

**Law No. 03/L-154**

**ON PROPERTY AND OTHER REAL RIGHTS**

**Assembly of Republic of Kosovo,**

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Adopts:

**LAW ON PROPERTY AND OTHER REAL RIGHTS**

**PART I**

**GENERAL PROVISIONS**

**Article 1  
Scope of the Law**

1. This law governs the creation, content, transfer, protection, and termination of real rights.
2. This law regulates ownership and, as limited real rights, possession, real security rights and real rights of use. These limited real rights may be created in ownership and in other suitable real rights.
3. Other real rights can only be created by law. The general provisions and fundamental principles of this law shall also apply to real rights not referred to in paragraph 2 above, unless separate legislation provides otherwise.
4. Ownership and other real rights can only be limited or taken away against the lawful holders' will in accordance with conditions and procedures as defined by the applicable laws.
5. The provisions of this law do not apply to real rights in public or common assets, which are subject to specific legislation, unless specifically provided otherwise in this law.

**Article 2  
Holders of Real Rights**

1. Any person can acquire real rights, unless otherwise provided by law.
2. The holder of a real right can assert this right against any other person, unless otherwise provided by law.

**Article 3  
Priority of Real Rights**

If several limited real rights exist in a single asset, their priority is determined in accordance with the time of their creation, unless otherwise provided by law.

**Article 4  
Presumption of Good Faith**

If the acquisition of a real right depends on the good faith of the transferee, good faith shall be presumed unless proven otherwise.

**Article 5  
Limitation of Real Rights**

1. Real rights can be restricted by real rights in other assets as determined by this law.
2. Real rights must be exercised in accordance with the nature of the asset and the principles of this law.

#### **Article 6 Prohibition of Abuse**

1. The abuse of a real right is prohibited.
2. A real rights is abused if it is exclusively or patently used to damage other persons or their assets.

#### **Article 7 Extinction of Real Rights**

Real rights are not subject to extinction except by operation of law.

### **PART II**

#### **Definitions**

#### **Article 8 Assets**

Assets are movable property, immovable property, and intangible rights.

#### **Article 9 Moveable Property**

1. Movables are independent corporal objects that are not permanently attached to the ground or a part of the ground, and are generally capable of being moved.
2. Physical objects that are not corporal, such as light or electricity, are intangible movables (untouchable).

#### **Article 10 Immovable Property**

1. Immovable property is a part of the earth's surface that is or can be enclosed. Immovable property includes plants enrooted in the ground and buildings firmly connected to the ground, but do not include natural resources in the subsoil.
2. Immovable Property includes:
  - 2.1. a building that belongs to a person other than the owner of the immovable property on which it is built;
  - 2.2. a building unit which is regulated by Articles 57 -62;
  - 2.3. a building right which is regulated by Articles 271-281;
  - 2.4. a leasehold according to the relevant provisions on leaseholds.
3. All other property shall be deemed movable.

#### **Article 11 Intangible Rights**

Intangible rights are limited real rights and include the claim to demand the performance of a specific act by another person, in particular the payment of money.

**Article 12**  
**Common Assets**

1. Common assets, such as air or water, are assets that cannot be the object of ownership or limited real rights of a person, or the subject of legal transactions.
2. Any person may utilize common assets within the limitations prescribed by law.

**Article 13**  
**Component Parts**

1. A component part is movable property that is generally regarded as an integral part of other movables (principal movables) or of immovable property.
2. Component parts of immovable property include movables which are not only temporarily attached to the ground, stand on the ground, or extend underneath the ground.
3. A component part has the same legal status as the principal moveable property or immovable property and cannot be the object of separate rights, unless it is separated from the principal movable property or the immovable property.

**Article 14**  
**Fixtures**

1. Fixtures are movables that are not component parts, but intended to permanently serve the economic purpose of principal movables or of immovable property, and are for that reason positioned pursuant to such purpose.
2. Fixtures of a farm include cattle, equipments, machines, farm produce and seeds insofar as these are necessary for the continuation of the farming operation until such time when the next crop of the product or seeds can be harvested.
3. Fixtures of immovable property on which handicraft, craft, industrial production, or trade is carried out include machines, tools, and other equipment that is needed and utilized for the purpose of the production or trade.
4. The rights and obligations relating to principal movables also extend to the fixtures unless otherwise provided by law or the parties.

**Article 15**  
**Non-Personal Rights**

A non-personal right is a transferable right and the value of which can be expressed in money or monetary terms.

**Article 16**  
**Fruits**

Fruits of assets or of a non-personal right are the natural and legal proceeds that directly derive from such asset or non-personal right or from their actual or legal use without diminution of the value of the asset or non-personal right.

**Article 17**  
**Utilisation**

Utilisation of assets or of a non-personal right denotes the use of the fruits of the assets and non-personal right and of other advantages provided by the use of such assets or the non-personal right.

**Part III  
Ownership**

**CHAPTER I  
GENERAL PROVISIONS**

**Article 18  
Ownership**

1. Ownership is the comprehensive right over a thing. The owner of a thing may, unless it is not contrary to the law or the rights of third parties, deal with the thing in any manner he sees fit , in particular possess and use it, dispose of it and exclude others from any interference.
2. Intellectual property is subject to special rules.

**Article 19  
Similar Rights**

The provisions of this chapter also apply to similar rights regarding other assets that make no reference to a thing, in particular rights of claims and intellectual property, insofar in these rights by their nature those provisions are applicable.

**Article 20  
Danger Emanating from Assets**

1. No person acts unlawfully if he damages or destroys movable property belonging to another person, in order to ward off from himself or a third person an imminent danger deriving from such movable property, provided that the damage to or destruction of the movable property was necessary to ward off the danger. If the danger was prompted by the person damaging or destroying the movable property or if that person could have avoided the imminent danger but intentionally or negligently failed to do so, this person is liable to compensate the owner of the movable property for the damage caused.
2. The owner of moveable or immovable property is not entitled to prevent others from exercising authority over such property if this is necessary to ward off an imminent danger, provided the danger would cause disproportionate damage compared to the damage caused to the owner. The owner can demand compensation for any damage caused.

**CHAPTER II  
ACQUISITION AND TERMINATION OF OWNERSHIP IN MOVABLES**

**Article 21  
Acquisition of Ownership of Movables**

1. For the transfer of ownership in movable property, a valid legal transaction agreement between the owner and the transferee passing ownership and the delivery of the movable property to the transferee are required.
2. If the transferee is in possession of the movable property, a valid agreement passing ownership is sufficient for the transfer of ownership.
3. If the owner is in possession of the movable property, the delivery may be substituted by an agreement between the owner and the transferee by which the transferee obtains indirect possession of the movable property.
4. If a third party is in possession of the movable property, delivery may be substituted by the owner assigning to the transferee the claim against the third party for the delivery of the movable property.

**Article 22**  
**Good Faith Acquisition**

1. If moveable property transferred does not belong to the transferor, the transferee nevertheless acquires ownership, unless he is not acting in good faith at the time of the delivery.
2. If moveable property transferred pursuant to Article 21, paragraph 2 does not belong to the transferor, the transferee nevertheless acquires ownership unless he is not acting in good faith at the time he obtains possession.
3. If moveable property transferred pursuant to Article 21, paragraph 3 does not belong to the transferor, the transferee nevertheless acquires ownership at the time when the transferor delivers the property, unless the transferee was not acting in good faith at the time he obtained indirect possession.
4. If moveable property transferred pursuant to Article 21, paragraph 4 does not belong to the transferor, the transferee nevertheless acquires ownership at the time when the transferor assigns the claim, or when the transferee obtains possession from the third party, unless he is not acting in good faith at this time.
5. The transferee is not acting in good faith if he knows, or as a result of gross negligence does not know, that the movable property does not belong to the transferor.

**Article 23**  
**No Good Faith Acquisition of Lost Property on Involuntarily Lost Things**

1. No good faith acquisition of ownership pursuant to Article 22 is possible, if the property was stolen from the owner or has been lost in any other way, unless as foreseen in Article 33 of this law.
2. Rule according to paragraph 1 of this law does not apply to money or bearer instruments or movable property that is transferred by way of public auction.

**Article 24**  
**Return of National Cultural Assets**

1. National cultural assets are deemed to be things of artistic, historic or archeological value which are found especially in public institutions such as museums, archives, or libraries.
2. National cultural assets which have been illegally removed from the sovereign territory of a member state of the European Union or according to the loan contract have not been returned within the given term, are to be delivered by the possessor to the competent authorities.
3. Paragraph 1 of this article is also applicable on the removal of cultural assets from the territories of other countries on condition that factual reciprocity exists.

**Article 25**  
**Extinction of third parties` rights**

1. If a transferred thing is encumbered with a third party's right, this right is extinguished upon acquisition of ownership toward that thing.
2. The right is not extinguished if the acquiring party was not in good faith at the time the ownership is transferred.

**Article 26**  
**Presumption of ownership in favor of the possessor**

1. It is presumed in favor of the possessor of a movable thing that he is the owner of the thing. Notwithstanding the foregoing, this is not applicable against a former possessor if the thing was stolen from him, he lost it or otherwise involuntarily lost possession over the thing, except where the thing is either money or bearer instruments.

2. It is presumed in favor of the former possessor that during his possession he was the owner of the thing.

### **Article 27 Acquisition of Fruits**

1. The fruits of movable property belong to the owner of the property, unless otherwise provided by law or agreement.

2. A person who possesses movable property as owner acquires ownership of the fruits of the property upon separation of the fruit from that property. Acquisition of ownership to the fruits is not possible if the proprietary possessor is not in good faith at the time when he acquires proprietary possession or learns of the defect of his right before the separation of the fruits from the property.

### **Article 28 Acquisition by Prescription**

1. A person who has a movable property in his proprietary possession for a period of ten (10) uninterrupted years acquires ownership of the property at the end of the ten (10) year period (acquisition by prescription) if, at the beginning of the ten (10) year period, he was not aware that he was not entitled to ownership.

2. Prescription is excluded if the person, on acquiring the proprietary possession, was not in good faith or if he discovers during the ten-year period that he is not entitled to the ownership of the movable property.

3. Upon the acquisition of ownership by prescription, all third-party rights in the movable property which arose prior to the acquisition by proprietary possession are extinguished, unless the proprietary possessor is not in good faith with regard to these rights while acquiring proprietary possession.

### **Article 29 Joining of Movables**

1. If movables that belong to different owners are joined in such a way that they become component parts of a single movable property, the previous owners become co-owners of that property. Their shares are determined in relation to the value of the original movables at the time when these were joined.

2. If one of the movables can be determined to be the main movable property, its owner acquires sole ownership of the new single property. The previous owners whose ownership ceases to exist are entitled to compensation from the new owner in an amount equal to the value of their movables.

3. Cessation of ownership rights in a movable property causes the cessation of all other rights in that property. This does not apply if the owner of an encumbered property becomes the owner or a joint owner of the new single property.

### **Article 30 Mixing of Properties**

If movables of different owners are mixed or mingled in a way that they cannot be separated or such separation would entail disproportionately high cost, the provisions of Article 29 of this law apply *mutatis mutandis*.

### **Article 31 Processing**

1. A person who creates new moveable property through processing or transformation his own materials acquires ownership of the processed or transformed property.
2. A person who creates new movables property through processing or transformation materials of other persons acquires ownership of the new movable property created, unless the value of the processing or transformation activity is substantially less than the value of the materials used to create the new movable property.
3. If the value of the processing or transformation activity is exactly equal to the materials used, the parties involved shall acquire joint ownership over the newly created movable property in equal proportions.
4. The activity of processing includes writing, drawing, painting, printing, engraving or any similar processing of the surface.
5. On the acquisition of ownership of the new movable property, all existing rights in the materials cease. The owner of the new property is obliged to compensate any third parties for the loss of their rights.

### **Article 32 Acquisition of Ownership of Ownerless Movables**

1. A person who takes proprietary possession of ownerless movable property acquires ownership of that property unless the acquisition is prohibited by law.
2. Movable property becomes ownerless if the owner, with the intention of abandoning his ownership rights, gives up the possession of the property.
3. A domestic animal becomes ownerless if it gives up the habit of returning to the place provided for it.
4. A swarm of bees become ownerless if it lives in the wild and the owner fails to pursue it within forty eight (48) hours, and the new whereabouts are not marked.

### **Article 33 Finding**

1. A person who finds lost moveable property and takes possession of it must notify the person who lost the property or the owner of that property without undue delay.
2. If the finder does not know the identity or whereabouts of the owner or the person who lost the property, the finder must notify the competent authority without undue delay of the find together with the related circumstances. If the property is not valued more than ten (10) Euros, no notification is necessary.
3. The finder has a duty to keep the property in safe custody. If it is feared that the property will decay, or if keeping the property in safe custody entails disproportionately great costs, the finder is obliged to deliver the property to the competent authorities for public auction.
4. Upon the expiration of one year after notifying the competent authorities of the find, the finder acquires ownership of the property, unless the person entitled to receive the property has before this time become known to the finder or notified the competent authorities of his right. On the acquisition of ownership, all other rights in the property are ceased to exist.

5. The finder may demand a finder's reward from the person entitled to receive the property. The finder's reward is five percent of the value of the property up to five hundred (500) Euros, three percent upon this value and three percent (3%) in the case of animals. If the property has a value only for the person entitled to receive it, the finder's reward shall be determined as appears equitable. No claim for a reward can be made, if the finder violates the duty of notification or conceals the find on being questioned.

#### **Article 34 Treasure Trove**

1. If a property of exceptional value that was hidden for such a long time that the owner can no longer be ascertained (treasure) is found, than the ownership over that property is acquired according to the following division, 1/3 by the discoverer, 1/3 by the owner of the immovable property on which the treasure was hidden and 1/3 belongs to the state.

2. If the property is of exceptional historic, cultural, archaeological or artistic value, the acquisition of ownership shall be determined by a separate law.

#### **Article 35 Abandonment of Ownership**

Movable property is deemed abandoned if the owner unambiguously expresses his intention to irrevocably renounce his ownership over the property.

### **CHAPTER III ACQUISITION AND TERMINATION OF OWNERSHIP IN IMMOVABLE PROPERTY**

#### **Article 36 Acquisition of Immovable Property**

1. The transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register.

2. The contract for the transfer of ownership of an immovable property must be concluded in written in the presence of both parties before a competent court or a notary public.

#### **Article 37 Scope of Application**

The transfer of ownership of an immovable property includes the transfer of the area above the immovable property and the area below the original surface, but only if there is an interest for its performance and if by specific legislation and rights of third parties do not provide otherwise.

#### **Article 38 Component Parts**

The transfer of ownership of an immovable property includes the transfer of movables that have become component parts thereof.

#### **Article 39 Fixtures**

Upon the transfer of an immovable property, it is presumed that its fixtures are acquired at the same time.

#### **Article 40 Acquisition by Prescription**



1. A proprietary possessor acquires ownership of an immovable property, or a part thereof, after twenty (20) years of uninterrupted possession.
2. A proprietary possessor acquires ownership of an immovable property, or a part thereof, after ten (10) years of uninterrupted possession and if he is registered as the proprietary possessor in the immovable property rights register and no objection against this registration is filed during this period.

**Article 41**  
**Acquisition by Prescription Following Registration**

A person who without having acquired ownership is registered as the owner of an immovable property in the immovable property rights register, acquires ownership of that property if the registration has existed for twenty (20) years and the person has the immovable property unit in proprietary possession during this period. The expiry of the term is suspended for as long as an objection to the accuracy of the registration is entered in the immovable property rights register.

