

# **Decree #38 Referring to Contract and Other Liabilities\_881028**

**Council of State**

**People's Republic of Kampuchea**

## **DECREE No. 38 D REFERRING TO CONTRACT AND OTHER LIABILITIES**

*This Decree was adopted by the Council of State in Phnom Penh on October 28, 1988*

- Seen the Constitution of the People's Republic of Kampuchea (PRK);
- Seen the Law on the Organization of the National Assembly and the Council of State of the PRK and its promulgation by Decree No. 04D, dated February 10, 1982;
- Seen the Law on the Organization of the Council of Ministers of the PRK and its promulgation by Decree 03D, dated February 10, 1982;
- Seen the Law on the Formation of the Judiciary and Prosecutor's Office and its promulgation by Decree 02D, dated February 10, 1982;
- Seen the Law on the Establishment of the People's Supreme Court and the Prosecutor General's office attached to the People's Supreme Court, and its promulgation by Decree 28D, dated July 31, 1985;
- Seen the Decree 34D, dated August 26, 1987, on the Organization of the People's Supreme Court and the Prosecutor General's Office attached to the people's supreme court;
- Seen the Decree 07D, dated July 13 1982, regarding the competency and procedure for adoption of laws and regulations, and
- pursuant to a request by the Council of Ministers, it is hereby decided:

## **CHAPTER I: CONTRACTS**

### **section i: general provisions**

#### **Article 1:**

A contract is an agreement between two or more persons to create, change or terminate one or more obligations which bind them.

In the above definition, a person may be a natural person or a legal entity. A legal entity can enter into a contract through his/her own representative.

#### **Article 2:**

A contract shall bring to the contracting parties both bring personal and social benefits. the contracting parties shall deal in an atmosphere of trust and honesty, respecting the social ethics particularly the elimination of the " exploitation of one party by the other" concept.

### **section ii: validity and form of the contract**

#### **Article 3:**

A contract is valid provided that it:

- arises out of a real and free agreement.
- is made by parties who have capacity to enter into a contract.

- has a subject matter that is certain, possible to perform, lawful, and consistent with public order and good customs.

**Article 4:**

Contracts can be made orally or in writing. The law shall set up precise formalities in making a contract. Every contract not consistent with the formalities fixed by law shall be deemed void. Except where there is any provision to the contrary, contracts involving money, or item(s) worth more than five thousand Riels must be in writing.

**section iii: voidness of contracts.**

**Article 5:**

The following contracts shall be deemed void when

- it is illegal, and not consistent with public order or good customs.
- it is contrary to social interests or violating social ethics.
- a contract whose subject matter is impossible to perform.

**Article 6:**

The following contracts shall be deemed voidable when

- it is not resulting from a real or free agreement
- a contract made by a party lacking capacity to contract.

**Article 7:**

An agreement that is the result of mistake, duress, or fraud is not a valid agreement.

**Article 8:**

Mistake shall be a ground for avoiding a contract if there is mistake as to substance of the object which is the subject matter of the contract. Mistake as to person can not be a ground for avoiding a contract except where the identity of the person is the basis of the contract.

**Article 9:**

Violence is a ground for avoiding a contract if such violence is in the form of mental or physical duress against a party to the contract, his/ her husband or wife, any ascendants, or any descendants of the party.

**Article 10:**

Fraud is a ground for avoiding the contract when there are acts of deception, dishonesty, or misrepresentation committed by one party to the contract without which the other party would not have entered into the contract.

**Article 11:**

When entering into a contract, should any party take advantage of the situation of another party with undue profit, then the aggrieved party can always sue to rescind the contract.

**Article 12:**

When making a contract, if there is a difference between the value of the subject matter offered by one party and the value of the consideration in return, then the aggrieved party can sue to rescind the contract on the ground that he/she never intended the difference to be a gift.

**Article 13:**

A party who asserts that he/she entered into a contract because of mistake, duress or fraud, in order to avoid the execution of his/her obligations in the contract, shall have to prove this matter.

**Article 14:**

People who have fully reached 18 years of age can enter into a contract at any time, except detainees as provided in the law.

**Article 15:**

Minor under 18 years of age can not create rights or duties and especially can not enter into a contract without consent from his/her legal guardian.

