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# CIVIL OBLIGATIONS ACT ZAKON O OBVEZNIM ODNOSIMA

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**Purpose and Scope of the Law**

Article 1

This Law shall regulate the principles of obligations (general part) and contractual and noncontractual obligations (special part).

**Freedom to Regulate Obligations**

Article 2

The parties are free to regulate their obligations, and these must be in compliance with the Constitution of the Republic of Croatia, mandatory laws and the morals of the society.

**Equality of Parties to Obligations**

Article 3

Parties to obligations shall be equal.

**Principle of Good Faith and Fair Dealing**

Article 4

In creating obligations and exercising the rights and obligations resulting from such obligations, parties shall act in accordance with good faith and fair dealing.

**Duty to Cooperate**

Article 5

Parties to obligations shall co-operate in order to entirely and duly meet the obligations and exercise the rights resulting from such obligations.

**No Abuse of Rights**

Article 6

It is prohibited to exercise any right resulting from an obligation that is contrary to the underlying purpose for which it was established or recognized by law.

**Principle of Equal Value of Performances**

Article 7

(1) In concluding payment legal transactions, parties shall apply the principle of equal value of mutual performances.

(2) The law shall regulate the cases in which a violation of this principle may result in legal consequences.

**Prohibition to Cause Damage**

Article 8

Each party is obliged to refrain from taking any action that may cause damage to the other party.

**Duty to Perform an Obligation**

Article 9

Parties to obligations shall perform their obligations and they are liable for their performance.

**Conduct in the Course of Performing Obligations and Exercising Rights**

Article 10

(1) In performing their obligations, parties shall act with due care as required in a legal transaction relating to a relevant type of obligations (to exercise the care of a good merchant

or a good master of the house).

(2) In performing obligations relating to their professional activities, parties to obligations shall act with increased care in accordance with professional rules and practice (to exercise the case of a good expert).

(3) In exercising their rights, parties to obligations shall refrain from any action that may hinder the other party's performance of obligations.

### **Dispositive Character of the Provisions of the Law**

#### Article 11

Parties may regulate their mutual obligations in a manner other than according to the provisions of this law, unless otherwise indicated by a provision of this law or its meaning.

### **Application of Usages and Practices**

#### Article 12

(1) Any agreed trade usages and mutually developed practices shall apply to obligations between traders.

(2) In obligations under paragraph 1 above the trade usages shall also apply as applied by traders in identical relations, unless the parties excluded their application explicitly or implicitly.

(3) If the pre-conditions hereof are fulfilled with regard to the application of trade usages and practices developed mutually by traders, such usages and practices shall be applied even if they are contrary to dispositive rules.

(4) In obligations between other parties, usages shall apply if their application is agreed or provided for by law.

### **Acting in Conformity with the Statute, Articles of Association or Rules**

#### Article 13

(1) In creating obligations, legal entities shall act in accordance with their statute, article of association or rules.

(2) However, any contract that is entered into or other legal transaction that is concluded contrary to the statute, articles of association or rules, shall remain in effect, unless the other party was aware thereof or it is provided otherwise by law.

### **Application of Individual Provisions to Commercial Contracts and Other Legal Transactions**

#### Article 14

(1) The provisions of this Law referring to contracts shall apply to all types of contracts, unless it is explicitly provided otherwise for commercial contracts.

(2) Within the meaning of this Law, commercial contracts are contracts entered into by traders between themselves in pursuing activities that fall under the scope of activities of at least one of them or that are related to the pursuit of such activities.

(3) Any provisions of this Law that relate to contracts shall also apply adequately to other legal transactions.

### **Protection of Rights**

#### Article 15

(1) Anyone who considers that its right is violated shall be entitled to protect and exercise such right through courts, unless decision-making powers are vested by law in another authority.

(2) Where someone arbitrarily acquires or protects any of its rights or rights it considers to

its own and thereby crosses the line of necessary defence or other legally permissible self-help, it shall be held liable.

## Title II

### **PARTIES TO OBLIGATIONS**

#### **Definition**

##### Article 16

Parties to obligations are natural persons or legal entities.

#### **Legal Capacity**

##### Article 17

- (1) Any natural person and legal entity may be a holder of rights and obligations.
- (2) It shall be deemed that a conceived child is born, wherever it is the question of its benefits, provided it is born alive.
- (3) It shall be deemed that a child is born, unless it is established otherwise.
- (4) In case of a doubt as to which of several persons died first, it shall be deemed that they died concurrently, unless it is established that one person died before the other.
- (5) A legal entity shall acquire legal capacity on the date of its establishment as provided by special laws.

#### **Contractual Capacity**

##### Article 18

- (1) A person capable of contracting may produce legal effects by means of its declarations of intention.
- (2) A natural person acquires contractual capacity when it becomes of age and a legal entity on the date of its establishment, unless provided otherwise by law.
- (3) A person that is under age may produce only those legal effects as provided by law.
- (4) Instead of a person lacking contractual capacity, its legal representative or guardian shall declare its will.
- (5) In case of a legal entity, its bodies express its intentions in legal transactions and actions taken in such capacity.
- (6) In case of doubt as to whether a person under paragraph 5 above acted in the capacity of a body of a legal entity, it shall be deemed so, provided that a third party neither knew nor, in view of the circumstances, had a reason to doubt that this person acted in such capacity.

#### **Rights of Personality**

##### Article 19

- (1) Any natural person or legal entity is entitled to the protection of its personality rights under the conditions as provided by law.
- (2) Within the meaning of this law, personality rights are understood to be the right to life, to physical and mental health, reputation, honour, dignity, name, privacy of personal and family life, freedom, and other.
- (3) A legal entity has all the stated personality rights, other than the rights related to the biological character of a natural person, in particular the right to reputation and a good name, honour, name or firm name, business secrecy, freedom to conduct business, and other.

## Title III

### **CREATION OF OBLIGATIONS**

##### Article 20

(1) Obligations arise on the basis of legal transactions, causing damage, unjust enrichment, management of affairs without mandate, public promise of a reward and issuing securities.

(2) Obligations may also arise on the basis of a decision of a court or any other public authority.

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### **MONETARY OBLIGATIONS**

Section 1

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##### **Principle of Monetary Nominalism**

Article 21

Where a sum of money constitutes the performance under an obligation, the debtor shall pay the number of monetary units as stated in the obligation, unless the law provides otherwise.

##### **Currency of Obligation**

Article 22

(1) A provision in a contract is allowed according to which the value of the contractual obligation in the currency of the Republic of Croatia shall be calculated on the basis of the value of gold or the exchange rate of the currency of the Republic of Croatia against a foreign currency.

(2) In such a case, unless the parties agree another exchange rate, the obligation shall be performed in the currency of the Republic of Croatia on the basis of the selling exchange rate published by the foreign exchange or the Croatian National Bank that is valid on the date of maturity or on the date of payment as required by the creditor.

(3) If, contrary to the law, a monetary obligation is stipulated to be paid in gold or a foreign currency, its performance may be required only in the currency of the Republic of Croatia on the basis of the selling exchange rate published by the foreign exchange or the Croatian National Bank that is valid on the date of maturity or on the date of payment as required by the creditor.

(4) The provisions of this law on interest rates shall apply to a monetary obligation regardless of the currency in which it is expressed.

##### **Index Clause**

Article 23

A contract may include a provision on the basis of which the amount of a monetary obligation in the domestic currency is linked to changes in prices of goods, commodities and services as expressed by the index of prices established by an authority.

##### **Sliding Scale**

Article 24

In contracts where one party takes the obligation to produce and deliver certain articles, it may be provided that the price shall depend on the cost of material, labour and other factors that affect the level of the costs of production at a certain time on a certain market.

##### **Payment Prior to Due Date**

Article 25

(1) A debtor may perform its monetary obligation prior to its due date.

(2) A provision by which the debtor waives such right is null and void.

(3) In case of the performance of a monetary obligation before the due date, a debtor may deduct the amount of interest for the period from the date of payment to the date of maturity only if the contract includes an authorization to that effect.

## Section 2

### CONTRACTUAL INTEREST

#### **Contractual Rate of Interest**

##### Article 26

(1) The contractual rate of interest among persons of whom at least one is not a trader may not exceed the statutory default interest rate applicable on the day of entering into the contract or the day the contractual rate of interest changed, where the contracted rate of interest is variable.

(2) The contractual rate of interest among traders or a trader and a public law person may not exceed the statutory default interest rate referred to in paragraph (1) of this Article increased by one half of that rate.

(3) If interest is contracted without determining its rate the interest rate applicable among persons of whom at least one is not a trader shall be equal to one quarter of the statutory default interest rate and among traders to one half of the statutory default interest rate referred to in paragraph (1) of this Article.

(4) If the contractual interest exceeds the statutory interest, the highest statutory rate of interest shall apply.

(5) The contractual rate of interest shall refer to a period of one year.

(6) Within the meaning of this Act a public law person is a person who is obliged to act in accordance with the public procurement regulations, except for the companies.

#### **Interest on Interest**

##### Article 27

(1) The provision of a contract stipulating that interest shall accrue on due and outstanding interest is void.

(2) Within the limitations of Article 26 hereof an increased annual interest rate may be contracted in advance in the event the debtor does not pay the interest accrued on due date.

(3) The provision of paragraph (1) of this Article shall not apply to deposits with banks and other financial institutions.

#### **Interest as Regards Non-monetary Obligations**

##### Article 28

The provisions of this Act pertaining to contractual interest shall apply as appropriate to other obligations whose objects of performance are things determinate as to their kind.

## Section 3

### DEFAULT INTEREST

#### **Charged When**

##### Article 29

(1) The debtor in default with the performance of a monetary obligation shall in addition to the principal owe default interest.

(2) The default interest rate on relations arising from commercial contracts and contracts between a trader and a public law person shall be determined on semi-annual basis by increasing the discount rate of the Croatian National Bank applicable on the last day of a six-month period prior to the current six-month period by eight percentage points, or five



percentage points in other relations

(3) Within the limitation of paragraph (2) of Article 26 hereof the parties to commercial contracts and contracts between a trader and a public law person may contract a different default interest rate.

(4) The provision of the contract referred to in paragraph (3) of this Article shall be void, if it arises from the circumstances of the case, in particular from commercial custom and the nature of the subject of obligation, that the contracted default interest rate has contrary to the principle of fair conduct caused obvious inequality of rights and obligations of parties to the contract.

(5) In deciding whether the provision regarding the rate of default interest is void it shall be taken into account whether there were reasons for departing from the default interest rate prescribed by law.

(6) If in a case referred to in paragraph (2) of Article 26 hereof the contractual rate of interest exceeds the default interest rate, they shall continue to accrue also when the debtor is in default.

(7) The default interest rate shall refer to the period of one year.

(8) The Croatian National Bank shall on 1 January and 1 July of every year publish its discount rate in the *Official Gazette*.

### **Right to Full Compensation**

#### Article 30

(1) The creditor shall have the right to default interest regardless whether he suffered any damage as a result of the debtor's default.

(2) If the damage suffered by the creditor as a result of the default by the debtor exceeds the amount to be received from default interest, he shall be entitled to full compensation of the difference.

### **Interest on Interest**

#### Article 31

(1) Default interest shall not accrue on due and outstanding default interest unless otherwise provided by law.

(2) Default interest may be requested on due and outstanding interest only as from the date the request for their payment has been submitted to the court.

#### Chapter 2

### OBLIGATIONS WITH MULTIPLE PERFORMANCES

#### Section 1

### ALTERNATIVE OBLIGATIONS

### **Right of Choice**

#### Article 32

If an obligation contains two or more performances as its object and fulfilment of either of which releases the debtor for the performance of the whole, the right of choice, unless agreed otherwise, shall belong to the debtor and the obligation shall end when he fulfils the performance of his choice.

### **Irrevocability and Effect of Choice**

#### Article 33

(1) The choice shall be made when the party holding the right of choice notifies the other party of such choice, and shall as of that moment be irrevocable.

(2) After the choice has been effected the obligation shall be deemed to have always

been simple and have had the chosen performance as its object from the beginning.

### **Duration of Right of Choice**

Article 34

(1) The debtor shall have the right of choice until as part of execution proceedings one of the things owed is not partially or fully delivered to the creditor as chosen by the creditor.

(2) If the right of choice belongs to the creditor who fails to make a choice within the time period stipulated for performance, the debtor may request that the choice be made and determine a reasonable time period after the expiry of which the right of choice passes to the debtor.

### **Choice Entrusted to a Third Person**

Article 35

If the choice is to be made by a third person who fails to make it, each party may request that the choice to be made by the court.

### **Limitation to Remaining Performance**

Article 36

If one of the performances becomes impossible to perform through no fault of either parties the obligation shall be limited to the performance of the remaining one.

### **Limitation Due to Fault of One Party**

Article 37

(1) Where one of the performances becomes impossible to fulfil due to the fault of the debtor, the obligation shall be limited to the remaining performance if the debtor holds the right of choice. If the right of choice belongs to the creditor, the creditor may choose to have the remaining performance fulfilled or request compensation for damage.

(2) Where one of the performances becomes impossible to perform due to the fault of the creditor, the debtor's obligation shall extinguish, however if the debtor is entitled the right of choice, he may request compensation for damage and perform his obligation by fulfilling the remaining performance. In case the right of choice is given to the creditor, he may provide compensation for damage and request the remaining performance.

Section 2

## **FACULTATIVE OBLIGATIONS AND FACULTATIVE CLAIMS**

### **I FACULTATIVE OBLIGATIONS**

#### **Authority of Debtor**

Article 38

A debtor whose obligation has only one performance as its object but who may release himself by performing another specific performance may exercise this right until the creditor in the execution procedure receives partial or full performance of the act in question.

#### **Authority of Creditor**

Article 39

(1) A creditor in a facultative obligation may request from the debtor only the performance of the principal performance but not any other performance by which the debtor, if he so chooses, may perform his obligation.

(2) Where the performance owed becomes impossible to fulfil due to the fault of the debtor, the creditor may only claim compensation for damage but the debtor may free himself from the obligation by performing the performance he is authorised to perform instead of the performance owed.

### **II FACULTATIVE CLAIMS**

#### Article 40

(1) Where so provided by contract or law that the creditor may request from the debtor fulfilment of some other specific performance instead of the performance owed, the debtor shall perform this performance, should the creditor demand it.

(2) In other respects, rules on facultative and alternative obligations shall apply as appropriate to facultative claims in accordance with the intentions of the contracting parties and circumstances of the transaction.

#### Chapter 3

### OBLIGATIONS WITH MULTIPLE DEBTORS AND CREDITORS

#### Section 1

### DIVISIBLE OBLIGATIONS

#### **Division of Debt and Claim**

#### Article 41

(1) An obligation shall be divisible if that which is owed may be divided and performed in parts having the characteristics of a whole, provided that by this division it does not lose any of its value, otherwise the obligation shall be indivisible.

(2) Where there are multiple debtors in a divisible obligation, the debt shall be divided equally among them and unless a different division has been determined each of them shall be liable for his share of the debt.

(3) Where there are multiple creditors in a divisible obligation, the claim shall be divided among them into equal shares and unless otherwise agreed each creditor may demand only his share of the claim.

#### **Presumption of Solidarity**

#### Article 42

Where there are multiple debtors in a divisible obligation that arises from a commercial contract their obligation towards the creditor shall be solidary, unless the contracting parties have expressly eliminated solidary liability.

#### Section 2

### SOLIDARY OBLIGATIONS

#### **I SOLIDARITY BETWEEN DEBTORS**

#### **Subject Matter of Debtor Solidarity**

#### Article 43

(1) Each debtor of a solidary obligation shall be liable to the creditor for the whole debt and the creditor may request the performance of the debt from any of the debtors until the debt is fully performed, but performance by a single debtor releases the others and the obligation ceases to exist.

(2) Of multiple solidary debtors each may be allowed performance of obligation under a different time limit, under different terms and with various divergences in general.

#### **Set-off**

#### Article 44

(1) Each solidary debtor may invoke a set-off effected by his co-debtor.

(2) A claim belonging to a solidary debtor may not be set off by other co-debtors.

#### **Release of Debt**

#### Article 45

(1) The release of debt agreed upon with one solidary debtor shall also release the other debtors from the obligation.

(2) However, where the purpose of the release of debt was to discharge from obligation only the debtor with whom the debt was contracted, the solidary obligation shall be reduced by the extent of his share of the debt while other debtors shall be liable solidary for the remaining debt.

### **Novation**

#### Article 46

(1) Novation effected between the creditor and one solidary debtors shall also release the other debtors.

(2) If the creditor and debtor limited novation to the extent of the debtor's share in the debt, the obligation of other debtors shall not be terminated but reduced by that share.

### **Settlement**

#### Article 47

A settlement reached between one of the solidary debtors with the creditor shall not have effect as regards the remaining debtors but they shall be entitled to accept the settlement, provided it is not limited to the debtor it has been reached with.

### **Merger**

#### Article 48

Where the qualities of creditor and debtor in a solidary obligation are united in the same person, the obligation of other debtors shall reduce to the extent of its share.

### **Default by Creditor**

#### Article 49

Where the creditor is in default towards one solidary debtor he shall be in default also to other solidary debtors.

### **Default by One Debtor and Debt Acknowledgement**

#### Article 50

(1) Default by one solidary debtor shall have no effect as regards other debtors.

(2) The same shall apply where one of solidary debtors acknowledges the debt.

### **Suspension and Interruption of Prescription; Renunciation of Prescription**

#### Article 51

(1) If prescription does not run or is interrupted with regard to one debtor, it shall run with regard to other solidary debtors and may be acquired, but the debtor whose obligation has not prescribed and who had to perform it shall be entitled to request from other debtors whose obligation has prescribed compensation to the extent of each of their shares in the debt.

(2) Renunciation of acquired prescription has no effect as regards to the other debtors.

### **Right of Performer to Compensation**

#### Article 52

(1) The debtor who performed the obligation shall have the right to request reimbursement from each co-debtor to the extent of his share of debt.

(2) In that, it shall have no effect if the creditor released one of the co-debtors from debt or reduced his debt.

(3) The share belonging to a debtor who cannot provide compensation shall be proportionally divided among all debtors.

### **Division to Equal Shares and Exception**

#### Article 53

(1) Unless otherwise agreed or arising from the legal relationship among participants in a transaction, debt shall be equally divided among all debtors.

(2) If a solidary obligation has been contracted in the exclusive interest of one of the solidary debtors, he shall be liable for the whole of the debt to the co-debtor who settled the debt with the creditor.

## **II SOLIDARITY BETWEEN CREDITORS**

### **Solidarity not Presumed**

#### Article 54

Where there is plurality of persons on the side of the creditor, they shall be solidary provided that solidarity has been contracted or stipulated by law.

### **Substance of Solidarity**

#### Article 55

(1) Each creditor shall be entitled to request from the debtor the performance of the whole obligation but the performance of an obligation in favour of one of the creditors shall release the debtor towards the other creditors.

(2) A debtor may perform an obligation towards a creditor of its own choosing, but only until one of the creditor parties requests performance.

### **Set-off**

#### Article 56

A debtor may set off his obligation against his claim against the creditor who has requested performance of the obligation.

### **Release of Debt and Novation**

#### Article 57

The release of debt and novation between a debtor and one creditor shall reduce the solidary obligation to the extent of the creditor's share of the claim.

### **Settlement**

#### Article 58

A settlement reached between one of the solidary creditors with the debtor shall not have effect on other creditors but they shall be entitled to accept the settlement, except when it pertains only to the share of the creditor it has been reached with.

### **Merger**

#### Article 59

Where the quality of a solidary creditor and a debtor are united in the same person, each of the other solidary creditors may request the performance of only his share of the claim.

### **Default**

#### Article 60

(1) Where the debtor is in default towards one solidary creditor, he shall be in default towards other creditors as well.

(2) A default by one solidary creditor shall affect other creditors as well.

### **Debt Acknowledgement**

#### Article 61

Debt acknowledgement as regards one creditor benefits all.

### **Prescription**

#### Article 62

(1) If one creditor interrupts prescription or prescription does not run with regard to him, this shall not benefit other creditors and with regard to them the prescription shall

continue running.

(2) Renunciation of prescription in favour of one creditor shall also benefit the others.

### **Relations among Creditors after Performance**

#### Article 63

(1) Each solidary creditor shall have the right to request from the creditor who received performance to deliver to him the share he is entitled to.

(2) Unless otherwise indicated by the relations among creditors, each solidary creditor shall be entitled to an equal share.

#### Section 3

### **INDIVISIBLE OBLIGATIONS**

#### Article 64

(1) Provisions pertaining to solidary obligations shall apply as appropriate to indivisible obligations with multiple debtors.

(2) Where there are more creditors in an indivisible obligation and their solidarity is neither contracted nor provided by law, one creditor may request from the debtor the performance of obligation only if he has been authorised by other debtors to receive performance, otherwise each creditor may request from the debtor performance of obligation towards all creditors, its delivery to the court or a notary public.

#### Title V

### **EFFECTS OF OBLIGATIONS**

#### Chapter 1

#### **General Rule**

#### Article 65

(1) Pursuant to an obligation the creditor shall be authorised to request performance from the debtor and the debtor shall be obligated to full performance.

(2) A debtor shall be liable for performance with all of his assets.

#### Chapter 2

### **CONTESTATION OF DEBTOR'S LEGAL TRANSACTIONS**

#### **General Rule**

#### Article 66

(1) Each creditor whose claim has become due, regardless when has been created may contest any legal transaction of his debtor undertaken to the detriment of the creditor.

(2) A legal transaction shall be deemed to have been taken to the detriment of the creditor if as a result the debtor lacks assets for performance of the creditor's claim.

(3) A legal transaction shall also include omissions due to which the debtor lost a material right or which resulted in a material obligation for the debtor. .

#### **Presumptions of Contestation**

#### Article 67

(1) Onerous disposal may be contested, if at the time of disposal the debtor knew or could have known that such an action would cause damage to his creditors and if this was known or could have been known to a third person with whom or to whose benefit the legal transaction was undertaken.

(2) If the third person is the debtor's spouse, or is a close blood relative in a straight line or a remote relative up to the fourth degree, or an in-law relative of the same degree, it shall be presumed that he/she knew that the disposal was to the detriment of the creditor, unless proven otherwise.

(3) In case of gratuitous disposal or legal transactions equal to it, it shall be presumed that the debtor knew that the effected disposal would cause damage to the creditor, so the contestation of these actions does not require that the third person was aware of if or could have been aware of it.

(4) Renouncing an inheritance shall be considered to be gratuitous disposal.

### **Exclusion of Contestation**

Article 68

Customary presents, remunerative gifts and gifts made as sign of gratitude, in proportion with the financial state of the debtor, cannot be contested on the grounds of damage caused to creditors.