**Article 42**  
**Relinquishment of Ownership**

1. Ownership of an immovable property may be abandoned, if the owner declares to the competent authorities that he wishes to abandon the immovable property and such declaration is registered in the immovable property rights register.
2. The right to appropriate the abandoned immovable property belongs to the competent public body in the territory where the immovable property is located. The competent public body acquires ownership by registering itself in the immovable property rights register as owner.

**Article 43**  
**Joint and Collective Ownership of Immovable Property**

The provisions of this law on ownership of an immovable property are also applicable to joint ownership and collective ownership of immovable property.

**CHAPTER IV**  
**RIGHT OF PRE-EMPTION**

**Article 44**  
**Concept of the Right of Pre-emption**

1. An immovable property (or joint ownership over an immovable property) may be encumbered in such a manner that a person has a right of pre-emption.
2. The right of pre-emption can be established by law or by contract. The contractual right of pre-emption is established by agreement between the owner of the immovable property and the person entitled to the pre-emption. The right of pre-emption becomes effective against third parties once it is entered into the immovable property rights register.
3. The right of pre-emption may be granted for one or more instances of purchase, but is restricted to the sale by the owner who owned the immovable property at the time of the granting of the right of pre-emption, or by his heirs.

**Article 45**  
**Notification and Exercise of Right of Pre-emption**

1. The relevant provisions of the Law on Obligations or any other applicable law are applicable if the right of preemption is exercised.

2. The right of preemption is exercised by notifying the person obliged by the preemption right. The exercise of this preemption right has to comply with the formal requirement of a contract for the transfer of immovable property units.

#### **Article 46 Effect of a Right of Pre-emption**

1. In exercising the right of pre-emption, a contract is concluded between the person exercising the right of pre-emption and the person obligated under this right in accordance with the terms agreed between the person obligated and the purchaser.

2. Against third parties the right of pre-emption has the effect of a priority notice given for the purpose of securing a claim for the transfer of ownership of the immovable property.

#### **Article 47 Payment of the Purchase Price**

1. The person entitled to the right of pre-emption must pay the purchase price to the seller.

2. If the buyer or his legal successor is registered as the owner, the holder of the right of pre-emption must reimburse the buyer for the purchase price he paid to the seller.

#### **Article 48 Release of Pre-emption Right Holder**

1. To the extent that the holder of the right of pre-emption is required to pay the purchase price to the buyer or the buyer's legal successor, the holder of the right of pre-emption is released from his obligation to pay the purchase price owed under the pre-emption.

2. If the buyer or his legal successor loses ownership as a result of the exercise of the right of pre-emption, the buyer shall be released from his obligation to pay the purchase price owed by him. The buyer cannot demand restitution or the repayment of a purchase price already paid by him.

#### **Article 49 Preclusion of Unknown Holder of a Right of Pre-emption**

If a holder of a right of pre-emption is unknown, he may be precluded from exercising his right, in the same manner as an unknown holder of a priority notice can be precluded from exercising his right pursuant to Article 124.

#### **Article 50 Applicability of Provision for Pre-emptive Purchase**

The relevant provisions of legislation on obligations are applicable to this Chapter on the right of pre-emption.

### **CHAPTER V OWNERSHIP OF SEVERAL PERSONS**

#### **SUB-CHAPTER 1 JOINT OWNERSHIP**

#### **Article 51 Joint Ownership**

1. If several persons are sharing ownership in an immovable property or movable property, these persons are joint owners.

2. If the shares of the joint owners are not specified, it is presumed that they are equal.

**Article 52**  
**Rights of Joint Owners**

1. A joint owner is entitled to possess and use movable or immovable property in proportion to his share.
2. The fruits of immovable property are divided between the joint owners according to their shares. If the fruits are not divisible, the joint owners acquire joint ownership over the fruits.
3. A joint owner may dispose of his share without the consent of the other joint owners.
4. If immovable property is the object of joint ownership each joint owner is entitled to a right of pre-emption. If more than one joint owner chooses to exercise the right of pre-emption, each joint owner exercising this right shall be entitled to a portion of the property which is determined by the size of his share in the immovable property. The right of pre-emption persist even if a court orders the sale of the shares at a public auction. There is no right of pre-emption if a joint owner sells his shares to his heirs.

**Article 53**  
**Administration of Joint Ownership**

1. Joint owners shall jointly administer the movable or immovable property that is the object of their joint ownership.
2. Ordinary acts taken in the course of administration of joint property are void without the consent of joint owners whose shares jointly amount to more than fifty percent (50%).
3. Extraordinary acts of administration, in particular the encumbrance of the joint property and the appointment of an administrator, require the consent of all joint owners.
4. Decisions taken by joint owners are binding upon a legal successor of a joint owner.

**Article 54**  
**Claims by Joint Owners**

If the joint owners of an immovable property unit have settled the administration and the use of their immovable property unit or barred the termination of their community permanently or for a certain period of time, then this provision is only binding against the singular successor of a joint owner if it is entered into the immovable property rights register.

**Article 55**  
**Sole Successor of Joint Owner**

If joint owners of immovable property have permanently or for a limited period of time settled the administration and the use of their immovable property or excluded the termination of their joint ownership, then this agreement is binding against a sole successor of a joint owner only if it is registered in the immovable property rights register.

**Article 56**  
**Termination of Joint Ownership**

1. Joint ownership may be terminated in one of the following ways: severance, one or more of the joint owners acquiring the entire property, disposal of the movable property, or an auction of the immovable property.

2. If all of the joint owners deem the transfer to a third party inappropriate, the property may be sold at a public auction and the proceeds shall be allocated to the joint owners according to their shares.
3. If the termination of joint ownership takes place through severance or by one or more of the joint owners acquiring the entire property, the value is determined by an officially appointed appraiser, unless all joint owners wave their right to the official appraisal.
4. If joint owners cannot agree on how to proceed with the termination of their joint ownership, a movable property shall be disposed of in accordance with the rules on the disposal of pledged property, and immovable property shall be disposed of through a compulsory auction with the proceeds allocated to the joint owners in accordance with their shares. If an attempt to transfer ownership is unsuccessful, a joint owner may request that an additional attempt to be made, provided that he covers the expenses if this attempt is unsuccessful.

## **SUB-CHAPTER 2 OWNERSHIP OF BUILDING UNITS**

### **Article 57 Ownership of a Building Unit**

1. Ownership of a separate part of a building (building unit) is the separate ownership of a flat, an office, or a garage parking space together with a share of joint ownership of the immovable property in which the building unit is located.
2. Joint ownership exists for the immovable property on which the building is erected as well as all pertinent parts, installations and equipment unless owned separately and or owned by a third party.
3. Separate ownership of a building unit shall only be established if the flat, office, or garage parking space is self-contained.
4. The share of joint ownership of the immovable property cannot be separated from the respective separate ownership of the building unit.

### **Article 58 Creation of Ownership Right**

1. Ownership of a building unit can be created by contract (in accordance with paragraph 2) or division (in accordance with paragraph 3).
2. Joint ownership of immovable property can be contractually limited by an agreement among the joint owners to the extent that each joint owner is allocated ownership of a specific flat, office or garage parking space in a building that is erected or to be erected on the jointly owned immovable property.
3. The owner of an immovable property can divide the property into shares of joint ownership by officially declaring at the immovable property rights registry that together with each share in the joint ownership of the property separate ownership is established over a certain flat or room in a building that is erected or to be erected on the immovable property.

### **Article 59 Encumbrance with a Mortgage**

1. If, in the case of Article 57, paragraph 3, the immovable property, or in the case of Article 58, paragraph 2, the jointly owned immovable property, is encumbered with a mortgage, the division of the property is subject to the mortgagee's consent.
2. Mortgages are transferred to the ownership of the building unit.

### **Article 60**

## **Object of Separate Ownership**

1. Separate ownership may also include specified rooms as well as component parts of the building belonging to these rooms which can be modified, removed or added without the joint ownership or separate ownership of third parties being impaired beyond an acceptable extent and without affecting the outward appearance of the building.
2. Separate ownership cannot be transferred or encumbered without the share of joint ownership connected to it.

### **Article 61 Provisions in respect of the form**

1. The grant or termination of separate ownership requires a valid contract on the alteration of the original rights as well as the registration of the rights in the immovable property rights registry.
2. The contract must comply with the formal requirements set out in Article 36, paragraph 2.

### **Article 62 Immovable Property Rights Register**

1. The grant of consent for an entry into the immovable property rights register by the owner or joint owner in accordance with Article 58, paragraphs 2 and 3 of this law must be supplemented with:
  - 1.1. a construction drawing signed by the building authority showing the partition of the building as well as the location and size of the building units over which separate or joint ownership exists (building plans);
  - 1.2. a certificate issued by the building authority stating that the requirements of self-containment are satisfied.
2. The severance takes effect when entered into the immovable property rights register.

## **SUB-CHAPTER 3 COMMUNITY OF BUILDING UNITS` OWNERS**

### **Article 63 Principles**

1. The legal relationship amongst the owners of building units is determined by the provisions of this law. Unless otherwise provided by this law, the owners of building units by the agreement can adjust mutual relations.
2. Agreements by which the owners of building units deviate from this law or from such agreements are only binding against the legal successor of a separate ownership over if they are entered into the immovable property rights register as content of the separate ownership.
3. Legal actions in affairs which according to this law or to agreement can be taken by majority vote, are also binding against the owners of building units who did not consent to the decision or who were absent from the decision making.
4. In order to be effective, particularly against creditors and other third persons, decisions are not required to be entered into the immovable property rights register.

**Article 64**  
**Prohibition of Termination**

The owner of a building unit can only demand the termination of joint ownership if the building is completely or partially destroyed and there is no obligation to rebuild.

**Article 65**  
**Rights of Owners of Building Units**

1. Except where the rights of third parties are affected, each owner of a building unit may dispose of the parts comprising the separate ownership within the framework of the law as he see fit and exclude others from any interference.

2. It may be agreed that the content of the separate ownership of a building unit contain the restriction that the separate owner should only be allowed to dispose of his separate ownership of a building unit if the other owners building units or a third party agree. The consent may only be refused for an important reason. Such limitation only becomes effective upon registration in the immovable property rights register.

**Article 66**  
**Liability of Owners of Building Units**

1. Each owner of a building unit shall:

1.1. maintain that part of the building which is in his separate ownership and use the building part which is in his separate and joint ownership in such a manner that no other owner of a building unit suffers disadvantage;

1.2. allow others to enter and use those parts of the building in his separate ownership

1.3. if it is necessary to maintain and repair joint property bear the charges and pay the maintenance cost of the joint property in relation to his share of joint ownership of the property.

**Article 67**  
**Right of Exclusion**

1. If an owner of a building unit repeatedly breaches his obligations toward other owners of building units in a way that they cannot reasonably be expected to continue the joint ownership with him, the other owners are entitled to adopt a resolution which requires that the owners in repeated breach dispose of his ownership over the building unit.

2. The resolution requires the vote of more than half of the owners.

3. The provisions in paragraph 1 and 2 are binding. Any contract or agreement to the contrary is void.

4. If the owner of a building unit does not participate in necessary measures for improvement of the joint property, the proportional expense related to his building unit will be calculated when the purchase price for this building unit is determined.

**Article 68**  
**Right of Pre-emption**

When the ownership of a building unit is transferred, other owners of building units in the same building have the right of pre-emption. The provisions regarding pre-emption in the case of joint property in Article 52, paragraph 4, apply accordingly.

## **SUB-CHAPTER 4 ADMINISTRATION**

### **Article 69 Regular Administration**

1. Unless otherwise provided by this law or by agreement of the owners over a building unit, the owners of a building unit are jointly entitled to the administration of their joint property.
2. If the regular administration is not settled by agreement, the owners of building units may decide by majority of votes.
3. Regular administration in the interest of the owners of a building unit as a whole comprises in particular:
  - 3.1. the ordinary repair and maintenance of joint property, the conclusion of the necessary insurances against fire as well as building and property insurances,
  - 3.2. the accumulation of an appropriate financial provision for repairs,
  - 3.3. the inducement and toleration of all measures that are in particular necessary for the building's connection to the regular supplies, especially water, sewage and power, telephone and telecommunication installations,
  - 3.4. the establishing of an economic plan, and
  - 3.5. making the rules of the house known.

### **Article 70 Extraordinary Administration**

1. Structural alterations and investments that exceed measures of regular administration require decision by unanimity amongst the owners of the building units.
2. If more than half of the building is destroyed and the reconstruction is not covered by insurance or other means, reconstruction can only be decided upon unanimously.

### **Article 71 Appointment, Dismissal, Rights and Liabilities of the Administrator**

1. The appointment of an administrator is decided upon by majority vote of the owners of the building units. The duration of the appointment may not exceed five (5) years. An extension is permissible.
2. The appointment of an administrator is also then required if the community of building owners comprises only two parties.
3. In particular, the administrator is entitled and obliged to execute decisions of the owners of a building unit, to arrange for regular maintenance of the joint property and administer joint funds.
4. In particular, the administrator is authorized to assert and to receive, judicially and extra judicially, all payments and performances and legal declarations regarding the joint property.
5. The administrator's duties and powers as stated in Paragraphs 2 and 3 may not be limited by an agreement of the owners of the building units.

**Article 72  
Advisory Board**

The owners of a building unit may establish an advisory board with the majority of their votes consisting of a chairperson and deputy chairperson. The advisory board supports the administrator taking care of the property and, in particular, audits the economic plan and its calculations and cost estimates.

**Article 73  
Assembly of Building Owners**

1. The assembly of owners of building units is established on the matters on which, according to his law or another agreement of the owners of a building unit, a decision by it can be made.
2. The assembly is summoned at least once a year by the administrator and when a member of the advisory board or a quarter of owners of building units so demand. If there is no administrator or if he refuses to summon the meeting with no just cause, the chairperson of the advisory board can also summon the meeting.
3. In order for a resolution to be valid its subject must have been mentioned in the summons and the latter must have been effected ten days prior to the assembly. A resolution is also valid without an assembly summoned, if all owners of a building unit declare their consent thereto in writing.
4. The decisions agreed upon at the assembly are to be recorded in minutes. Each owner of a building unit has the right to inspect the minutes and to request a copy.

**Article 74  
Assembly Meeting**

1. The assembly only reaches a quorum if the present owners of the building units represent more than half of the shares of the joint ownership calculated according to the building's area.
2. Every building unit is represented by one vote. If a building unit belongs to several owners, its vote must be unanimous.
3. Owners not entitled to vote, if the subject of this vote is agreement or a litigation with the other owners.

**Article 75  
Solution of disputes from the court**

The Court decides, on the application of the person affected, upon the duties and rights of the owners over building units, upon the administrator's duties and powers regarding the administration of joint property, upon the appointment of an administrator and upon the validity of decisions taken by the assembly meeting.

**Article 76  
Implementation of provisions for administration of building units**

Provisions of Articles 69 until 75 are applicable unless otherwise foreseen by separate law.

**SUB-CHAPTER 5  
COMMON OWNERSHIP**

**Article 77  
Common Ownership**

1. If several persons are entitled to the ownership over movable property in such manner that no shares are determined then they are common owners.



2. Common ownership can be established by law or agreement. An agreement creating common ownership may only be concluded if expressly permitted by law.
3. Common owners must dispose of their property collectively and are collectively accountable for its liabilities.
4. A common owner may request partition or sale of common property, but not at an inconvenient time.
5. The provisions on joint ownership apply to common ownership unless otherwise provided by law.

