

Content

Title :	Enforcement Act of the Part of Rights In Rem of the Civil Code CH
Announced Date :	1930.02.10
Amended Date :	2010.02.03
Legislative :	1.Promulgated on February 10, 1930 ;Effective from May 5, 1930 2.Amendments promulgated 28 March 2007 per Presidential Order No. Hua-Zong-I-Yi-Zih-09600037751 3.As amended on January 23, 2009 Effective from July 23, 2009 4.As amended on February3, 2010

Article 1 Unless otherwise provided by this Enforcement Act, the provisions of the Rights In Rem part of the Civil Code do not apply to rights in rem that existed before the coming into force of the Rights in Rem part of the Civil Code. Unless otherwise provided by this Enforcement Act, the amended provisions of the Rights in Rem part likewise do not apply to rights in rem that existed before the coming into force of the amended provisions.

Article 2 If rights in rem as set out in the Rights in Rem part of the Civil Code existed before the coming into force of the Rights in Rem part, the effect of the rights shall accord with the Rights in Rem part beginning from the date it come into force.

Article 3 Registration, as provided for in the Rights in Rem part of the Civil Code, shall be regulated by a separate statute.
The provisions of the Rights in Rem part of the Civil Code concerning registration do not apply to rights in rem that have not been registered in accordance with the separate statute referred to in the preceding paragraph.

Article 4 Before the coming into force of the BOOK of RIGHTS in REM of the CIVIL CODE, if the extinctive prescription has already completed in accordance with the provisions of the BOOK of RIGHTS in REM of the CIVIL CODE, or the remainder of the period of prescription is less than one year, the claim may be exercised within one year from the date of the coming into force [of the BOOK of RIGHTS in REM]. Except when the period, reckoning from the completion of the prescription to the coming into force of the BOOK of RIGHTS in REM of the CIVIL CODE, exceeds half of the period of prescription as provided by the BOOK of RIGHTS in REM of the CIVIL CODE. The preceding paragraph shall apply to the situation when the extinctive prescription has already completed in accordance with the effective provisions of the revision of the BOOK of RIGHTS in REM of the CIVIL CODE, or the remainder of the period of prescription is less than one year.

Article 5 If, before the coming into force of the Rights in Rem part of the Civil Code, a statutory period of a non-prescriptive nature has already expired, the period has expired.
If a period has commenced to run before the coming into force of the Rights in Rem part of the Civil Code, and if according to the provisions of the Rights in Rem part of the Civil Code regarding statutory periods of non-prescriptive nature, the period has not yet expired at the time of the coming into force of the Rights in Rem part, the period that has already run shall be reckoned together with the period after the coming into force of the Rights in Rem part.
The provisions of the preceding paragraph apply mutatis mutandis to

acquisitive prescription.