### **Means of Contestation**

Article 69

(1) A legal transaction of the debtor shall be contested by an action or a complaint.

(2) Action for contestation shall be brought against the debtor and a third person with whom or to whose benefit the legal transaction to be contested was undertaken, or against all of its legal successors.

(3) If a third party alienated a benefit acquired by disposal to be contested by a onerous contract, action may be brought against the acquirer only if he knew that the acquisition of his predecessors might be contested, and if he alienated this benefit by a gratuitous contract, the action may be brought against the acquirer also if he was not aware of it.

(4) The defendant may avoid contestation if he performs the debtor's obligation.

### **Effect of Contestation**

Article 70

If the court admits the claim, the legal transaction will lose effect only as regards the plaintiff and to the extent necessary to settle his claims.

### **Time Limit**

Article 71

(1) Action for contestation may be brought within the time limit of one year as regards to disposal referred to in Article 67 paragraph (1) and within the time limit of three years as regards the other cases.

(2) The time limit shall be calculated as from the day legal transaction to be contested was undertaken or as from the day the omitted action should have been done.

Chapter 3

## **RIGHT OF RETENTION**

### **Definition of Term and Subject Matter**

Article 72

(1) A creditor with a claim that has become due having in his possession a debtor's thing shall be entitled to retain it until his claim is fulfilled.

(2) If a debtor has become unable to pay, the creditor shall have the right of retention although his claim is not yet due.

### **Exceptions**

Article 73

(1) A creditor shall have no right of retention where the debtor requests that a thing that has exited his possession against his will be returned.

(2) He also may not retain an authorisation received from the debtor nor other documents, identity cards, correspondence and similar things as well as things that cannot be put for sale.

#### **Obligation to Return a Thing Prior to Settlement of Claim**

Article 74

The creditor shall return a thing to the debtor provided he receives adequate security for his claim.

#### **Effect of Right of Retention**

Article 75

A creditor holding a debtor's thing pursuant to the right of retention shall be entitled to settle his claim from its value in the same manner as a pledgor, but shall be obliged to notify the debtor of its intention in due time, before effecting the payment.

Chapter 4

### **CREDITOR'S RIGHTS IN SPECIAL CASES**

#### **Where Performance Consists of Giving Things Determinate as to their Kind**

Article 76

Where performance consists of giving things determinate as to their kind, and the debtor is in default, the creditor may, after having notified the debtor thereof, acquire according to his own choosing a thing of the same kind and request from the debtor reimbursement for the price and compensation for damage or request payment of the value of the owed things and compensation for the damage.

#### **Where Performance Consists of an Action**

Article 77

Where performance consists of an action and the debtor is in default with its performance, the creditor, after having notified the debtor thereof, may undertake himself, at the expense of the debtor, what the debtor was obligated to undertake, as well as request compensation for damage arising from the default and compensation for other damages he has suffered as a result of such manner of performance.

#### **Where Performance Consists of Omission to Act**

Article 78

- (1) Where performance consists of omission to act the creditor shall be entitled to compensation for damage because the debtor acted contrary to obligation.
- (2) If something has been constructed contrary to an obligation, the creditor may request it be removed at the expense of the debtor as well as request from the debtor compensation for damage suffered in connection with construction and removal.
- (3) Taking into consideration public interest and the justified interest of the creditor, a court may, if it finds that it is evidently more practical, decide that the construction not be demolished but that the creditor be compensated for damage in money.

#### **Right to Request Compensation Instead Performance Awarded by Court**

Article 79

- (1) If a debtor fails to perform his obligation within the time limit stipulated by a final decision, the creditor may ask him to perform it within a subsequent reasonable period and may intimate that after the expiry of this time limit he will not accept performance but demand compensation for damage due to non-performance.
- (2) After the expiry of the subsequent period, the creditor may only request compensation for damage arising from non-performance.



Title VI

**ALTERATIONS IN OBLIGATIONS**

Chapter 1

ALTERATIONS ON THE SIDE OF THE SUBJECT

Section 1

ASSIGNMENT OF CLAIM (CESSION)

**I GENERAL PROVISIONS**

**Which Claims May be Transferred by Contract**

Article 80

(1) A creditor may assign his claim by a contract entered into with a third party with the exception of a claim whose transfer not permitted by law, or which is strictly personal in nature, or whose very nature is incompatible with assignment to another.

(2) A contract of assignment shall have no effect for a debtor if he and the creditor stipulated that the latter shall not be able to transfer the claim to another person, or that he shall not be able to transfer the claim to another person without the debtor's consent.

**Accessory Rights**

Article 81

(1) Accessory rights, such as the right of preferential payment, mortgage, right of pledge, rights arising from the contract with a guarantor, rights to interest, contractual penalties and the like, shall pass to the assignee together with the claim.

(2) However, an assignor may deliver the thing pledged to the assignee only should the pledger agree; otherwise it shall remain with the assignor to be kept by him for the account of the assignee.

(3) It shall be presumed that due and outstanding interest is assigned together with the principal claim.

**Notifying a Debtor**

Article 82

(1) A debtor's consent shall not be required for assignment of a claim, but the assignor undertakes to notify the debtor of the assignment.

(2) Performance effected to the assignor prior to notification on the assignment shall be valid and shall exempt the debtor from obligation, but only if he was unaware of the assignment, otherwise the obligation shall remain valid and he shall be bound to perform it.

**Multiple Assignment**

Article 83

Should a creditor assign one and the same claim to various persons, the claim shall attach to the assignee being the first intimated as such to the debtor by the assignor or to the assignee who was the first to contact the debtor.

**II RELATIONSHIP BETWEEN ASSIGNEE AND DEBTOR**

Article 84

(1) The assignee shall have the same rights against the debtor as the assignor before the assignment.

(2) A debtor may raise against an assignee, in addition to objections he has against him, also those which he was able to raise against the assignor until the moment of being notified of the assignment.

**III RELATIONSHIP BETWEEN ASSIGNOR AND ASSIGNEE**

### **Delivery of Documents on Debt**

#### Article 85

(1) The assignor undertakes to deliver to the assignee a bond or some other document evidencing the debt, should such be in his possession, and other proof of the assigned claim and accessory rights.

(2) If the assignor transferred to the assignee only a part of a claim, he undertakes to deliver to the assignee a certified copy of the bond or of some other document evidencing the existence of the assigned claim.

(3) The assignor undertakes to issue to the assignor at his request a verified certificate of assignment.

### **Liability for Existence of a Claim**

#### Article 86

Where a claim is assigned by an onerous contract, the assignor shall be liable for the existence of the claim at the time of assignment.

### **Liability for Collectibility**

#### Article 87

(1) The assignor shall be liable for the collectibility of the assigned claim if so agreed, but only up to the amount received from the assignee, as well as the collectibility of interest, expenses relating to assignment and expenses of proceedings against the debtor.

(2) A higher degree of liability of a conscientious assignor cannot be stipulated.

## **IV SPECIAL CASES OF ASSIGNMENT OF CLAIM**

### **Assignment Instead of Performance or for the Purpose of Performance**

#### Article 88

(1) Where a debtor instead of performing his obligation assigns to the creditor his claim, or one of its parts, by entering a contract of assignment the debtor's obligation shall extinguish up to the amount of the assigned claim.

(2) However, where the debtor assigns to the creditor his claim only for the purpose of performance, his obligation shall be extinguished or reduced only after the creditor collects the assigned claim.

(3) In both cases, the assignee undertakes to return to the assignor the amount received in excess of his claim against the assignor.

(4) In case of assignment for the purpose of performance the debtor to the assigned claim may perform his obligation to the assignor even after he has been notified of the assignment.

### **Assignment for the Purpose of Security**

#### Article 89

Where assignment has been effected for the purpose of securing the assignee's claim against the assignor, the assignee undertakes to care, with diligence of an orderly and conscientious businessman or reasonable host, for the collection of the assigned claim, and after having deducted the amount necessary for settling his own claim against the assignor, deliver the excess to him.

#### Section 2

## **SUBROGATION**

### **Definition of Term and Subject Matter**

#### Article 90

(1) In case of performance of another's obligation, a performer and the creditor may

agree prior to or in the course of performance that the performed claim be transferred to the person who has performed it with all or only some accessory rights.

(2) Creditor's rights may also be transferred to the performer pursuant to an agreement entered into between the debtor and the performer prior to performance.

(3) In these cases the subrogation of the creditor's rights to the performer is effected at the moment of performance.

### **Legal Subrogation**

#### Article 91

Where an obligation is performed by a person having legal interest in the transaction, by performing the obligation the creditor's claim with all accessory rights shall automatically transfer to it.

### **Subrogation in Case of Partial Performance**

#### Article 92

(1) In case of partial performance of a creditor's claim, the performer is subrogated the accessory rights which secure performance of that claim, provided they are not required for the performance of the remainder to the creditor's claim.

(2) However, the creditor and the performer may agree to use the guarantees in proportion to their claims or they may agree that the performer shall have the priority right to collection.

### **Evidence and Security Instruments**

#### Article 93

(1) A creditor undertakes to deliver to the performer the instruments by which the claim is evidenced or secured.

(2) Exceptionally, the creditor may hand over to the performer or some other party the thing received as a pledge from the debtor provided that the pledgor agrees, otherwise it will remain with the creditor to hold and preserve for the account of the performer.

### **How Much Can Be Requested from a Debtor**

#### Article 94

A performer who has been subrogated to a claim may not request from the debtor more than he paid to the creditor.

### **Exclusion of Creditor's Liability**

#### Article 95

(1) A creditor who received performance from a third person shall not be liable for the existence and collectibility of a claim at the time of performance.

(2) This shall not exclude application of rules on unjust enrichment.

#### Section 3

### ASSUMPTION OF DEBT

### **Contract on Assumption of Debt**

#### Article 96

(1) A debt shall be assumed by a contract between a debtor and a person assuming the debt provided the creditor gave his consent.

(2) Any of the two may inform the creditor that the contract has been entered into and the creditor may communicate his consent on the assumption of debt to either of them.

(3) It shall be deemed that the creditor has given his consent if he has, without reservations, received performance from the person who assumed the debt effected on its own behalf.

(4) The contracting parties, as well as each of them individually, may request from the creditor to give a statement within a stipulated time limit on whether or not he consents to the assumption of debt; should the creditor fail to give a statement within the set time limit, it shall be presumed that he has not given his consent.

(5) The contract on assumption of debt shall have the effect of the contract on assumption of performance until the creditor gives, or refuses to give, his consent for the contract on assumption of debt.

### **Were Debt is Secured by Mortgage**

#### Article 97

(1) Where at the time of alienation of immovable property encumbered by mortgage it was agreed between the alienee and the alienor that the alienee will assume the debt towards the mortgagee, it shall be presumed that the mortgagee gave his consent for assumption of debt, if he failed to, at the written request of the alienor, refuse it within the period of three months after having received it.

(2) The creditor shall be explicitly made aware of such consequence in the written request, otherwise the request shall be deemed never to have been sent.

### **Substitution of Debtor**

#### Article 98

(1) By assuming the debt the person assuming the debt shall assume the place of the previous debtor who shall be released from the obligation.

(2) However, if at the time of the creditor's consent to the contract on assumption of debt the person assuming the debt was over-indebted, and the creditor was not aware of it nor had to be aware of it, the previous debtor shall not be released from the obligation and the contract on assumption of debt shall have the effect of the contract on joining a debt.

(3) The same obligation that existed between the previous debtor and creditor shall exist between the person assuming the debt and the creditor.

### **Accessory Rights**

#### Article 99

(1) Accessory rights that have existed as regards the claim shall continue to exist, however, guarantees and pledges given by third persons shall be terminated if the guarantors and pledgors do not consent to be liable also for the new debtor.

(2) Unless otherwise agreed, the person assuming the debt shall not be liable for due and outstanding interest that accrued prior to assumption.

### **Objections**

#### Article 100

(1) A person assuming the debt may raise against the creditor all objections that arise from the legal transaction between the previous debtor and the creditor from which the assumed debt has originated, as well as objections that the person assuming the debt has against the creditor.

(2) A person assuming the debt may not raise against the creditor objections arising from his legal transaction with the previous debtor which was the basis for debt assumption.

#### Section 4

### **JOINING A DEBT**

### **Contract on Joining a Debt**

#### Article 101

A contract between a creditor and a third party by which the latter assumes an

obligation towards the creditor to perform the creditor's claim against the debtor shall mean that the third party has joined the obligation together with the debtor.

### **Joining a Debt in Case of Taking Over Entire Property**

#### Article 102

(1) A person to whom a whole or a part of a property (company etc.) of an individual or legal person is transferred on the basis of a contract, shall be liable for debts in connection with this property or some of its part, jointly and solidary with the previous holder, but only up to the value of its assets.

(2) A provision of the contract excluding or limiting the liability established in paragraph (1) of this Article shall have no effect towards creditors.

#### Section 5

### ASSUMPTION OF PERFORMANCE

#### Article 103

(1) Performance shall be assumed by a contract between the debtor and a third party by which the latter undertakes to perform the debtor's obligation towards the creditor.

(2) He shall be liable to the debtor if he fails to perform the obligation to the creditor in due time and the latter requests performance from the debtor.

(3) However, the third party shall not assume or join in the debt and the creditor shall have no rights whatsoever as regards the third party.

#### Section 6

### GUARANTEE

#### I GENERAL PROVISIONS

### **Definition of Term**

#### Article 104

By entering into a contract of guarantee the guarantor undertakes to the creditor to perform a valid and due obligation of the debtor if the latter fails to do.

### **Form**

#### Article 105

A contract of guarantee shall be binding for the guarantor only if the guarantor has given a statement of guarantee in writing.

### **Capacity to Guaranty**

#### Article 106

A contract of guarantee may be binding only on those having full legal capacity.

### **Guarantying for a Legally Incapacitated Person**

#### Article 107

A person who undertakes to be a guarantor for an obligation of a legally incapacitated person shall be liable to the creditor same as the guarantor of a person with legal capacity. .

### **Which Obligations it May be Provided for**

#### Article 108

(1) A guarantee may be provided for every valid obligation regardless of its subject matter.

(2) A guarantee may also be given for a conditional obligation as well as for a specific future obligation.

(3) A guarantee for a future obligation may be revoked before the creation of the obligation, if a time limit has not been provided for its creation.

(4) A guarantee may also be given for an obligation of another guarantor (guarantor's

guarantor).

### **Scope of a Guarantor's Liability**

Article 109

- (1) A guarantor's obligation shall not exceed the obligation of the principal debtor and if agreed otherwise, it shall be reduced to the scope of the debtor's obligation. .
- (2) A guarantor shall be liable for the performance of the whole obligation for which he provided guarantee unless his liability is limited to one of its parts or is subject to less strict terms and conditions.
- (3) He shall be liable for reimbursement of all necessary expenses incurred by the creditor for the purpose of collecting the debt from the principal debtor.
- (4) The guarantor shall also be liable for every increase in the obligation arising from a delay or fault on the part of the debtor, unless agreed otherwise.
- (5) He shall be liable only for contractual interest due after entering into a contract of guarantee.

### **Transfer of Creditor's Rights to Guarantor (Subrogation)**

Article 110

A creditor's claim settled by a guarantor shall be transferred to the guarantor with all accessory rights and securities of its performance.

## **II RELATIONSHIP BETWEEN CREDITOR AND GUARANTOR**

### **Types of Guarantees**

Article 111

- (1) Performance of an obligation may be requested from a guarantor only if the principal debtor fails to perform the obligation within the time limit specified in a written notice.
- (2) A creditor may request performance from a guarantor without having previously requested performance from the principal debtor if it is obvious that performance cannot be effected from the assets of the principal debtor or the principal debtor went bankrupt.
- (3) Should a guarantor have undertaken to be a guarantor-payor, he shall be liable to the creditor as the principal debtor for the whole obligation; the creditor may request its performance either from the principal debtor or from the guarantor, or both at the same time.
- (4) Unless otherwise stipulated, a guarantor shall be liable as guarantor-payor for an obligation arising from a commercial contract.

### **Joint Guarantors**

Article 112

Several guarantors of a debt shall be jointly liable, regardless whether they guaranteed together or each of them has undertaken an individual obligation towards the creditor except where their liability has been otherwise regulated by contract.

### **Loss of Right to a Time Limit**

Article 113

Unless otherwise agreed, if a debtor has lost the right to a time limit stipulated for performance of his obligation, a creditor shall not be entitled to request performance from the guarantor prior to the expiration of that time limit.

### **Bankruptcy of Principal Debtor**

Article 114

- (1) In case of bankruptcy of the principal debtor, the creditor shall file his claim in the bankruptcy proceedings and inform the guarantor thereof; or otherwise be liable to the

guarantor for the damage he may sustain as a result.

(2) The reduction of the principal debtor's obligation in the bankruptcy proceedings shall not result in a corresponding reduction of the guarantor's obligation, so that the guarantor shall be liable to the creditor for the full amount of the obligation.

### **Reduced Liability of a Debtor's Successor/Heir**

#### Article 115

A guarantor shall also be liable for the full amount of the obligation he has provided a guarantee for in a case where the debtor's successor is liable only for the part of the obligation equal to the value of the inherited property.

### **Guarantor's Objections**

#### Article 116

(1) A guarantor may raise against a creditor's claim all the objections of a principal debtor, including to the objection relating to set-off, but excluding the strictly personal objections of a debtor.

(2) A debtor's renunciation of the right to an objection and acknowledgement of a creditor's claim shall have no effect on the guarantors.

(3) A guarantor may also raise personal objections against the creditor, such as nullity of the contract of guarantee, prescription of the creditor's claim towards him or set off of mutual claims.

### **Obligation to Notify a Guarantor of a Debtor's Omission**

#### Article 117

If a debtor fails to perform his obligation in due time, the creditor shall notify the guarantor thereof, or otherwise be liable to the guarantor for the damage he may sustain as a result.

### **Release of a Guarantor Due to Creditor's Delay**

#### Article 118

(1) A guarantor shall be released from liability if a creditor fails to request performance from the principal debtor within a period of one month after being notified by the guarantor that the claim has become due.

(2) Where the time limit for performance has not been determined, the guarantor shall be released from liability if after a year following the conclusion of the contract of guarantee the creditor, at the request of the guarantor, fails to make a statement necessary to determine the date of performance within the period of one month after the request has been made.

### **Release of a Guarantor Due to Loss of Security**

#### Article 119

(1) If a creditor abandons the lien or any other right serving as security for performance of his claim, or if he loses such a right by his own fault and thus prevents the transfer of such right to the guarantor, the latter shall be released from the obligation towards the creditor to the extent of his benefit from effecting such right.

(2) The provisions of paragraph (1) of this Article shall apply equally in cases where this right has been created prior to entering into the contract of guarantee, as where it has been created after it.

## **III RELATIONSHIP BETWEEN GUARANTOR AND DEBTOR**

### **Right to Request Compensation from a Debtor**

#### Article 120

(1) A guarantor who settled the creditor's claim may request from the debtor

reimbursement for what he has paid on his behalf, including interest as of the day of payment.  
(2) He shall be entitled to reimbursement of expenses arising from a dispute with the creditor as of the moment he notified the debtor thereof as well as to compensate for the damage, if any.

### **Right of a Guarantor of Solidary Debtor**

#### Article 121

A guarantor of one or several solidary debtors may request from any of the debtors reimbursement of what he has paid to the creditor, as well as reimbursement of expenses.

### **Guarantor's Right to Prior Security**

#### Article 122

Even prior to settling the creditor's claim, a guarantor who obligated himself with the knowledge and approval of the debtor, may request from the debtor to provide to him the necessary security for his possible claims, in the following cases: if the debtor failed to perform his obligation when it became due, if the creditor requested payment from the guarantor in a court procedure and if the debtor's financial standing substantially deteriorated after the entry into the contract of guarantee.

### **Loss of Right to Compensation**

#### Article 123

(1) A debtor may use against a guarantor who has settled the creditor's claim without his knowledge all legal remedies that he could have used at the moment of the settlement to reject the creditor's request.

(2) Where a guarantor has settled the creditor's claim without having notified the debtor thereof, and the debtor, not being aware that the claim has been settled, repeated the settlement of the claim, the guarantor shall not be entitled to request compensation from the debtor but shall have the right to request reimbursement from the creditor.

### **Right to Reimbursement**

#### Article 124

A guarantor who without the knowledge of the debtor settled the creditor's claim that has subsequently been cancelled or terminated by set-off, may only request from the creditor the reimbursement of the paid amount.

## **IV RIGHT OF RECOURSE**

#### Article 125

Where there are several guarantors and one settles the claim that has become due, he shall be entitled to request reimbursement from the remaining guarantors to the extent of the share pertaining to him.

## **V PRESCRIPTION**

#### Article 126

(1) The obligation of a guarantor shall prescribe when the obligation of the principal debtor prescribes.

(2) Where the period of prescription for the obligation of the principal debtor exceeds two years, the guarantor's obligation shall prescribe two years after the obligation of the principal debtor has become due, except where the guarantor is liable solidary with the debtor.

(3) Interruption of prescription of a claim with regard to principal debtor shall also have effect with regard to the guarantor if the interruption has been effected by judicial proceedings of the creditor against the principal debtor.

(4) Suspension of prescription of a claim with regard to the principal debtor shall have



no effect with regard to the guarantor.

Section 7

## TRANSFER OF CONTRACT

### **Presumptions of Transfer**

Article 127

- (1) Each of the parties to a contract may, if the other party consents, transfer the contract to a third person, whereby it becomes the holder of all its rights and obligations arising from that contract.
- (2) By a transfer of contract the contractual relationship between the transferor and the other party shall transfer to the transferee and the other party as of the moment the other party consented to the transfer, and if the other party gave its consent in advance, as of the moment it has been notified of the transfer.
- (3) The consent to the transfer of contract shall be valid only if given in the form proscribed or contracted for the transferred contract to be valid.
- (4) Provisions on accessory rights as regards the contract on assumption of debt shall apply to transfer of contract as appropriate.

### **Liability of Transferor**

Article 128

- (1) The transferor shall be liable to the transferee for the validity of the transferred contract.
- (2) He shall not guaranty to him the performance of obligations arising from the transferred contract by the other party, unless this has been explicitly contracted.
- (3) He shall not guaranty to the other party that the transferee shall perform the obligations arising from the contract, unless this has been explicitly contracted.

### **Objections**

Article 129

The other party may raise against the transferee all objections arising from the transferred contract as well as those arising from their other relations but not the objections it has against the transferor.

Section 8

## ASSIGNMENT (ASSIGNATION)

### **I SUBJECT MATTER OF CONTRACT**

Article 130

By assignment, one person, the assigner, authorises the other person, the assignee, to perform a thing in his account to a third person, the recipient of the assignment, and authorises him to receive this performance in his own name.