## **CHAPTER VI NEIGHBOUR LAW**

### **Article 78 Duty of Care**

1. Owners of adjoining immovable property units are obligated to take the rights and interests of their neighbours into consideration and to exercise their right in a manner which does not impede the rights of their neighbours.
2. The duty of care and all other provisions of this Chapter on a neighbour relationship apply to the relations between the owner of an immovable property and the owner of a building erected thereupon if, by their nature, they are applicable to this relationship.

### **Article 79 Confusion of Boundaries**

If, in the case of a confusion of boundaries, the true boundary cannot be established, the relevant provisions of the Law on Cadastre are applicable.

### **Article 80 Boundary Markings and Boundary Structures**

1. Owners of neighbouring immovable properties are required to cooperate in erecting fixed boundary marks and, if a boundary mark has moved or become unrecognizable, in the restoration of such marks.
2. The costs of boundary markings are to be borne by the parties in equal parts, unless an existing legal relationship between the neighbours leads to another result.
3. If a boundary structure (in particular a wall, fence, hedge, ditch, earth wall or stone sign) is situated on the boundary between two adjoining immovable properties, it is deemed that the structure is jointly owned.
4. If a boundary structure is on one of the immovable properties, it is deemed to be owned by the person who owns the immovable property upon which it is built.
5. The type of markings and the procedure for maintaining such markings are determined in accordance with the common practice in the location of the properties concerned.
6. If a third party suffers damage due to the lack of maintenance of boundary marks, the owners are obliged to compensate for the damage caused.

### **Article 81 Tree on the Boundary**

1. If a tree is standing on a boundary between immovable properties, the fruits from the tree and the tree itself belong to the neighbours in equal shares.

2. Each of the neighbours may require the tree to be removed. The cost of the removal shall be borne by the neighbours in equal shares. The neighbour who demands the removal, however, must bear the cost alone if the other neighbour waives his right to the tree. The claim to removal is excluded if the tree serves as a boundary mark and, in view of the circumstances, cannot be replaced by another appropriate boundary mark.

3. These provisions also apply to a bush and other plants standing on the boundary between immovable properties.

#### **Article 82 Emissions**

1. The owner of an immovable property may not prohibit the introduction of gases, steam, smells, smoke, soot, heat, noise, vibrations and similar interference emanating from another immovable property to the extent that the interference does not materially or completely impede the use of his immovable property. Interference is generally not considered material if the limits or targets laid down in applicable law and regulations are not exceeded.

2. The same applies to a material interference caused by the use of an immovable property which is customary in the location and which cannot be prevented by measures that are financially reasonable for users of this kind.

#### **Article 83 Fruit**

Fruit that fall from a tree or a bush onto a neighbouring immovable property are deemed to be the fruit of the owner of the neighbouring immovable property at the time the fruits separate from the tree.

#### **Article 84 Branches and Roots**

1. The owner of an immovable property is entitled to cut off branches of a tree or a bush intruding over the boundary from a neighbouring immovable property if the owner has set a reasonable period for the possessor of the neighbouring immovable property to remove such branches and the removal is not effected within the period set. The owner is not entitled to such right if the boundary is in a forest.

2. The owner of an immovable property may only cut roots growing from a neighbouring property if the roots threaten to destroy or endanger, a structure, a building or a culture of plants on his own property.

#### **Article 85 Access to Retrieve Animals**

1. Household or farm animals may be pursued by their owners onto neighbouring immovable properties. This also applies to a swarm of bees.

2. The owner of the immovable property on which the animals are loitering may deny access if he immediately turns over the animals to their owner.

#### **Article 86 Necessary Passage**

1. The necessary passage over an immovable property must be tolerated if the neighbouring immovable property has no other access way to a public road, or the connection to a public road involves a

significant detour, provided that the benefit to the neighbouring property exceeds the disadvantage caused to the immovable property on which the passage occurs.

2. The direction of the necessary passage and the scope of its use are determined by the manner in which the least obstruction is imposed on the neighbour granting the passage, and the manner in which the greatest convenience is given to the person requesting it.

3. The neighbour over whose immovable property the necessary passage occurs must be compensated with periodic payments for the use of the property and for any damage that may be caused by the passage.

4. The right of passage is terminated when the necessity ends.

5. This Article also applies to the affixing of supply lines.

### **Article 87 Right of Passage for Buildings**

The provisions of Article 78 also apply to an owner of a building who requires the necessary passage over the immovable property surrounding it.

### **Article 88 Temporary use of a Neighbouring Immovable Property**

1. The owner of an immovable property can demand from the owner of a neighbouring property that temporary access is granted to the neighbouring property in order to carry out work provided that the work cannot be carried out in any other manner or otherwise only at a disproportionately high cost. The work must be announced with a proper notice period prior to its commencement.

2. After using the neighbouring immovable property, it must be restored to its former condition.

3. The owner who allows the use of his immovable property may require payment of a reasonable fee as compensation for the use. The claim for such compensation expires six (6) months after the work is completed.

### **Article 89 Collapse of a Building**

If there is a serious risk that a building or a part thereof could collapse and endanger a neighbouring or surrounding immovable property, the owner of the immovable property that is at risk may require the owner of the building to take all action necessary to ward off such danger.

### **Article 90 Building over Boundary Lines**

1. If the owner of an immovable property constructs a building over a boundary line, the owner of the neighbouring property does not have to endure such construction.

2. The neighbour shall be indemnified by payment of a rent, provided he objects in writing to the owner of the building that infringes the boundary line. The objection must be made no later than one year after the neighbour learns of the infringement and no later than five years after the infringement. The rent shall be paid after the objection is made.

3. The neighbour whose immovable property was infringed may demand from the owner of the building:

3.1. that ownership of the building be divided taking into account the boundary line;

3.2. that the owner of the building remove such part of the building which is located on the neighbour's immovable property; or

3.3. that the owner purchase the immovable property that has been covered by the infringing part of the building.

4. The neighbour shall exercise any one of the rights provided under sub-paragraph 3.1. and 3.2. above within one year of the objection. Until the right is exercised and the respective action under sub-paragraph 3.1. through 3.3., is completed by the owner of the infringing building, the rent under paragraph 2 of this article must be paid.

#### **Article 91 Excavation**

There may not be any excavation on an immovable property which may cause the ground of a neighbouring immovable property to lose its necessary support, unless care has been taken to provide sufficient reinforcement of another kind.

#### **Article 92 Watercourse**

The owner of an immovable property may not change the watercourse or the amount or quality of a body of water flowing through his immovable property if this would be detrimental to a neighbouring property.

### **CHAPTER VII PROTECTION OF OWNERSHIP**

#### **Article 93 Claim for delivery**

The owner may demand the delivery of the thing determined from anyone who is not entitled to possess it.

#### **Article 94 Objections of the Possessor**

1. The possessor may refuse the delivery of the thing, if he or the indirect possessor from whom his right of possession derives, is entitled to the possession.
2. If the indirect possessor is not entitled to possession as against the owner, the owner may request the direct possessor to deliver the thing to the indirect possessor, or, if the indirect possessor does not or cannot take possession of the thing, to himself (owner).

#### **Article 95 Claims against the Possessor in Good Faith**

1. The owner may demand delivery of the fruits as well as of other advantages which the use of the thing affords from the bona fide possessor.
2. A person who is obliged to deliver the fruits taken to the owner may demand compensation for his reasonable expenses he incurred in the production or collection of the fruits, but not for a higher sum than the value of the fruits he had to deliver.
3. The claim for return of fruits and compensation of expenses are prescribed three years after return of the thing to the owner.

**Article 96**  
**Claims of bona fide Possessor**

1. The bona fide possessor is entitled to demand compensation for necessary and useful expenditure insofar as the value of the thing has been increased by the expenditure.
2. A necessary expenditure is an expense which, at the moment of its incurrence, was, according to objective standards, essential to maintain or run the thing.
3. A useful expenditure is any expense that, according to objective standards, leads to the increase in the value of the thing.
4. The bona fide possessor is entitled to retain the thing until the owner has compensated him for the necessary and useful expenditures.
5. The claim for compensation of expenditure prescribes three (3) years after delivery of the thing.

**Article 97**  
**Good Faith**

1. A possessor is not bona fide if he or his possessory servant knew or should have known that he was not entitled to possession.
2. The bona fide possessor is to be treated as a possessor in bad faith from the moment at which either the claim for delivery or the claim prescribed under Article 95 of this law has been served on him.

**Article 98**  
**Claims against the mala fide Possessor**

1. The mala fide possessor is liable to deliver the proceeds of the thing to its possessor as well as compensation for proceeds if he no longer has them or refrained from obtaining them.
2. The mala fide possessor is responsible to the owner for the damage caused which due to his fault led to the deterioration or destruction or another reason for which he is unable to deliver the thing.

**Article 99**  
**Claims of the mala fide Possessor**

1. The mala fide possessor is entitled to demand compensation for necessary expenditure made.
2. He is not entitled to retain the thing on the grounds of this claim.

**Article 100**  
**Liability of the Wrongful Possessor**

If the possessor has taken possession by an unlawful interference or by a criminal offense, he is liable to the owner pursuant to the provisions concerning damages for delicts.

**Article 101**  
**Exclusion**

The claims of owner and possessor against each other as provided for in Articles 93 – 100 exclude any other claims.

**Article 102**  
**Claim for Removal and Injunction**

1. If ownership is interfered with by removing or retaining possession of movable property, the owner may require that such interference with his right ceases forthwith. If further interference is feared, the owner may seek an injunction against such interference.

2. A claim against interference with an owner's rights can not be brought if the owner is obliged to tolerate such interference.

## **PART IV POSSESSION**

### **Article 103 Possession**

A person exercising material control over movable property is a direct possessor.

### **Article 104 Acquisition of Possession**

Possession of movable property is acquired by obtaining material control over such property. An agreement between a previous possessor and a transferee is sufficient for acquiring possession if the transferee is in a position to exercise control over the property at the time of the agreement.

### **Article 105 Agent in Possession**

A person exercising material control over movable property on behalf another person, in another person's household or in the business of another person or in a similar relationship that requires the person to follow instructions from another person relating to the property, is not deemed possessor.

### **Article 106 Heritability**

Upon the death of a possessor, possession passes to the heirs.

### **Article 107 End of Possession**

1. Possession comes to an end as a result of the possessor giving up material control over the property or losing material control in any other way.
2. Possession does not end as a result of the possessor being prevented from exercising control in a way that is temporary in nature.

### **Article 108 Joint Possession**

If several persons have joint possession of movable property, one person's right to use the property in relation to the others, and the individual possessor's protection of his possession, is limited by the right of the other persons to use the property as it was intended to be used.

### **Article 109 Indirect Possession**

1. A person granting possession of movable property based on a pledge, a lease, a depository or similar agreement or legal relationship that entitles another person to the possession of such property for a period of time is an indirect possessor.

1. If the indirect possessor derives indirect possession from a legal relationship of the nature set out in paragraph 1 above with a third party, the third party is also an indirect possessor.

### **Article 110 Proprietary Possession**

A person possessing movable property that is owned by that person is a proprietary possessor.

**Article 111**  
**Unlawful Interference with Possession**

1. A person depriving the possessor of possession or interfering with the possessor's possession against the will of the possessor acts unlawfully, except where the deprivation or the interference is expressly permitted by law.
2. Possession obtained as a result of unlawful interference is defective. The successor in such possession must allow the lawful possessor to assert possession against him if the possessor knew about the defective possession of his predecessor at the time the possessor acquired possession or if the defective possession was passed to the possessor by inheritance.

**Article 112**  
**Self-Help by the Possessor**

1. The possessor may use reasonable force as defence against unlawful interference with his possession, provided that the interference is concrete and adequate measures of defence are taken immediately upon occurrence of the interference.
2. If movable property is taken away from the possessor by acts of unlawful interference, the possessor may use reasonable force to retrieve the property if the interferer is caught in the act or in pursuit.
3. The rights of a possessor under subsections above may also be exercised by an agent in possession pursuant to Article 105 of this law.

**Article 113**  
**Claim against Interference with Possession**

1. If a possessor is deprived of his possession by unlawful interference, the possessor may require that his possession is restored by the interferer in defective possession as against the deprived possessor.
2. If a possessor is disturbed in his possession by unlawful interference, the possessor may require the disturber to remove the interference. If further disturbances are feared, the possessor may seek an injunction against such disturbances.
3. A claim against interferences is excluded if the possessor possesses the property defectively in relation to the disturber or the predecessor in title of the disturber.

**Article 114**  
**Exclusion of Claims to Possession**

The claim can only be asserted within thirty (30) days after the possessor became aware of either the deprivation or of the disturbance of his possession. The claim expires one year after the deprivation or disturbance of the possession.

**PART V**  
**SUBSTANTIVE PROVISIONS ON IMMOVABLE PROPERTY RIGHTS REGISTRATION**

**Article 115**  
**Acquisition, Modification and Termination of a Right**

1. Acquisition, variation, transfer and termination of ownership, a right of pre-emption or a limited right relating to immovable property require a legally valid contract and registration of the relevant transaction in the immovable property rights register.

2. Registration of entries in the immovable property rights register remains subject to the requirements in Law on the Establishment of the Immovable Property Rights Register no. 2002/5 and the Law no. 2003/13 on Amendment and Supplementation of the Law no. 2002/5.

#### **Article 116** **Subsequent Limitation of Disposal**

If a holder of a right to immovable property submits an application to acquire, vary, or terminate the right, the application remains valid even if the entitlement to the right becomes restricted after submission of the application.

#### **Article 117** **Third Party Rights**

If a right over immovable property is encumbered with the right of a third party, termination of the encumbrance requires the consent of the third party. If the right to be terminated is held by the owner of another immovable property that is encumbered with the right of a third party, the third party must consent to the termination if the termination affects any of its rights.

#### **Article 118** **Ranking of Rights**

1. The ranking of several rights encumbering the same immovable property shall be determined according to their date of entry into the register. Rights that were registered on the same day and at the same time have equal ranking.

2. Registration of a right also determines its ranking if the transaction necessary for the acquisition of the right is completed only after the registration.

#### **Article 119** **Changing the Order of Ranks**

1. A change in the order of ranking of rights requires an agreement between the holder of the rights that are affected by the ranking change and registration in the immovable property rights register.

2. If a mortgage is to be lowered in ranking, the consent of the owner of the immovable property is required in addition to the registration. This consent is irrevocable.

3. If a right that is to be ranked lower was encumbered with the right of a third party, the consent of the third party is also required.

4. Other rights ranking between the rights that are changed in ranking are not affected by that change.

#### **Article 120** **Reservation of Priority Ranking**

1. The owner of an immovable property when registering an encumbrance on such property may make a reservation that grants authority to have a different, clearly defined right registered with priority ranking over the encumbrance.

2. Reservations of priority rankings must be registered in the immovable property rights register next to the registrations for the rights that are to be lowered in ranking.

3. If a right with a reservation of priority ranking is registered for an immovable property that is already encumbered with another right free of any ranking reservation, the reservation of priority ranking is only effective on the pre-registered right to the extent that this right is not encumbered beyond the lower ranking it will take as a result of the new priority ranking reservation.



**Article 121**  
**Registration of Reservations**

1. A reservation may be entered in the immovable property rights register for securing a claim of a right to or for encumbering immovable property or varying the contents or the ranking of such rights. The registration of a reservation is admissible for securing future or conditional claims.
2. The registration of a reservation can also be effected on the basis of a preliminary injunction, as enforcement of a judgment or in the course of insolvency procedures.
3. A transaction made after the registration of a reservation in respect of immovable property or a right to the property, is without effect to the extent that the transaction would adversely affect the claim secured by the reservation. This also applies if the transaction is effected as enforcement of a judgment, by way of preliminary injunction or in the course of insolvency procedures.