A contract by a minor without prior consent from his/her legal guardian can be executed on condition that his/her guardian has agreed on such a contract after it has been entered into by the minor, but all contracts made by a minor to meet every day life needs shall not require the consent of his/her legal guardian.

**Article 16:**

A party who enters into a contract with someone who lacks capacity cannot attempt to get out of his/her contract obligations on the ground of incapacity of the other party.

**Article 17:**

The subject matter of a contract must have a commercial value. Their kind, quality and quantity shall be clearly described.

Future happening can also be the subject matter of a contract. However, one cannot contract to sell an inheritance of a person who is still alive even with his consent.

**Article 18:**

Any person can sue to absolutely rescind a contract defined in article 5, at any time .

**Article 19:**

Where a contract is voidable because of incapacity, mistake, duress, or fraud, a claim to avoid the contract can be made by the aggrieved party or by any person who has lawful interest in the claim. The aggrieved party or any person who has a lawful interest in the claim shall notify the other party. The party receiving the notification shall reply without delay.

After the notification the aggrieved party or any person having a lawful interest in the claim can sue to rescind the contract within a maximum period of 12 months.

**Article 20:**

The right to sue to rescind a contract as provided for in Article 19 shall cease to exist if, after suing, the party who has such a right agrees to carry out his/her obligations or agrees, in writing, to withdraw the action.

**Article 21:**

In the case where there is nullity of a contract, the situation prior to entering into contract shall be restored.

**section iv: effects and interpretation of the contract**

**Article 22:**

A contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting party.

A contract shall be executed with honesty and according to the will of the parties.

A contract binds only the parties to the contract.

**Article 23:**

If the contract is not clear in meaning, that contract shall be interpreted according to common practices or customs of the place where the contract has been made, but the interpretation shall not conflict with the provisions of this law. If there is any ambiguity, the contract shall be interpreted in favor of the obligor party.

**Article 24:**

The obligor party shall fulfill his obligations under the contract by payment from his personal and real properties available now and in the future.

**section v: statute of limitations for contracts**

**Article 25:**

Except where the law prescribes differently, obligations resulting from a contract shall be deemed to have expired if the obligee party has not sued for performance within 5 years of the date defined in the contract, or where the date is not defined in the contract, the date of entering into the contract shall be the date.

**Article 26:**

The limitation period shall be postponed if the obligor party is absent from his/her residence and this absence has been certified by the local authorities according to the law.

**Article 27:**

A obligor or guarantor can assert the statute of limitations. If the obligor or the guarantor fails to assert the statute of limitations, then the People's Court can do so on their behalf.

**Article 28:**

A debtor or the guarantor who executes his/her obligations under the contract after the limitation period has expired can not then make a claim for the amount of money or value given on the grounds that the limitation period has expired.

**section vi: the execution of the contract**

**Article 29:**

Obligations in the contract shall be carried out in a timely and proper manner particularly with regard to quality, quantity, place, and duration prescribed.

**Article 30:**

A party to the contract is

- an obligor when he has obligations to be fulfill.
- an obligee when he has rights on the obligations the obligor is supposed to fulfill.

**Article 31:**

An obligee shall not be compelled:

- to accept an object other than that which he/she is entitled to receive even though its value is equal or higher.
- to accept the execution of part of the contract. But depending on the goodwill and the difficulty of the obligor, the People's Court can extend or delay the time for execution of the contract and make an order to suspend the obligee's action. In such a case, the reasons for the decision shall be clearly stated, and the People's Court shall exercise this power with great care.

**Article 32:**

The execution of the contract shall take place at the location of the obligor if the contract has not specified a place.

**Article 33:**

If there is no specific duration of time within which to execute the contract, then the obligor can pay or provide at any time, and the obligee can request payment at any time.

## CHAPTER II: SOME FREQUENTLY USED CONTRACTS

**section i: sale**

**Article 34:**

A sale is a contract in which one person has the obligation to transfer ownership of a subject matter or right to another person who has the obligation to compensate for the value of that subject matter or right.

**Article 35:**

It shall be deemed void:

- the sale of another's property.
- the sale by a husband of his spouse's belonging and vice-versa.
- the sale of joint-tenancy property "that can not be divided " by one co-owner without the consent of the other co-owner.

**1. obligation of the vendor**

**Article 36:**

The vendor shall maintain the subject matter to be sold in good condition until the due date for delivery so that he is able to execute his obligations under the contract, namely the delivery of the subject matter.