### **II RELATIONSHIP BETWEEN THE RECIPIENT AND ASSIGNEE**

#### **Acceptance by the Assignee**

Article 131

- (1) A recipient of the assignment shall acquire the right to request performance from the assignee when he intimates that he accepts the assignment.
- (2) Acceptance of assignment may not be revoked.

#### **Objections by Assignee**

Article 132

- (1) By accepting the assignment an obligation is created between the recipient and the assignee which is independent from the relationship between the assigner and assignee and

the relationship between the assigner and recipient of the assignment.

(2) Assignee who accepted the assignment may raise against the recipient of the assignation only those objections pertaining to the validity of the acceptance, objections pertaining to the subject of acceptance or the subject of assignment as well as objections against him personally.

### **Transfer of Assignment**

Article 133

(1) Recipient may transfer the assignment to another even before the assignee has rendered his acceptance, and he can transfer it further, except when it arises from the assignment or circumstances that it can not be transferred.

(2) If the assignee notified the recipient of the assignment that he accepts the assignment, the acceptance shall have effect as regards to all persons to whom it is to be successively transferred.

(3) If the assignee notified the acquirer, to whom the recipient, transferred the assignment, that he accepts the assignment, he may not raise against the acquirer objections he has against the recipient of the assignment personally.

### **Prescription**

Article 134

(1) The right of the recipient of assignment to request performance from the assignee shall prescribe by one year.

(2) If no time limit has been stipulated for performance, prescription shall start running when the assignee accepts the assignment, and if he accepted it before it has been given to the recipient than when it is delivered to him.

## **III RELATIONSHIP BETWEEN THE RECIPIENT OF ASSIGNMENT AND ASSIGNER**

### **Where Recipient is the Creditor of the Assigner**

Article 135

(1) The creditor shall not be obligated to agree to assignment given by the debtor for the purpose of performance of his obligation, but shall immediately notify the debtor of his refusal, or otherwise be liable for damage.

(2) The creditor who agreed to assignment shall be obligated to call the assignee to perform it.

### **Assignment is not Performance**

Article 136

(1) Where the debtor agreed to receive assignment from his debtor for the purpose of performance, the obligation shall not cease by his acceptance of assignment, by the assignee's acceptance of the assignment, unless otherwise agreed, but only by performance effected by the assignee.

(2) A creditor who agreed to an assignment from his debtor may request from the assigner performance of what he owes to him only if he has not received performance from the assignee at the time stipulated in the assignment.

### **Obligation of the Recipient to Notify the Assigner**

Article 137

If the assignee refuses the assignment or performance requested by the recipient of assignment or states his refusal of performance in advance, the recipient shall notify the assigner thereof immediately or be liable for damage.

### **Withdrawal from Accepted Assignment**

#### Article 138

The recipient of assignment who is not the creditor of the assigner and who does not want to use the assignment may withdraw from it, even if he stated he accepted it, but shall notify the assigner thereof without delay.

#### **Revocation of Authorisation Given to Recipient**

#### Article 139

The assigner may revoke authorisation given to the recipient by assignment, unless he issued the assignment for the purpose of performing his debt towards him and generally if he issued the assignment in his interest.

#### **IV RELATIONSHIP BETWEEN ASSIGNER AND ASSIGNEE**

#### **Where the Assignee is a Debtor of the Assigner**

#### Article 140

- (1) The assignee shall not be obligated to accept assignment, even if he is a debtor of the assigner, unless he has undertaken to do so.
- (2) However, where the assignment has been issued on the basis of the assignee's debt to the assigner, the assignee shall be obliged to fulfil it up to the extent of such debt, if it is in no way more burdensome than the performance of the obligation to the assigner.
- (3) By performing the assignment issued on the basis of the assignee's debt to the assigner, the assigner shall be released from his debt to the assigner up to the same extent.

#### **Revocation of Authorisation Given to Assignee**

#### Article 141

- (1) The assigner may revoke the authorisation given to the assignee by assignment, until he states to the recipient that he accepts the assignment or performs it.
- (2) He may revoke it also where the assignment stipulates that it is irrevocable and one of its obligations to the recipient would thereby be offended.
- (3) Initiation of bankruptcy proceedings over the property of the assigner represents revocation of assignment by operation of law, except in cases where the assignee accepted the assignment before initiation of bankruptcy proceedings or he was not aware nor should have been aware thereof at the time of acceptance.

#### **V DEATH AND LOSS OF BUSINESS CAPACITY**

#### Article 142

Death or termination of the legal person of the assigner, recipient of assignment or assignee, as well as legal incapacitation of one of them shall not have effect on assignment.

#### **VI ASSIGNMENT IN THE FORM OF PAPER TO THE BEARER**

#### Article 143

- (1) Written instruction may be issued to the bearer.
- (2) In such case each bearer shall assume the position of the recipient of assignment against the assignee.
- (3) Relations arising by assignment between the recipient of assignment and assigner arise in this case only between each individual bearer and the person who assigned the paper.

#### Chapter 2

#### ALITERATION OF CONTENT

#### Section 1

#### RENEWAL (NOVATION)

#### **Presumptions**

#### Article 145

(1) Novation shall be effected where the creditor and debtor agree on exchanging the existing obligation by a new obligation if the new obligation has a different principal performance as its object or different legal basis.

(2) An agreement between a creditor and a debtor whereby a provision relating the time, place or manner of performance is added or altered, a subsequent agreement on interest, contractual penalties, security for performance or any other subordinate provision, and an agreement on the issuance of new certificate of debt shall not be considered novation.

(3) Issuance of a bill of exchange or a cheque as a result of a previous obligation shall not be deemed novation, unless where so agreed.

### **Intention of Novation**

#### Article 146

Novation is not presumed; if the parties have not expressed an intention to extinguish an existing obligation when creating a new one, the former obligation shall not cease but shall continue to exist in addition to the new one.

### **Effect of Novation**

#### Article 147

(1) A contract of novation terminates a previous obligation and creates a new one.

(2) Lien and guarantee shall also be terminated with the previous obligation, unless otherwise agreed with the guarantor or pledgor.

(3) The same shall apply to other accessory rights in connection to the previous obligation.

### **Nullity and End of Previous Obligation**

#### Article 148

(1) Novation shall have no effect if the previous obligation was invalid or already extinguished.

(2) If the previous obligation was only voidable, novation shall be valid only if the debtor was aware thereof.

### **Effect of Annulment**

#### Article 149

Where a contract of novation has been annulled, it shall be deemed that no novation took place and that the previous obligation never ceased to exist.

#### Section 2

### SETTLEMENT

### **Definition of Term**

#### Article 150

(1) By a contract of settlement persons between whom there is a dispute or uncertainty as regards a legal transaction, shall, by mutual compromise, discontinue the dispute or eliminate the uncertainty and define their mutual rights and obligations.

(2) Uncertainty shall exist also where realisation of a specific right is not certain.

### **Contents of Mutual Compromise**

#### Article 151

(1) Compromise may consist, among other things, of honouring a request by the other party in part or in full, or of renouncing one of one's own requests, of undertaking a new obligation, of reducing the interest rate, of extending a time limit, of consenting to partial repayment, of granting the right to forfeit money.

(2) Compromise may be conditional.

(3) Where only one party gives in to the other, recognising, for instance, a right of the other party, this shall not constitute a settlement and shall not be subject to rules governing settlement.

### **Capacity**

Article 152

Capacity to dispose of the right that is the subject of settlement shall be required for conclusion of a contract of settlement.

### **Subject**

Article 153

(1) The subject of a settlement may be any disposable right.

(2) Settlement regarding the consequences of a criminal offence on property shall be valid.

(3) Dispute relating to status relationships shall not be the subject of settlement.

### **Application of Provisions on Bilateral Contracts**

Article 154

(1) Contract of settlement shall be governed by general provisions on bilateral contracts, unless otherwise provided as regards to such contract.

(2) Where under the name of settlement the contracting parties effect some other legal transaction, their relations shall not be governed by provisions of the law applicable to settlement but by those relating to the transaction actually effected.

### **Excessive Damage**

Article 155

Annulment of a settlement may not be requested on the grounds of excessive damage.

### **Effect of Settlement on Guarantors and Pledgors**

Article 156

(1) If novation of an obligation has been effected by settlement, a guarantor shall be released from liability for its performance, and a pledge provided by a third person shall also be terminated.

(2) The guarantor and the third person that has given his thing as pledge shall remain obligated, their liability may be reduced by the settlement but not increased, unless they have agreed to settlement.

(3) Where a debtor acknowledges a contested claim by settlement, the guarantor and the pledgor shall retain the right to raise against the creditor objections that the debtor renounced by the settlement.

### **Settlement as Regards an Invalid Legal Transaction**

Article 157

(1) A settlement as regards a legal transaction which could have been annulled at the request of one party shall be valid, if the party was aware of that possibility at the time of settlement.

(2) A settlement as regards an invalid legal transaction shall also be invalid where the contracting parties were aware of the invalidity and wanted to eliminate it by settlement.

### **Invalidity of Settlement**

Article 158

(1) A settlement shall be void if based on an erroneous belief of both contracting parties that a legal relationship exists which in fact does not exist and if without such erroneous belief there would be no dispute or uncertainty between them.

(2) The same shall apply also where the erroneous belief of the contracting parties relates to facts.

(3) Renouncing such nullity shall have no legal effect and what has been given for the purpose of performing obligations arising from such settlement may be requested back.

### **Invalidity of One Provision of the Claim**

#### Article 159

All provisions of a settlement shall constitute a whole, so if one of the provisions is invalid, the whole settlement shall be invalid, unless it arises from the settlement itself that it consists of independent parts.

#### Title VII

### **TERMINATION OF OBLIGATION**

#### Chapter 1

#### GENERAL RULE

#### Article 160

(1) An obligation shall be extinguished by mutual consent of parties to the obligation, by performance and in other cases prescribed by law.

(2) Upon extinction of the principal obligation, the guarantee, pledge and other accessory rights shall be extinguished as well.

#### Chapter 2

#### PERFORMANCE

#### Section 1

#### GENERAL RULES RELATING TO PERFORMANCE

#### **I WHO CAN EFFECT PERFORMANCE AND COSTS OF PERFORMANCE**

#### **Performance by Debtor or Third Person**

#### Article 161

(1) An obligation may be performed not only by the debtor but by a third party.

(2) A creditor shall be obligated to receive performance from all persons who have a legal interest in performing the obligation even where the debtor opposes to such performance.

(3) A creditor shall be obligated to receive performance from a third person if the debtor agrees, except where in accordance with the contract or nature of the obligation it must be performed by the debtor personally.

(4) A creditor may accept performance from a third person without the knowledge of the debtor even in a case where the debtor has notified the creditor of his refusal to accept performance of his obligation by a third person.

(5) However, if a debtor has offered him immediate performance of his obligation, the creditor may not accept performance by a third party.

#### **Performance by a Legally Incapacitated Person**

#### Article 162

(1) Even a legally incapacitated debtor may validly perform an obligation if there is no doubt as to its existence and it became due.

(2) However, performance may be opposed if such a party has paid out a debt that is prescribed or debt arising from a game or bet.

#### **Costs of Performance**

#### Article 163

Costs of performance shall be born by the debtor, unless where caused by the creditor.

## **II TO WHOM PERFORMANCE MAY BE EFFECTED**

### **Authorised Person**

#### Article 164

- (1) An obligation shall be performed to the creditor or a person stipulated by law, a court order or contract between the creditor and debtor, or to a person chosen by the creditor.
- (2) Performance shall be valid also where effected to a third person provided that the debtor subsequently approved it or used it.

### **Performance to a Legally Incapacitated Person**

#### Article 165

- (1) Performance of an obligation effected to a legally incapacitated person shall release the debtor only if it was beneficial to the creditor or the subject of performance is still in his possession.
- (2) Legally incapacitated creditor may approve, upon receiving legal capacity, performance he received while he was legally incapacitated.

## **III SUBJECT OF PERFORMANCE**

### **Subject Matter of Performance**

#### Article 166

- (1) Performance shall consist in effecting what represents the subject matter of performance; neither can the debtor effect performance by effecting something else nor can the creditor request something else.
- (2) Performance shall not be valid, if what has been delivered as the thing owed by the debtor and accepted as such by the creditor is in fact not the thing owed the creditor shall be entitled to return what has been delivered and request the thing owed.

### **Substitution of Performance**

#### Article 167

- (1) An obligation shall extinguish if the creditor, by agreement with the debtor, accepts something else than what is owed to him.
- (2) In that case, the debtor shall be liable same as the seller for material and legal defects of the thing given in place of what is owed.
- (3) However, instead of a claim arising from liability of the debtor for material or legal defects the creditor may request from the debtor, but not from the guarantor, performance of the original claim and compensation for damage.

### **Delivery for the Purpose of Sale**

#### Article 168

If the debtor delivered to the creditor a thing or some other right to put out for sale, settle his claim from the proceeds and return the amount in excess of the claim, the obligation shall extinguish only after the creditor receives settlement from the amount received.

### **Partial Performance**

#### Article 169

- (1) A creditor shall not be obligated to accept partial performance, unless otherwise indicated by the nature of the obligation.
- (2) However, a creditor shall be obligated to receive partial performance of a monetary obligation, unless he has a special interest in refusing it.

### **Obligation to Give Things Determined as to their Kind**

#### Article 170

- (1) Where things are determinate as to their kind only, the debtor shall be obligated to

give a thing of at least average quality.

(2) However, if he is familiar as to the purpose of the thing, he shall be obligated to give a thing of adequate quality.

#### **IV IMPUTATION OF PERFORMANCE**

##### **Order of Imputation**

###### Article 171

(1) Where there are several obligations of the same kind between the same persons, so that the debtor's performance does not settle them all, the imputation shall be, if there is no agreement between the creditor and debtor, effected in the order set by the debtor at the time of performance at the latest.

(2) Where the debtor's statement on imputation does not exist, obligations shall be settled in the order their performance became due. .

(3) If several obligations became due at the same time, those with least security shall be settled first, and if all are secured to the same extent, those which represent the heaviest burden for the debtor shall be settled first.

(4) If equal in all abovementioned respects, they shall be settled in the order of their occurrence, and if they occurred at the same time that what has been given in the name of performance shall be allocated/apportioned to all obligations in proportion to their amounts.

##### **Imputation of Interest and Expenses**

###### Article 172

If in addition to the principal a debtor owes interest and expenses, first the expenses are settled, then the interest and finally the principal.

#### **V TIME OF PERFORMANCE**

##### **Setting a Time Limit**

###### Article 173

(1) A debtor shall perform an obligation within the time limit stipulated in the contract.

(2) If a time limit for performance is not stipulated in the contract, the debtor shall perform the obligation within the time limit stipulated by law.

(3) If the time limit is not stipulated by contract or law, and the objective of the transaction, the nature of the obligation or other circumstances do not require a specific time limit, the creditor may request immediate performance of the obligation, and the debtor on his part may request from the creditor to receive immediate performance.

##### **Monetary Obligations in Commercial Contracts**

###### Article 174

(1) If a time limit for performance of a monetary obligation has not been stipulated in a commercial contract or contract between a trader and a public law person, the debtor shall, without having to be requested by the creditor, perform the obligation within the period of 30 days which shall start running:

- as of the day on which the debtor received a bill or some other appropriate request for payment,
- as of the day on which the creditor performed his obligation, if it is not possible to determine the day of receiving the bill or some other appropriate request for payment with certainty, or if the debtor received a bill or some other appropriate request for payment before the creditor performed his obligation,
- as of the day of expiry of the time limit for inspection of the subject of obligation, if a



time limit for such an inspection has been stipulated by contract or law, and the debtor has received a bill or some other appropriate request for payment prior to expiry of such time limit.

(2) The provision of the contract referred to in paragraph (1) of this Article stipulating a longer time limit for performance of a monetary obligation shall be invalid if it arises from the circumstances of the case, particularly customs of trade and the nature of the subject of obligation, that such a stipulation of the time limit for performance, contrary to the principle of fair conduct, resulted in obvious inequality of rights and obligations of the contracting parties to the detriment of the creditor.

(3) When determining whether the provision of the contract referred to in paragraph (1) of this Article is invalid, it shall be taken into account, among other things, whether justified reasons existed for departing from the time limit for performance stipulated by law.

### **Right to Early Performance**

#### Article 175

(1) Where the time limit has been agreed solely in the interest of the debtor, he shall be entitled to performance of the obligation before the expiry of the stipulated time period, but shall be obligated to notify the creditor of its intention and take care that it is not effected at an inopportune moment.

(2) In other cases, where the debtor offers early performance, the creditor may refuse it or accept it and retain the right to compensation for damage provided it notifies the debtor thereof without delay.

(3) A creditor shall be entitled to request performance before the expiry of the time limit if the debtor fails to provide the promised security or if the debtor fails to strengthen the security which has been reduced without any fault of the creditor, and where the time limit has been contrasted solely in his interest.

### **Where Stipulation of Time Limit is Left to One Party**

#### Article 176

Where stipulation of the time of performance is in the hands of a creditor or debtor, the other party may, if the authorised party fails to stipulate a time limit even after having been given notice, request that a reasonable time limit for performance be stipulated by the court.

### **Payment through Bank or Post**

#### Article 177

(1) If a payment is effected through a bank or other legal person that maintains the account of the creditor, the debt shall be deemed settled when the bank or the said legal person maintaining the account receives remittance/money order in favour of the creditor or transfer order (bank transfer) from the debtor's bank or other legal person to credit to the account of the creditor the amount specified in the order, unless otherwise agreed by contracting parties.

(2) If payment by mail has been agreed, it shall be deemed that the parties have agreed that the debtor settled his obligation towards the creditor by paying in the owed amount at the post-office, however, if such manner of payment has not been agreed, the debt shall be settled when the creditor receives the money order.

(3) If payment by cheque to a specified account has been stipulated by a separate regulation or contract, the parties shall be deemed to have agreed that payment is effected when the debtor pays in the owed amount via cheque for the benefit of the specified account.

## **VI PLACE OF PERFORMANCE**

### **General Rules**

#### Article 178

- (1) A debtor shall perform an obligation and a creditor shall receive performance at the place determined by legal transaction or law.
- (2) Where the place of performance is not determined, and it cannot be determined according to the purpose of the transaction or nature of the obligation or other circumstances, the obligation shall be performed at the place where the debtor had its head office or place of residence or, failing that, place of domicile at the time the obligation was created.
- (3) However, if a debtor has several units in different places the place of performance shall be deemed the head office of the units required to perform actions necessary for the performance of the obligation provided that the creditor was or should have been aware of this fact at the time of entering into the contract.

### **Place of Performance of Monetary Obligations**

#### Article 179

- (1) Monetary obligations shall be performed at the place where the creditor has his head office or place of residence or, failing that, place of domicile.
- (2) If payment is effected by transfer order, monetary obligations shall be at the head office of the legal person maintaining the creditor's monetary assets.
- (3) If a creditor changed the place of his head office or residence since the obligation was created and costs of performance increased as a result thereof, such increase shall be burdened on the creditor.

## **VII RECEIPT**

### **Issuing**

#### Article 180

- (1) A person who has fully or partially performed an obligation shall be entitled to request a receipt from the creditor issued at his own cost.
- (2) A debtor who paid out a monetary obligation through a bank or post office may request a receipt from the creditor only if having a justified reason.
- (3) If the creditor refuses to issue a receipt, a debtor may deposit the object of his obligation with the court.

### **Presumptions**

#### Article 181

- (1) If a receipt has been issued for the payment of a principal, it shall be presumed that interest, court and other expenses, if any, have also been paid.
- (2) Also, if a debtor owing periodic payments such as rents and other payables computed periodically, such as, for instance, those arising from the use of electricity, water or telephone, has a receipt for paying a matured payable, he shall be presumed to also have paid the payables that have matured previously.

## **VIII RETURNING A BOND**

#### Article 182

- (1) Where a debtor has fully performed his obligation, he may, in addition to a receipt, request from the creditor to return the bond.  
Where a creditor fails to return the bond, a debtor shall be entitled to request from the creditor a certified document stating that the obligation has been terminated.

(3) A debtor who performed only a part of his obligation shall be entitled that this performance be noted in the bond.

## Section 2

### DEFAULT

#### I DEFAULT BY DEBTOR

##### Where Debtor is in Default

###### Article 183

(1) A debtor shall be in default when he fails to perform an obligation within the time limit stipulated for performance.

(2) If a time limit for performance is not stipulated, the debtor shall be in default when he receives a written or oral request from the creditor to perform an obligation, by an extrajudicial demand or initiation of a proceeding aimed at achieving performance of the obligation.

#### II DEFAULT BY CREDITOR

##### Where Creditor is in Default

###### Article 184

(1) A creditor shall be in default if he, without justification, refuses to receive performance or prevents it by his conduct.

(2) A creditor shall be in default also where he is willing to receive performance of a simultaneous obligation by the debtor without having offered the performance of his obligation which became due.

(3) A creditor shall not be in default, if he proves that at the time the performance was offered or at the time stipulated for performance the debtor was not able to perform his obligation.

##### Effects of Default by Creditor

###### Article 185

(1) When the creditor is in default, the risk of the thing perishing accidentally or being damaged shall transfer to the creditor.

(3) Interest shall cease running as of the date the creditor is in default.

(4) The creditor in default shall compensate the debtor for damage arising therefrom as well as reimburse expenses for further preservation of the thing.

## Section 3

### DEPOSITING AND SALE OF OWED THING

#### Depositing

###### Article 186

(1) Where the creditor is in default or is unknown, or his identity or whereabouts are uncertain, or where the creditor is legally incapacitated and has no representation, the debtor may deposit the owed thing with the court or a person authorised by law.

(5) The same right shall pertain to third parties that have a legal interest in having the obligation performed.

(3) If aware of his identity and residence, the debtor shall notify the creditor of the deposit.

#### Place of Deposit

###### Article 187

(1) The thing owed shall be deposited with the competent court having in rem jurisdiction or person authorised by law at the place of performance, unless for reasons of

economy or due to the nature of the transaction it is required that the deposit be made at the place where the thing is at.

(2) All other courts having in rem jurisdiction or a person authorised by law must accept the deposit of the thing, while the debtor shall be liable to the creditor compensation for damages that he may have sustained as a result of the thing being deposited with another court or person authorised by law.

### **Delivery for Safekeeping by Another Person**

Article 188

(1) Where the object of an obligation is a thing that cannot be kept as a court deposit, the debtor may request from the court to appoint a person to whom the thing shall be delivered for safekeeping at the expense and for the account of the creditor.

(2) In case of an obligation arising from a commercial contract, delivery of such a thing to a public depository for safekeeping for the account of the creditor shall have the effect of deposit to a court.

(3) The creditor shall be bound to notify the creditor of the delivery for safekeeping.