**Article 122**  
**Effect of Reservations**

1. A claimant secured by reservation is entitled to demand from any third party acquiring ownership or another right to the immovable property without validity against the secured claimant that the third party consents to any change in the register necessary for the realization of the right secured by the reservation.
2. The ranking of rights to immovable properties secured by reservations registered in the immovable property rights register is determined by the entry of the respective reservations in the register.
3. If a reservation is registered to secure a claim arising in the event of death, the heirs are liable to the person whose claim is secured by the reservation.

**Article 123**  
**Removal of Reservation for Barred Claims**

1. If the assertion of the claim, which is secured by the priority notice, is permanently precluded, the obliged party may demand the removal of the priority notice from the creditor.
2. If the creditor, whose claim is secured by the priority notice, is unknown, he may be precluded by means of public notice if ten (10) years since the last entry regarding the priority notice in the register have passed and if the obliged party has not acknowledged the claim in this period of time.

**Article 124**  
**Legal Presumption**

1. If a right has been registered in the immovable property rights register for the benefit of a person, it is presumed that such person is entitled to the right so registered.
2. If a registered right is deleted from the immovable property rights register, it is presumed that such right does not exist any more.

**PART VI**  
**PROPRIETARY SECURITY RIGHTS**

**CHAPTER I  
GENERAL PROVISIONS**

**Article 125  
Definition**

1. A proprietary security right entitles the secured creditor ("Secured Party"), to obtain payment of the secured claim and of interest and costs from the encumbered assets with priority before the other creditors of the party granting security ("Security Grantor"), if the contractually agreed or legally prescribed conditions have occurred, in particular upon maturity of the secured claim.
2. The Security Grantor can create a security right in order to secure a personal debt or as a surety to secure the debt of another person.

**Article 126  
Legal basis**

Security rights over immovable property units and movable property can be created only pursuant to the provisions of law.

**Article 127  
Scope of Application**

1. The provisions of this part apply to all legal transactions and dispositions, regardless of their form, which have the purpose of creating a proprietary security right. The provisions of this law also apply in particular to:
  - 1.1. a contract through which the seller transfers the sold assets for use to the buyer but subjects the transfer of ownership to the buyer on the condition that the buyer pays the purchase price for the assets acquired ("Pledge for Purchase Price"); and
  - 1.2. a lease contract, respectively a leasing contract (financial lease), by which the lessor as owner of the assets leased, respectively given for leasing, transfers these assets to the lessee, respectively financial lessee, for use and subsequent acquisition.

**Article 128  
Exclusions**

1. The provisions of this law do not apply to:
  - 1.1. the creation of a security right in the salary claims of an employee; and
  - 1.2. the sale of pecuniary claims in the context of the sale of a business enterprise.

**Article 129  
Security Agreement**

1. By means of a security agreement, the Security Grantor assumes the obligation to grant a proprietary security right to the secured creditor.
2. The security agreement can be an independent contract or can be included in another contract, in particular in a credit agreement.
3. The Security Grantor may be the debtor of the secured claim or a third party.

**Article 130  
Void agreements**

1. An agreement, entered into before the secured claim has matured, is void if it provides that upon non-payment after maturity of the secured claim the encumbered assets are to become or to be transferred into the ownership of the secured creditor or the encumbered assets are to be sold at a fixed price.
2. After maturity of the secured claim, the agreements mentioned in the preceding paragraph can validly be concluded.

**Article 131**  
**Secured claim**

A proprietary security right can be granted for securing present, future and conditional claims.

**Article 132**  
**Extinctive prescription of a secured claim**

A proprietary security right can be exercised even if the period of extinctive prescription for the secured claim has expired.

**CHAPTER II**  
**PLEDGE**

**SUB-CHAPTER 1**  
**GENERAL PROVISIONS**

**Article 133**  
**Definition**

1. "Pledge" means the creation by agreement or by law of an interest in movable property or over a right, which gives the pledge holder the right to take possession of such property or exploit such right for the purpose of satisfying an existing and sufficiently identifiable obligation that is secured by the pledge.
2. The pledge agreement may deviate from the provisions of this Chapter. It may in particular provide for a pledge to secure an obligation that will only come into existence after the conclusion of the pledge agreement.

**Article 134**  
**Types of pledge**

1. Unless the pledgor and the pledge holder agree in the pledge agreement that the pledge is possessory, the pledgor retains the right to possess, use and otherwise enjoy all rights in the pledge item.
2. A Possessory pledge is effective against third parties at the time the pledge agreement is signed and the pledged item has come into the possession of the pledge holder or the pledge holder's designated agent.
3. A non-possessory pledge is effective against third parties at the time a notification statement is filed in accordance with this law.
4. The creation of a pledge over a right requires the registration of a pledge in the pledge register.

**Article 135**  
**Statutory Pledges**

1. The following provisions also apply to a pledge over a movable item which is created by operation of the law (statutory pledge).
2. The statutory pledge is effective against third parties at the time a notification statement is filed in accordance with this law.

3. Unless otherwise agreed between the parties, a landlord's statutory pledge becomes effective at the time a pledged item comes into the possession of a landlord.

### **Article 136 Pledge Agreement**

1. The validity of a pledge agreement requires a written document containing the following particulars:
  - 1.1. the name and address of the pledgor and if the pledgor is a person other than the debtor;
  - 1.2. a description of the obligation to be secured;
  - 1.3. a description of the pledged item;
  - 1.4. a statement that the purpose of the agreement is to create a pledge in favor of the pledge holder;
  - 1.5. the signatures of the parties to the agreement; and
  - 1.6. the date on which the pledgor signs the pledge agreement.
2. If the pledge agreement is signed by a person who acts on behalf of the pledgor, the pledge is only valid if the person signing the pledge agreement is independent from the pledge holder.

### **Article 137 Specification of the Agreement**

A pledge agreement may, in addition to the particulars required by the preceding article, also contain agreements of the parties with respect to their reciprocal rights and obligations, subject to mandatory provisions. The agreement may be supplemented, modified or terminated at any time.

### **Article 138 Pledged items**

1. Any movable item or right that is legally transferable can be pledged.
2. Subsoil minerals and hydro-carbons and rights to subsoil minerals and hydro-carbons can be pledged in accordance with the provisions for the transfer and encumbrance of subsoil minerals and hydro-carbons or such rights in the applicable law.

### **Article 139 Authority to Dispose the Pledged item**

1. The pledgor must be the owner of the pledged item at the time the pledge becomes effective. If the pledgor is not the owner of the pledged item, he must have the legal authority to pledge the item.
2. Property that is jointly or commonly owned may be pledged only if all joint or common owners consent the pledge.
3. A person who owns a partial interest in movable property may pledge that interest without the consent of other holders of a partial interest.

### **Article 140 Acquisition of Possessory Pledge in Good Faith**

1. If the pledgor is not the owner of the pledged item or does not otherwise have legal authority to pledge the item, the pledge holder acquires the pledge only if at the time the pledge becomes effective the pledgor is in possession of the pledged item and the pledge holder could assume in good faith that the pledgor is the owner or has legal authority to pledge the item.

1. If the pledged item is encumbered with the right of a third party, the pledge holder acquires the pledge unencumbered only if the pledgor is in possession of the pledged item at the time the pledge becomes effective and the pledge holder could assume in good faith that the pledge is unencumbered.

#### **Article 141**

##### **Pledge over mixed generic things**

1. In the case of a non-possessory pledge over generic things, if the pledgor mixes them inseparably with generic things of the same kind and quality, the pledgor must objectively assess the entire quantity at the time of the pledge and communicate this to the pledgee.

2. The pledge then consists of a quota in the entire quantity which changes respectively with every change of the entire quantity.

3. The pledgor is obliged to keep account of the additions to and reductions of the entire quantity and keep the evidence for verification.

4. The preceding rules apply mutatis mutandis to a possessory pledge.

#### **Article 142**

##### **Pledge of Future Items and Inventory**

1. A pledge can extend to such items as identified in the pledge agreement which comes into the ownership or otherwise under the legal authority of the pledgor after the conclusion of the pledge agreement.

2. A pledge can be created over an inventory or changeable items if the location and content of the inventory are sufficiently clear described in the pledge agreement. Each item added to the inventory over which a pledge is created becomes subject to the pledge from the time it is added to the inventory.

#### **Article 143**

##### **Secured Obligation**

A pledge is only valid and enforceable if the obligation to be secured by the pledge is valid and enforceable.

#### **Article 144**

##### **Scope of Secured Obligation**

A pledge secures the entire amount of an obligation, including any unpaid principal and interest, penalties, the costs of enforcement, maintenance and sale of the pledged item.

#### **Article 145**

##### **Change of Pledged Item or Increase of the Secured Obligation**

Subsequent to the creation of a pledge, the pledgor and the pledge holder may agree to increase the secured obligation, or to add to the pledged item. Any addition that is not permanently attached or connected to the pledged item is to be treated as the creation of a new pledge.

#### **Article 146**

##### **Additional Security**

1. The pledge holder may demand additional or adequate security, if the pledged item does not offer sufficient security for the secured obligation and a pledge holder could not be aware of this at the time the pledge agreement was concluded.

2. If the pledgor does not grant additional or adequate security, the pledge holder may demand immediate fulfillment of the secured obligation.

**Article 147**  
**Right to Inspection**

In the case of a non-possessory pledge the pledge holder has the right upon reasonable notice to the pledgor to inspect the pledged item. In the case of a possessory pledge the pledgor has the right upon reasonable notice to the pledge holder to inspect the pledged item.

**Article 148**  
**Rights and Duties of a pledge Holder**

1. In the case of a possessory pledge the pledge holder must not use and has to prudently maintain the pledged item. The pledge holder is entitled to the fruit from the pledged item. In case of a non-possessory pledge the pledgor has to use the pledged item in a manner consistent with the ordinary use of such items of property.

2. Unless otherwise agreed between the parties, the pledge holder may re-pledge the pledged item if he can ensure that the pledged item will be returned to the pledgor in accordance with the terms of the pledge agreement. The pledge holder is liable to the pledgor for any damage to, the loss or a delay in the return of the pledged item.

**SUB-CHAPTER 2**  
**PLEDGE AND THIRD PARTY RIGHTS**

**Article 149**  
**Pledge over Claim for Money**

1. If a claim for money is pledged, the debtor of such claim ("Third Party Debtor") may discharge the claim according to the agreement with the pledgor. If the pledgor or the pledge holder has notified the Third Party Debtor of the pledge, the third party debtor has to effect payment to the pledge holder once the pledged claim falls due.

2. The notification to the Third Party Debtor must be in writing, contain the names of the pledgor and the pledge holder identify the claim secured by the pledge and give precise instructions for payment to the pledge holder.

**Article 150**  
**Objections of the Third Party Debtor**

The third Party Debtor is entitled to the same objections against a payment demand from the pledge holder which he has against the pledgor as the initial creditor of the pledged claim.

**Article 151**  
**Set-Off of the Claims**

1. After receiving payment from the Third Party Debtor, the pledge holder is entitled to set off from this payment any amount due to him under the obligation secured by the pledged claim. Until the secured obligation falls due the pledge holder has to hold payment received from the third party debtor including any interest accruing thereon as agent on behalf of the pledgor.

2. If the amount paid by the Third Party Debtor to the pledge holder exceeds the amount due under the secured obligation, the pledge holder has to pay the surplus amount to the pledgor without delay.

3. Third Party Debtor who is required to make payment to the pledge holder has to be notified by the pledge holder if the secured obligation has been discharged before the payment to the pledge holder falls due.

**Article 152**  
**Application of the Provisions for Pledge over Claim for Money**

The provisions for a pledge over a claim for money are also applicable for pledges over other rights.

**Article 153**  
**Right of Pledge over Securities**

1. A right of pledge over securities which have been issued to a holder, is deemed to be a right of pledge over a thing.
2. The right of pledge over a negotiable instrument to order or over an endorsable security to a named beneficiary is created by endorsing and delivering the security to the pledgee. The endorsement must explicitly state that it is an endorsement for a pledge (pledge endorsement).
3. If the pledged security is in the name of the debtor, the right of pledge is created if the pledgor notifies the debtor that the claim deriving from the security has been pledged to the pledgee.
4. The right of pledge over un-certificated securities is created by registration of the right of pledge in the register of the institution in whose register the account for the pledged securities is kept.

**Article 154**  
**Applicable Provisions for the Right of Pledge over Securities**

In all other respects, the provisions regarding the right of pledge over a claim apply mutatis mutandis.

**Article 155**  
**Priority of Several Pledges**

1. Unless otherwise agreed, a pledgor can grant more than one pledge over the same item of property or a same right.
2. Unless this law provides otherwise more than one pledge created over the same item of property or the same right are ranked according to the time at which each pledge becomes effective against a third party.
3. A pledge that is effective against a third party always has priority over a pledge that is effective only between the pledgor and the pledge holder. Several pledges that are not effective against third parties are ranked according to the time at which the pledges become effective against the pledgor.

**Article 156**  
**Special rules regarding the priority of pledges**

1. A possessory pledge over money, over transferable securities over shares of companies, over rights to goods or rights to monetary payment has priority over every other right of pledge over these assets.
2. A right of pledge to secure a claim for the purchase price (purchase money pledge) has priority over every other right of pledge the pledgor has granted over the same thing, if
  - 2.1. it is effective against third persons; and
  - 2.2. the pledgee notifies previous pledgees of his acquisition of a right of purchase money pledge and its priority, and at the latest, after the pledgor takes possession of the pledged asset. The purchase money pledgee must state in the notification that he has such a right of pledge or that he shall acquire it in the near future. In addition, the notification must contain a precise description of the pledged asset over which there exists or shall exist a purchase money pledge.
3. If a new right of pledge is granted according to Article 152 this does not continue the priority of the previous right of pledge.

**Article 157**  
**Preserving priority after a Change in the Form of Pledge**

1. If, in the case of a possessory pledge, the pledged asset is returned to the pledgor, the right of pledge only preserves its priority if, at the latest when the pledged asset is returned, the conditions for the effectiveness of the non-possessory pledge as against third persons are fulfilled.
2. If the possession of the pledged asset over which an effective non-possessory right of pledge exists, is handed over to the pledgee, the possessory pledge preserves the same priority as the already existing non-possessory pledge.

**Article 158**  
**Change in the order of priority**

1. For a change in the order of priority, the provisions of Article 119 apply mutatis mutandis.
2. Notwithstanding the foregoing, the signatures of the participating parties do not require certification and instead of the registration in the immovable property rights register, the registration in the pledge registry is required.

**Article 159**  
**Acquisition of Pledged Item by Third Party**

1. Subject to the provisions of this law a pledged item can only be encumbered or acquired by a third party subject to an existing pledge. A pledged item is acquired free of any pledge, if:
  - 1.1. the pledged item is sold in the ordinary course of the pledgor`s business;
  - 1.2. the pledged item is sold with the written consent of all pledge holder having a pledge over the item;
  - 1.3. the pledged item is a share, debt, or security instrument quoted on a recognized market, a negotiable instrument or document of title, or cash; or
  - 1.4. the buyer could assume in good faith at the time of the purchase that the pledged item is not encumbered with a pledge.
2. Items from the inventory sold in the pledgor`s ordinary course of business can be acquired free of any pledge, even if the buyer had knowledge of the pledge.

**Article 160**  
**Transfer of the Secured Obligation**

1. The transfer of a secured obligation by the pledge holder is deemed a transfer of the pledge securing this obligation. The pledge holder shall notify the pledgor of the transfer.
2. If the pledge holder transfers only part of a secured obligation, the transferee becomes entitled to the pledge jointly with the pledge holder and up to the amount of the secured obligation that was transferred.
3. The pledgor is entitled to the same rights against the new pledge holder which he had against the initial pledge holder.