**Article 37:**

The vendor shall not change or modify the subject matter to be sold by any means from the date of the sale until its delivery.

**Article 38:**

The vendor shall be liable for damage occurring to the subject matter to be sold up until the time of delivery. The sale can be canceled if the item has been lost or substantially damaged prior to delivery or when the vendor can not find a substitute. If the sale has been canceled, the vendor

shall pay damages to the purchaser relating to the loss of the subject matter to be sold or any damages resulting from the vendor's fault.

**Article 39:**

The vendor shall inform the purchaser of all essential attributes and other substantial conditions relating to the subject matter to be sold, particularly information concerning rights that others have in the subject matter, if any. The vendor shall hand deliver to the purchaser all documents relevant to the sale.

**Article 40:**

The vendor shall hand over not only the main subject matter but also any derivatives and accessories.

In the case of real property sale, the delivery of the property deed is deemed to be delivery of that real property. Expenses incurred in the delivery shall be the vendor's responsibility unless otherwise stated in the sale contract.

**Article 41:**

Regarding real property, the conveying of the vendor's rights to the purchaser is deemed valid providing that the sale deed has been certified and registered. From the certification and registration date, a third party has no rights to the property. Regarding personal property, the conveying of the vendor's right is deemed valid and a third party has not right to object from the time the personal property is delivered into the hands of the purchaser except where the sale is done through certified deed. In the latter case, the third party can not object from the day the deed has been certified.

**Article 42:**

The vendor is not responsible for any external defects but shall be liable for latent defects in existence prior to the sale. If the purchaser can prove that such defect existed prior to the sale, then the purchaser can ask to rescind the contract or to reduce the price.

Where the purchaser refrains from buying or asks to reduce the price, the purchaser shall bring his claim within 1 year of the date of delivery. If no claim is brought within 1 year, the purchaser's silence shall constitute agreement.

**Article 43:**

The vendor shall guarantee the purchaser protection from any action by a third party to deprive the purchaser of the subject matter, such action being a third party claiming a right to the subject matter.

**Article 44:**

In the event of a third party threatening to sue to deprive the purchaser of the subject matter, the purchaser can refer the third party to the vendor immediately. The vendor, by any means, shall prevent the third party from bringing a claim against the purchaser otherwise he shall assure that the purchaser defeat the third party's claim through a court decision.

**Article 45:**

If the vendor, so called upon by the purchaser to act on his behalf, succeeds in resolving the problem with the third party, the purchaser is not entitled to damages. If the vendor is unable to resolve the situation, then the purchaser shall proceed to legal action.

**Article 46:**

If the court decides to deprive the purchaser of the subject matter, the vendor shall return the amount received to the purchaser. In addition, the vendor shall be liable for damages. The

amount of damages shall include the loss from the contract and order relevant expenses incurred since the date of the sale.

**Article 47:**

In the event of vendor's death, his obligations shall fall to his heirs.

**Article 48:**

If the vendor obtained the subject matter by way of a felony or misdemeanor, then the purchaser, when he is so aware, can ask to rescind the contract even though there is no threat from a third party to deprive the purchaser of the property.

All contracts contrary to this Article shall be deemed void.

**Article 49:**

If the same subject matter has been sold successively to many persons the last purchaser shall be revert back to the immediate vendor to guarantee his rights.

This vendor, if need be, shall revert back to his immediate vendor in the chain of title.

**2. obligations of the purchaser.**

**Article 50:**

The purchaser shall pay the contract price on the day and at the place already determined .If the date and the place are not stipulated in the contract, payment shall take place at the place of delivery.

**Article 51:**

The contract can impose on the purchaser an obligation to pay interest on the contract price if payment is late. The interest rate shall not exceed 5% per annum. Should the interest rate not stipulated in the contract, the purchaser is liable to pay only the price mentioned in the contract, but where the subject matter yields income or profit, the interest shall be calculated according to the rate set by law.

**Article 52:**

If the purchaser has received the subject matter, and if a third party brings a claim to deprive the purchaser of the subject matter, then the purchaser can postpone payment. The purchaser shall pay the vendor only if and after the problem with the third party is resolved.

**Article 53:**

The vendor is entitled to retain possession of the subject matter until the purchaser delivers payment.