### **Taking Back the Thing Deposited**

Article 189

(1) A debtor may take back the thing deposited.

(2) A debtor shall notify the creditor of taking back the thing.

(3) The right of the debtor to take back the thing deposited shall cease when the debtor notifies the court or person authorised by law in writing that he renounces this right, when the creditor states that he shall accept the deposited thing or when it is decided by a final court decision that the deposit satisfies the terms and conditions of a timely performance.

### **Effect of Deposit**

Article 190

(1) By depositing the thing owed the debtor shall be released from an obligation at the moment of deposit.

(2) If the debtor was in default, he shall no longer be in default.

(3) As of the moment the thing was deposited the risk of the thing perishing accidentally or being damaged shall be transferred to the creditor.

(4) Interest shall cease to run as of the day of deposit.

(5) If the debtor takes back the deposited thing, the deposit shall be deemed never to have taken place, and its co-debtors and guarantors shall remain in the obligation.

### **Costs of Deposit**

Article 191

The costs of a valid and unrevoked deposit shall be born by the creditor if they exceed the costs of performance to be born by the debtor.

### **Sale Instead of Deposit**

Article 192

(1) If a thing is not fit for safekeeping or if expenses incurred by its safekeeping or maintenance are in disproportion to its value, the debtor may sell it in a public sale at the place stipulated for performance or some other place provided this is in the best interest of the creditor, and deposit the obtained amount reduced by the costs of sale with the court or a person authorised by law.

(2) If a thing has a current price or its value is small as compared to the costs of a public sale, the debtor may sell it through a direct sale.

(3) If a thing is such that it may easily perish or be destroyed the debtor shall sell it without delay in the most appropriate manner.

(4) In any case, the debtor shall notify the creditor of the intended sale, whenever this is possible, and after the sale of the obtained price and its deposit with the court or person authorised by law.

### **Delivery to Creditor**

#### Article 193

A court shall deliver the deposited thing to the creditor in accordance with the terms and conditions set down by the debtor.

### **Sale for the Purpose of Covering the Expenses of Safekeeping**

#### Article 194

(1) If expenses of safekeeping are not reimbursed within a reasonable period, a court shall, at the request of the keeper, order that the thing be sold and stipulate the manner of sale.

(2) The amount obtained by sale less the costs of sale and safekeeping shall be deposited for the creditor with the court or person authorised by law.

#### Chapter 3

### OTHER WAYS FOR OBLIGATIONS TO END

#### Section 1

### SET-OFF (COMPENSATION)

#### **General presumptions**

#### Article 195

A debtor may set off a claim against the claim of the creditor provided that both claims are payable in money or other fungible property identical in kind or quality and both are due.

#### **Statement of Set-off**

#### Article 196

(1) Set-off shall not be effected when preconditions for it have been met, but rather when statement of set-off is made.

(2) After the statement of set-off has been made, it shall be deemed that the set-off has been effected at the moment all preconditions for it are met.

#### **Lack of Reciprocity**

#### Article 197

(1) A debtor may not set off what he owes to the creditor with what the creditor owes to his guarantor.

(2) However, a guarantor may set off the debtors obligations towards the creditor with the creditor's claim against the debtor.

(3) A person who has given a thing belonging to him as pledge for an obligation of another, may request from the creditor to that the thing be returned to him when preconditions for termination of the obligation by set-off are met and when the creditor fails to effect set-off by his own fault.

#### **Claim That Is Prescribed**

#### Article 198

(1) A debt may be set off by a claim that is prescribed provided that it has not prescribed at the time preconditions for set-off were met.

(2) If preconditions for set-off were met after the claim had prescribed, the set-off shall not be effected if the debtor of the expired claim raises an objection due to prescription of the claim.

### **Set-off With an Assigned Claim**

Article 199

(1) A debtor of the assigned claim may set off with the assignee those claims which he could have set off with the assignee until the notification of assignment.

(2) He may also set off with him his claims against the assignor which arose before the notification of assignment and whose time of performance was not due at the moment he was notified of assignment, but only if such time is before the time of performance of the assigned claim or at the same time.

(3) A debtor who stated without reservations to the assignee that he agrees to set-off shall not be able to set off with him any of his claims against the assignor.

(4) If the assigned claim has been entered into the books of title, the debtor may effect set-off with the assignee only if his claim was entered with the assigned claim or if the assignee was notified of such claim at the time of assignment.

### **Cases Where Set-Off is Excluded**

Article 200

Set-off cannot terminate:

- 1) a claim that cannot be seized;
- 2) a claim of things or values that have been given to the debtor for safekeeping or loaned or that have been taken or retained illegally by the debtor;
- 3) a claim arising from wilful damage;
- 4) a claim for compensation of damage caused by injury to health or by causing death;
- 5) a claim which arises from the legal obligation of support.

### **Attachment of Claim of the Other Party**

Article 201

A debtor may not effect set-off if his claim became due after a third party attached the creditor's claim against him.

### **Imputation by Set-off**

Article 202

Where there are several obligations between two persons that may be terminate by setoff, set-off shall be effected in accordance with rules that apply for imputation of performance.

Section 2

RELEASE OF DEBT

### **Agreement**

Article 203

(1) An obligation shall be terminated when the creditor states to the debtor that he will not request its performance, and the debtor agrees to it.

(2) It shall not be necessary for the validity of the agreement that it be entered into in the same form as the transaction from which the obligation arose.

### **Renunciation of Security Instruments**

Article 204

The return of a pledge and renunciation of other security instruments ensuring performance of an obligation shall not mean that the creditor renounced the right to request its performance.

### **Release of Debt in Favour of the Guarantor**

#### Article 205

- (1) Release of debt in favour of the guarantor shall not release the principle debtor, but the release of the principal debtor entails release of the guarantor.
- (2) Where there are several guarantors and the creditor releases one of them, others continue to be obligated, but their obligation shall be reduced by to the share pertaining to the released guarantor.

### **Universal Release of Debts**

#### Article 206

A universal release of debts shall extinguish all creditor's claims against the debtor, apart from those the debtor did not know existed at the time of release.

#### Section 3

### **MERGER**

#### Article 207

- (1) An obligation shall terminate when the creditor and debtor are united in one and the same person.
- (2) Where a guarantor becomes a creditor, the obligation of the principal debtor shall not be terminated.
- (3) An obligation entered in a public book shall be terminated by merger only when the termination is entered in the book.

#### Section 4

### **IMPOSSIBILITY OF PERFORMANCE**

### **Termination of Obligation**

#### Article 208

- (1) An obligation shall be terminated when its performance becomes impossible due to circumstances for which the debtor is not responsible.
- (2) The burden of proving the circumstances which exclude his responsibility is on the debtor.

### **Where the Object of an Obligation are Things Determinate as to their Kind**

#### Article 209

- (1) If things determinate as to their kind are the object of an obligation, the obligation shall not be terminated even where all of such things in the debtor's possession are destroyed due to circumstances he is not responsible for.
- (2) However, where the object of an obligation are things determinate as to their kind that are to be taken from a certain mass of such things, the obligation shall be terminated when the entire mass is destroyed.

### **Assignment of Rights as Regards a Third Party Responsible for Impossibility of Performance**

#### Article 210

A debtor who has been released from his obligation due to impossibility of performance shall assign to the creditor the right he would have as regards a third person as a result of the created impossibility.

#### Section 5

## LAPSE OF TIME, CANCELLATION

### **Time Limit in a Lasting Obligation**

#### Article 211

A lasting obligation with a fixed period of duration shall end when the period expires, unless where it has been agreed or stipulated by law that after the expiry of the period the obligation shall be prolonged indefinitely, if not cancelled in due time.

### **Cancellation of a Lasting Obligation**

#### Article 212

- (1) If the duration of an obligation has not been determined, each party may terminate it by notice of cancellation.
- (2) Notice of cancellation shall be delivered to the other party.
- (3) Cancellation may be effected at any time but not at an inopportune time.
- (4) A cancelled obligation shall end when the cancellation term stipulated by the contract expires, and if such a term has not been stipulated by contract the obligation shall cease after the expiry of the period stipulated by law or custom or upon expiry of an appropriate period.
- (5) Parties may agree that their obligation shall end upon delivery of the cancellation notice, unless in certain cases otherwise stipulated by law.
- (6) A creditor shall be entitled to request from the debtor that which has become due before the obligation ceased by expiration of the term or notice of cancellation.

#### Section 6

## DEATH

#### Article 213

Death of a debtor or creditor shall end the obligation only if it has been created with regards to personal qualities of a contracting party or personal ability of the debtor.

## Chapter 4

## PRESCRIPTION

### Section 1

## GENERAL PROVISIONS

### **General Rule**

#### Article 214

- (1) Prescription shall terminate the right to request performance of an obligation.
- (2) Prescription is acquired with the expiry of the period within which the creditor could have requested the performance of an obligation.
- (3) A court shall not take prescription into consideration if the debtor has not invoked it.

### **When Prescription Starts Running**

#### Article 215

- (1) Prescription shall start running on the first day following the day on which the creditor had the right to request the performance of an obligation, unless in certain cases otherwise has been stipulated by law.
- (2) If an obligation consists of not doing something, omitting to do something or



suffering something, prescription begins to run on the first day following the day when the debtor acted contrary to his obligation.

### **Acquiring of Prescription**

Article 216

Prescription shall be acquired when the last day of the period stipulated by law has elapsed.

### **Imputation of Predecessor's Time**

Article 217

Time that passed in favour of debtor's predecessors shall also be imputed to the period of prescription.

### **Prohibition of Changing the Period of Prescription**

Article 218

(1) A legal transaction shall not stipulate a period of prescription longer or shorter than the period stipulated by law.

(2) A legal transaction shall not stipulate that prescription is not to run for a certain time.

### **Renunciation of Prescription**

Article 219

A debtor cannot renounce prescription before time stipulated for prescription has not elapsed.

### **Written Acknowledgement and Security for an Obligation that is Prescribed**

Article 220

(1) A written acknowledgement of an obligation that is prescribed shall be deemed renunciation of prescription.

(2) Giving a pledge or some other security for an obligation that is prescribed shall have the same effect.

### **Effect of Performance of an Obligation that is Prescribed**

Article 221

If a debtor performs an obligation that has prescribed, he shall not be entitled to request back what he has given, even if he has not been aware of the fact that the obligation has prescribed.

### **Creditor with a Secured Claim**

Article 222

(1) When the period of prescription elapses, the creditor whose claim is secured by pledge or mortgage may collect payment only from the value of the burdened thing if it is in his possession or his right is entered in a public book.

(2) However, a claim that is prescribed as regards to interest and other periodical payments may not be settled from the value of the burdened thing.

### **Accessory Claims**

Article 223

Where the principal claim is prescribed, accessory claims such as interest, fruits, expenses and contractual penalties are prescribed as well.

### **Where Rules on Prescription Do Not Apply**

Article 224

Rules on prescription do not apply in cases where the law provides for time limits as regards to filing a suit or performing a specific action under the risk of losing the right.

## Section 2

### TIME REQUIRED FOR PRESCRIPTION

#### **General Period of Prescription**

##### Article 225

The period for prescription of claims shall be five years, unless otherwise provided by law.

#### **Periodic Claims**

##### Article 226

(1) Claims for periodic payments due annually or in shorter periods, both in cases of accessory periodic claims such as interest or periodic claims where the right itself is consumed such as the right of support shall be prescribed by three years following the moment in which each of the payment has become due.

(2) The same shall apply to annuities by which the principle and interest are repaid in previously stipulated periodic payments, but shall not apply to payment in instalments and other partial performances.

#### **Prescription of Rights**

##### Article 227

(1) The right from which periodic claims arise shall prescribe in five years, counting from the moment the oldest outstanding claim has become due.

(2) Where the right from which periodic claims arise has expired, the creditor loses the right to request both future periodic payments and periodic payments that became due prior to prescription.

(3) The right of support provided by law cannot prescribe.

#### **Mutual Claims Arising from Contract on Transport of Goods and Services**

##### Article 228

~~(1) Mutual claims arising from a contract on transport of goods and services and claims for reimbursement of expenses in relation to these contracts shall prescribe by three years.~~

(1) Mutual claims arising from a trade contract on transport of goods and services or a contract between a trader and a public law person on transport of goods and services and claims for reimbursement of expenses in relation to these contracts shall prescribe by three years (i.e. shall be limited to three years).

(2) Prescription shall run separately for each delivery of goods, or work or service performed.

#### **Rent**

##### Article 229

A claim for rent, regardless whether due periodically or in a lump sum shall prescribe by three years.

#### **Compensation for Damage**

##### Article 230

(1) A claim of compensation for damage shall prescribe by three years from the time the injured party became aware of the damage or the person causing the damage.

(2) In any case, such claim shall prescribe by five years from the moment the damage has been caused.

(3) A claim of compensation for damage caused by breaching a contractual obligation

shall prescribe within the period stipulated for prescription of such obligation.

### **Compensation for Damage Caused by a Criminal Offence**

#### **Article 231**

(1) Where damage has been caused by a criminal offence and where a longer period of prescription is provided for criminal prosecution, a claim of compensation for damage against a responsible person shall prescribe with the prescription of the period provided for prescription of criminal prosecution.

(2) Interruption of prescription of criminal prosecution shall also have effect in respect of interruption of prescription of the claim of compensation for damage.

(3) The same shall apply to suspension of prescription.

### **One-year Period of Prescription**

#### **Article 232**

(1) The following shall prescribe in one year:

1) claims for payment of supplied electricity, heat, gas, water, chimney sweeping service and service of rubbish collection where supply or a service has been provided to a household;

2) claims of a radio or television station for use of a radio receiver or television set;

3) claim of post office, telegraph and telephone for use of telephones, post-office boxes and other claims charged quarterly or in shorter periods;

4) claim for subscription to a periodic newspaper, commencing from the expiry of the period of subscription.

(2) Prescription shall continue to run even if supply or provision of services has been continued.

### **Claims Ascertained before a Court or Other Competent Body**

#### **Article 233**

(1) All claims ascertained by a final court decision or decision of some other competent body of public authority or a settlement before a court or some other competent body, or by a notarial act shall prescribe in ten years, including those for which otherwise the law provides a shorter period of prescription.

(2) However, all periodic claims arising from such decisions or settlement or a notarial act that will become due in the future shall prescribe within the time limit set for prescription of periodic claims. .

### **Prescriptive Periods as Regards Contracts of Insurance**

#### **Article 234**

(1) Claims of a policyholder or a third person arising from a contract of life insurance shall prescribe by five, and arising from other contracts of insurance by three years, as of the first day after the lapse of the calendar year in which the claim arose.

(2) If the interested person proves by the day stipulated in paragraph (1) of this Article that it was not awarded that insured event has taken place, prescription begins to run as of the day the person became aware of it, in case of life insurance the claim is prescribed by five years, and in other cases by five years from the day stipulated in paragraph (1) of this Article.

(3) Claims of an insurer arising from a contract of insurance prescribe by three years.

(4) Where in case of liability insurance, the injured party requests indemnity from the insured person or receives it from him, the prescription of the claim of the insured person against the insurer shall begin to run as of the moment the injured person requested indemnity from the insured person, or when it was indemnified by the insured person.

(5) Immediate claim of a third injured party towards the insurer shall prescribe by the same time as its claim towards the insured person responsible for damage.

(6) Prescription of the insurer's claim against a third person responsible for the occurrence of the insured event shall begin to run as of the same moment as prescription of the claim of the insured person against such person and shall be acquired within the same period.

### Section 3

## SUSPENSION OF PRESCRIPTION

### **Claims between Specific Persons**

#### Article 235

Prescription shall not run:

- 1) between spouses;
- 2) between parents and children for the duration of parental rights;
- 3) between a ward and his guardian and the administrative body of social welfare for the duration of the guardianship and until accounts are given;
- 4) between persons living in a civil union for the duration of such union.

### **Claims of Specific Persons**

#### Article 236

Prescription shall not run:

- 1) as regards claims of persons in military service at time of mobilisation, in case of immediate war danger or at time of war;
- 2) as regards claims of persons employed as domestic staff towards their employer or members of his family living with him, for the duration of such relationship.

### **Insurmountable Obstacles**

#### Article 237

Prescription shall not run for as long as the creditor is unable due to insurmountable obstacles to request performance judicially.

### **Effect of Reasons for Prescription**

#### Article 238

- (1) If prescription could not begin running due to a legal reason, it shall begin running when such reason is removed.
- (2) If prescription began running before the reason arose which interrupted its further running, it shall continue running when such reason is terminated, and the time that elapsed before interruption shall be included in the prescriptive period provided by law.

### **Claims Against Persons Lacking Business Capacity and their Claims**

#### Article 239

- (1) Prescription shall run in respect to minors or other persons without business capacity regardless whether they have a legal representative or not.
- (2) However, prescription of a claim by a minor or other person without business capacity may not be acquired until two years have passed since they have achieved full business capacity or have been given a representative.
- (3) If a period proscribed for prescription of a claim is shorter than two years, and the creditor is a minor without a representative or some other person not having business capacity without a representative, prescription of a claim shall begin running only when the creditor achieves business capacity or is given a representative.

### Section 4

## INTERRUPTION OF PRESCRIPTION

### **Debt Acknowledgment**

#### Article 240

(1) Acknowledgement of a debt by a debtor shall interrupt prescription.

(2) A debt may be acknowledged not only by a statement to a creditor but also in an indirect manner such as making a payment, paying interest or giving security.

### **Filing a Suit**

#### Article 241

Prescription shall be interrupted by filing of a suit or any other action by the creditor against the debtor before a court or other competent body for the purpose of ascertaining, securing or effecting a claim.

### **Discontinuation, Dismissal or Pre-emption of a Suit**

#### Article 242

(1) Interruption of prescription effected by filing a suit or some other action taken by the creditor before a court or other competent body for the purpose of ascertaining, securing or realising a claim, shall be deemed never to have been acquired if the creditor discontinues the suit or action he has taken.

(2) It shall also be deemed that there has been no interruption if the suit or demand by the creditor are dismissed or pre-empted or a specific security measure is put out of effect.

### **Dismissing a Suit Due to Lack of Competence**

#### Article 243

(1) If a suit against a debtor has been dismissed due to lack of competence of a court or some other reason with no bearing on the essence of a thing and the creditor files a suit again within a period of three months since the decision on the dismissal of the suit acquired the authority of a final decision, prescription shall be deemed to have been interrupted by the first suit.

(2) The same shall apply also to invoking protection and set-off of a claim in a dispute and in a case where the court or some other body instructed the debtor to realise his registered claim in a litigation proceedings.

### **Request from Debtor**

#### Article 244

It shall not be sufficient for interruption of prescription for the creditor to request performance from the debtor in writing or by word of mouth.

### **Period of Prescription in Case of Interruption**

#### Article 245

(1) Following interruption, prescription begins to run again, but the time lapsed before the interruption shall not be included in the period of prescription stipulated by law.

(2) Prescription interrupted by acknowledgement on the part of the debtor shall begin to run as from the moment of acknowledgement.

(3) Where interruption of prescription has been effected by filing of a suit or invoking protection or set-off of a claim in a dispute or reporting a claim in another procedure, prescription shall begin to run again as of the day the dispute has been settled or resolved in some other manner.

(4) Where interruption of prescription has been effected by filing a claim in the bankruptcy proceeding, prescription shall begin to run again as of the day such proceeding is closed.

(5) The same shall apply where interruption of prescription has been effected by request for execution or security.

(6) Prescription that starts running again following interruption shall be acquired when the period of time stipulated by law for prescription that has been interrupted expires.

**Prescription in Case of Novation**

Article 246

Where the interruption has been effected by acknowledgement of debt by the debtor and where the creditor and debtor have agreed on a novation of the obligation, the new claim shall prescribe in the period of time stipulated for its prescription.

PART TWO

**SPECIAL PART**

Title VIII

**CONTRACTUAL OBLIGATIONS**

## Chapter 1

### GENERAL PROVISIONS

#### Section 1

#### ENTERING INTO CONTRACT

##### **I. MUTUAL ASSENT**

##### **Time of Entering into Contract**

###### Article 247

A contract is entered into when the contracting parties have reached an agreement on the essential elements of the contract.

##### **Mandatory Entering into Contract and Mandatory Contents of Contract**

###### Article 248

- (1) If a party is bound by law to enter into a contract, the other interested party may require that such a contract be entered into without delay.
- (2) The legal provisions determining the contents of a contract in part or completely shall be integral parts of such contracts and complement them or supersede differing contractual provisions.

##### **Statement of Assent**

###### Article 249

- (1) A statement of assent to enter into a contract may be expressed in words, customary signs or other conduct that may, beyond any doubt, lead to a conclusion on the existence and the contents of such assent and on the identity of the person making such statement.
- (2) The assent to enter into a contract may also be expressed using different means of communication.
- (3) The statement of assent must be made freely and in a serious manner.

##### **Permission and Approval**

- (1) Where entering into a contract is subject to a third party's consent, such consent may be granted before entering into a contract, in the form of permission, or after entering into a contract, in the form of an approval, unless the law provides otherwise.
- (2) Permission or approval must be given in a form that is prescribed for the relevant type of contract it is intended for.

##### **Negotiations**

###### Article 251

- (1) Negotiations preceding the entering into a contract shall not be binding.
- (2) However, a party that has negotiated or broken off negotiations contrary to the principle of good faith and fair dealing shall be liable for the damage caused thereby to the other party.
- (3) It is contrary the principle of good faith and fair dealing inter alia for a party to enter into negotiations with the other party with no real intention of reaching an agreement with the other party.
- (4) If confidential information is given in the course of negotiations by one party to the other party or if it enabled the other party to obtain such information, the other party, unless otherwise agreed, shall be under a duty not to disclose such information to third parties or use it for its own purposes whether or not a contract is subsequently entered into.
- (5) A liability for breach of the duty under paragraph 4 above may include a

compensation for loss suffered and a restitution of the benefit received by the party causing damage.

(6) Unless agreed otherwise, each party shall bear its expenses in connection with any preparations to enter into a contract, and any joint expenses shall be covered by parties in equal shares.

### **Time and Place of Entering into Contract**

#### Article 252

(1) It is deemed that a contract is entered into at the moment the offeror receives the offeree's declaration of acceptance of the offer.

(2) It is deemed that a contract is concluded at the place where the offeror has its main office or residence at the moment the offer is made.

### **Offer**

#### Article 253

(1) An offer is a proposal to enter into a contract submitted to a certain person containing all essential terms of a contract.

(2) If the contracting parties after reaching an agreement on essential terms of a contract leave some minor terms to be agreed later on, a contract shall be deemed to be entered into, and such minor terms, where the parties fail to reach an agreement, shall be determined by a court, taking into account the negotiations that were conducted, the established practices between the parties and the usage.