**Article 161**  
**Termination of a Pledge**

1. A pledge terminates when:



- 1.1. the pledgor and the pledge holder so agree;
  - 1.2. the secured obligation is satisfied or otherwise ceases to exist;
  - 1.3. the pledged item or right or any surrogate replacing it ceases to exist;
  - 1.4. the pledged item or right is changed or incorporated with another item or right such that it ceases to exist in an identifiable or separable form;
  - 1.5. when the pledge holder becomes owner of the pledged item or right;
  - 1.6. in the case of a possessory pledge, the pledge holder's possession of the pledged item ceases;
  - 1.7. the obligation secured by the pledge is transferred, but the transfer does not extend to the pledge;
  - 1.8. a third party validly acquires the pledged item or right pursuant to the provisions of this law;  
or
2. The pledge holder shall return the pledged item to the pledgor upon termination of a possessory pledge.

### **SUB CHAPTER 3 REGISTRATION OF A NON-POSSESSORY PLEDGE**

#### **Article 162 Filing of a Notification Statement**

1. The registration of a non-possessory pledge in the Pledge register is effected by filing a Notification Statement with the office of the pledge registry. A Notification Statement shall include:
- 1.1. a clear identification of the pledgor, the person owing the secured obligation (if not a pledgor) and the pledge holder;
  - 1.2. a specific or general identification of the nature of the secured obligation;
  - 1.3. the maximum value of the secured obligation expressed in money terms;
  - 1.4. a specific or general identification of the pledged item;
  - 1.5. a signature by or on behalf of the pledgor; and
  - 1.6. the date of the pledge agreement.

2. A pledge shall be deemed to be filed in the pledge register when the Notification Statement is presented to the office of the Pledge Registry in prescribed form and accompanied by payment of the prescribed fee.

#### **Article 163 Duration of Registration and Extension**

1. A registration in the Pledge Register is valid for three (3) years from the time of registration.
2. Upon expiry of the three (3) year term the non-possessory pledge becomes ineffective against the third parties, unless the registration is extended or non-possessory pledge is transformed into a possessory pledge

**Article 164**  
**Termination of Registration**

1. If a pledge terminates the pledge holder must within a month of the termination register the termination in the Pledge Register by submitting a Termination Statement to the office of the Pledge Registry.
2. Termination Statement shall contain the pledge holder`s signature and a statement that the pledge holder no longer claims a pledge over an item or right as indicated in the Notification Statement, which shall be identified by its document number. A Termination Statement that is signed by person other than the pledge holder shall be accompanied by a written authorization duly executed by the pledge holder before it may be filed.
3. A pledge holder who does not or not within the prescribed time file a Termination Statement is liable to the pledgor for the damages caused by delayed or failure to register the termination of the pledge.

**Article 165**  
**Establishment of the Pledge Registry Office**

1. The Pledge Registry is established by separate legislation.
2. The Pledge Registry shall ensure that index and registration documents are open to the public for at least five (5) hours business day.
3. With the law on establishment of the pledge registry office is regulated the inner functioning of the Registry Office.

**SUB CHAPTER 4**  
**ENFORCEMENT OF THE PLEDGE**

**Article 166**  
**Delivery of the Pledged item to Pledge Holder**

1. Of the pledgor or the debtor of the secured obligation, if he is not identical with the pledgor defaults on the secured obligation or the pledge agreement, the pledge holder of a non-possessory pledge can demand delivery of the pledged item from the pledgor.
2. If the pledgor of a non-possessory pledge fails to deliver the pledged item, the pledge holder can take possession of the pledged item with the help of a competent court.

**Article 167**  
**Judicial Enforcement of the Claim for Possession**

1. The pledge holder of a non-possessory pledge may file an application with the competent court to issue an order, *ex parte* and without notice to the pledgor authorizing the pledged item to be sequestered and delivered to the pledge holder pursuant. Such application shall be adjudicated by the competent court not later than five (5) business days after the date of filing the application.
2. The pledgor, or the debtor of the secured obligation, if he is not identical with the pledgor, can file a request with the competent court to issue a declaration that the pledge is partially or totally invalid. If the court issues such declaration, it shall at the same time determine weather to revoke or change any order issued pursuant to paragraph 1 of this article, and if it decides to do so, weather and to what extend the pledge holder is liable for damages caused by the decision to sequesterate and delivery of pledged tem to the pledge holder.

**Article 168**  
**Disposal of Pledged Item**

1. Upon default, a pledge holder may sell, ease or otherwise dispose the pledged item. A sale of a pledged item can be effected by public auction or in any other suitable manner. The pledge holder shall endeavor to achieve a fair market value while disposing the pledged item.
2. The pledge holder must notify the pledgor at least fourteen (14) days prior to the sale of the pledged item of the time and place of such sale. The notification shall also be communicated to the debtor of the secured obligation, if he is not identical with the pledgor and to all other holders of a pledge over the same pledged item.
3. The proceeds of any disposition of the pledged item shall be applied in the following order:
  - 3.1. to the reasonable expenses incurred by the pledge holder in connection with any enforcement of his right of possession to end disposing of the pledged item;
  - 3.2. to the discharge of the secured obligation;
  - 3.3. to the discharge of any lower ranking pledge holder for the same pledged item, if written demand is made by the holder of such pledge prior to the disposition; and
  - 3.4. the remains shall be paid to the pledgor.
4. The pledgor remains liable for any deficiency in the amount obtained through the disposal of the pledged item.

**Article 169**  
**Restriction to Acquire Pledged Item**

The pledge holder may purchase the pledged item only at a public sale or a private sale if the pledge item is sold in a recognized market, or in cases where commonly known standard prices exist for the pledged item.

**Article 170**  
**Acceptance of Pledged Item**

1. A pledge holder may offer to the pledgor to accept the pledged item in full or partial discharge of the secured obligation. The offer becomes binding, if the pledgor agrees in writing and the debtor of the secured obligation, if he is not identical with the pledgor, or any other party with legal interest to fulfill the secured obligation does not object in writing within fourteen (14) days after the offer is received.
2. The pledgor, or the debtor of the secured claim, if he is not identical with the pledgor or any other party with a legal interest to fulfill the secured obligation, can redeem the pledged item after having discharged the secured obligation entirely.
3. The redemption may be made at any time before the pledge holder disposes off or accepts the pledged item as partial or total discharge of the secured obligation.

**SUB CHAPTER 5**  
**RECOGNITION OF FOREIGN SECURITY RIGHTS**

**Article 171**  
**Equality of foreign security rights**

1. A foreign security right of any form or denomination which has been validly acquired and is still valid according to right of foreign country, has the effect of a valid and effective right of pledge, if the thing encumbered by the security right is brought on the territory of Kosovo.
2. From the time in which the pledged asset is located on the territory of Kosovo, the effect of this security right is determined by the applicable laws of Kosovo.

2. The Registry Office must be notified of a non-possessory right of pledge within three (3) months of the entry of the encumbered asset into the territory of Kosovo. The necessary information provided for in Article 146 must be submitted in certified translations into the official languages of Kosovo as is prescribed by law.

## **CHAPTER III MORTGAGE**

### **SUB-CHAPTER 1 GENERAL PROVISIONS**

#### **Article 172 Definition**

“Mortgage” means the creation by agreement or by law of an interest in immovable property, which gives the mortgage creditor (mortgagee) the right to initiate foreclosure proceedings for such immovable property for the purpose of satisfying sufficiently identifiable obligation that is secured by the mortgage and has fallen due.

### **SUB-CHAPTER 2 CREATION OF THE MORTGAGE**

#### **Article 173 Creation of mortgage with contract**

A mortgage is created by an agreement between the owner of an immovable property unit and the mortgage creditor and by entry into the immovable property rights register.

#### **Article 174 Mortgage Agreement**

1. The mortgage agreement must be in writing. The signature of the owner of the immovable property unit and of the mortgage creditor need to be certified in accordance with the rules applicable to other legal agreements over immovable property units.
2. The mortgage agreement must contain at least the following:
  - 2.1. names and addresses of the owner of the immovable property unit and of the mortgage creditor as well as of the debtor of the secured claim, unless he is the same person as the owner of the mortgaged immovable property unit;
  - 2.2. the exact description of the immovable property unit which is to be encumbered, containing its location, full address or
  - 2.3. other exact particulars regarding the location and cadastral number;
  - 2.4. a certificate of possession and, if necessary, a certificate regarding the use of the immovable property unit;
  - 2.5. the amount of the claim secured by the mortgage, including the rate of interest; if applicable, the maximum amount agreed upon;
  - 2.6. a warning in written with capital bold letters, that in the case of delayed payment or occurrence of the other stipulations agreed upon the mortgage creditor may initiate an enforcement process which might result in the loss of ownership over the mortgaged immovable property unit or in eviction from it or the house on it;
  - 2.7. further agreements amongst the parties if this law or other laws require so;

- 2.8. further agreements as far as other mandatory requirements allow;
- 2.9. the date the agreement was signed;
- 2.10. certified signatures both of the owner of the immovable property unit as well as of the mortgage creditor.

**Article 175  
Void Agreements**

1. Apart from those agreements mentioned in Article 130, an agreement is also void if it is made before the maturity of the secured claim and if it allows the creditor to use the immovable property unit.
2. Furthermore, an agreement committing the owner of the immovable property unit to neither sell nor to further encumber the immovable property unit is void.

**Article 176  
Encumbered Immovable Property Unit**

1. The mortgage encumbers all parts of the immovable property unit, including the buildings thereupon that are firmly attached to the ground.
2. Other than is provided for in Paragraph 1, a separate mortgage may be established over a building unit as defined in Article 10 paragraph 2 sub-paragraphs 2.1. and 2.2. of this law, that does not extend to other parts of the immovable property unit.

**Article 177  
Extent of Mortgage on Fixture**

1. The mortgage covers all component parts and natural fruits of the immovable property unit as long as the latter are not separated from the principal thing.
2. The mortgage also covers all fixtures belonging to the owner of the immovable property unit.
3. Liability for the mortgage terminates if component parts, products or fixtures are sold and removed from the immovable property unit before having been sequestered in favor of the mortgage creditor. If a party acquiring the things, removes these from the immovable property unit after the mortgage creditor has sequestered them, the sequestration is only valid against the acquiring party if it was aware or should have been aware of the sequestration when removing the things from the immovable property unit.

**Article 178  
Leased Immovable Property Unit**

1. If the immovable property unit is leased, the mortgage also covers the rental claim of the owner.
2. As far as the claim has matured it is freed from this liability twelve (12) months after maturity, unless the mortgage creditor sequestered it prior to this.

**Article 179  
Immovable Property Unit belonging to several persons**

A share of joint or collective ownership can be encumbered with a mortgage without the consent of the other joint or collective owners of the immovable property unit.

**Article 180  
Aggregate Mortgage**

A mortgage can be created for the same claim over several immovable property units belonging to the same owner or to different owners (aggregate mortgage). Each immovable property unit is liable for the entire claim.

#### **Article 181 Secured Claim**

Articles 143 and 144 are applicable mutatis mutandis to the mortgage.

#### **Article 182 Maximum Amount Mortgage**

1. A mortgage may be created as security of a specific maximum amount (maximum amount mortgage).
2. The maximum amount mortgage can secure an individual claim or all claims deriving from a particular contractual relationship.
3. Interest and expenses of the secured claim or claims are only covered within the maximum amount.

### **SUB-CHAPTER 3 EFFECTS OF MORTGAGE**

#### **Article 183 Duties of the Owner of an Encumbered Immovable Property Unit**

1. The owner has to administer and take care as is usual of the encumbered immovable property unit as well as the buildings erected upon it and its fixtures, to the extent necessary for its regular maintenance and conservation of value.
2. At the request of the mortgage creditor, the owner of the immovable property unit has to insure the items mentioned above at his own expense.
3. The owner of the immovable property unit has to allow the mortgage creditor or a third party authorized by the latter to inspect the encumbered immovable property unit, if due notice is given prior to the visit.

#### **Article 184 Depreciation of the Encumbered Immovable Property Unit**

1. If the immovable property unit has a defect which the mortgage creditor did not notice when concluding the mortgage contract and if the immovable property unit therefore does not offer sufficient security for the secured claim, the mortgage creditor may request an additional security or grant reasonable time for the owner to repair the defect.
2. If the encumbered immovable property unit for whatever reason loses value after having been encumbered, Paragraph 1 applies mutatis mutandis.
3. If after the time granted by the mortgage creditor the defect or depreciation mentioned in previous paragraph of this Article still exists, and if the owner of the immovable property unit has not provided additional adequate security, the mortgage creditor may demand immediate payment of the secured claim according to the provisions of sub-chapter 5 of this law.

#### **Article 185 Prevention of danger through the court**

1. If due to acts or omissions of the owner of the encumbered immovable property unit or of a third party, a depreciation of the immovable property unit has taken place or threatens to do so, the mortgage creditor may file an action for forbearance.

2. If acts or omissions of the owner of an encumbered immovable property unit threaten to lead to a depreciation, the court may, if the mortgage creditor so applies, order measures to prevent the threat.

#### **Article 186** **Depreciation of Fixtures**

Provisions of Articles 184 and 185 apply mutatis mutandis if the value of the fixtures belonging to the encumbered immovable property unit depreciates or if they are removed from there contrary to the rules regarding regular maintenance.

#### **Article 187** **Objections Against the Secured Claim**

1. The owner of the immovable property unit is entitled to raise all objections against the mortgage creditor that a debtor is entitled to raise against a creditor as far as they concern the secured claim.
2. The owner of the encumbered immovable property unit also is entitled to raise all objections which a guarantor may raise against a creditor of a secured claim.
3. If the owner of the encumbered immovable property unit is not the debtor of the secured claim, he may raise an objection that the debtor would have been entitled to, even if the debtor renounced his right to do so.
4. He may not claim that after the death of the debtor the latter's heir has merely limited liability for the secured claim.

#### **Article 188** **Indivisibility of the Mortgage**

1. The mortgage secures the secured claim until it is completely paid off. A partial payment does not affect the mortgage.
2. If the immovable property unit is divided, an aggregate mortgage is created which encumbers the immovable property units created by the division according to Article 180.

#### **Article 189** **Termination of the Mortgage by notification**

1. If the maturity of the secured claim is dependent on a notice of termination, the notice of termination is, if the owner of the encumbered immovable property unit is not the same person as the debtor of the secured claim, only effective if it is declared by the creditor to the owner of the encumbered property unit or by the owner to the creditor.
2. If the owner of the encumbered immovable property unit is not resident in Kosovo, or if the person giving notice of termination is unaware of the whereabouts of the person who has to receive the notice, then the court, in whose district the immovable property unit is located, shall, upon application of the creditor, appoint a representative, to whom the creditor's notice can be served.

#### **Article 190** **Owner's Right to Satisfy the Debt**

The owner of an encumbered immovable property unit is entitled to satisfy the creditor if the claim against the former has matured or if the personal debtor is entitled to perform.

#### **Article 191** **Transfer of Claim**

1. If the owner who is not the personal debtor to the claim satisfies the mortgage creditor, the secured claim is transferred to him insofar as he satisfied the creditor.

2. The transfer may not be asserted to the disadvantage of the creditor. Objections based on a contractual relationship between the debtor and the owner of the immovable property unit remains unaffected.