Article 6	The provisions of the preceding article apply mutatis mutandis to a statutory period of a non-prescriptive nature under the amended Rights in Rem part of the Civil Code once the amended part has come into force. If the statutory period is less than one year, however, and that period has not expired when the amended Rights in Rem part comes into force, the period shall be calculated from the date the amended Rights in Rem part comes into force.
Article 7	A person who possesses a personal property before the coming into force of the Rights in Rem part of the Civil Code, and who fulfils the conditions set out in Article 768, acquires its ownership from the date of the coming into force of the Rights in Rem part.
Article 8	A person who possesses a real property before the coming into force of the Rights in Rem part of the Civil Code, and who fulfils the conditions given in Article 769 or 770, may claim to be registered as the owner of the real property from the date of the coming into force of the Rights in Rem part.
Article 8-1	The provisions of the revised Article 782 of the CIVIL CODE shall apply to the situation when the owner of a land where water originates, or of a well, is entitled to claim to have the status quo ante restored or claim compensation against another, who, owing to the works carried on by him, cuts off, reduces or pollutes the water of such land or well before the coming into force of the revision of the BOOK of RIGHTS in REM of the CIVIL CODE.
Article 8-2	The provisions of the revised Article 788 II of the CIVIL CODE shall apply to the situation when the person entitled to access constructs a road and has caused an extensive injury to the land accessed before the coming into force of the revision of the BOOK of RIGHTS in REM of the CIVIL CODE. However it shall only apply to the situation when the person entitled to access has not compensated in accordance with the provision before the revision.
Article 8-3	The provisions of the revised Article 796 and 796-1 of the CIVIL CODE shall apply to the situation when the landowner constructs a building beyond the abuttal and the owner of the adjacent land claims to remove or alter such building before the coming into force of the revision of the BOOK of RIGHTS in REM of the CIVIL CODE.
Article 8-4	The provisions of the revised Article 796-2 of the CIVIL CODE shall apply to other constructions that have a value equivalent to a building before the coming into force of the revision of the BOOK of RIGHTS in REM of the CIVIL CODE.
Article 8-5	<p>In order to conform the share to the common elements of the building and the land on which the building is erected to the ratio provided in the revised Article 799 IV of the CIVIL CODE, the transfer of such above between the owners of the condominium building shall not be regulated by the provision of the revised Article 799 V of the CIVIL CODE.</p> <p>Before the coming into force of the revision of the BOOK of RIGHTS in REM of the CIVIL CODE, if the rights to the individual unit, the common elements of the building which the individual unit, and the land on which the building is erected of a condominium building have not been owned by the same person or have been established encumbrances separately, the transfer or the encumbrances establishment of its rights in rem shall not be regulated by the provisions of the revised Article 799 V of the CIVIL CODE.</p> <p>When the land on which the building is erected of a condominium building will be sold separately in accordance with the preceding paragraph, the owner of the individual unit who does not own or not own enough shares of the land on which the building is erected, to the extent of the ratio of the land on which the building is erected which is decided by the ratio of his own individual unit to the total of the individual units, has the right of first purchasing under the same terms and conditions and his right is superior to other co-owners.</p>

In the preceding case, if there are several people willing to exercise his right of first purchasing shall purchase it according to the proportion of the individual unit. If it is otherwise provided by covenant, such covenant shall then govern.

When the individual unit of a condominium building will be sold separately in accordance with the second paragraph, the owner of the land on which the building is erected, who does not own the individual unit, has the right of first purchasing under the same terms and conditions. In the preceding case, if there are several people willing to exercise his right of first purchasing, the buyer shall be decided by drawing lots. If it is otherwise provided by covenant, such covenant shall then govern.

The owner of the land on which the building is erected or the individual unit of a condominium building, who sells his land or individual unit in accordance with the third or the fifth paragraph, shall advertise at a bulletin board of the construction or other proper place for five days. The right holder of first purchasing, who does not purchase within fifteen days from the date of the advertisement, is deemed to waive his right of first purchasing.

Article 9	If an agency for registration provided for in Article 3, paragraph 1 is not yet established, a person who may duly claim to be registered as owner will be deemed the owner from the date on which the person is entitled to claim for registration.
-----------	--

Article 10	A person who possesses a real property before the coming into force of the Rights in Rem part of the Civil Code, and who fulfils the conditions of Article 801 or 886, acquires its ownership or pledge from the date of the coming into force of the Rights in Rem part.
------------	---

Article 11	A person, who picked up the lost property, the floating property, or the sunken property before the coming into force of the BOOK of RIGHTS in REM of the CIVIL CODE and fulfils the conditions of Articles 803 and 807, acquired the rights as provided in Article 807 of the CIVIL CODE, as from the date of the coming into force of the BOOK of RIGHTS in REM of the CIVIL CODE.
------------	--

Article 12	If, before the coming into force of the Rights in Rem part of the Civil Code, a person is entitled to acquire the ownership of a thing in accordance with the provisions of Article 808 or Articles 811 to 814 of the Civil Code, he acquires the ownership of the thing from the date of the coming into force of the Rights in Rem part.
------------	--

Article 13	<p>If a covenant with a period for non-partition of a thing held in indivision has been made before the coming into force of the BOOK of RIGHTS in REM of the CIVIL CODE, and if the remainder of the period, reckoning from the date of its coming into force, is shorter than that provided in the second paragraph of Article 823, such period shall be followed; if the remainder is longer, the provisions of the second paragraph of Article 823 shall be applied as from the date of the coming into force of the BOOK of RIGHTS in REM of the CIVIL CODE.</p> <p>The provisions of the revised Article 823III of the CIVIL CODE shall apply to the covenant with a period for non-partition before the coming into force of the revision of the BOOK of RIGHTS in REM of the CIVIL CODE.</p>
------------	--