### **General Offer**

#### Article 254

A proposal to enter into a contract addressed to an indefinite number of persons and containing all essential terms of the intended contract shall be deemed to be an offer, unless the circumstances of the case or the usage indicate otherwise.

### **Display of Goods**

#### Article 255

Any display of goods with a price indication shall be deemed to be an offer unless the circumstances of the case or the usage indicate otherwise.

### **Dispatch of Catalogues and Advertisements**

#### Article 256

(1) Any dispatch of catalogues, price lists, tariffs and other publications as well as advertisements in the press, leaflets, on the radio, television, by means of electronic media or any other means shall not be deemed to be an offer to enter into a contract, but only an invitation to make an offer under the conditions made public, unless such statements of assent indicate otherwise.

(2) However, a sender of such invitations shall be held accountable for any damage the offeror may suffer as a result of the sender's refusal of the offer without a justified reason.

### **Effect of Offer**

#### Article 257

(1) An offeror shall be bound by an offer unless it excluded its obligation to make an offer or if such exclusion results from the circumstances of the transaction.

(2) An offer may be revoked only if the revocation reached the offeree before it received



the offer or concurrently.

### **Duration of Binding Offer**

#### Article 258

- (1) Where a time limit for acceptance of an offer is laid down in the offer, such offer is binding for the offeror until the expiry of such time period.
- (2) Where the offeror fixed a time limit for acceptance in its letter or its telegram, it shall be deemed that the time period began to run from the date stated in the letter or from the date the telegram was dispatched at the post office.
- (3) If no date is stated in a letter, the time period for acceptance of the offer begins to run from the date the letter was dispatched at the post office.
- (4) If no time is fixed for acceptance of an offer made to a person that is absent, such offer is binding for the offeror during the time that is usually needed for the offer to reach the offeree, in order that the offeree may consider it and make a decision, and for the reply with an acceptance to reach the offeror.

### **Form of Offer**

#### Article 259

- (1) If a special form of an offer to enter into a contract is provided by law, such offer is binding on the offeror only if it is made in that form.
- (2) The same applies to acceptance of the offer.

### **Offer by Unauthorized Person**

#### Article 260

- (1) A written offer is binding on the offeror even though it is not signed by an authorized person if it is made on a letterhead paper the offeror uses in conducting its business, if it is signed in the usual manner, or if it refers to the business activity the offeror usually pursues and its ordinary scope and if the offeree did not know and had no possibility to know that the offer was signed by an unauthorized person.
- (2) The above terms shall also be applicable to acceptance of an offer.

### **Confirmation of Offer Made on the Phone or in Telegram**

#### Article 261

- (1) If an offer is made on the phone or in a telegram, the offeror must confirm such offer to the offeree in a registered mail not later than on the next working day.
- (2) Any absence of a written confirmation shall not affect the validity of a contract entered into on the phone or by dispatching a telegram; however, a party that failed to provide a confirmation shall be liable to the other party for any damage caused thereby.
- (3) The provisions under paragraphs 1 and 2 above shall also be applicable to acceptance of an offer.

### **Acceptance of Offer**

#### Article 262

- (1) An offer is deemed to be accepted when an offeror receives a notice of acceptance from the offeree.
- (2) An offer is also deemed accepted where an offeree dispatches the object or pays the price or performs any other act that, based on the offer, the practice established between the interested parties or the usage, may be deemed to be the notice of acceptance.
- (3) An acceptance may be withdrawn only if the withdrawal notice reaches the offeror

before the acceptance notice or concurrently.

### **Acceptance of Direct Offer**

#### Article 263

(1) An offer made to a person that is present shall be deemed to be rejected if it is not accepted without delay, unless it may be inferred from the circumstances that the offeree is entitled to a certain period of time for consideration.

(2) An offer made on the phone or direct radio link shall be deemed to be an offer to a person that is present.

(3) An offer made by means of a facsimile is not deemed to be an offer made to a person that is present.

### **Modified Acceptance**

#### Article 264

If an offeree replies that it accepts the offer and simultaneously proposes different or additional terms of the offer, it is deemed that it has rejected the offer and made a new offer to its former offeror.

### **Silence of Offeree**

#### Article 265

(1) Silence of an offeree does not in itself amount to acceptance.

(2) A provision in an offer laying down that silence of an offeree or some other inactivity (for example, if an offeree does not reject an offer within a specified time limit or if it does not return the object for which the contract is offered within a specified time limit, and similar) is deemed to be acceptance shall have no effect.

(3) However, where an offeree has business cooperation with an offeror on a regular basis with regard to certain goods, it shall be deemed that the offeree has accepted an offer relating to such goods if it did not reject it without delay or within the time limit provided.

(4) Similarly, if a person made an offer to another party to carry out its orders to perform certain activities, as well as if a person pursues a business activity involving the carrying out of such orders, it has a duty to perform the order [has business cooperation with the offeror on a regular basis](#) received unless it rejected it without delay.

(5) If, in cases under paragraph 3 and 4 above, an offer or an order is not rejected, it shall be deemed that the contract is formed at the moment the offer or the order reaches the offeree.

### **Late Acceptance and Late Acceptance Notice**

#### Article 266

(1) A late acceptance is deemed to be a new offer.

(2) However, if a notice containing acceptance that was sent in due time reached the offeror after the time limit for acceptance and if the offeror knew or should have known that the notice was dispatched in due time, the contract is formed.

(3) Nonetheless, a contract is not formed in such a case, if the offeror informs the offeree without delay, but not later than on the first working day after or even before the acceptance reached it, after the expiry of the time limit for acceptance of the offer, that the offeror does not consider itself bound by the offer due to the delay.

### **Death or Incapacity of One Party**

#### Article 267

An offer does not lapse in the event of death or incapacity of one party before the acceptance

of the offer, unless it results otherwise from the intention of the parties, the usages or the legal nature of the transaction.

### **Preliminary Contract**

#### Article 268

- (1) A preliminary contract is a contract under which the parties undertake the obligation to enter into the main contract at a later date.
- (2) If, pursuant to law, a contract is to be concluded in a specific format in order to be valid, the preliminary contract shall also be concluded in the same format.
- (3) The preliminary contract is binding if it contains all the essential elements of the contract.
- (4) If a party refuses to enter into the main contract, the court shall, at the request of an interested party, order the refusing party to enter into the main contract within a specified period of time.
- (5) It may be required that the contract be concluded within a period of six months from the expiry of the time limit that was provided for entering into the contract; if such time limit is not provided, the period shall be computed from the date on which, based on the nature of the transaction and the circumstances, the contract should have been concluded.
- (6) A preliminary contract is not binding if the circumstances since it was entered into changed to such an extent that it would not have been entered into if such circumstances had existed at the time.

## **II. PERFORMANCE**

### Elements of Performance

#### Article 269

- (1) The object of a contractual obligation is a performance that may consist in giving, acting, omitting or toleration.
- (2) The performance must be possible, admissible and determined or determinable.

### **Void Contract Due to Performance**

#### Article 270

- (1) If a performance is impossible, inadmissible, not determined or not determinable, the contract is void.
- (2) However, a contract that is concluded under a deferring condition or with a deferred time limit is valid, if the performance became possible, admissible, determined or determinable before the condition was met or before the expiry of the time limit.

### **Inadmissible Performance**

#### Article 271

A performance is inadmissible if it is contrary to the Constitution, mandatory rules or morals of the society.

### **Determinable Performance**

#### Article 272

- (1) A performance is determinable if the contract includes the information that may be used to determine it or if the parties entrusted its determination to a third person.
- (2) If such third person is unwilling or unable to determine the performance, the contract is void.

## **III. MOTIVES TO ENTER INTO A CONTRACT**

#### Article 273

- (1) Motives for entering into a contract shall not affect its validity.
- (2) However, if an inadmissible motive materially influenced the decision of one of the parties to enter into the contract and if the other party knew or should have known that, the contract shall have no effect.
- (3) A contract with no consideration shall have no legal effect if the other party did not know or had no reason to know that an inadmissible motive materially influenced the decision of the other contracting party.
- (4) The provision on inadmissibility of a performance also applies to motives for entering into a contract.

#### **IV. CONTRACTUAL CAPACITY**

##### **Contracts of a Legal Entity**

###### Article 274

- (1) A legal entity may conclude contracts in the course of legal transactions within the framework of its legal capacity.
- (2) Legal transactions concluded by a legal entity with third parties outside the scope of its business activities are valid.

##### **Consent to Enter into a Contract**

###### Article 275

- (1) Where a statute, articles of association or rules of a legal entity provide and the registry where a legal entity is registered states that its agent may enter into a specific contract only with a consent of one of its bodies, the consent may be granted in advance, concurrently or subsequently, unless it is stated otherwise in the registry.
- (2) The other party is entitled to invite a legal entity to have its authorized body state within a reasonable time whether it grants its consent and, if it fails to do so, it shall be deemed that the consent has not been granted.
- (3) Any subsequent consent has a retroactive effect unless otherwise agreed.
- (4) If such consent is not granted, it shall be deemed that the contract has not been concluded.

##### **Contract of a Person with No Contractual Capacity**

###### Article 276

- (1) In order to enter into a contract that is valid, a party to the contract must have contractual capacity required for the conclusion of the contract.
- (2) If a person has a limited contractual capacity, it may, without the consent of its legal representative, conclude only those contracts it may conclude pursuant to law, i.e. it may conclude such contracts that are not prohibited by the decision of the court on a partial deprivation of contractual capacity.
- (3) Other contracts of such persons, if concluded without consent of their legal representative, may be challenged, but they may be enforced by means of their subsequent consent.

##### **Right of a Party Negotiating a Contract with a Person with No Contractual Capacity**

###### Article 277

- (1) If a party entered into a contract with a person with no contractual capacity without the consent of its legal representative and without being aware of its lack of contractual capacity, it may cancel the contract it entered into.
- (2) If a party who was aware of the lack of contractual capacity of the other party entered into a contract with such person, but it was misled into believing such person has the

consent of its legal representative, it has the right to cancel the contract.

(3) This right lapses after the expiry of thirty days from the date a party becomes aware of the lack of contractual capacity of the other party or the absence of a consent of its legal representative; however, it may lapse even earlier, if the legal representative grants its consent to the contract before the expiry of such time period.

### **Invitation to a Legal Representative to Take Position**

Article 278

(1) A party negotiating a contract with a person with no contractual capacity who entered into a contract with such a person without consent of its legal representative may invite its legal representative to take a position as to whether it approves such a contract.

(2) If a legal representative does not take a position with a period of thirty days from the invitation to approve the contract, it shall be deemed that it refused to grant its consent.

## **V. DEFECTS OF INTENTION**

### **Threat and Force**

Article 279

(1) If a party or a third person used unlawful threat causing justified fear in the other party inducing it to conclude a contract, the other party may apply for annulment of the contract.

(2) Fear is deemed justified if it is evident from the circumstances that life or limb or other substantial property of the other party or a third person is gravely endangered.

(3) A contract that is concluded as a result of the use of force towards a party is void.

### **Fundamental Mistake**

Article 280

(1) A mistake is deemed fundamental if it relates to the object of a contract, essential features of the object of a contract, a person the contract is concluded with if it is concluded with regard to that person or to circumstances that, based on the usages in transactions or intentions of the parties, are considered decisive, and if the mistaken party would not have entered the contract otherwise.

(2) A mistaken party may apply for the annulment of a contract on grounds of a fundamental mistake.

(3) In case of the annulment of a contract due to a mistake, the other party acting in good faith is entitled to demand compensation for any loss suffered regardless of the fact that the mistaken party is not to blame for its mistake.

(4) A mistaken party may not invoke the mistake if the other party is willing to perform the contract as if there had been no mistake.

### **Mistake as to Motive for Concluding Contract with No Consideration**

Article 281

In case of a contract with no consideration, a mistake as to a motive that was decisive in assuming an obligation is also deemed to be a fundamental mistake.

### **Misunderstanding**

Article 282

Where parties believe they have reached an understanding and, in fact, there is a misunderstanding as to the legal nature of a contract or any essential element of a contract, the contract is not formed.

### **Indirect Declaration**

#### Article 283

A mistake of a person a party used to declare its intention is considered to be a mistake in its own declaration of intention.

### **Fraud**

#### Article 284

(1) Where a mistake is caused in a party by the other party or if the other party intentionally leaves the mistaken party in error in order to induce it to conclude a contract, the mistaken party may require the annulment of the contract also in cases where the mistake was not fundamental.

(2) If a party concluded a contract as a result of fraud, it is entitled to demand compensation for the damage suffered.

(3) If a third person committed a fraud, such fraud affects the contract if the other party knew or ought to have known about the fraud at the time of the conclusion of the contract.

(4) A contract with no consideration may also be annulled in cases where a third party committed fraud, regardless of whether the other contracting party knew or ought to have known about the fraud at the time of entering into the contract.

### **Apparent Contract**

#### Article 285

(1) An apparent contract has no effect between the contracting parties.

(2) However, if an apparent contract is a cover for another contract, such other contract shall be valid if the conditions for its legal validity are fulfilled.

(3) An apparent contract may not be invoked upon against a third party acting in good faith.

## **VI. FORM OF CONTRACT**

### **Optional Nature of Form**

(1) A contract may be concluded in any form, unless otherwise provided by law.

(2) Where the law requires that a contract be entered in a certain form, any subsequent amendments thereof must also be in that form.

(3) However, any subsequent oral additions on non-essential terms that are not laid down in the contract shall be valid, provided it is not contrary to the purpose of the prescribed form.

(4) Any subsequent oral agreements that diminish the obligation or make the obligations of either party less onerous shall also be valid, if the particular form is prescribed only in the best interests of the contracting parties.

### **Written Confirmation of Oral Agreement**

#### Article 287

(1) Each contracting party may require from the other party to confirm an oral contract in writing until the other party performs its contractual obligation.

(2) A party requiring a written confirmation of a contract shall send the other party at least two copies of a signed contract with an invitation to return a signed copy of the contract.

(3) If the invited party does not submit a confirmation to the other party or to a post office in a registered mail within eight days from the receipt of the invitation, the latter may require the court to establish the existence of the contract and claim damages for loss

suffered due to the failure to issue a confirmation in writing.

(4) A contract concluded in oral form shall be valid even though no confirmation in writing has been issued.

### **Cancellation of Prescribed Form Contracts**

Article 288

Contracts in a prescribed form may be cancelled by agreement in any form, except where the law provides otherwise in a particular case or where the purpose for which the form is prescribed requires that the cancellation of the contract be effected in the same form.

### **Agreed Form**

Article 289

(1) Parties to a contract may agree that a special form be a condition for the formation and validity of their contract.

(2) Where the parties have agreed a special form, the contract may be cancelled, amended or in any other way altered by agreement in any form.

(3) Where the parties to a contract have agreed to use a special form only as a proof of the existence of their contract, or to achieve some other purpose, the contract is formed when agreement regarding the substance of the contract is obtained, and at the same time the contracting parties are bound to provide the contract with the prescribed form.

### **Sanction for Failure to Observe Prescribed Form**

Article 290

(1) A contract not entered in the prescribed form has no legal effect, unless the purpose of the regulations determining the form indicates otherwise.

(2) A contract not entered in the agreed form has no legal effect if the parties have conditioned the validity of the contract on the use of that particular form.

### **Presumption of Completeness of Document**

Article 291

(1) Where a contract is concluded in a special form, according to the law or the will of the parties, only what is expressed in that form is valid.

(2) However, simultaneous oral agreements regarding non-essential terms not discussed in the contract in a prescribed form are valid, provided they are not contrary to the content of the contract or the purpose for which the form is prescribed.

(3) If the special form is prescribed only in the best interest of the contracting parties, simultaneous oral agreements that diminish or make the obligations of the either or both parties less onerous are valid as well.

### **Making a Document**

Article 293

(1) Where making a document in order to form a contract is necessary, the contract is formed after such document is signed by contracting parties.

(2) A contracting party that is illiterate or unable to write shall put on the contract its sign manual certified by a notary public.

(3) In order to form a contract it is sufficient that both parties sign the same document or that each party signs the copy of the contract intended for the other party.

(4) It is considered that the written form requirement is met if parties exchange letters or reach an agreement by some other means that allow the content and the identity of the maker of the statement to be determined with certainty.

### **Electronic Formation of Contracts**

#### Article 293

- (1) An electronic contract is formed when the parties have agreed the essential elements.
- (2) An offer made electronically is deemed to be an offer to a person that is present, if it is possible in a specific case to immediately respond to a statement by a counter-statement.
- (3) The use of an electronic signature for entering into a contract shall be laid down in specific laws.

#### **Enforcement of Contract Lacking the Necessary Form**

##### Article 294

Where a contract that is required to be in writing is not entered in written form, it is considered to be valid, if the contracting parties have executed, fully or in large part, the obligations that arise from the contract, unless it results otherwise from the purpose for which the form is prescribed.

### **VII. GENERAL CONTRACT CONDITIONS**

#### **Definition and Mandatory Nature**

##### Article 295

- (1) General contract conditions are contractual terms that have been formulated for a larger number of contracts that one party (drafter) proposes to the other contracting party before or at the time of entering the contract, whether they are included in a form contract (standard contract) or referred to in the contract.
- (2) General contract conditions complement individually negotiated provisions laid down between the contracting parties of the same contract, and, as a rule, they are equally binding.
- (3) Where general contract conditions are in conflict with individually negotiated provisions, the latter shall be valid.
- (4) General contract conditions must be published in a usual manner.
- (5) General contract conditions are binding for a contracting party if it was acquainted or ought to have been acquainted with them at the time of the contract was formed.

#### **Voidness of Individual Provisions**

##### Article 296

- (1) Any provision of the general contract conditions shall be void if it, contrary to the principle of good faith and fair dealing, causes evident inequality in rights and obligations of the parties to the detriment of the contracting party of the drafter or if it compromises the achievement of the purpose of the contract concluded, even if the general contract conditions including such provisions are approved by an authority.
- (2) In evaluating whether a provision in general contract conditions is void, it is necessary to take into account all circumstances before and at the time of conclusion of the contract, the legal nature of a contract, the type of goods or services that constitute the performance, other provisions of the contract and the provisions of another contract such provision of the general contract conditions is linked with.
- (3) The provision under paragraph 1 of hereof shall not apply to those provisions of the general contract conditions, the content of which was taken over from applicable regulations or which were subject to individual negotiations before conclusion of the contract in the course of which the other party could have affected the content of such provision, or to provisions on the subject and price of the contract if these are clear, understandable and highly visible.

### **VIII. CONDITION**

#### **Conditions and Their Effect**



#### Article 297

- (1) A contract is concluded under a condition if the creation or termination of its effects depends on a future and uncertain fact.
- (2) Where a contract is concluded subject to a condition precedent, and the condition is fulfilled, the contract has effects from the time of its conclusion, unless it results otherwise from the law, the nature of the transaction or the will of the parties.
- (3) Where a contract is entered under a condition subsequent, the effects of the contract lapse after the condition takes place.
- (4) It shall be deemed that a condition is fulfilled if its fulfilment, contrary to the principle of good faith and fair dealing, is prevented by the party at whose responsibility it is established, while a condition shall be deemed not fulfilled if, contrary to the principle of good faith and fair dealing, its fulfilment is caused by the party in whose favour it is established.

#### **Inadmissible or Impossible Condition**

##### Article 298

- (1) A contract is void if it includes a condition precedent or a condition subsequent that is contrary to the constitution, the mandatory laws or the morals of the society.
- (2) A contract that is concluded subject to an impossible condition precedent is void, while an impossible condition subsequent is considered to be non-existent.

#### **Insuring a Conditioned Right**

##### Article 299

Where a contract is concluded subject to a condition precedent, the creditor whose right is subject to the condition is entitled to require appropriate insurance of such right if its attainment is at risk.

### **IX. TIME PERIOD**

#### **Computation of Time**

##### Article 300

- (1) A time period expressed in days begins to run on the first day after the relevant event serving as a starting point for calculating the time period, and it expires on the last day of the specified time period.
- (2) A time period expressed in weeks, months or years expires on the day and the date that coincides with the day of occurrence of the relevant event after which the time period begins to run, and if such a day does not exist in the last month, the time period expires on the last day of that month.
- (3) Where the last day of a time period happens to be an official non-working day, the last day of the time period is considered to be the following working day.
- (4) The beginning of a month shall be the first day, the middle of a month the fifteenth day, and the end of a month the last day of that month, unless it results otherwise from the intention of the parties or the nature of the contractual relations.

#### **Application of Rules Relating to Condition**

##### Article 301

Where a contract is to become effective at a specified future time, the rules relating to a condition precedent shall be applicable, while where a contract is to be invalidated after the expiry of a set time period, the rules relating to a condition subsequent shall be applicable.

### **X. IMPOSITION OF BURDEN**

##### Article 302

(1) If a contract with no consideration is concluded subject to a burden and the beneficiary does not discharge a burden, the other party may require a discharge of the burden or cancellation of the contract.

(2) Any failure to discharge a burden in a legal transaction in the case of death has the effect of a fulfilment of a condition subsequent.

## **XI. DEPOSIT AND FORFEIT MONEY**

### ***1. Deposit***

#### **Recovery and Inclusion of Deposit**

##### Article 303

(1) If at the moment of conclusion of the contract one of the parties gives the other a certain amount of money or a certain quantity of some other exchangeable objects as a sign that the contract is concluded (deposit), the contract shall be deemed binding from the moment the deposit is given, unless agreed otherwise.

(2) In case of enforcement of a contract, such deposit must be recovered or included in the performance of the obligation.

(3) Unless otherwise agreed, a depositing party may not renounce a contract leaving the deposit to the other party, neither can the other party renounce the contract by recovering the double amount of the deposit.

#### **Non-Performance of Contract**

##### Article 304

(1) Where a depositing party is liable for non-performance of the contract, the other party is entitled, in its discretion, to request performance of the contract if it is still possible, or to request compensation for the damage, and to include the deposit in the compensation or to recover it or to accept the deposit as a satisfactory compensation.

(2) Where a party receiving a deposit is liable for non-performance of the contract, the depositing party is entitled, in its discretion, to request performance of the contract if it is still possible or to request compensation for the damage and recovery of the deposit, or to request recovery of the double amount of the deposit.

(3) In both cases, the party requesting execution of the contract is entitled to compensation for the damage suffered due to delay.

(4) In cases under paragraphs 1 and 2 hereof, a court may, at the request of an interested party, reduce an excessively high deposit.

#### **Partial Performance of Contract**

##### Article 305

(1) Where an obligation is partially performed, the creditor may not keep the deposit, but it is entitled to request performance of the rest of the obligation and compensation for the damage caused by the delay, or to request compensation for the damage caused by the partial performance; however, in both cases the deposit shall be included in the compensation.

(2) Should a creditor cancel the contract and recover whatever it has received as partial performance, it can choose between the remaining claims belonging to one party if the other party is responsible for non-performance of contract.