3. If a claim is secured by an aggregate mortgage, then the provisions of Article 202 of this law are applicable to it.

### **Article 192** **Satisfaction through one Owner in Case of Aggregate Mortgage**

1. The owner of an immovable property unit that is encumbered together with further immovable property units by an aggregate mortgage (in accordance with the provisions of Article 180) may satisfy the mortgage creditor once the secured claim has matured.

2. If the owner mentioned in Paragraph 1 can claim compensation from the owner of one of the other immovable property units, the mortgage encumbering this immovable property unit is transferred to him.

3. Paragraph 2 is applicable mutatis mutandis if the owner mentioned in Paragraph 1 is entitled to claims against several owners of the other immovable property units which were encumbered with an aggregate mortgage.

### **Article 193** **Extinction of the Mortgage**

1. The mortgage becomes extinct by deleting the entry in the immovable property rights register.

2. Extinction may be applied for if:

2.1. the debtor of a secured claim has satisfied this by payment or in any other way;

2.2. the secured claim ceases to exist for other reasons;

2.3. the mortgage creditor renounces the mortgage in writing and with certified signature;

2.4. the mortgage creditor and the owner of the encumbered immovable property unit are the same person or come to be the same person;

2.5. the encumbered immovable property unit is sold in order to satisfy the secured claim.

## **CHAPTER IV** **RELATIONSHIP TO THIRD PARTIES**

### **Article 194** **Effectiveness of the Mortgage**

1. A mortgage must be entered into the immovable property rights register in order to be effective.

2. Procedures and effects of registration are based on law on establishing a registry for immovable rights (immovable property rights register).

### **Article 195** **Priority of Mortgages**

1. If not otherwise provided for in this law, the priority of several mortgages is based on the time of their registration in the immovable property rights register.

3. For an amendment of the priorities, the provisions of Article 119 of this law apply.



**Article 196**  
**Transfer of mortgaged immovable property unit**

A mortgage is also valid against a person who acquires the mortgaged immovable property unit.

**Article 197**  
**Transfer of the Secured Claim**

1. With the transfer of the secured claim, the mortgage is also transferred to the new creditor, unless the parties have agreed to the contrary.
2. The transfer of the mortgage is not effective until entered into the immovable property rights register.
3. If the owner of the immovable property unit dies and the encumbered immovable property unit is transferred to several heirs, an aggregate mortgage is created according to Article 192 of this law.
4. Otherwise, the provisions of the relevant provisions of the Law on Obligations or any future applicable law.

**CHAPTER 5**  
**ENFORCEMENT OF THE MORTGAGE**

**SUB-CHAPTER 1**  
**GENERAL PROVISIONS**

**Article 198**  
**Breach of Contract as precondition**

A breach of contract by the debtor of the secured claim occurs if the debtor is in delay with the payment. For such cases the relevant provisions of the Law on Obligations are used.

**Article 199**  
**Satisfaction of the mortgage creditor's claim by enforcement**

1. In case of delay or another breach of contract by the debtor, the mortgage creditor can acquire the right to sell the mortgaged immovable property unit by civil action and to satisfy the secured claim in priority (from the proceeds of the sale).
2. Conditions and procedures are governed by the provisions on forced execution.

**Article 200**  
**Notification of other parties**

All other persons registered as holders of a proprietary right over the encumbered immovable property unit shall be notified of the opening of the execution or of an extra-judicial sale of the encumbered immovable property unit at the same time as its owner.

**SUB-CHAPTER 2**  
**EXTRA-JUDICIAL ENFORCEMENT OF A BUSINESS MORTGAGE**

**Article 201**  
**Extra judicial Realization of a "trade association mortgage"**

1. A "trade association mortgage" is realized either according to the procedure as mentioned above in sub-chapter 1 or extra-judicially through a sales agent according to the following provisions.

1.1. A mortgage is a “trade association mortgage” if the following conditions are met:

1.1.1. the owner of the immovable property unit is a merchant or a business enterprise;

1.1.2. the mortgage creditor is a domestic financial institution admitted to do business; and

1.1.3. a business enterprise carries out business on the encumbered immovable property unit. If, after the creation of a mortgage encumbering the immovable property unit, the business enterprise is discontinued, the classification of the mortgage is not affected thereby. An agricultural enterprise is not a business enterprise according to this provision.

## **Article 202 Power of Attorney for Sale**

1. The Power of Attorney for Sale of an owner of an encumbered immovable property unit for extra-judicial realization of the immovable property unit must contain at least the following information for it to be valid:

1.1. name and address of the owner of the encumbered immovable property unit, of the debtor of the secured claim, if this is a person other than the owner of the immovable property unit; and of the mortgage creditor. Alternative postal addresses are to be noted in writing;

1.2. an explicit statement that the parties have agreed that in the case of non-performance of the claims by the owner of the encumbered immovable property unit, the sale of this immovable property unit is to take place without any court proceedings;

1.3. an explicit statement and explanation that the three conditions provided for in Article 210 are fulfilled in this case;

1.4. a Power of Attorney by the owner of the immovable property unit and by the mortgage creditor, by which the sales agent is authorized, to sell the immovable property unit according to the provisions of this law;

1.5. a precise description of the conditions under which the Power of Attorney to sell may be exercised.

2. The parties may include further conditions or clarifications into the Power of Attorney, provided that these do not deviate from the mandatory provisions of this law.

3. The parties may agree in particular that the Power of Attorney be irrevocable and /or remain valid for an indefinite period of time.

4. The Power of Attorney is valid also in the case of death, incapacity, discharge from employment or termination of the owner of the immovable property unit or of the mortgage creditor and that it is binding upon the respective legal successors.

## **Article 203 Form and Registration of the Power of Attorney**

1. The signatures of the parties are to be certified.

2. The Power of Attorney only becomes effective after being entered into the immovable property rights register.

## **Article 204 Applicable provisions**

1. Subject to other provisions of this law, the general rules on agency and Power of Attorney apply to the Power of Attorney (see the relevant provisions of the Law on Obligations or any future applicable law)
2. In case of invalidity of the Power of Attorney, the mortgage creditor can apply for satisfaction by enforced sale ( in accordance with the provisions of Article 199).

**Article 205**  
**Conditions for the exercise of the Power of Attorney to sell**

1. A Power of Attorney to sell the mortgaged immovable property unit can be exercised if:
  - 1.1. there is a non-performance as provided by the Power of Attorney;
  - 1.2. the notification of non-performance is registered in the immovable property rights register and in the cadastre; and
  - 1.3. the notification for intended sale is registered in the immovable property rights register and the cadastre.

**Article 206**  
**Notice of Non-Performance**

1. Before the initiation of an extra-judicial sale, the mortgage creditor has to submit an application to register the notification of non-performance in the immovable property rights register and in the cadastre. The application has to contain the following information:
  - 1.1. description of the certificate and content of the mortgage securing the claim which has not been satisfied;
  - 1.2. names and addresses of the mortgage creditor, of the owner of the encumbered immovable property unit as well as of the debtor of the secured claim, if this is a person other than the owner of the immovable property unit;
  - 1.3. name and address of the agent appointed by the mortgage creditor for the sale of the immovable property unit;
  - 1.4. full address or another description of the location of the encumbered immovable property unit and its cadastral number;
  - 1.5. a statement of non-performance and its nature;
  - 1.6. a statement of whether and how the non-performance can be remedied within a given term; the term may not be any shorter than forty five (45) days;
  - 1.7. a statement that the mortgage creditor will opt for the extra-judicial sale if the non-performance has not been remedied within the given term.

2. The notification of non-performance is to be registered in the language required by law. The notification starts with the following words in writing and notable font 14:

**“THIS IS A NOTIFICATION THAT YOU HAVE NOT PERFORMED YOUR CREDIT OBLIGATIONS. ACCORDING TO THE LAWS OF KOSOVO YOUR IMMOVABLE PROPERTY UNIT MAY BE SOLD WITHOUT LEGAL PROCEEDINGS IF YOU DO NOT CURE THE NON-PERFORMANCE OF YOUR OBLIGATIONS . YOU HAVE THE RIGHT TO PAY OFF YOUR FINANCIAL OBLIGATIONS BY MAKING ALL THE DUE PAYMENTS INCLUDING INTEREST AND EXPENSES ALLOWED FOR WITHIN THE TERMS AS DEFINED BY LAW. THE DAY OF SALE OF THE IMMOVABLE CANNOT BE FIXED BEFORE THE EXPIRY OF THIRTY (30) DAYS AFTER THIS NOTIFICATION OF DEFAULT HAS BEEN REGISTERED (THE DATE OF THAT IS INDICATED ON THIS NOTIFICATION)”.**

3. The notification is to be entered at the request of the mortgage creditor into the immovable property rights register and in the local cadastre. The respective offices, are not responsible for the damages caused to the mortgage creditor through his own mistakes.

### **Article 207 Copies of Notification of Non-Performance**

1. The mortgage creditor according to paragraph 2 has to send two copies of the notice of non-performance to the following persons:

- 1.1. the owner of the immovable property unit;
- 1.2. the debtor of the secured claim, if he is not identical with the owner of the immovable property unit;
- 1.3. the agent for selling the immovable property unit;
- 1.4. any other person who is registered as a holder of a proprietary right in the mortgaged immovable property unit; as well as
- 1.5. any person who requests a copy.

2. The mortgage creditor has to post the copies of the notification of non-performance within seven days after notification of non-performance is registered. The delivery is to take place by registered and stamped mail in an envelope containing a number issued by the postal service and the date of posting.

### **Article 208 Right to remedy the Non-Performance**

1. The owner of the immovable property unit and the personal debtor, if he is a person other than the owner, have the right to remedy the non-performance by paying the secured claim, including the interest and costs, as provided for in the notice of non-performance, no later than five (5) business days before the date determined for the sale of the immovable property unit. They are also required to pay claims arising later, in particular the fee of the agent of sale for the immovable property unit and his expenses as well as the expenses that were incurred by the mortgage creditor by preparing the extra-judicial execution of the mortgage.

2. If the owner of the immovable property unit, or another person entitled to do so, remedies the non-performance, the mortgage creditor has to notify the owner of the immovable property unit in writing within twenty one (21) days of the performance and hereby give notice that the non-performance was remedied from that date. The owner of the immovable property unit has to apply for the notification of non-performance to be cancelled at the immovable property rights register respectively the cadastral office at which the notification was initially registered. Apart from the registration fee no further costs or expenses are incurred for the entry of cancellation.

### **Article 209 Notification of sale**

1. If the non-performance is not remedied in accordance with the provisions of Article 208 by the time as determined by the notice of non-performance specified in Article 206, the mortgage creditor may instruct the sales agent to proceed with the extra-judicial sale of the mortgaged immovable property unit.

2. The sales agent has to calculate the minimum purchase offer for the immovable property unit that may be accepted at the auction of the encumbered immovable property unit. The minimum offer must at least be the sum of the following items:

- 2.1. unpaid claims for which security rights over the encumbered immovable property unit are registered;
- 2.2. fee of the sales agent;
- 2.3. sale price of the immovable property unit;
- 2.4. unpaid taxes on the immovable property unit; and
- 2.5. costs of the sale itself.

3. The sales agent has to submit an application to enter the notification of sale into the immovable property rights register. The application must contain the following information:

- 3.1. date and time of the sale;
- 3.2. place of sale which shall be in the same municipality as the immovable property unit;
- 3.3. address, cadastre number and name of location of the cadastral office of the encumbered immovable property unit as well as a description of its kind of use;
- 3.4. amount of the minimum offer for purchasing the immovable property unit;
- 3.5. whether instead of cash payment in money another method is acceptable for payment of the purchase price and if so which kind;
- 3.6. amount of a security to be deposited; and
- 3.7. name, address and telephone number of the sales agent for the mortgaged immovable property unit sale.

#### **Article 210**

##### **Distribution and Publication of Notice of Sale of the Immovable Property Unit**

1. No later than ten (10) days after registration of the notice of sale of the immovable property unit, the mortgage creditor and sales agent of the immovable must send copies of the notice of sale to all persons who are entitled to receive a notification of non-performance according to Article 207.
2. The mortgage creditor or the sales agent must send copies of the notice of sale to all persons mentioned in Article 207 and follow the procedure that this provision requires.
3. The sales agent has to publish the notice for sale of the immovable property unit for three consecutive weeks at least once a week in newspapers or journals with a circulation of more than five thousand (5000) copies in Kosovo and in the area where the immovable property unit to be sold is located. The first notice shall be published no later than twenty one (21) days before the date of the sale.
4. No later than fourteen (14) days before the date of sale, the sales agent has to communicate the notice of sale by announcement on public boards for announcements in the office of the local authority of the place where the immovable property unit shall be sold; as well as in a visible place on the immovable property unit that is to be sold, if this is feasible and is not barred for any reason.
5. If the immovable property unit consists of a building, the announcement is to be attached to the door of the building. If this is not possible or not feasible, the notice is to be placed in a visible place of the building. If entry to the building is possible only through one entrance, the announcement is to be attached to this door or to a similar place.

**Article 211**  
**Postponement of Sale**

1. Until all the obligations resulting from the sale are paid, the mortgage creditor can instruct the sales agent of the encumbered immovable property unit to defer the sale.
2. A sale according to Paragraph 1 can be postponed no more than two times without a new notice of sale becoming necessary. Where the sale is postponed more than twice a new notice of sale according to the provisions of Articles 209 and 210 must fix a new date of sale.
3. A sales agent of an encumbered immovable property unit has to defer the date of sale if the competent court of Kosovo so orders or if the procedure is interrupted due to a law or if the owner of the immovable property unit and the mortgage creditor has so agreed. A rescheduling of the sale on the basis of this paragraph is not a voluntary rescheduling according to Paragraph 2 and is therefore not to be counted towards the maximum number of deferrals to be admitted according to Paragraph 2. The same applies if the sales agent defers the sale of the encumbered immovable property unit due to a reasonable concern that a request to open bankruptcy proceedings will be filed. The sales agent for the encumbered immovable property unit announces publicly any deferral of the sale and its reasons in the final location where the sale should have been held. The new time and place of the sale are to be announced at the same time and in the same manner.

**Article 212**  
**Sale**

1. The encumbered immovable property unit is to be sold according to the provisions of this Article and the following Article. Any provisions in the mortgage agreement that are contrary to the foregoing are void.
2. The sale can take place on any day from Monday to Saturday between 9 and 15 hours, except for bank holidays, but no sooner than forty five (45) days after the registration of the notice of sale and no later than ninety (90) days after this registration.
3. Prior to the request to submit offers, the sales agent may request proof of qualification from each participant of the auction by lodging a deposit of ten (10) per cent of the required minimum offer. The deposit may be in cash or another manner corresponding to cash in accordance with the notice of sale.

**Article 213**  
**Sale through public auction**

1. Sale takes place through public auction. The mortgaged immovable property unit is sold to the offeror who offers the highest purchase price. The sales agent acts as an auctioneer and conducts the sale in a commercially reasonable manner in order to achieve the highest possible price.
2. Each offer of a price for the purchase of the immovable property unit is deemed to be irrevocable. Each subsequent offer of the same offeror or of another offeror repeals the prior offer.
3. Within five (5) days after the auction is finalized, the successful offeror must pay the sum of the successful offer to the sales agent, deducting any deposit.
4. If the payment mentioned in Paragraph 3 is not made, the owner of the immovable property unit acquires the deposit. A new sale takes place.

**Article 214**  
**Transfer of the mortgaged immovable property unit**

The transfer of ownership over the encumbered immovable property unit to the buyer is effective upon being entered into the immovable property rights register.