**Article 54:**

On the due date if no payment is made by the purchaser, the vendor can rescind the contract if he does not wish to bring an action for payment. As long as full payment is not made, the vendor can always rescind the contract.

**Article 55:**

The rescission of the contract requires both contracting parties to return to each other what they have received. The purchaser shall return the subject matter with any interest and income gained. The vendor shall pay back the amount paid by the purchaser and shall pay interest according to the rate provided by law.

## **section ii: interest bearing loan**

### **Article 56:**

An interest bearing loan is a contract whereby one person delivers money to another person and the latter is obligated to repay that amount together with an additional amount according to the duration of the contract.

### **Article 57:**

The contract shall be in writing. The contract shall clearly state the names of the parties, residence of the parties, loan amount, amount of interest, loan duration and maturity date. The borrower shall sign his name to the contract.

### **Article 58:**

If the maturity date and the interest rate have not been provided for in the contract, it is presumed that the parties agree to contract for 1 year period without interest.

### **Article 59:**

A lender shall be allowed to charge interest on a loan provided that there is an agreement to this between the contracting parties. The interest rate shall not exceed 5% per annum unless otherwise provided by law.

### **Article 60:**

Any interest overcharged by the lender during the debt period shall be deducted from the principal amount. If the repayment is in excess of the principal amount and the interest allowed by law, the creditor shall be compelled to refund such excess to the borrower together with interest calculated from the date of repayment by the borrower.

In this case the lender will be criminally liable according to the provisions of the criminal law in effect.

### **Article 61:**

A lender cannot demand repayment prior to the due date. In the event of a borrower's death, repayment of the entire debt can be demanded immediately by the lender and the obligation for repayment shall pass to the heirs of the deceased who shall be bound to pay the outstanding debt out of the deceased's estate and before the estate is distributed.

### **Article 62:**

The lender shall deliver the loan deed or document certifying payment to the borrower when he repays the loan fully.

### **Article 63:**

An interest bearing loan relating to personal property must comply with the provisions regarding the loan.

## **section iii: secured personal property**

### **Article 64:**

A secured personal property contract is a contract whereby a debtor delivers his personal property to a creditor to be held as security for a debt.

A creditor in possession of such secured property is entitled to be paid out of the proceeds of the sale of such property in priority to all other creditors.

**Article 65:**

A secured personal property contract must be in writing. The contract shall only be considered valid when the creditor is in possession of the secured property.

The amount of the debt and the secured property must be specified and described clearly in the contract. If the contract fails to specify the amount of interest and the date of payment, the debt shall be considered to have no interest for one year from the date the contract is signed.

**Article 66:**

A creditor is not entitled to dispose the secured personal property as he pleases. The creditor is obligated to take reasonable care of and preserve the secured property. In the event that the secured property is damaged or lost through the creditor's fault, he must repair the damage or compensate the debtor for the loss of, or damage to, the secured property.

**Article 67:**

Unless otherwise stipulated in the written contract, a creditor may not use or take profit from the secured personal property. The creditor is allowed to receive only the profit from the secured loan. Such profit shall be used for necessary expenses.

If a creditor uses the secured property in breach of the terms of the contract, the debtor may file a complain to withdraw the secured property.

**Article 68:**

If the creditor disposes of the secured property without the prior consent of the debtor, the creditor shall be criminally liable under the provisions of the criminal law in effect.

**Article 69**

When payment is due and the debt is fully paid, the creditor must restore possession of the secured property to the debtor. If a portion of the debt is still outstanding on the due date, the creditor may still maintain possession of the secured property until the outstanding balance is paid.

**Article 70:**

When payment is due and the debtor does not fulfill his obligations, the creditor may submit a request to the People's Court to have the secured property liquidated.

The proceeds acquired from the sale the secured property shall be paid first to the creditor who is in possession of the secured property. The balance of the sale proceeds shall be paid to the debtor, or paid to any creditors to whom payment is due.

If the proceeds from the sale of the secured property are not sufficient to satisfy the debt, then the debtor still remains liable to the creditor for the outstanding balance.

**Article 71:**

A personal property secured contract shall be considered void if the contract stipulates that the creditor shall become the actual owner of the secured personal property in the event that the debtor fails his obligations under the contract .

**section iv: contractor contract****Article 72:**

An Contractor contract is a contract whereby one party undertakes to perform the work for another party for a fee proportionate to the work.