### ***2. Forfeit Money***

#### **Definition and Effects**

##### Article 306

(1) Contracting parties may agree that one or both parties may rescind the contract by

paying an agreed amount of forfeit money.

(2) When a party in favour of which a right to rescind is agreed notifies the other party of its intention to pay the forfeit money, it can no longer request performance of the contract.

(3) The party entitled to rescind is obliged to pay the forfeit money together with the rescission notice.

(4) Where the parties have not agreed a time limit within which an entitled party may rescind the contract, that party may rescind it within the time limit set for performance of its obligation.

(5) The right to rescind a contract also ceases when the entitled party begins to perform its obligations under the contract or to receive performance by the other party.

### **Deposit as Forfeit Money**

#### Article 307

(1) When both a deposit and the right to rescind the contract are agreed, the deposit shall be considered the forfeit money and either party may rescind the contract.

(2) In such a case, if a contract is rescinded by a depositing party, the party shall lose the deposit, while if a contract is rescinded by a party receiving deposit, it shall return the double amount of the deposit.

#### Section 2

#### AGENCY

### **I. AGENCY IN GENERAL**

#### **Agency Possibilities**

#### Article 308

(1) A contract or any other legal transaction may be concluded or undertaken through an agent.

(2) The authority for agency is based on law, a statute, articles of association or any other rules of a legal entity, an act of a competent authority or a statement of assent by the principal (power of attorney).

#### **Effects of Agency**

#### Article 309

(1) A contract concluded by an agent within its authority in the name of a principal shall be directly binding on both the principal and the other contracting party.

(2) Under the same conditions other legal actions by the agent shall also have a direct legal effect on the principal.

(3) An agent is obliged to inform the other party that it is acting on behalf of its principal; however, if an agent does not do so, but the other party was aware of the agency or could have inferred it from the circumstances, the contract is valid for both the principal and the other contracting party.

#### **Transfer of Authority**

#### Article 310

(1) An agent may not transfer its authority to another person, except if it is permitted by law or a contract.

(2) By way of derogation, an agent may transfer its authority if the circumstances prevent it from attending the matter personally, and it is in the interest of the principal that the legal transaction be undertaken without delay.

#### **Exceeding Authority**

#### Article 311

- (1) When an agent exceeds its authority, the principal is not bound unless it consented to its exceeding authority.
- (2) If a principal does not consent to the contract within a regular period of time needed to review and assess such contract, it shall be deemed that the consent is refused.
- (3) The consent from the preceding paragraph is retroactive, unless otherwise determined by the parties.
- (4) Where the other contracting party did not know or had no reason to know of the agent's exceeded authority, it is entitled to state immediately, upon becoming aware that it exceeded authority, not awaiting the principal's statement, that it does not consider itself bound by the contract.
- (5) Where a principal refused to give consent and the other contracting party did not know or had no reason to know of the exceeded authority, the agent and the principal have joint liability for the damage suffered by the other party.

#### **Entering into Contract by Unauthorized Person**

##### Article 312

- (1) A contract concluded by an unauthorized person purporting to act as an agent of another person, does not bind the alleged principal unless it subsequently ratifies it.
- (2) The other party to a contract is entitled to ask the alleged principal to approve the contract within a reasonable time period.
- (3) If the alleged principal does not ratify the contract even within the time period granted, it shall be deemed that the contract has not been concluded.
- (4) In such a case, where the other party to a contract did not know or had no reason to know of the absence of authority, it is entitled to request compensation for the damage from the unauthorized agent.

## **II. POWER OF ATTORNEY**

### **Granting Power of Attorney**

##### Article 313

- (1) A power of attorney is an authorization to represent granted by a principal to a representative by means of a legal procedure.
- (2) The existence and the scope of a power of attorney are independent of the legal relationship that serves as the basis on which the power of attorney is granted.
- (3) A legal entity may also be authorized to act as an authorized representative under the power of attorney.

### **Mandatory Form of Power of Attorney**

##### Article 314

Provisions of law relating to the form of a contract or any other legal transaction apply to a power of attorney to enter into such contract or to undertake such transaction.

### **Scope of Power of Attorney**

##### Article 315

- (1) An authorized representative may undertake only those legal transactions for which it is authorized.
- (2) An authorized representative who is granted a general power of attorney may undertake only those legal transactions that are a part of regular day-to-day business operations.
- (3) A transaction outside the scope of regular day-to-day business operations may be

undertaken by an authorized representative provided it is specially authorized to undertake it, i.e. specially authorized to undertake transactions of such nature.

(4) An authorized representative may not take an obligation of a bill of exchange, or enter into a guarantee contract or a settlement contract, or waive any right without compensation, if it is not specifically authorized for each and every such case.

### **Terminating and Limiting Power of Attorney**

#### Article 316

(1) A principal may at its discretion terminate or limit a power of attorney, even if it has waived such right in a contract.

(2) Any termination or limitation of a power of attorney may be done in any form.

(3) Where an order contract, a contract for work or any other contract is violated by a termination or limitation of a power of attorney, the authorized representative has a right to damages.

### **Effect of Termination and Limitation of Power of Attorney on Third Parties**

#### Article 317

(1) A termination or limitation of a power of attorney shall have no legal effect on a third party that has concluded a contract with an authorized representative or has performed any other legal transaction if it did not know and had no reason to know that the power of attorney has been terminated or limited.

(2) In such a case, the principal is entitled to compensation from the authorized representative for the damage suffered, except where the authorized representative did not know and had no reason to know of the termination or limitation of the power of attorney.

(3) The same shall apply to all other cases of expiry of a power of attorney.

### **Other Cases of Expiry of Power of Attorney**

#### Article 318

(1) A power of attorney expires upon liquidation of the legal entity as an authorized representative, unless otherwise provided by law.

(2) A power of attorney expires with the death of the authorized representative.

(3) A power of attorney expires upon liquidation of a legal entity or death of the principal, except where the transaction started and cannot be terminated without causing damage to legal successors, or if the power of attorney is also valid in case of death of the principal, based on the principal's intention or on the legal nature of a transaction.

#### Section 3

### INTERPRETATION OF CONTRACT

### **Application of Provisions and Interpretation of Controversial Clauses**

#### Article 319

(1) Contract clauses apply as they read.

(2) When interpreting a controversial clause of a contract, the mutually agreed intention of the parties must be considered rather than the literal meaning of the expressions used, and the controversial clause must be understood in accordance with the principles of the law of obligations established by this Act.

### **Unclear Clauses in Specific Cases**

#### Article 320

(1) Where a contract is concluded according to a previously printed content, or where a contract was prepared and proposed by one contracting party, any unclear clause shall be interpreted in favour of the other contracting party.

(2) Any unclear clauses in a contract with no consideration shall be interpreted in a way that is less onerous for the debtor, whereas any unclear clauses in a contract with consideration shall be interpreted in a way establishing an equitable exchange of mutual performances.

### **Out-of-Court Interpretation of Contract**

#### Article 321

(1) Contracting parties may provide that, in case of a difference of opinion with regard to the meaning and scope of any contract clauses, a third person shall interpret the contract.

(2) In such a case, unless the contract provides otherwise, the contracting parties may not file an action with a court or other competent authority prior to obtaining such interpretation the contract, except where the third party refuses to provide the contract interpretation.

#### Section 4

### 4. INVALIDITY OF CONTRACT

#### **I. VOID CONTRACTS**

##### **Nullity**

#### Article 322

(1) A contract that is contrary to the constitution, the mandatory laws or the morals of the society is null and void unless the objective of the infringed rule refers to some other legal effect or the law provides otherwise for such particular case.

(2) If entering into a contract is prohibited for only one of the contracting parties, the contract shall remain valid, unless the law provides otherwise for the particular case, while the party that has violated the legal prohibition shall bear the appropriate consequences.

##### **Consequences of Nullity**

#### Article 323

(1) Where a contract is null and void, each contracting party is obliged to effect restitution to the other party of everything that it has received on the basis of the particular contract, and if this is not possible, or if the nature of the performance prevents the restitution, an appropriate monetary compensation shall be paid according to the prices at the moment a court decision is passed, unless otherwise provided by law.

(2) A contracting party responsible for entering into a contract that is rendered null and void is liable to the other contracting party for the loss suffered on account of the nullity of such contract, provided that the other contracting party did not know or, according to the circumstances, had no reason to know of the existence of the cause of nullity.

##### **Partial Nullity**

#### Article 324

(1) If one clause of a contract is void, it shall not result in rendering the contract void, provided that the contract may survive without such void clause and that the clause was neither a condition nor a decisive motive for entering into the contract.

(2) Where nullity is established in order to eliminate a void clause from a contract and to

maintain the validity of the contract, the contract shall remain valid even if the void clause was a condition or a decisive motive for the contract.

### **Conversion**

#### Article 325

Where a void contract meets the conditions for validity of some other contract, the contracting parties shall be bound by that other contract provided it serves the purpose the contracting parties had in mind at the moment they entered into their contract and if it could be presumed that they would have concluded that other contract if they had known of the nullity of their contract.

### **Subsequent Disappearance of the Cause of Nullity**

#### Article 326

- (1) A void contract shall not become valid if a cause of nullity disappears in the future.
- (2) However, in case a minor prohibition caused the contract to become void and if the contract has been performed in full, the nullity may not be invoked.

### **Invoking Nullity**

#### Article 327

- (1) The court examines the matter of nullity ex officio and any interested party may invoke nullity.
- (2) A state attorney is also entitled to request the establishment of nullity.

### **Unlimited Period for Invoking Nullity**

#### Article 328

The right to invoke nullity does not lapse.

### **Usury Contracts**

#### Article 329

- (1) A contract is held void if a person, exploiting the state of need or difficult financial situation of another person, its lack of experience, levity or dependence, agrees a benefit for itself or for a third party that is manifestly disproportionate to whatever it has given to or performed for or undertaken to give to or perform for the other party.
- (2) The provisions of this law relating to the consequences of nullity and on partial nullity of contract shall apply adequately to a usury contract.
- (3) Where a harmed party requests a reduction of its obligation to an equitable amount, the court shall grant the request, if possible, in which case the contract shall remain in effect with the appropriate amendment.
- (4) A harmed party may apply for a reduction of its obligation to an equitable amount within a period of five years from the date of concluding the contract.

## **II. VOIDABLE CONTRACTS**

### **When Contracts Are Voidable**

#### Article 330

A contract is voidable if it is entered into by a person with limited business capacity, if there are defects in the intention of the parties concluding the contract, or in other cases as determined by this Act or a special regulation.

### **Annulment of Contract**

#### Article 331

- (1) A party in whose favour voidability of the contract has been established may request that the contract be annulled.
- (2) In such a case, however, the other contracting party may request that the first party

state within a time period of no less than 30 days whether or not it is going to honour the contract, since otherwise the contract shall be considered annulled.

(3) If the party does not state its intention within the stated period of time, or if it declares that it does not intend to honour the contract, the contract shall be considered annulled.

### **Consequences of Annulment**

#### Article 322

(1) If on the basis of an annulled contract something has been performed, it is to be restituted, and if this is not possible or if it is contrary to the nature of the performance, an appropriate monetary compensation shall be paid in keeping with the prices at the time such ruling is adopted by the court.

(2) A contracting party at fault for causing a contract to be voidable shall be liable to the other contracting party for the damage suffered due to annulling the contract, provided that the other party did not know or had no reason to know of the cause of voidability of the contract.

### **Restitution and Compensation in Case of Annuling a Contract Entered into by a Party with Limited Business Capacity**

#### Article 333

Where a contract is annulled due to limited business capacity of one contracting party, the other contracting party shall be entitled to restitution only of the portion of the performance which is in the possession of the party with limited business capacity or is being used in its favour, as well as of everything that has been destroyed or sold on purpose.

### **Liability of a Party with Limited Business Capacity**

#### Article 334

A party with limited business capacity is liable for damage caused by annulling a contract, if it cunningly misled the other contracting party into believing it had business capacity.

### **Termination of Right to Annulment**

#### Article 335

(1) A limitation period of one year is applicable to the right to apply for annulment of a voidable contract after becoming aware of the cause for voidability or after the termination of duress.

(2) In any event this right shall expire within three years from the date of entering into a contract.

#### Section 5

### **EFFECTS OF CONTRACT**

#### **I. GENERAL EFFECTS OF CONTRACT**

##### **I. Creation of Obligations for Contracting Parties**

##### **Effects of Contract Between Contracting Parties and Their Legal Successors**

#### Article 336

(1) A contract produces rights and obligations for the contracting parties.

(2) A contract also produces effect for universal legal successors of the contracting parties, unless otherwise agreed or else it results otherwise from the nature of the contract.

(3) A contract may create a right in favour of a third person.

##### **II. Third Party Beneficiary Contracts**

##### **Third Party Direct Right**

#### Article 337



(1) Where a party in its own name stipulates a claim for the benefit of a third party, the third party assumes its own direct right towards the debtor, unless otherwise agreed or indicated by the circumstances of the transaction.

(2) The contracting party is entitled to request the debtor to enforce what was agreed for the benefit of a third party.

### **Rescinding the Benefit of Third Party**

Article 338

(1) A contracting party stipulating a benefit for a third party may revoke or modify the benefit until the third party accepts what has been stipulated in its favour.

(2) Where it is agreed that a debtor shall perform the obligation undertaken in favour of a third party only after the death of the contracting party, the contracting party may until then, or even in its will, revoke the benefit stipulated for the third party, unless otherwise indicated by the contract or the circumstances.

### **Objections of Debtor against Third Party**

Article 339

A debtor may raise against a third party any and all objections that it has against its contracting partner on grounds of a contract in which a benefit for a third party has been agreed.

### **Third Party Refusal**

Article 340

Where a third party refuses to accept the benefit stipulated in its favour, or if it is rescinded, the benefit shall belong to the contracting party stipulating it, unless agreed or indicated otherwise by the nature of the transaction.

## **3. Contract Promising Third Party Performance**

### **Promising Third Party Action**

Article 341

(1) A promise made to promisee that a third party shall act or omit to do something, shall not be binding on the third party, while the promisor shall be liable for any damage that the promisee has suffered because the third party has not consented to take an obligation or perform an action.

(2) A promisor shall not be held liable if it promised the promisee to persuade a third party to take an obligation or omit to do something but has not succeeded despite all the efforts made.

### *4. Right to Remedy of the Damage*

### **Performance of Obligation and Consequences of Non-Performance**

Article 342

(1) A creditor in a binding relationship is authorized to request the debtor to perform the obligation, and the debtor is obliged to fully perform the obligation as it reads.

(2) Where a debtor does not perform an obligation or is late with the performance, the creditor is also entitled to request compensation for the damage suffered thereby.

(3) A debtor having been given by the creditor a reasonable subsequent time-limit for performance shall be liable for damage due to late performance.

(4) A debtor is also liable for partial or full impossibility to perform although the impossibility was not due to its fault, if the impossibility occurred after the delay the debtor is liable for.

(5) However, a debtor is not liable for damage if it proves that the subject of the

performance would have been lost by accident even if the debtor had performed its obligation in time.

### **Release of Debtor from Liability**

Article 343

A debtor shall not be liable for damage if it can prove that it could not perform its obligation or that it is late with the performance due to external, extraordinary and unforeseeable circumstances arising after entering into the contract, which circumstances it could not have prevented, eliminated or avoided.

### **Contractual Expansion of Liability**

Article 344

(1) The liability of a debtor may be extended by contract to cover cases for which it is not liable otherwise.

(2) However, the fulfilment of such a clause may not be required if it is contrary to the principle of good faith and fair dealing.

### **Restricting and Excluding Liability**

Article 346

(1) The liability of the debtor for intentional or gross negligence may not be excluded or restricted by contract in advance.

(2) However, at the request of an interested contracting party a court may annul the clause on exclusion or restriction of liability for ordinary negligence, if such agreement arises from a monopolistic position of the debtor or else from inequality in relations between the contracting parties in general.

(3) A contract provision specifying a maximum amount for compensatory damages shall be valid if the amount specified in such a manner is not in evident disproportion with the damage and if no law provides otherwise for the particular case.

(4) In case of limitation of the maximum amount for compensatory damages, the creditor shall be entitled to full compensation if the impossibility to perform the obligation resulted from intention or gross negligence of the debtor.

### **Scope of Compensation**

Article 346

(1) A creditor is entitled to compensation for ordinary damage or loss of earnings and to equitable non-pecuniary damage that, at the time of entering into a contract, had to be foreseen by the debtor as possible consequences of a breach of the contract, considering the facts it knew or should have known at the time.

(2) In case of fraud or deliberate non-performance or non-performance due to gross negligence, the creditor shall have the right to request from the debtor compensation for the entire damage that was caused due to breach of the contract, regardless of the fact that the debtor did not know of the particular circumstances resulting in the damage caused.

(3) Where a breach of obligation, apart from the damage, gives rise to a certain benefit for the creditor, it shall be taken into account to a reasonable extent in determining the volume of compensation.

(4) The party invoking the breach of contract is obliged to take all reasonable steps to reduce the damage caused by such breach, otherwise the other party may request a decrease of the compensation.

(5) The provisions of this article are also applicable to non-performance of obligations

that do not arise from a contract, unless this Act provides otherwise for some of them.

### **Reduction of Compensation**

Article 347

Where a creditor or a person for whom the creditor is responsible is at fault for contributing to the caused damage or its scope or for making the position of the debtor more onerous, the compensation is proportionally reduced.

### **Liability Due to Failure to Notify**

Article 348

A contracting party obliged to notify the other party about facts that have an impact on their mutual relationship shall be liable for the damage suffered by the other party as a result of the failure to notify it in time.

### **Application of Provisions on Non-Contractual Damage**

Article 349

Unless the provisions of this section provide otherwise, the provisions of this law relating to compensation of non-contractual damage shall adequately apply to such damage.

## **II. CONTRACTUAL PENALTY**

### **General Rules**

Article 350

(1) A creditor and a debtor may stipulate that the debtor shall pay a certain amount of money or shall provide some other material benefit to the creditor in case of nonperformance or a delay in performance or a faulty performance.

(2) Unless otherwise indicated by the contract, it shall be deemed that the penalty is stipulated for cases where the debtor's performance is late.

(3) A contractual penalty may not be contracted for monetary obligations.

### **Method of Determination**

Article 351

(1) The contracting parties may determine the amount for the penalty at their discretion, as a total amount, as a percentage or for each day of the delay, or in any other manner.

(2) The penalty relating to the performance of an obligation must be agreed in a form prescribed for the contract from which such obligation arises.

### **Legal Fate of Agreement**

Article 352

(1) The agreement on contractual penalty has the same legal fate as the obligation it secures.

(2) Such agreement shall cease to be legally effective if non-performance or faulty performance or delayed performance resulted from causes for which the debtor is not liable.

### **Creditor Rights**

Article 353

(1) Where penalty is contracted for cases of non-performance of obligation, the creditor may request either performance of the obligation or the contractual penalty.

(2) The creditor loses the right to request performance of the obligation if it already requested payment of the contractual penalty.

(3) Where penalty is contracted for non-performance, the debtor is not entitled to pay the contractual penalty and to rescind the contract, unless it was the intention of the contracting parties when they agreed the penalty.

(4) Where penalty is contracted for cases of the debtor's delayed performance or faulty performance, the creditor is entitled to request both performance of the obligation and payment of the contractual penalty.

(5) The creditor may not request payment of the contractual penalty for delayed or faulty performance if it received the performance of the obligation, but did not notify the debtor without delay that it reserved its right to a contractual penalty.

### **Reducing the Contractual Penalty Sum**

Article 354

At the request of a debtor, a court shall reduce the sum of the contractual penalty if it finds that the sum is disproportionately high in view of the value and the significance of the subject of the obligation.

### **Contractual Penalty and Compensation for Damage**

Article 355

(1) A creditor is entitled to request a contractual penalty even if the amount of the penalty exceeds the value of the damage suffered, as well as in cases when it did not suffer any damage.

(2) Where the value of the damage suffered by the creditor exceeds the amount of the contractual penalty, the creditor is entitled to request the balance up to the full compensation.

### **Compensation and Contractual Penalty Specified by Law**

Article 356

In case of non-performance, faulty performance or delayed performance of an obligation where the law specifies the compensation amount as penalty, contractual penalty, compensation or otherwise and where additionally the contracting parties have contracted a penalty, the creditor is not entitled to request both the contractual penalty and the compensation determined by law, unless it is allowed by law.

## **II. EFFECTS OF BILATERAL CONTRACTS**

### **1. Liability for Material and Legal Defects of Performance**

Article 357

(1) In case of a contract with consideration each contracting party is liable for material defects in its performance.

(2) Each contracting party is also liable for legal defects in its performance and it is obliged to protect the other contracting party from any third party rights and claims that might eliminate or reduce the rights of the other contracting party.

(3) The provisions of this law relating to the liability of the seller for material and legal defects in its performance shall apply accordingly to the obligations of the transferor, unless otherwise provided for certain cases.

### **II. Objection of Non-Performance of Contract**

#### **Rule of Simultaneous Performance**

Article 358

(1) In case of bilateral contracts neither party is obliged to perform its obligation if the other party does not perform or is not ready to perform the obligation simultaneously, except where otherwise agreed, provided by law or indicated by the nature of the transaction.

(2) However, if in the course of a court action one of the contracting parties pleads that it is not obliged to perform its obligation until the other party has performed its

obligation, the court shall order this party to perform its obligation at the time the other party performs its obligation.

### **Where Performance of One Party Becomes Uncertain**

#### Article 359

(1) Where it is agreed that first one party shall perform its obligation, and where after the contract is entered the financial state of the other party declines to the extent that it is uncertain whether it will be able to perform its obligation or if this uncertainty is due to other serious reasons, the party that undertook to perform its obligation first, may postpone its performance until the other contracting party performs its obligation or until it provides sufficient guarantees for the performance.

(2) This also applies in cases where the financial state of one contracting party was equally difficult before the contract was entered, provided the other contracting party did not know or had no reason to know of this fact.

(3) In such cases the party that undertook to perform the obligation first is entitled to request guarantees within a reasonable time period, and if the time period expires with no results, it may terminate the contract.

### **III. Termination of Contract for Non-Performance**

#### **Rights of One Party if Other Party Fails to Perform**

#### Article 360

In case of bilateral contracts, where one contracting party fails to perform its obligation, the other party, unless otherwise determined, may request performance of the obligation or, under the conditions provided in the following articles, it may terminate the contract with a simple statement if the termination does not result by virtue of law, and in any case it has the right to damages.

#### **Where Performance within Specified Time Is Essential Term of Contract**

#### Article 361

(1) Where performance of an obligation within a specified time period is an essential term of a contract and a debtor does not perform the obligation within such period of time, the contract is terminated by virtue of law.