**Article 215**  
**Distribution of proceeds of sale**

1. The sales agent distributes the proceeds of sale of an encumbered immovable property unit according to the following ranking:

1.1. fiscal claims related to the encumbered immovable property unit and other charges or claims with which the immovable property unit is encumbered which have priority in enforcement of a mortgage;

1.2. expenses of the sale including taxes which the sales agent is obliged to pay because of his instructions as provided for in Article 217 of this law;

1.3. the secured claim of the mortgage creditor;

1.4. claims secured by any other mortgage over the encumbered immovable property unit according to their ranking;

1.5. the excess to the owner of the immovable property unit.

2. The owner of the immovable property unit remains liable to the mortgage creditor, insofar as the secured claim is not fully discharged by the proceeds of the sale.

3. If the mortgage creditor does not file a law suit for his unpaid claim against the owner of the immovable property unit within ninety (90) days after the sale of the immovable property unit, the proceeds of the sale are deemed to have fully satisfied the claim of the mortgage creditor and he cannot claim any further payment for the unpaid part of the secured claim.

**Article 216**  
**Legal remedies of the owner of the immovable**

1. The owner of the immovable property unit may file a request to the court which has jurisdiction over the location of the immovable property unit to discontinue the sale of the immovable property unit or to declare a performed sale to be void or to establish other measures.

2. The request has to be filed within thirty days (30) after completion of the sales contract according to Article 213. The court has to decide whether: there is in fact a non-performance of the owner of the immovable property unit which justifies the extra-judicial sale of the encumbered immovable property unit; or the sales agent of the encumbered immovable property unit has conducted the procedure of the sale offer or of the sale itself in breach of the provisions of this law or other mandatory provisions.

3. The court decides in expeditious proceedings.

4. The credit institution which violates the provisions of this section of the law in order to obtain unjustified advantages, is subject to disciplinary measures by the Authority for Banks and Payments in Kosovo and other measures that the court may order.

**Article 217**  
**Duties and obligations of the sales agent**

1. The sales agent for the encumbered immovable property unit must comply with the provisions of this section of the law. The agent is not liable for consequences of actions undertaken in good faith whilst complying with these provisions.

2. The agent may ask, within an agreement with the mortgage creditor, for reimbursement of his expenses for his services regarding the sale of the immovable property unit as for the taxes relating to that transaction. The amount of such expenses cannot exceed 1.5 percent of the sale proceeds.

3. The sales agent opens a bank account at a bank that is licensed by the Kosovo Central Bank for every sale procedure of a mortgaged immovable property unit according to the provisions of this Paragraph. The account shall only be used for distribution of the sale proceeds of a mortgaged immovable property unit in accordance with Article 215. The account is designated in a specific way referring to the immovable property unit subject to sale.

**PART VII  
REAL RIGHTS OF USE**

**CHAPTER I  
USUFRUCT**

**SUB-CHAPTER 1  
USUFRUCT IN THINGS**

**Article 218  
Concept of Usufruct**

1. Movable and immovable property can be encumbered in such way that a person for whose benefit the encumbrance is made is entitled to use and encumber the property (usufruct) provided the substance of the property remains unimpaired.

2. The usufruct may be restricted to exclude specific uses.

**Article 219  
Transferability of Usufruct**

1. A usufruct held by a natural person is not transferable. The encumbered property, however, may be relinquished to another person in order for this person to exercise the usufruct.

2. If a usufruct is held by a legal person or a partnership with legal personality, the usufruct is transferred if the assets of the legal person or the partnership are assigned to another person by way of universal succession. If a business or part of a business operated by a legal person is transferred to another person, a usufruct may be transferred to the acquirer if the usufruct is considered beneficial for the purposes of operating the business or a part thereof.

**Article 220  
Creation of Usufructs**

Usufructs may be created by contract or court decision.

**Article 221  
Establishment of Usufruct in Movable**

For the creation of usufructs in movable property, the owner has to deliver the property to the beneficiary (usufructuary) and both have to agree that the usufruct passed to the usufructuary.

**Article 222  
Establishment of Usufruct in Immovable Property**

For the creation of usufructs in immovable property, a written contract stating that the owner and the usufructuary intend to establish the usufruct and the registration of the usufruct in the immovable property rights register are required.

**Article 223  
Extension to Fixtures**



1. A usufruct in immovable property extends to the fixtures of the property without the requirement for the fixtures to be delivered to the usufructuary.
2. The owner and the usufructuary may agree otherwise.

**Article 224**  
**Right of Possession of Usufruct**

The usufructuary is entitled to possession of the movable property encumbered by the usufruct.

**Article 225**  
**Exercise of Usufruct**

1. In exercising the right of use, the usufructuary must maintain the current economic purpose of the property and must proceed in compliance with the rules of proper management.
2. If, at the time the usufruct was established, the immovable property is used for the exploitation of raw materials such as stone, gravel, sand, loam, clay, marl, peat or other, the usufructuary may construct or otherwise erect new installations to extract such raw materials except where the economic purpose of the property is materially altered as a result of such installation.

**Article 226**  
**Maintenance of Property**

1. The usufructuary must provide for the maintenance of the property in order for its substance to remain unimpaired.
2. The usufructuary is obligated to carry out repairs and renovations only to the extent that these are part of the normal maintenance of the property.
3. The usufructuary is not obligated to carry out extraordinary repairs and renovations, but must permit the owner to undertake such repairs or renovations.

**Article 227**  
**Compensation for Expenditures**

If the usufructuary incurs expenses for the property beyond what is necessary for maintaining the substance of the property, the owner is obliged to reimburse the usufructuary based on the provisions applicable for expenditures incurred by unauthorised agents.

**Article 228**  
**Duty of Notification by the Usufructuary**

If the property is destroyed or damaged or if an extraordinary repair or renovation or a precautionary measure for protection of the property against unforeseen hazards becomes necessary, the usufructuary must notify the owner without undue delay. A third party claiming a right to the property has to be informed in the same way.

**Article 229**  
**Payment of Charges**

1. For the duration of the usufruct, the usufructuary is obligated to pay all ordinary public charges due for the property, such as taxes and fees. The usufructuary is further obligated to pay private charges that were levied on the property as of the date the usufruct was created, in particular interest on a mortgage and land charges.
2. Extraordinary public charges aiming at the original value of the property need not be paid for by the Usufructor.

**Article 230**  
**Protection of Owner's Rights**

1. If the conduct of the usufructuary, in particular relating to its obligation to maintain and return the property, threatens a material impairment of the owner's rights, the owner may demand a security. If the usufructuary does not provide such security, the usufruct is deemed to be cancelled.
2. If the usufruct is deemed to be cancelled, the usufructuary is entitled to compensation for the uncollected benefits of the usufruct.

**Article 231**  
**Application Prohibitory Injunction**

If the usufructuary uses the property in an unauthorised manner, the owner may issue a warning to the usufructuary. If the usufructuary continues the unauthorised use notwithstanding that a warning was issued, the owner may seek an injunction against the usufructuary prohibiting the unauthorised use.

**Article 232**  
**Protection of Usufruct**

The usufructuary is entitled to the same rights as the owner against any third party interference with the usufruct.

**Article 233**  
**Limitation of Claims for Compensation**

The compensation claim of the owner for modifications or deterioration of the property, and the claim of the usufructuary for reimbursement of expenses or permission to remove an installation are subject to a one year limitation period.

**Article 234**  
**Usufructuary's Duty to Return**

The usufructuary is required to return the property after the usufruct has terminated.

**Article 235**  
**Death of the Usufructuary**

1. The usufruct terminates:
  - 1.1. with the death of the usufructuary, if the usufructuary is natural person.
  - 1.2. in the case that the Usufructor is a legal entity with its termination.

**Article 236**  
**Termination of Usufruct abandoned by usufructuary**

1. A usufruct in immovable property terminates when the usufructuary gives the owner a notice of termination and the termination is registered into the immovable property rights register.
2. A usufruct in movable property terminates when the usufructuary declares to the owner that the usufruct is abandoned.

**Article 237**  
**Usufruct in Share of Joint Ownership**

1. If a usufruct is established in the share of a joint owner, the usufructuary may administer and use the property in the same manner as the joint owner.
2. A request to terminated joint ownership in property for which a usufruct is established must be made jointly by the joint owner and the usufructuary.

**Article 238**  
**Usufruct in Consumable Property**

If consumable property is subject to a usufruct, the usufructuary becomes the owner of the property. After the termination of the usufruct, the usufructuary must reimburse the previous owner for the value that the property had at the time the usufruct was granted. Both, the previous owner and the usufructuary, at their own expenses may have the value of the property established by experts. The previous owner and the usufructuary may enter into an agreement setting out different conditions for the usufruct.

**CHAPTER II**  
**USUFRUCT IN RIGHTS**

**Article 239**  
**Usufruct in Rights**

1. A transferable right may be encumbered by a usufruct.
2. Usufructs in rights are governed by the provisions on usufructs in property, unless the following provisions provide otherwise.

**Article 240**  
**Creation of a Usufruct in a Right**

1. The creation of a usufruct in a right is governed by the provision applicable for the transfer of the right, with the necessary modifications.
2. A usufruct may not be created in a right that is not transferable.

**Article 241**  
**Usufruct in Right to a Performance**

If a right under which performance may be demanded is encumbered with a usufruct, the legal relationship between the usufructuary and the person obliged to perform is governed by the provisions that apply to the legal relationship between the transferee of the right to demand a performance and the person obliged to perform with the necessary modifications.

**Article 242**  
**Termination or Alteration of Encumbered Right**

A right encumbered by a usufruct may only be altered or terminated by a legal transaction with the approval of the usufructuary.

**Article 243**  
**Effect of Performance**

1. Upon performance by the obliged party to the usufructuary, the creditor of the claim for performance acquires ownership of the property and the usufructuary acquires a usufruct in the property.
2. If consumable property is delivered, the usufructuary acquires the ownership.

**Article 244**  
**Usufruct in Interest-Free Claims**

1. The usufructuary of a claim may collect any payment made on the claim when it falls due. If the due date depends on a notice to be given, the usufructuary may give such notice.
2. If the usufructuary collects funds, the collection in an orderly manner has to be ensured
3. The usufructuary is not entitled to any further dispositions.

**Article 245**  
**Usufruct in Interest Bearing Claims**

1. If an interest bearing claim is the subject of a usufruct, the following provisions apply:
  - 1.1. the debtor may only pay the principal amount due to the usufructuary and the creditor jointly. Each of the creditor and the usufructuary may require that payment or a deposit on the payment is made to them jointly.
  - 1.2. the usufructuary and the creditor may give notice of the due date only jointly. A notice from the debtor is effective only if it is declared to both the usufructuary and the creditor.
  - 1.3. when collecting payment on a claim fallen due or giving notice of its due date to the debtor the usufructuary and the creditor are obligated to cooperate, in particular if the due date for such claim depends their prior notice and the claim's viability is at risk.
  - 1.4. the usufructuary and the creditor are obliged to cooperate in the investment of the principal collected and the creation of a usufruct for the benefit of the usufructuary, who may also determine the nature of the investment. The creditor may refuse such determination if the investment does not seem sufficiently safe.

**Article 246**  
**Usufruct in Bearer Instruments or Instruments Made out to Order**

1. If a bearer instrument or an instrument made out to order and bearing a blank endorsement are the subjects of a usufruct, the usufructuary and the owner are jointly entitled to possession of the instrument and the renewal certificate for the instrument. The usufructuary is entitled to possess the interest, annuity or dividend coupons.
2. The usufructuary or the owner may request that the instrument and the renewal certificate be deposited at a depository institution with the stipulation that delivery may be requested only by the usufructuary and the owner jointly.
3. The usufructuary and the owner of the instrument are obligated to cooperate for the purpose of collecting the capital due, obtaining new interest, annuity or dividend coupons and undertaking other measures that are necessary for proper asset management.
4. In case of a redemption of the instrument, the provisions of Article 245 of this law apply with necessary modifications.

**Article 247**  
**Usufruct in Assets, Inheritance and Enterprises**

A usufruct in the assets of a person, an inheritance, or an enterprise may be created only in such a way that the usufructuary obtains the usufruct in the individual items constituting such assets, inheritance, or enterprise.

**Article 248**  
**Rights of Creditors of the Usufructuary**

1. Creditors of the owner of assets encumbered by a usufruct may, to the extent that their claims arose before the usufruct was granted, satisfy their claims out of the property encumbered by the usufruct.
2. If the property encumbered with usufruct is consumable, the creditors of the owner may claim compensation for the value of the property from the usufructuary; satisfaction of claims out of the property encumbered by the usufruct is excluded.

**Article 249**  
**Relationship between Usufructuary and Owner of Assets**

1. If a claim for a particular asset falls due which arose before the usufruct in the owner's assets was created, the owner may require the usufructuary to return the asset that is necessary to satisfy the creditor's claim.
2. If the asset owed is encumbered by the usufruct, the usufructuary may satisfy the claim by delivering the asset to the creditor. If the asset owed is not subject to the usufruct the usufructuary is entitled, for the purpose of satisfying the creditor, to dispose of any of the encumbered assets, provided that it cannot reasonably be expected from the creditor to wait for the claim to be fulfilled by the owner.

**Article 250**  
**Liability of Usufructuary**

1. The owner's creditors whose claims were already subject to interest at the time when the usufruct was created may, for the duration of the usufruct, require the usufructuary to pay the interest. The same applies to other recurring payments that are under normal circumstance satisfied from the income of the assets encumbered by the usufruct, if the claim arose before the usufruct was created.
2. The usufructuary is liable to the owner for the satisfaction of creditors for all liabilities arising under paragraph 1 of this Article.
3. The liability of the usufructuary to satisfy the owner's creditors may not be excluded or restricted by agreement between the usufructuary and the owner.

**Article 251**  
**Usufructs in Enterprises**

1. The creation of a usufruct in an enterprise must also be entered into the Companies Registry.
2. The usufructuary is entitled to the use and operation of all assets of the enterprise and becomes the ultimate beneficiary of all claims the enterprise has against third parties, unless owner and usufructuary agree otherwise.
3. The usufructuary must manage the enterprise with the due care and diligence of an ordinary businessman.
4. The usufructuary is entitled to all profits of the enterprise. Annual financial statements of the enterprise determine the amount of profit available to the usufructuary. The financial statements must be prepared in accordance with the relevant legislation not taking into account that the enterprise is encumbered with the usufruct. All financial statements must determine the amounts of depreciation and reserves appropriate for the enterprise.
5. At the time the usufruct terminates, the usufructuary must return the enterprise and all its assets to the owner. In addition and if the value of all current assets returned to the owner is lower than their value at the time of the creation of the usufruct, the usufructuary must compensate the owner accordingly.

## **CHAPTER III REAL SERVITUDES**

### **Article 252 Definition**

1. A real servitude is an encumbrance of an immovable property (subservient plot) that grants the owner of another immovable property (dominant plot) the right to use the subservient plot in a specific manner, or to require that particular acts are not undertaken on the subservient plot, or to exclude the exercise of a right arising from the ownership of the subservient plot in relation to the dominant plot.
2. A real servitude that should offer any benefit for the use of the dominant plot by the person entitled is impermissible.
3. A real servitude cannot commit the owner of the subservient plot to any specific act or performance.

### **Article 253 Establishment of a Real Servitude**

1. A real servitude may be established by a legal transaction, a decision of a state body, or by law.
2. A contract establishing a real servitude requires the written agreement of the parties setting out the content of the real servitude and the entry of the real servitude in the immovable property rights register. The contract must contain the agreement of the parties that they want to establish a real servitude and its content.
3. Provisions in paragraph 1 and 2 of this article shall apply in all cases if by the administrative decisions or by separate law is provided otherwise.