Article 13-1	The provision of the revised Article 833-1 of the Civil Code shall also apply to the superficies of which the period has not been fixed before the revision of the BOOK of RIGHTS in REM of the CIVIL CODE, amended on 5th January 2010, coming into force.
--------------	---

Article 13-2	<p>Yong-Dian occurred before the revision of the BOOK of RIGHTS in REM of the CIVIL CODE, amended on 5th January 2010, coming into force; its duration shall be reduced to twenty years from the date of the coming into force of the revision.</p> <p>The provisions before the revision shall apply to Yong-Dian mentioned in the preceding paragraph.</p> <p>When the duration of Yong-Dian mentioned in the first paragraph expires, the Yong-Dian holder is entitled to apply for registration for change to agricultural right.</p>
--------------	---

Article 14	<p>The provisions of Articles 875-1 to 875-4 of the amended Civil Code also apply if the owner of a mortgaged property is a third party other than the debtor and the mortgage is created before the coming into force of the amended Rights in Rem Part of the Civil Code.</p> <p>The provisions of Article 875-4, subparagraph 2 of the amended Civil Code also apply if the junior mortgage is created before the coming into force of the amended Rights in Rem part of the Civil Code.</p>
Article 15	<p>The provisions of amended Article 879 of the Civil Code regarding the exercise of rights against a guarantor by a third party who creates a mortgage on behalf of a debtor also apply if the guarantee was created before the coming into force of the amended Rights in Rem part of the Civil Code.</p>
Article 16	<p>If, before the coming into force of the Rights in Rem part of the Civil Code, the right of claim against a claim secured by a mortgage is extinguished by prescription in accordance with the provisions of the Civil Code, the period for extinguishment of the mortgage as provided in Article 880 is reckoned from the date of the coming into force of the Rights in Rem part. However if the period from the completion of the extinctive prescription of the claim to the date of the coming into force of the Rights in Rem part exceeds 10 years, the mortgage may not be enforced.</p>
Article 17	<p>The provisions of Articles 881-1 through 881-17 of the amended Civil Code, with the exception of paragraph 2 of Article 881-1, paragraph 2 of Article 881-4, and Article 881-7, also apply to line of credit mortgages created before the coming into force of the amended Rights in Rem part of the Civil Code.</p>
Article 18	<p>The provisions of Article 883 of the amended Civil Code also apply to mortgages on superficies or on dian rights, and to other mortgages, created before the coming into force of the amended Rights in Rem part of the Civil Code.</p>
Article 19	<p>Before the promulgation and coming into force of the Auction Act, unless a court has been petitioned to conduct an auction, the auctioning of a pledged thing pursuant to Article 892, paragraph 1 or Article 893, paragraph 1 of the Civil Code may be effected by sale of the thing at market price, which shall be verified by a notary public or a commercial association.</p>
Article 20	<p>The provisions of the pre-amendment Rights in Rem part of the Civil Code in regard to pledges do not apply to pawnshops or to others whose business is accepting pledges.</p>
Article 21	<p>The provisions of Article 906-1 of the amended Civil Code also apply to a claim that is the subject of a pledge and that comes to maturity before the coming into force of the amended Rights in Rem part of the Civil Code.</p>
Article 22	<p>If, before the coming into force of the Rights in Rem part of the Civil Code, a period has been fixed for the duration of a dian and according to the old provisions of the Code the dian may be redeemed, the old provisions shall remain applicable.</p>
Article 23	<p>The provisions of Article 932-1 of the amended Civil Code also apply to rights in rem other than ownership rights existing in a thing retained before the coming into force of the amended Rights in Rem part of the Civil Code.</p>
Article 24	<p>This Enforcement Act comes into force from the date of the coming into force of the Rights in Rem part of the Civil Code.</p> <p>The amended articles of the Rights in Rem part of the Civil Code and the amended articles of this Enforcement Act come into force six months after their promulgation.</p>