**Article 73:**

If the fee is not specified in the contract, the court shall determine the fee according to customary practices at the place where the work was performed.

**Article 74:**

The work must be clearly described in the contract. If the work to be performed is not performed in compliance with the terms of contract, the hiring party may:

- a) either not accept the results of the work in which case the contract may be determined, or ask the contractor to pay for damages and other compensation for any loss, if any;
- b) require the contractor, at his own expenses, to make the necessary adjustments within a specific time frame agreeable to both parties; or
- c) accept the works by reducing the fee.

**Article 75:**

If the time for completion of the work is specified in the contract and if the work is not completed within that period of time, the contract may be terminated notwithstanding the possible damages which the hiring party may claim for.

However, if delay in the work results from a force majeure, the hiring party may not claim for damages.

**Article 76:**

If the hiring party fails to advance money or supply raw materials within a certain time frame as stipulated in the contract, he may not terminate the contract on the basis of the work delay. The contractor can cancel the contract on the ground of such delays. In such a case, the contractor is entitled to receive a reasonable fee for the work that he has already completed.

**Article 77:**

The hiring party may terminate the contract at any time before performance has been completed, provided he pays to the contractor the fees and other expenses related to the work already performed.

**Article 78:**

If the work is destroyed before it is completed through the contractor's fault and if the hiring party has paid the contractor in advance and/or supplied materials, the hiring party is entitled to receive compensation equal to the value of the loss and other expenses which he has paid toward the works. However, if the damages is caused by a force majeure, both contracting parties have no legal recourse against each other .

**Article 79:**

The contractor shall be liable for the performance of the works by his employees.

**Article 80:**

If the work is completed, the contractor may collect his fees upon delivery of the contracted work. Payment of the fee shall be deemed to be an implied acceptance of the work done.

**Article 81:**

If, after delivery of the work to the employer, any defects in the work becomes apparent as the result of the contractor's fault, the contract can

- either be rescinded; or
- part of the fee shall be refunded to the hiring party; or
- the repairs shall be done at the contractor's expenses.

The hiring party may only claim where the defects becomes apparent during the period under warranty. If the period of warranty is not stipulated in the contract, the hiring party may claim any time within three years from the date of acceptance of the work.

**Article 82:**

Where the contractor is a natural person and where the contractor dies, the contract shall be void.

**section v: carrier contract**

**Article 83:**

A contract for carriage is a contract whereby a person who is a carrier undertakes to transport passengers, luggages or goods from one place to another for a fee determined by an agreement of the parties or a fee determined by the state .

**Article 84:**

Where the carrier incurr delays in starting his mode of transports, a consignor is entitled to terminate the contract and require the carrier to pay

- the transportation fees and other advances to other substitute carriers,
- compensation for any damages caused by delay in delivery, loss or destruction of the transported luggages or goods, or decrease in price caused by such delivery delay.

**Article 85:**

Where the carrier incurr delays in the delivery, a consignor is entitled to terminate the contract and require the carrier to pay

- the transportation fees and other advances to other substitute carriers,
- compensation for any damages caused by delay in delivery, loss or destruction of the transported luggages or goods, or decrease in price caused by such delivery delay.

**Article 86:**

A carrier is liable for the loss of ,or damage to, the transported luggages or goods. A carrier is also liable for any accidents to the passengers during his transport.

A carrier is not liable if the injury is caused by a force majeure or by the negligence of the passengers themselves.

If the luggages or goods being transported are stolen, the carrier shall be liable to pay for the stolen luggages or goods.

**Article 87:**

A carrier is liable, with respect of the luggages or goods, for any loss or damage that is not caused by a force majeure or by the natural destruction of the luggages or goods themselves.

The carrier is particularly liable for any loss or damage resulting from unreasonable delays in the transport.

**Article 88:**

Any action for compensation for loss or damage shall be commenced within one year from the date an owner becomes aware that the luggage or goods have been lost or damaged or from the date passengers become victims.

### **Section VI: Bailment Contract**

#### **Article 89:**

A bailment contract is a contract whereby a person (the "bailee") keeps in custody the personal property of another person ("the bailor") gratuitously or for a fee, and returns that property to the bailor or to a person clearly designated by the bailor at a specified time or at the time when the property is demanded back.