(2) However, a creditor may preserve the validity of a contract if it notifies the debtor without any delay after the expiry of the time period that it requests performance of the contract.

(3) Where a creditor has requested performance and did not receive it within a reasonable time period, it may declare its termination of the contract.

(4) These rules apply both where the contracting parties have agreed that a contract shall be considered terminated if it is not performed within the specified time period and where the performance of a contract within the specified time period is an essential term of the contract based on the nature of the transaction.

#### **Where Performance Within Specified Time Period Is Not Essential Term of Contract**

#### Article 362

(1) Where performance of an obligation within a specified time period is not an essential condition of a contract, the debtor preserves the right to perform its obligation even after the specified time limit has expired, while the creditor reserves the right to request performance of the obligation.

(2) However, if a creditor wants to terminate the contract, it shall allow the debtor a subsequent reasonable time period for performance.

(3) If a debtor fails to perform an obligation within the subsequent time period, the same consequences shall apply as in the case where time period is an essential term of contract.

#### **Termination of Contract without Allowing a Subsequent Time Limit**

Article 363

A creditor may terminate a contract without allowing the debtor to perform the obligation within a subsequent time period, if the debtor's conduct indicates that it has no intention to perform its obligation within the subsequent time limit either.

#### **Termination of Contract before Expiry of Time Limit**

Article 364

Where it is obvious, before the time limit for performance has expired, that one of the contracting parties will not perform its contractual obligation, the other party may terminate the contract and request compensation for the damage incurred.

#### **Termination of Contract with Consecutive Obligations**

Article 365

(1) Where one of the parties to a contract with consecutive obligations fails to perform one of its obligations, the other party may terminate the contract with respect to all future obligations within a reasonable time period, if it is evident from the circumstances that the future obligations will not be performed either.

(2) The other contracting party may terminate the contract not only with regard to future obligations, but in respect to the already performed obligations as well, if such performance without the performance of future obligations is of no interest to it.

(3) A debtor may maintain a contract if it provides suitable insurance.

#### **Duty to Inform**

Article 366

A creditor terminating a contract for non-performance of a debtor's contractual obligation is obliged to inform the debtor thereof without delay.

#### **Inability to Terminate Contract**

Article 367

A contract may not be terminated for non-performance of an insignificant part of the obligation.

#### **Effect of Termination**

Article 368

(1) Upon termination of contract both contracting parties are released from their obligations other than the obligation to pay damages.

(2) Where one party has performed the contract fully or partially, it has the right to restitution of whatever it has given.

(3) Where both parties have the right to request restitution of whatever has been given, such mutual restitutions shall be performed in compliance with the rules of performance for bilateral contracts.

(4) Each party owes the other party compensation for the benefits that it enjoyed in the meantime from whatever it is obliged to return or compensate.

(5) The party reimbursing money is obliged to pay default interest from the date on which it received the payment.

#### **4. Variation or Termination of Contract in Case of Change of Circumstances Requirements for Termination**

#### Article 369

(1) Should, after entering into a contract, extraordinary circumstances arise, that it was impossible to foresee at the time of entering into a contract, making it excessively onerous for one party to perform or if under such circumstances a party would suffer an excessive loss as a result of the performance, it may request variation or even termination of the contract.

(2) Variation or termination of a contract may not be requested by a contracting party invoking the change of circumstances if that party was obliged to take into consideration such circumstances at the time of entering into a contract or if it could have avoided or overcome them.

(3) A party requesting variation or termination of the contract may not invoke a change of circumstances that occurred after the expiry of the time limit for performance of the obligation.

(4) Where a party requests termination of a contract, the contract shall not be terminated if the other contracting party offers or agrees to an equitable change in the relevant provisions of the contract.

(5) Where a court declares termination of a contract, the court shall, at the request of the other party, oblige the party applying for the cancellation, to compensate the other party with an equitable amount for the damage suffered due to the termination.

#### **Duty to Inform**

##### Article 371

Where a contracting party is entitled to request variation or termination of a contract in case of a change of circumstances, it shall inform the other party about such intention as soon as the change of circumstances comes to its notice; if it fails to do so, it shall be liable for the damage suffered by the other party on account of not being informed in time.

#### **Circumstances Relevant for Judicial Decision**

##### Article 371

In deciding on variation or termination of a contract, the court shall be governed by the principles of good faith and fair dealing, taking into consideration the purpose of the contract, the allocation of risk resulting from the contract or from laws, the duration and effects of extraordinary circumstances and the interests of both parties.

#### **Waiving Invocation of Change of Circumstances**

##### Article 372

Parties to a contract may in advance in the contract waive their right to invoke a change of circumstances, provided it is not contrary to the principles of good faith and fair dealing.

### **5. Impossibility of Performance**

#### **Where Neither Party Is Liable for Impossibility of Performance**

##### Article 373

(1) Where performance of an obligation of one party to a bilateral contract becomes impossible due to extraordinary external events that occurred after entering into a contract and before the performance is due and which could not have been foreseen or prevented, avoided or eliminated by a party to a contract and for which neither of the parties is liable, the obligation of the other party shall also cease, and if it has performed its obligation partially, it has the right to restitution according to the regulations relating to restitution in case of unjust enrichment.

(2) In case of partial impossibility of performance of one party due to an event for which neither of the parties is liable, the other party may terminate the contract if partial performance does not meet its needs; otherwise the contract shall remain valid and the other party shall be entitled to request proportional reduction of its obligation.

### **Impossibility of Performance for Which the Other Party Is Liable**

#### Article 374

(1) Where performance of an obligation by one party to a bilateral contract is impossible due to an event for which the other party is liable, the first party's obligation shall cease and it shall retain its claim towards the other party; however, such a claim is reduced by the benefit it might have had from the release from its own obligation.

(2) In addition, such a party is obliged to transfer to the other party all rights it would have towards third persons in relation to the subject of its obligation the performance of which has become impossible.

### **6. Excessive Loss**

#### **Evident Imbalance of Mutual Performances**

##### Article 375

(1) If at the time of entering into a contract there was an evident imbalance between the performances of the contracting parties, the harmed party may request annulment of the contract, provided that at that time it did not know or had no reason to know of the true value.

(2) The right to apply for annulment of a contract shall lapse after a period of one year from the conclusion of contract.

(3) Any waiver of this right in advance shall have no legal effect.

(4) A contract shall remain valid provided the other party offers to increase its consideration to match the true value.

(5) In case of such imbalance, a party may not require annulment of a commercial contract, gaming contract, public contract of sale or a contract where a higher price was given as a result of particular preference.

## Chapter 2

## CONTRACTS

### Section 1

#### CONTRACT OF SALE

#### I GENERAL PROVISIONS

##### **Definition of Term**

##### Article 376

(1) By a contract of sale a seller undertakes to deliver to a buyer ownership of a thing, and the buyer undertakes to pay him the price.

(2) A seller of a right undertakes to vest such right with the buyer, and where the realisation of its content requires possession of a thing, also deliver the thing to him.

##### **Form of the Contract of Sale of Immovable Property**

##### Article 377

Contract of sale of immovable property shall be entered into in writing.

##### **Risk**

##### Article 378

(1) Until delivery of a thing to the buyer the risk of the thing perishing by accident or



being damaged shall be born by the seller, however, upon delivery the risk shall transfer to the buyer.

(2) The risk shall not pass to the buyer if, on account of a defect of the delivered thing, he cancelled the contract or requested that the thing be replaced.

### **Passing of Risk in Case of Default by the Buyer**

#### **Article 379**

(1) If delivery of the thing has not been effected due to default by the buyer, the risk shall pass to the buyer as of the moment he is in default.

(2) Where the object of the contract are things determinate as to their kind, the risk transfers to the buyer in default if the seller separated the things obviously intended for sale and notified the buyer thereof.

(3) However, where things determinate as to their kind are such that the seller cannot separate one of their parts, it shall be sufficient that the seller has performed all activities necessary to deliver the thing to the buyer and notified the buyer thereof.

## **II CONTENTS OF CONTRACT OF SALE**

### ***1 Thing***

#### **General Rule**

##### **Article 380**

(1) A thing must be in circulation, the contract of sale of a thing extra commercium shall be void.

(2) Special rules shall apply to the sale of a thing with limited circulation.

(3) A sale may pertain to a future thing.

#### **Where a Thing Perishes Prior to Contract**

##### **Article 381**

(1) A contract of sale shall have no legal effect if at the moment of its conclusion the thing the contract is on had perished.

(2) If at the moment of entering into the contract the thing has only partially perished, the buyer may terminate the contract or honour it with a proportionate reduction of price.

(3) However, the contract shall remain in force and the buyer shall be entitled only to a reduction in price if the partial perishing of the thing does not interfere with the purpose of the contract, or if for a specific thing this is customary in legal transactions.

#### **Sale of a Thing of Another**

##### **Article 382**

A sale of a thing shall be binding on the contracting parties, but the buyer who was not aware or should not have been aware that the thing belonged to another may, if the purpose of the contract cannot be achieved, terminate the contract and request compensation for damage.

#### **Sale of a Disputable Right**

##### **Article 383**

(1) A disputable right may be the object of a contract of sale.

(2) However, a contract by which an attorney or any other agent intends to purchase a disputable right whose realisation has been entrusted to him, or contract a share for himself in the division of the amount awarded to his principal.

### ***2 Price***

#### **Where Price is not Determined**

##### **Article 384**

(1) If the price has not been determined by the contract of sale, and the contract does

not contain enough information to determine the price, the contract shall have no legal effect.

(2) Where the price has not been determined by a commercial contract, and it does not contain enough information to determine the price, the buyer shall pay the price regularly charged by the seller at the time of entry into the contract, and where there is no such price, a reasonable price.

(3) The reasonable price shall be the current price at the time of entry into the contract, and if it cannot be determined, the price set by the court in accordance with the circumstances of the case.

### **Prescribed Price**

Article 385

Where a higher price has been contracted for a specific type of thing than the price prescribed by a competent administrative body, the buyer shall owe only the prescribed price and if he already paid the contracted price, he shall have the right to request reimbursement of the balance.

### **Where the Current Price is Contracted**

Article 386

(1) Where the current price is contracted, the buyer shall owe the price indicated in official records of the market at the seller's place of business at the time of performance.

(2) If there are no such records, the current price shall be determined by the elements used to determine the price in accordance with the custom and practices of the market.

### **Where Determination of Price Is Entrusted to a Third Party**

Article 387

If a third party entrusted with the determination of price will not or cannot determine it, and the contracting parties subsequently do not agree on determining the price or terminating the agreement, it shall be deemed that a reasonable price has been contracted.

### **Where Determination of Price is Left to One Contracting Party**

Article 388

A provision of the contracted by which the determination of price is left to the choice of one contracting party shall be deemed as if never having been contracted and the buyer shall owe the same price as in a case where the price has not been determined.

## **III OBLIGATIONS OF THE SELLER**

### ***1 Delivery***

#### **Time and Place of Delivery**

Article 389

(1) The seller shall deliver the thing to the buyer at the time and place stipulated in the contract.

(2) The seller shall be deemed to have performed the obligation of delivery to the buyer, when he delivers the thing to him or surrenders a document by which it may be taken over.

#### **Subject of Delivery**

Article 390

(1) Unless otherwise stipulated or arising from the nature of the transaction, the seller shall deliver the thing in good condition with all its accessories.

(2) Fruits and other benefits arising from the thing shall belong to the buyer as of the day the seller should have delivered them to him.

#### **Where Delivery within a Specific Period Is Contracted**

#### Article 391

Where it has been contracted that delivery is to be effected within a specific period and it has not been stipulated which of the parties shall have the right to determine the date within the stipulated period, this right shall be entitled to the seller, except where it arises from the circumstances of the case that determination of such date be left to the buyer.

#### **Where the Date of Delivery is Not Stipulated**

#### Article 392

Where the date of delivery of the thing is not determined, the seller shall deliver the thing within a reasonable period following the entry into the contract in accordance with the nature of the thing and other circumstances.

#### **Where Place of Delivery is Not Stipulated by Contract**

#### Article 393

(1) Where the place of delivery is not stipulated by contract, the thing shall be delivered at the place where the seller was domiciled at the time of entry into contract, or, failing this, had its residence, or if the seller entered the contract in the course of regularly business activity at the place of his head office.

(2) However, if at the time of entering into contract the contracting parties were aware of where the thing is at or where it is to be produced the delivery shall be effected at that place.

#### **Delivery to Carrier**

#### Article 394

Where pursuant to the contract carriage is to be effected, but the contract does not stipulate the place of performance, delivery shall be effected by delivering the thing to the carrier or shipper.

#### **Obligation of Carriage of a Thing**

#### Article 395

If the seller is obligated to send the thing to the buyer, he shall in the usual manner and under usual terms enter into a contract required to effect carriage to the stipulated place.

#### **Costs of Delivery**

#### Article 396

Costs of delivery as well as costs preceding it shall be born by the seller, while the cost of carrying off the thing and all other costs following delivery shall be born by the buyer, unless otherwise agreed.

#### **Delay of Delivery until Payment of Price**

#### Article 397

Unless otherwise agreed or customary, a seller shall not be bound to deliver the thing if a buyer fails to pay or is not ready to pay the price simultaneously, but the buyer shall not be bound to pay the price until he has had the chance to inspect the thing.

#### **Delay of Delivery in Cases Where the Thing is Carried**

#### Article 398

(1) Where delivery of a thing is effected by handing the thing over to the carrier, the seller may postpone forwarding the thing until the price has been paid, or forward it in a way allowing him to retain the right of disposal during carriage.

(2) If he retains the right of disposal with the thing during carriage, the seller may

require that the thing not be delivered to the buyer at the destination until he pays the price, but the buyer shall not be bound to pay the price until he has had the chance to inspect the thing.

(3) However, where the contract stipulates payment at delivery of an appropriate document, the buyer shall not have the right to refuse payment for the reason of not having had the chance to inspect the thing.

### **Preventing Delivery of a Forwarded Thing**

Article 399

(1) Should it be established after sending off the thing to the buyer that his financial situation raises reasonable doubt as to his ability to pay the price, the seller may prevent the delivery of the thing to the buyer even at the moment when the latter already holds in his possession a document authorising him to request handing over of the thing.

(2) However, the seller may not prevent the surrender of a thing if requested by a third person who is the legitimate holder of a document authorising it to request surrender, unless the document contains reservations as to the effects of transfer, or if the seller proves that the holder of the document when obtaining it purposely acted to the detriment of the seller.

### **2 Liability for Material Defects**

#### **Material Defects for Which the Seller is Liable**

Article 400

(1) The seller shall be liable for material defects of a thing at the moment of the transfer of risk to the buyer, regardless whether he was aware of them or not.

(2) The seller shall also be liable for all material defects arising after the transfer of risk to the buyer if they arose as a result of the cause that existed prior to it.

(3) It shall be presumed that a defect arising within six months following the transfer of risk existed at the time of transfer of risk unless the seller provides evidence to the contrary or this arises from the nature of the thing or the nature of the defect.

~~(4) There shall be no liability for a minor material defect.~~

#### **Where Do Material Defects Exist**

Article 401

(1) A defect shall exist:

- 1) if a thing lacks the qualities required for its regular use or circulation;
  - 2) if a thing lacks the qualities required for the specific purpose the buyer intends to use it for, and where was known or should have been known to the seller.
  - 3) if a thing lacks qualities and characteristics which were agreed or stipulated expressly or by implication;
  - 4) where the seller has delivered a thing not equal to the sample or model, unless the sample or model have been shown for information only;
  - 5) if the thing lacks qualities otherwise inherent to other things of the same kind and which the buyer could have reasonably expected in accordance with the nature of the thing, taking into consideration public statements of the seller, the manufacturer and their representatives on the qualities or characteristics of the thing (particularly in advertising or on labelling etc.);
  - 6) if the thing has been badly assembled provided that the service of assembly is included in the performance of the contract of sale;
  - 7) if bad assembly is a result of deficiencies in the instructions for assembly;
- (2) If a buyer, based on statements given by the manufacturer or his representative,

expected the thing to have specific qualities, a defect shall not be taken into account if the seller was not or should not have been aware of such statements, or such statements were withdrawn by the time of entry into the contract or had no influence on the buyer's decision to enter into the contract.

(3) Manufacturer, within the meaning of the liability for material defects and warranty for the quality of a sold item, is deemed to be the manufacturer of the item, the importer of the item or any other person represented as the manufacturer by placing the name, stamp or any other proper designation on the item.

### **Defects for Which the Seller is Not Liable**

#### Article 402

(1) The seller shall not be liable for defects if at the time of entering into the contract the buyer was aware of them or could not have been unaware of them.

(2) It shall be deemed that the buyer could not have been unaware of defects that a prudent and diligent person having the average knowledge and experience characteristic of a person of same occupation and profession as the buyer could easily have noticed in a usual examination of the thing.

(3) The provision of paragraph (2) of this Article shall not apply to contracts entered into by a physical person as the buyer, outside his economic and professional activity, with the physical or legal person as the seller, within the framework of his economic or professional activity (consumer contacts).

(4) However, the seller shall also be liable for defect that the buyer could easily have noticed if he declared that the thing was free of all defects and had specific qualities or characteristics.

### **Inspection of a Thing and Visible Defects**

#### Article 403

(1) A buyer shall inspect the delivered thing in a customary manner or have the thing inspected, as soon as possible in the regularly course of events, and notify the seller of visible defects within the period of eight days, or in respect of a commercial contract without delay, otherwise he shall lose the right entitled to him in this regard.

(2) Where the inspection has been performed in the presence of both parties, the buyer shall immediately address his remarks on visible defects to the seller, otherwise he shall lose the right entitled to him in this regard.

(3) Where the buyer forwarded the thing without reloading it, and the seller was aware or should have been aware of such possibility at the time of entering into the contract, the inspection of the thing may be postponed until its arrival at the new destination, in which case the buyer shall notify the seller of any defects as soon as, in the regular course of events, he was informed thereof by his clients.

(4) As regards consumer contracts, a buyer who deals as a consumer shall not be bound to inspect or have a thing inspected, but shall notify the seller of any visible defects within the period of two months from the day when he discovered the defect, [no later than two years from the transfer of risk to the consumer](#).

### **Latent Defects**

#### Article 404

(1) Where after the buyer receives a thing becomes apparent that the thing has a defect

that could not have been discovered by usual inspection when the delivery was taken, the buyer shall, under threat of losing the right, notify the seller thereof within the period of two months, not including the day when the defect was discovered, or without delay in respect of a commercial contract.

(2) The seller shall not be liable for defects arising after the expiry of two years since the thing was delivered, or six months in respect to a commercial contract.

(3) Where used things are sold the contractual parties may agree a time limit of one year, or shorter in respect of commercial contracts.

(4) Time limits referred to in paragraph (2) and (3) of this Article may be extended by contract.

### **Deadlines in case of Repairs, Replacements, etc.**

#### Article 405

Where there has come to repair of a thing, delivery of another thing, replacement of parts, etc., the time limits referred to in the two foregoing articles shall run as from the moment the repaired thing has been delivered, parts replaced, etc.

### **Notice of Defect**

#### Article 406

(1) The buyer shall not be bound to describe in detail the defect of a thing in the notice of defect and invite the seller to inspect the thing, except in respect of a commercial contract.

(2) If a notice of defect sent by the buyer to the seller in a timely manner by a registered letter, telegram, and fax or in some other reliable way, is received late or not at all, it shall be deemed that the buyer has fulfilled his duty of notifying the seller.

### **Where the Seller Was Aware of a Defect**

#### Article 407

A buyer shall not lose the right to invoke a defect even where failing to perform his obligation of inspecting a thing without delay or notifying the seller of the existence of a defect within a set period of time, as well as where such defect appeared two years, [or in case of a trade contract six months](#) after the thing has been delivered, if the buyer was aware or could not have been unaware of such defect.

### **Limitation and Exclusion of Liability for Material Defects**

#### Article 408

(1) Parties to a contract may limit or fully exclude the seller's liability for material defect of a thing.

(2) A provision of the contract on limiting or excluding liability for defects of things shall be void if the seller was aware of the defect and failed to notify the buyer thereof, and also where the seller imposed such a provision by making use of his monopolistic position, or as regards to a commercial contract.

(3) A buyer who has renounced his right to terminate the contract on account of a defect of a thing shall retain other rights in connection with these defects.

### **Mandatory Public Sale**

#### Article 409

Liability for material defects shall be excluded as regards a mandatory public sale.

### **Rights of the Buyer**

#### Article 410

(1) A buyer who notified the seller of a defect in due time may:

- 1) request that the defect be eliminated by the seller; or
- 2) request from the seller delivery of another thing without defects; or
- 3) request a price reduction; or
- 4) declare the contract cancelled.

(2) In each of the foregoing cases, the buyer shall be entitled to the repair of damage in accordance with general rules on liability for damage, including the damage caused by such defect to his other property.

(3) If a defect is minor, the buyer shall not be entitled to termination of contract but shall be entitled to other rights in relation to the liability for material defects, including the right on repair of damage.

(4) The costs of removing the defect and delivery of another thing without defect shall be born by the seller.

### **Non-performance of a Contract within a Reasonable Period**

#### Article 411

If a buyer does not receive the requested performance of the contract within a reasonable period, he shall retain the right to terminate the contract or reduce the price.

### **When May a Buyer Terminate a Contract**

#### Article 412

(1) A buyer may terminate a contract only after having allowed the seller a subsequent adequate time limit to perform the contract.

(2) A buyer may terminate a contract even without allowing for a subsequent time limit if the seller, after having been notified of the defects, informed the buyer of his intention not to perform the contract or if the circumstances of the particular case render it obvious that the seller will not be able to perform the contract even within the subsequent time limit, as well as in the case where the buyer due to default by the seller may cannot achieve the purpose for which he entered into the contract.

(3) If the manner of removal of the defect or delivery of another fit item would create substantial inconveniences to the buyer, he/she is entitled to terminate the contract or require proportional price discount.

### **Termination of Contract by Operation of Law**

#### Article 413

(1) If the seller fails to perform the contract within the subsequent time limit, it shall terminate by operation of law, but the buyer may continue it if he intimates to the seller without delay that the contract is to remain in force.

(2) The same shall apply in case of performance with a defect, an obligation where performance within a specified period constitutes an important provision of the contract.

### **Partial Defects**

#### Article 414

(1) Where only a part of the delivered thing is defective, or where only a part of the thing or a smaller-than-contracted quantity has been delivered, the buyer may terminate the contract within the sense of previous articles only pertaining to the part which is defective or only as regards to the part or quantity which is missing.

(2) A buyer may terminate the contract as a whole only if the contracted quantity or delivered thing constitutes the whole, or if the buyer has a justifiable interest to be delivered

the contracted thing or quantity as a whole.