### **Article 254 Considerate Exercise of the Real Servitude**

1. A person entitled to a real servitude must exercise it in a manner that affects the subservient immovable property as modestly as possible.
2. When exercising a real servitude, the person entitled must observe the interest of the owner of the subservient plot as far as possible unless this would limit the exercise of the servitude.

### **Article 255 Duty of Maintaining Installations**

1. If the exercise of a real servitude includes the use of an installation on a subservient plot, the beneficiary of the servitude must maintain such installation. If the installation is maintained on the subservient plot for the mere purpose of exercising the servitude, the beneficiary of the servitude must keep the installation in proper condition to the extent that the interest of the owner of the subservient plot requires this.
2. Notwithstanding paragraph 1, the parties may agree that the owner of the subservient plot must maintain the installation to the extent that the interest of the beneficiary of the servitude requires this.
3. If the owner of the subservient plot is also entitled to use the installation, it can be agreed that the beneficiary of the servitude must maintain the installation to the extent necessary for the exercise of the owner's right of use.
4. For the duties of maintenance, the provisions on land charges apply with the necessary modifications.

**Article 256**  
**Moving the Encumbrance**

1. If the exercise of a real servitude is restricted to a part of the subservient plot, the owner of the plot may require the use to be moved to another place on the subservient plot in order to reduce the burden on the plot, provided that this does not limit the essential interest of the beneficiary of the servitude.
2. The right to request such move may not be excluded or restricted by legal transaction.

**Article 257**  
**Division of Plot**

1. If the dominant plot is divided, the real servitude continues to exist for the separated parts. If the real servitude benefits only one part, it is extinguished for the other parts. The use of the real servitude after such division may not place an additional burden on the subservient plot.
2. If the subservient plot is divided, the real servitude continues to encumber the separated parts. If the use of the real servitude is restricted to a particular part of the subservient plot, the parts that lie outside the area of use are released from the real servitude.

**Article 258**  
**Protection with Real Servitude**

If the exercise of servitude is interfered with, the beneficiary of the servitude has the rights set out in Article 102 of this law.

**Article 259**  
**Protection of Lawful Possessor**

If the possessor of a dominant plot is disturbed in the use of the real servitude registered in the immovable property rights register, the provisions applying to the protection of a possessor are applicable with necessary modifications.

**Article 260**  
**Termination of Real Servitudes**

1. The termination of a real servitude requires the owner of the dominant plot to give notice of the intent to terminate the real servitude and an entry into the immovable property rights registry.
2. The owner of the subservient plot can demand the termination of a real servitude if it is no longer necessary for the use of the dominant plot or if the circumstances since the creation of the servitude have otherwise substantially changed. An entry into the immovable property rights register is required.

**CHAPTER IV**  
**PERSONAL SERVITUDES**

**Article 261**  
**Definition**

1. A personal servitude is the right of the person for whose benefit the immovable property unit has been encumbered entitling him to use the immovable property unit in a specific way or to require certain actions to be omitted or to refrain from exercising a right that arises out of the immovable property unit
2. The provisions of Articles 253 to 259 apply to personal servitudes mutatis mutandis.

**Article 262**  
**Non-Transferability of Personal Servitude**

1. A personal servitude is not transferable in favour of a natural person. The rights arising from a personal servitude can be left to be exercised by a third party. It is not permissible to surrender the immovable property to another person for the purpose of such person to exercise the rights from the personal servitude.
2. The transfer of a personal servitude or the right to be granted a personal servitude registered for a legal person or a partnership with legal personality follows the provisions of Article 219 paragraph 2 of this law.

**Article 263**  
**Termination of Personal Servitudes**

1. A personal servitude terminates with the death of the entitled person.
2. A personal servitude granted to a legal person or a partnership with legal personality terminates when the entity ceases to exist.

**Article 264**  
**Right of residence**

1. A personal servitude can be granted to entitle a person to use a building or part of a building as a residence.
2. The right to use such building may not be transferred to another person.
3. This right of residence is governed by the provisions applying to usufruct, with necessary modifications.

**CHAPTER V**  
**REALTY CHARGES**

**Article 265**  
**Realty Charges**

1. Any immovable property may be encumbered in such a manner that recurring performances are to be rendered to a beneficiary on account of the immovable property (charge).
2. A charge may be created for the benefit of a person (personal realty charge) or in favour of the current owner of another immovable property (realty charge).

**Article 266**  
**Creation of Charges**

1. The creation of a charge requires a written agreement and registration of the charge in the immovable property rights register.
2. A charge may be created by law.

**Article 267**  
**Personal Liability of Owner**

1. Individual performances resulting from a charge shall be delivered by the owner of the immovable property so charged, unless otherwise provided.
2. The owner of an immovable property encumbered by a charge is personally liable for all performances that fall due while his ownership lasts, unless otherwise provided in a written agreement between the owner and the beneficiary.



**Article 268**  
**Individual Performances**

The provisions applicable to the payment of interest on a claim secured by a mortgage apply, with the necessary modifications, to individual performances due under a charge.

**Article 269**  
**Division of Immovable Property**

1. If an immovable property that benefits from a charge on another immovable property is divided, the charge will continue to benefit the separated parts of the property.
2. If the performance is divisible, the shares in the entitlement are determined according to the size of the parts of the divided property.
3. If the performance is not divisible, the owner of the encumbered immovable property may only deliver to all beneficiaries jointly. Every beneficiary may demand performance to all beneficiaries. The exercise of the right under the charge is, in case of doubt, permissible only in such a manner that it does not become more onerous for the owner of the immovable property so encumbered.
4. The beneficiaries may determine that all rights out of the charge shall be linked only to one part of a divided immovable property. Such determination must be registered in the immovable property rights register.

**Article 270**  
**Charge on Land**

A charge on an immovable property which exists in favour of the current owner of another immovable property may not be severed from the ownership of this immovable property.

**CHAPTER VI**  
**BUILDING RIGHT**

**Article 271**  
**Concept**

1. A building right is a right to ownership of a building on or under the surface of an immovable property.
2. A building right encumbers at the time of its creation the immovable property on which the building exists or will be constructed.
3. A building constructed pursuant to a building right is a component part of the building right.
4. A building right may not be restricted to a part of the building, such as a level or storey.
5. A building right may be alienated or inherited.

**Article 272**  
**Application of Real Rights**

The provisions of this law applicable to immovable property, in particularly the provisions concerning mortgages, apply to building rights, with necessary modifications.

**Article 273**  
**Establishing a Building Right**

1. The establishment of a building right requires a valid contract between the owner of the immovable property and the beneficiary by which the parties agree on establishment of a building right and the registration of the right in the immovable property rights registry.

2. The owner of an immovable property may establish a building right for his own benefit.
3. A contract to establish a building right must contain the name of the immovable property owner, a precise description of the immovable property encumbered by the building right, and the duration of the building right.
4. The duration of the building right shall be regulated with the agreement between parties, if it is not provided otherwise by separate law, but the duration shall not exceed ninety nine (99) years.

**Article 274**  
**Optional Content of a Building Right**

1. The content of the building right may include provisions on the following:
  - 1.1. the erection, maintenance and use of a building;
  - 1.2. the immovable property owner's remedies in case of a breach of the contract establishing the building right, in particular as to violations of the obligation to erect, maintain, or use the building;
  - 1.3. the building insurance and any plans for re-erecting the building in the event the building is destroyed;
  - 1.4. the liability for public and private charges and encumbrances;
  - 1.5. the obligation of the beneficiary to transfer the building right to the owner of the immovable property unit under certain conditions (reversion);
  - 1.6. the immovable property owner's entitlement to consent to transfers, encumbrances, and realty charges concerning the building right;
  - 1.7. the obligation of the beneficiary to pay compensation for use and penalties for the breach of the contract establishing the building right.

**Article 275**  
**Compensation for Use**

1. If for reasons to compensate for the use of the immovable property a recurring performance is agreed, the provisions on realty charges apply with necessary modifications.
2. The compensation for use must be specified for the amounts due during specific periods of time. The compensation for use may be specified in a foreign currency. The value of the compensation for use may be indexed to official public valuations that may exist for such building right or to the officially determined rate of inflation.
3. If it is impossible to determine the value of a compensation for use, the competent court shall determine an adequate evaluation of or any adjustment to the compensation for use. The personal circumstances of the parties may not be taken into consideration when such determining is made.

**Article 276**  
**Establishing Separate Ownership over Building Units**

1. The Separate Ownership over a building unit may also be established in a building right.
2. If several persons are entitled to the building right, each one of them must be allocated singular ownership over one or several particular rooms.

3. If only one person is entitled, the provisions regarding the creation of singular ownership over a building on the part of one owner are applicable mutatis mutandis.

#### **Article 277 Enforcement Actions**

1. In case enforced actions are executed against an immovable property encumbered with a building right, the provisions regarding enforcement actions taken against an immovable property encumbered with a real servitude are applicable with necessary modifications.

2. In case enforcement a building right may have to be enforced against an immovable property, the provisions regarding enforcement actions taken against an immovable property are applicable with necessary modifications.

#### **Article 278 Termination of Building Right**

1. A building right terminates after the agreed period of time.

2. A building right can be terminated early if the owner of the immovable property and the beneficiary of the building right agree by contract that the building right is terminated.

3. The provisions regarding the creation of a building right apply with necessary modifications to the termination contract.

4. If a building right is encumbered with the right of a third party, the termination requires the written consent of the third party.

#### **Article 279 Termination of a Building Right for Non-Payment**

If the beneficiary is in arrears with amounts of up to two annual payments of compensation for use the owner of the immovable property may terminate the building right and demand from the beneficiary the transfer of the building right (reversion).

#### **Article 280 Consequence of Termination**

1. Upon the termination of a building right, the building becomes part of the immovable property.

2. If the owner and the beneficiary have not agreed otherwise, the owner must compensate the beneficiary with a sum equal to one-fourth of the market value of the building. The compensation shall be calculated based on the value of the building on the day the building right is terminated.

#### **Article 281 Mortgages and Real Servitudes over the Building Right**

1. After the termination of the building rights the building's right creditor (the mortgage creditor or the realty charge's beneficiary) obtains a claim for satisfaction out of the claim for compensation.

2. The owner is not released from his obligation to compensate until he delivers the indemnification to the mortgage creditor or the real servitude's beneficiary.

3. Furthermore the mortgage creditor and the realty charge's beneficiary are entitled to the same rights they would have in the case of termination due to forced execution.

**PART VII  
TRANSITIONAL PROVISIONS**

**Article 282**

1. This law is applicable to all conveyances of ownership over movable things or immovable property units after its coming into force.
2. Conveyances of ownership for which at the time of coming into force of this law only the underlying obligational legal transaction for the transfer of ownership existed whereas according to former law, legal validity was subject to additional requirements (especially approvals for registration), remain subject to special regulation other than this law.

**Articles 283**

1. A bona fide acquisition has to comply with Article 21 of this law if the acquisition of ownership in accordance with Article 21, paragraphs 1, 2 and 4 or of the indirect possession in accordance Article 21, paragraph 3 as well as of a transfer in accordance with Paragraph 4 have taken place after this law has come into force.
2. This also applies to the extinguishment of rights in accordance with article 25 of this law.

**Article 284**

The exclusion of a bona fide acquisition is determined in accordance with article 23 of this law if the time when direct possession was acquired, or indirect possession as well as the transfer, is after the coming into force of this law. This also applies if the time of the involuntary loss of the thing was before the coming into force of this law.

**Article 285**

The presumption of ownership in accordance with article 26 is also then barred against the former possessor if the latter lost possession involuntarily before the coming into force of this law.

**Article 286**

**Regarding proof of entitlement to acquire ownership**

1. In favor of persons who on the day of the coming into force of this law, are in possession of a Tapia-Deed issued before 23<sup>rd</sup> March 1989 stating that they or their legal predecessor are owner of an immovable property unit, it is presumed that they are the owners of the immovable property unit.
2. The presumption according to Paragraph 1 can only be rebutted by the enforceable decision of a court.
3. Persons which at the day of coming into force of this law are in possession of a Tapia Deed issued after 23<sup>rd</sup> March 1989 stating that they or their legal predecessor are owner of an immovable property unit must have the Deed verified by the competent court of Kosovo in the procedure foreseen by the law.

**Article 287**

1. The acquisition of ownership in an immovable property unit requires entry into the registry for immovable property rights, if the registry for immovable property rights has been established and is functioning.
2. Before establishment and functioning of the registry for immovable property rights acquisition of ownership in an immovable property unit requires that the agreement on the purchase of the immovable property unit be registered with the competent court. A regulation issued by the competent ministry determines the procedure on registration.

### **Article 288**

A movable thing cannot be acquired by acquisitive prescription if the owner involuntarily lost his direct or indirect possession over it in the period between March 23<sup>rd</sup>, 1989 and the coming into force of this law.

### **Article 289**

Ownership can only be acquired according to article 41 of this law if the period according to article 41 of this law, first sentence, has begun after the time in which the immovable rights register was established and commenced its activities.

### **Article 290**

Claims based on articles 93 – 102 can also be made if necessary and useful expenditures were made before the coming into force of this law.

### **Article 291**

1. The provisions of this law are applicable to possessory relationships that exist on the day of the coming into force of this law.

2. Unless existing legal relationships provide for more favorably, natural persons or legal entities are entitled to possess an immovable property unit:

2.1. who built or have commenced to build a building with the required permission of public authorities, or

2.2. who have bought a building erected on an immovable property unit.

### **Article 292**

#### **Ownership over a building unit**

1. Independent ownership over a building unit is to be registered on application of the entitled party as an encumbrance of the immovable property unit. An independent immovable property rights register folio needs to be created for the building.

2. The acquisition of independent ownership over a building unit is only possible if the ownership over the building is registered as an encumbrance of the immovable property unit.

### **Article 293**

1. Rights of pledge, which according to the UNMIK Regulation No. 2001/5 from September 7<sup>th</sup> 2001 regarding pledges are still in existence, continue to be governed by the provisions of this Regulation as well as the applicable provisions regarding the registration of rights of pledge.

2. Contrary to paragraph 1, the necessity, requirements and effects of registration of the rights mentioned in paragraph 1 must comply with the provisions, which are applicable on the coming into force of this law or which may come into force in the future.

### **Article 294**

1. Mortgages which are still in existence according to the Law on Mortgages (2002/21) from December 20<sup>th</sup> 2002 remain subject to the provisions of that law.

2. Mortgages, which were established before the coming into force of this Law should be in compatibility with applicable conditions of registration established by this law.

#### **Articles 295**

1. All rights of usufruct, real servitudes, personal servitudes and realty charges which were in existence on the day of the coming into force of this law remain further subject to the provisions which were applicable to them before the coming into force of this law.

2. Contrary to paragraph 1 the necessity, requirements and effects of the registration of a right mentioned in paragraph 1 must comply with the provisions which are applicable to them before the coming into force of this statute.

3. If an entry into the immovable rights register becomes necessary according to provisions which are applicable at the time of the coming into force of this law, the entry must be applied for. In three months after entry of this law into force, otherwise is the right terminated.

#### **Article 296**

By the entering into force of this law, all provisions of the previous laws that have regulated this field shall have no effect, unless the law otherwise provides.

#### **Article 297**

This law shall enter into force fifteen days (15) after its publication in the Official Gazette of the Republic of Kosovo.

**Law No. 03/L-154**  
**25 June 2009**

**Promulgated by the Decree No. DL-016-2009, dated 15.07.2009, of the President of Republic of Kosovo, Dr. Fatmir Sejdiu.**