#### **Article 90:**

As a fundamental rule, if no fee is specified in the contract, a bailee shall receive no fee.

#### **Article 91:**

A bailee must preserve and return the bailed property at a specified time or at the time when the bailor demands it back.

The bailee is not entitled to use the bailed property without the authorization of the bailor.

#### **Article 92:**

A bailee is liable for any damage or loss to bailed property resulting from fault on the part of bailee.

If the bailed property is damaged or lost by reason of a force majeure, no compensation shall be awarded.

#### **Article 93:**

If the bailment is for a fee and the bailed property is lost by reason of theft, a bailee is bound to pay compensation.

If the bailment is gratuitous and the bailed property is lost by reason of a theft, the bailee is not bound to pay compensation if the bailee has sufficient evidence proving that he carefully safeguarded the bailed property.

However, a hotel owner, store owner or restaurant owner is liable for the loss through theft of the property of its guests or customers where such property is kept in the custody of the hotel owner or restaurant owner.

### **section vii: loan for use**

#### **Article 94:**

A loan for use is a loan without any interest or fee. A person who lends property to someone else for use retains ownership in the property.

#### **Article 95:**

A borrower may not sell, exchange or lend the loan property without the consent of a lender.

#### **Article 96:**

A borrower must use the loaned property in a good and proper manner, safeguard it as if he is the owner and use it in manner consistent with its purpose.

The borrower is liable for the expenses of safeguarding and maintaining the loaned property.

**Article 97:**

If the loan property is damaged or lost by reason of a force majeure, the borrower is not liable for any compensation. However, where the damage or loss is the result of the borrower's fault, the borrower shall be liable for compensation to the lender.

**Article 98:**

A borrower must return the loaned property to the lender at the time specified in the contract. If no time is specified in the contract, the lender may demand the return of the loaned property at any time.

**Article 99:**

If a borrower improperly uses the loaned property in a manner not consistent with its normal function, the lender may immediately demand back his property even prior to the time for return as specified in the contract.

**section viii: lease**

**Article 100:**

A lease is a contract wherein a lessor promise to lease his property for a fee to a lessee to use temporarily.

The property to be leased may be either real property or personal property.

**Article 101:**

The duration of a lease may or may not be limited, where the duration of the lease is not limited, the duration of lease may not exceed 12 years.

A lease contract which has as its duration a period of more than one year must be in writing.

**Article 102:**

Where a lease contract is not in writing and one party denies the existence of the lease, the evidence to prove the lease shall be based on the testimony of witnesses so long as the duration of such lease contract does not exceed one year.

**Article 103:**

A lessor shall lease to a lessee only property which is in good condition so as to prevent any incidents that may cause the lessee undue problems, and shall guarantee the lessee protection from claims of any third person who asserts any right to the leased property such as a right of mortgage.

**Article 104:**

A lessor is liable for major repairs to the leased property except where otherwise provided by law or in the contract.

**Article 105:**

A lessee shall pay rent according to the price fixed in the terms of the contract, shall use the property in accordance with its normal function and for the term specified in the contract, shall maintain the leased property in good condition and shall be liable for any minor or simple repairs except where otherwise provided for in the law or the contract.

**Article 106:**

When discharging the contract, the lessee shall return the leased property to the lessor in the same state or condition as when he took the property.

**Article 107:**

A lessor may terminate the contract if a lessee does not perform his obligations or if the lessee improperly uses the leased property in a manner inconsistent with its normal function or uses it in a manner which causes damage to the leased property

**Article 108:**

A lessee may not sublet the leased property to any other persons without the consent of the lessor except where otherwise provided for in the contract.

**Article 109:**

A lessee who sublets the property shall still be bound by the same obligations under the contract with the lessor, and in particular shall be liable for the sub-lessee regarding unpaid rent, and any destruction or damage to the leased property resulting from the sublease.

**Article 110:**

Where a lease contract has no limited duration period, a party may not terminate that contract unless there is notification in advance of at least one month or at most two months.

**Article 111:**

Where a lessor dies, the contract remains in effect. If a lessee dies, the contract shall not remain in effect. However, the contract shall remain in effect if the lessee's heirs want to continue with the lease contract.

**section ix: contract of suretyship**

**Article 112:**

A contract of suretyship is a contract whereby a third party called a "surety" agrees with the creditor by contract to undertake or to perform the obligations of the debtor in the event that the debtor fails to perform his obligations to the creditor. This contract shall be in writing.

**Article 113:**

One debt may have any number of sureties.

**Article : 114:**

Any contract of suretyship relating to obligations which are void by law shall be of no effect. But if such voidness results from the debtor being a minor, then the contract shall be deemed valid.

**Article 115:**

Legal action against the surety can be taken either concurrently with an action against the debtor, or later.

**Article 116:**

After the decision of the People's Court, the surety can request that the properties of the debtor be seized prior to the surety's property.

**Article 117:**

After the sale of the debtor's properties, if the amount obtained is not sufficient to satisfy the debt, then the surety shall be liable for the balance.

**Article I 118:**

In a case where there are many sureties, each surety shall be liable for the entire debt as though there were only one surety. All sureties shall be jointly liable for the payment of debt.

**Article 119:**

Where the surety has paid the debt of the debtor, all rights vested in the creditor shall pass to the surety. The surety is entitled to demand from the debtor repayment of the amount he has paid, as well as any interest and other expenses incurred from the date the debt was paid.

**Article 120:**

Where one surety pays the debt of the debtor, and the debtor is in a state of insolvency, this surety can take legal action to recover such payment from any other sureties who shall in turn pay their share individually.

## CHAPTER III: OTHER LIABILITIES

**Article 121:**

Any person who causes damages to others by reason of his own fault, shall be liable in compensation for such damage. Even where the damage is caused by involuntary acts such as carelessness or negligence, the offender shall be liable.

**Article 122:**

The insane and minors under 14 years old are deemed incompetent. These persons shall not be liable for damage they have caused to others.

**Article 123:**

Parents, guardians, and other persons who are in charge of or take care of incompetent persons, shall be personally liable for damage caused by those incompetent persons.

**Article 124:**

Minors aged over 14 years but less than 18 years shall be liable for damage they have caused to others. To compensate for the damage such minors and their parents or guardians shall be jointly liable. In a case where the minors have no funds or no property out of which to compensate for the damage, then their parents or guardians shall pay instead.

**Article 125:**

State, social, and collective organizations or enterprises shall be liable for damage resulting from the actions of their officials, staff, workers, at the time of, or while performing work for their employer.

**Article 126:**

Employers shall be liable for damage caused to others, due to acts committed by their employees during, or at the time of, performing work for the employer.

**Article 127:**

Owners of animals, or person who use animals, shall be liable for damage caused to others by such animals while under their control or where such damage occurred during any time that the animals had escaped or were lost.

**Article 128:**

Property owners shall be liable for damage caused to others if such damage is due to the owner negligently failing to properly maintain, control or repair the property.

**Article 129:**

Where damage is caused by a group of offenders, that group shall be jointly liable to the victim. In some cases, the People's Court can decide that each offender shall compensate the victim in proportion to his level of participation in the commission the offense.

**Article 130:**

Where an offender who is jointly liable with others has paid by himself the whole compensation, he can request a proportionate contribution from the others according to their level of their involvement in the commission of the offence.

**Article 131:**

Where an organization or a person is responsible for damage caused by another person, that organization or person is entitled to take legal action against that other person to recover the damages.

**Article 132:**

In a case where the damage is caused partly by the victim, he shall be liable for his part of that damage.

**Article 133:**

Any person who has caused damage to others is not liable to bear the responsibility resulting from such damages if:

1. The damage was caused by a force majeure,
2. 2.

**Article 134:**

If the damage occurs in a situation where the victim voluntarily agreed to assume the risk of such damage, and if it does not affect or threaten the social interests, no compensation for such damage will be awarded.

**Article 135:**

The limitation period for claiming compensation for damages will be limited to three years.

## CHAPTER IV: FINAL PROVISIONS

**Article 136:**

All contracts which have been signed before the promulgation of this Decree shall be solved through the policies of the Party and the State, or through customs and traditions.

The settlement of the above said contracts is available only for five years from the date this Decree become effective.

**Article 137:**

The Council of Ministers, the People's Supreme Court, the Prosecutor General attached to the People's Supreme Court shall be responsible for the implementation of this Decree within their respective capacities .

**Article 138:**

This Decree shall become effective upon its promulgation.

Phnom Penh, 28 October 1988

For the Council of State

	President
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Signature and Seal  
HENG SAMRIN