### **Where a Seller Gave a Buyer a Larger Quantity**

Article 415

(1) Should in case of a commercial contract of sale the seller of things determinate as to their kind give the buyer a quantity in excess of what has been agreed, and the buyer fails to refuse it within a reasonable period, it shall be deemed that he has taken the delivery of the excess and he shall be bound to pay for it at the same price.

(2) If the buyer refuses to accept the excess, the seller shall be liable for damage incurred by the buyer.

### **Where Price Is Determined as Regards Several Things**

Article 416

(1) Where several things or a group of things have been sold by one contract and for one price and only some of them have defect, the buyer may terminate the contract only in respect of such things and not the remaining things.

(2) However, if they make up a whole and their separation would be damaging, the buyer may terminate the entire contract, or if he states that the contract is cancelled only in respect of things with a defect, the seller on his part may terminate the contract also in respect of other things.

### **Loss of Right to Terminate a Contract Due to a Defect**

Article 417

(1) A buyer shall lose the right to terminate a contract due to a defect of a thing where he is unable to return the thing or return it in the condition he received it.

(2) A buyer may terminate a contract due to a defect of a thing if the thing has fully or partially perished or been destroyed due to a defect that justifies a termination of contract, or due to an event not being connected to him or a person he is responsible for.

(3) The same shall apply if a thing has fully or partly perished or has been destroyed at the time the buyer has been performing his obligation of inspecting the thing, or if the buyer prior to discovering the defect has spent or has changed one part of the thing during its regular usage and if the damage or alliteration are insignificant.

### **Retention of Other Rights**

Article 418

A buyer who loses the right to terminate a contract due to inability to return a thing or return it in the condition he received it, shall retain other rights provided by law as regards to the existence of a defect.

### **Effects of Termination Due to a Defect**

Article 419

(1) Termination of contract due to a defect of a thing shall have the same effect as the termination of bilateral contracts due to non-performance.

(2) The buyer shall be liable compensation to the seller for benefits he has realised by using a thing even where he is unable to return it in whole or one of its parts and the contract has been terminated regardless.

### **Price Reduction**

Article 420

Price shall be reduced in accordance with the proportion of the value of a thing without defect to the value of the thing with a defect at the time the contract was entered into.

### **Gradual Discovery of Defects**



#### Article 421

A buyer who has effected a reduction of price due to existence of a defect may terminate the agreement or request additional reduction of price if subsequently yet another defect were to be discovered.

#### **Time Limit for Exercising of Rights**

#### Article 422

(1) The rights of a buyer who has notified a seller of the existence of a defect in due time shall extinguish after two years, counting from the day the notice was sent to the seller, unless the seller deceived the buyer into failing to exercise his rights.

(2) However, a buyer who has notified a seller of the existence of a defect in due time may after the expiry of this term, if he has not paid the price, request that the price be reduced or that he be compensated for damage, as objection against the seller's request to be paid the price.

### ***3 Warranty of Quality of a Sold Thing*** **Liability of the Seller and Manufacturer**

#### Article 423

~~(1) Where the seller has given the buyer a warranty of quality by which it warrants the quality of a thing for a specified period of time, starting from its delivery to the buyer, the buyer may, if the thing is not of adequate quality or fitness, request from both the seller and the manufacturer that the thing be repaired within a reasonable period or if he fails to do so to deliver him a fit thing instead.~~

(1) If a manufacturer guarantees the quality of an item for a specified period of time, starting from its delivery to the buyer, the buyer may, if the item is not of adequate quality or fitness, request from both the seller and the manufacturer that the item be repaired within a reasonable period or if they fail to do so, to deliver him/her a fit item instead.

(2) If a seller guarantees the quality of an item for a specified period of time, starting from its delivery to the buyer, the buyer may, if the item is not of adequate quality or fitness, request from the seller that the item be repaired within a reasonable period or if the seller fails to do so, to deliver him/her a fit item instead.

(3) The warranty is binding under the conditions it has been issued with irrespective of the form of issue (written warranty, oral statement, additional representation etc.) but the buyer is entitled to request the guarantee be issued in the written form or in a different, durable medium, accessible to the buyer.

(4) These rules shall not withstand the application of rules relating to the liability of the seller for defects of a thing.

(5) The warranty shall contain the buyer's rights arising from the warranty and a clear stipulation that the warranty does not affect other rights belonging to the buyer as per other legal grounds.

(6) The warranty shall contain details required by the buyer to be able to exercise his rights, especially warranty period, regional scope of the warranty and the name and address of

the person who issued the warranty.

(7) Failure to perform the obligations referred to in paragraph (5) and (6) of this Article shall not have effect on the validity of warranty.

### **Request for Repair or Replacement**

Article 424

(1) The buyer may request from the seller or manufacturer repair or replacement of a defective thing during the warranty period, regardless of the fact when the defect arose.

(2) He shall be entitled compensation for damage suffered by not being able to use the thing, starting from the moment he requested repair or replacement until they were effected.

### **Extension of Warranty Period**

Article 425

(1) In cases of minor repairs the warranty period shall be extended for a period equal to the length of the period during which the buyer was prevented from using a thing.

(2) However, where due to a defect of a thing it has come to its replacement or a major repair, the warranty period shall begin running anew as of the moment of replacement or return of the repaired thing.

(3) If it has come to a replacement or major repair of only a part of a thing, the warranty period shall begin running anew only for that part.

### **Termination of Contract and Reduction of Price**

Article 426

If a seller fails to repair or replace a thing within a reasonable period, the buyer shall be entitled to termination of contract or reduction of price, and in both cases request compensation for damage.

### **Costs and Risk**

Article 427

(1) A seller or a manufacturer shall transport a thing to the place where it is to be repaired or replace at their own expense and return the repaired or replaced thing to the buyer.

(2) For the duration of that time the seller shall bear the risk of the thing failing or being damaged.

### **Liability of Several Manufacturers**

Article 428

Where several individual manufacturers of individual parts of a thing or several contractors of particular works participated in the creation of a thing, their liability towards the manufacturer of the thing for defects arising from such parts or works shall terminate when the liability of the manufacturer towards the buyer terminates.

### **Time Limit for Exercising of Rights**

Article 429

The rights of the buyer as regards ~~to the manufacturer arising from the warranty~~ arising from the warranty shall extinguish after the expiry of one year starting from the day when the buyer requested repair or replacement.

### **4 Liability for Legal Defects**

#### **Legal Defects**

Article 430

(1) The seller shall be liable to the buyer for all and any rights of third persons in the sold thing, which exclude, reduce or limit the rights of the buyer of the existence of which the buyer was not informed nor accepted a thing encumbered by such right.

(2) The seller of a right shall guarantee that the right exists and that there are no obstacles to it being exercised.

### **Notifying the Seller**

#### Article 431

Where it becomes apparent that a third person has rights in a thing, the buyer shall notify the seller thereof, except where this is already known to the seller, and invite him to free the thing of such right or claim by a third party within a reasonable period or to deliver him, where the object of the contract are things determinate as to their kind, another thing free of a legal defect.

### **Rights of the Buyer**

#### Article 432

(1) If the seller fails to act in compliance with the buyer's request, in cases where the thing is taken away from the buyer, the contract shall be terminated by operation of law, while in cases where the buyer's rights are reduced or limited, the buyer may choose to terminate the contract or request a proportionate reduction of price.

(2) Should the seller fail to comply with the buyer's request to free the thing from rights or claims by a third person within a reasonable period, the buyer may terminate the contract if its purpose impossible to achieve as a result thereof.

(3) In any case, the buyer shall be entitled to compensation for damage suffered in accordance with general rules on liability for damage.

(4) However, if at the time of entering into the contract the buyer knew of the possibility that the thing be taken away from him, or his right reduced or limited, he shall not be entitled to compensation of damage should this possibility be realised, but he shall be entitled to reimbursement or reduction of price.

### **Where the Buyer Fails to Notify the Seller**

#### Article 433

The buyer who, without having notified the seller, engages in unsuccessful litigation against a third person, may still invoke the seller's liability for legal defects, unless the seller proves was in possession of the assets in order to reject the request of the third party.

### **Where the Right of a Third Party is Clearly Valid**

#### Article 434

(1) The buyer shall be entitled to invoke the seller's liability for legal defects also where without having notifying the seller and engaging in litigation proceeding he acknowledged a clearly valid right of a third person.

(2) If a buyer has paid a third person an amount to renounce his obvious right, the seller may free himself from liability by reimbursing the buyer for the amount paid and damages suffered.

### **Contracted Limitation or Exclusion of the Seller's Liability**

#### Article 435

(1) A seller's liability for legal defects may be limited or fully excluded by contract.

(2) If at the time of entering into the contract the seller was aware or could not have been unaware of a defect to his right, the provision of the contract on limitation or exclusion of liability for legal defects shall be invalid.

### **Limitation of Public Legal Nature**

#### Article 436

A seller shall be liable, in accordance with these rules, also in cases where there are

special limitations of public legal nature of which the buyer was unaware, if the seller was aware of them or should have been aware of them, and failed to notify the buyer.

### **Time Limit for Enforcing a Right**

Article 437

- (1) A right of a buyer arising as regards to legal defects shall extinguish one year from the moment of becoming aware of a right of a third person.
- (2) However, if the third person has initiated litigation proceedings before the expiry of this term, and the buyer invited the seller to get involved in the proceedings, the right of the buyer shall extinguish after six months following a final court decision.

## **IV OBLIGATIONS OF THE BUYER**

### ***1 Payment of Price***

#### **Time and Place of Payment**

Article 438

- (1) A buyer shall pay the price at the time and place stipulated in the contract.
- (2) In the absence of a contractual provision or other custom, payment shall be effected at the moment and place of delivery of the thing.
- (3) If the price is not to be paid at the time of deliver, payment shall be effected at the place of residence or domicile of the seller.

#### **Interest in Cases of Credit Sale**

Article 439

If a thing sold by a credit sale bears fruit or other benefits, the buyer shall owe interest as of the moment the thing was delivered to him regardless whether the obligation to pay the price became due or not.

#### **Payment of Price In Case of Consecutive Deliveries**

Article 440

- (1) In case of consecutive deliveries, the buyer shall pay the price for each delivery at the time of its acceptance, unless otherwise has been agreed or arises from the circumstances of the case.
- (2) If in a contract with successive deliveries the buyer gave the seller an advance payment, the first deliveries shall be charged against the advance, unless otherwise agreed.

### ***2 Taking Delivery of a Thing***

Article 441

- (1) Taking delivery of a thing shall consist in undertaking activities necessary to enable a delivery and taking the thing away.
- (2) If a buyer refuses to take delivery offered to him in due time and in the manner agreed or customary without justification, the seller may, provided there is reasonable doubt as to whether the buyer shall pay the price, intimate that he terminates the contract.

## **V OBLIGATION TO PRESERVE A THING FOR CO-CONTRACTOR**

### **Cases of Obligation to Preserve a Thing**

Article 442

- (1) Where due to his default the risk passed to the buyer prior to delivery of thing, the seller shall keep the thing with the diligence of an orderly and conscientious businessman and undertake the necessary actions to this effect.
- (2) The same shall apply to the buyer, where the thing has been delivered to the buyer who wants to return it to the seller, either because he terminated the agreement or requested another thing instead.

(3) In both cases, the contracting party responsible for safekeeping of a thing shall be entitled to remuneration of expenses incurred by preservation of the thing.

#### **Where the Buyer Refuses to Accept a Thing**

Article 443

A buyer who refuses to accept a thing sent to the place of delivery and there placed at his disposal, shall take delivery for the account of the seller if he is not present at the place of delivery and there is no one to take delivery in his place, provided this is possible without payment of price, major inconvenience and excessive costs.

#### **Rights of a Party Responsible for Safekeeping of a Thing**

Article 444

The contractual party responsible for undertaking measures for safekeeping of a thing may, under the term and conditions and in accordance with the consequences stipulated in the provisions of this Act as regards to depositing with the court and sale of the thing owed, deposit with the court, deliver to another for safekeeping or sell a thing for the account of the other party.

### **VI COMPENSATION OF DAMAGE IN CASE OF TERMINATION OF SALE**

#### **General Rule**

Article 445

Where a sale has been terminated due to the breach of contract by one contracting party, the other party shall be entitled to compensation for damages suffered as a result in accordance with general rules on compensation for damage arising from breach of contract.

#### **Where a Thing has a Current Price**

Article 446

(1) Where a sale has been terminated due to breach of contract by one contracting party, and the thing has a current price, the other party may demand payment of the difference between the contracted price and the current price as at the date of termination of contract in the market at the place where the transaction has been effected.

(2) If the market at the place where the transaction has been effected has no current price, the current price of the market that could replace it in a given situation is taken for the purpose of calculation of compensation, increased by costs of transport.

#### **Where Sale or Purchase is Effected for Settlement**

Article 447

(1) Where the object of sale is a certain quantity of things determinate as to their kind, and one party fails to perform its obligation in due time, the other party may effect sale for the purpose of settlement, or purchase for the purpose of settlement and demand payment of the difference stipulated in the agreement and price of sale or purchase effected for the purpose of settlement.

(2) Sale or purchase for the purpose of settlement must be effected within a reasonable period and in a reasonable manner.

(3) The creditor shall notify the debtor on the intended sale or otherwise be liable for damage arising thereof.

#### **Compensation for Excess Damage**

Article 448

In addition to compensation for damage in accordance with the stipulated rules, a party not in breach of the contract shall be entitled to compensation for excess damage, if suffered.

### **VII VARIOUS MODES OF SALES**

### ***1 Sale by Right of Pre-emption***

#### **Definition of Term**

Article 449

By a contractual provision on the right of pre-emption a buyer undertakes to inform the seller of his intention to sell the thing to a specified person, as well as of the terms of the sale, and offer him to purchase the thing at the same price.

#### **Time Limit for Exercising the Right and Paying the Price**

Article 450

(1) The seller shall notify the buyer in a reliable way of his right to exercise the right of pre-emption within the period of one month as of the day the buyer notified him on the intended sale to a third person.

(2) At the same time, when intimating that he will buy the thing, the seller undertakes to pay the price agreed with a third person, or deposit it with the court or a person authorised by law.

(3) If the contract with a third person stipulates a time limit for the payment of price, the seller may make use of such time limit provided that he gives sufficient security.

#### **Possibility of Inheritance and Alienation**

Article 451

Right of pre-emption of movables may not be alienated or inherited, unless otherwise provided by law.

#### **In Case of a Forced Public Sale**

Article 452

(1) In case of a forced public sale the seller may not invoke his right of pre-emption.

(2) However, a seller whose right of pre-emption was entered in a public book may demand that the public sale be annulled, if he was not explicitly invited to attend.

#### **Duration of Right of Pre-emption**

Article 453

(1) Right of pre-emption shall cease five years after entering into the contract, unless earlier termination has been agreed.

(2) Where longer period has been contracted it shall be reduced to a period of five years.

(3) The limitation referred to in the paragraph 1 and 2 of this Article is not applied to the right of pre-emption in trade contracts nor to the right of pre-emption of stocks, business shares and shares in companies.

(4) If the contract referred to in the paragraph 3 of this Article does not stipulate the duration of pre-emption right, it shall cease to be valid after the expiration of five years from the day of concluding the contract.

#### **Where Transfer of Ownership Was Effected Without Notifying the Seller**

Article 454

(1) If the buyer sold a thing and transferred the ownership to a third person without having notified the seller, and if the third person was aware or could not have been unaware that the seller had the right of pre-emption, the seller may within the period of six months as from the day he became aware of such transfer request that it be annulled and that the thing be sold to him under the same conditions.

If the seller notified the seller of the conditions of the sale to the third person incorrectly, and if the third person was aware or could not have been unaware of this, the six

month time limit shall begin running as of the day the seller was informed of accurate terms and conditions of the contract.

In any case, the right of pre-emption shall cease five years after the transfer of ownership to a third person.

### **Legal Right of Pre-emption**

#### **Article 455**

(1) For specific persons the right of pre-emption may be established by law.

(2) Duration of the legal right of pre-emption shall not be limited.

(3) Persons having the right of pre-emption pursuant to law shall be notified in writing on the intended sale and its terms and conditions, otherwise they are entitled to request annulment of the sale.

(4) Rules on the sale by right of pre-emption shall apply to legal right of pre-emption as appropriate.

### ***2 Trial Sales***

#### **Definition of Term**

#### **Article 456**

(1) Where stipulated that the buyer takes a thing in order to try whether it fits his requirements, he undertakes to notify the seller whether he shall remain in the contract within the period stipulated in the contract or customary, or in the absence thereof, within the appropriate period set by the seller, otherwise he shall be deemed to have withdrawn from the contract.

(2) If a thing has been delivered to the buyer to for trial until a set time, and he fails to return it without delay, or fails to intimate to the seller that he withdrew from the contract, he shall be deemed to have staid in the contract.

#### **Objective Trial**

#### **Article 457**

Where the trial has been agreed in order to establish whether a thing has a certain characteristic or whether it is suitable for specific purpose, the continuation of the contract shall not be left at the buyer's discretion, but shall depend on whether or not it possesses such characteristics or whether it is suitable for specific use.

#### **Risk**

#### **Article 458**

The risk that a thing delivered to the buyer for trial will accidentally perish or be damaged shall be born by the seller until the buyer intimates that he shall stay in the contract, or until expiry of the time limit after which the buyer is obligated to return the thing to the seller.

#### **Sales Following Inspection or Trial**

#### **Article 459**

The provisions as regards trial sales shall apply as appropriate to sales following inspection and on sales without prior trial.

### ***3 Sales by Sample or Model***

#### **Article 460**

(1) If in cases of sale by sample or model the thing delivered by the seller to the buyer does not correspond to the sample or model, the seller shall be liable in accordance with the rules on a seller's liability for material defects of a thing, and in other cases in accordance rules on liability for non-performance.

(2) A seller shall not be liable for lack of compliance with the sample, if the sample or the model were presented to the buyer only as information or for approximately demonstrating the characteristics of a thing, without having promised its equality.

#### ***4 Sale by Specification***

Article 461

(1) If it has been contracted that the buyer shall have the right to determine the shape, measure or other details of the thing at a later time, but he fails to deliver the specification by the stipulated date or expiry of a reasonable period, commencing from the moment of the seller's request to do so, the seller may intimate that he will terminate the contract or make a specification in accordance with his knowledge of the buyer's needs.

(2) If a seller makes a specification, he shall notify the buyer of the details pertaining to it and give him a reasonable period to prepare the specification himself.

(3) If the buyer fails to make use of this possibility, the specification created by the seller shall be obligatory.

#### ***5 Sale by Retention of Right of Ownership***

##### **Presumptions**

Article 462

(1) A seller may retain the right of ownership of a thing by a special contractual provision even after delivery of the thing to the seller until receiving full payment of the price.

(2) When in doubt, it shall be deemed that the right of ownership was transferred under a suspensive condition of full payment of the price and that the seller is authorised to terminate the contract if the buyer defaults on his payment.

(3) Retention of the right of ownership of a movable thing shall have effect as regards the buyer's creditors only if effected in the form of a certified document prior to the buyer's liquidation proceedings or seizure of the thing.

(4) On movable things entered into special public books right of ownership may be retained only if stipulated by regulations governing the structure and maintenance of such books.

##### **Risk**

Article 463

The risk of accidental perishing or damage of the thing shall be born by the buyer as of the moment the thing was delivered to him.

#### ***6 Instalment Sale***

##### **Definition of Term**

Article 464

By a contract of sale of a movable thing by instalments a seller undertakes to deliver a movable thing to the buyer prior to the full payment of the sale price, and a buyer undertakes to pay the price in instalments, periodically.

##### **Form of Contract**

Article 465

The contract of sale by instalments shall be drawn up in writing.

##### **Essentials of a Contract**

Article 466

(1) An agreement shall, under caution of nullity, in addition to a thing and its price stipulate: the overall amount of all instalments, including also the one effected at the moment of entering into the contract, the amount of individual instalments, their number and due



dates.

(2) An agreement shall, under caution of nullity, contain a provision stipulating that a buyer may terminate the contract if he intimates it to the seller within three days after signing the agreement, and that this right may not be renounced in advance.

### **Buyer's Right to Lump Sum Payment**

Article 467

(1) The buyer may pay the balance of the sale price in a lump sum at all times.

(2) The payment of the balance of the sale price shall be free of contractual interest and costs.

(3) A contractual provision to the contrary shall be void.

### **Termination of Contract and Request of Full Payment of the Sale Price**

Article 468

(1) A seller may terminate a contract if a buyer defaults on the first instalment

(2) Following the payment of first instalment the seller may terminate the contract if the buyer defaults on maximally two consecutive instalments which make up minimally one eighth of the sale price.

(3) Exceptionally, the seller may terminate the contract where the buyer defaults on the payment of only one instalment, if the remaining balance of the sale price is to be repaid in no more than four instalments.

(4) In cases referred to in paragraph (2) and (3) of this Article, instead of terminating the contract the seller may request that the buyer pay the remaining balance of the sale price in full provided that he has allowed the buyer a subsequent time limit of fifteen days.

### **Judicial Extension of Time Limit for Payment**

Article 469

The court may, at the request of the buyer, where the circumstances of a case justify it, extend time limits for payment of overdue instalments, if the buyer provides security for performance of his obligation, unless the seller suffers damage there from.

### **Invalidity of Contractual Penalty**

Article 470

A provision of the contract as regards contractual penalty in case of termination of a contract or in case the buyer defaults on payment of an instalment shall be invalid.

### **Termination of Contract**

Article 471

(1) In case of termination of contract the seller shall return to the buyer any payments received with statutory interest as of the day he received it and remunerate any costs he may have incurred as regards the thing.

(2) For his part, the buyer shall return to the seller the thing in the same condition as it was when it was delivered him and pay for its use until termination of contract.

### **Application of Rules on Instalment Sale on Other Contracts**

Article 472

(1) Rules pertaining to instalment sale shall apply to other agreements with the same essence, such as, for example, a lease contract containing a stipulation that the ownership of the leased thing shall transfer to the leasee if he pays the rent for the stipulated period.

(2) They shall also apply to a loan granted to the buyer and intended for purchase of specific things, provided that the creditor and the seller agreed that the buyer shall pay to the creditor the price for the thing bought from the seller in instalments pursuant to the contract

entered into between the buyer and the seller.

### **Invalidity of Provisions Unfavourable for the Buyer**

Article 473

Provisions of an intelligent sale more unfavourable for the buyer from the provisions of this Section shall be void, except for provisions on retention of property right.

Section 2

## **CONTRACT OF EXCHANGE**

### **Definition of Term**

Article 474

(1) By contract of exchange each contracting party undertakes to transfer the ownership of a thing to the other contracting party.

(2) Object of exchange may be all transferable rights

### **Rights and Liabilities of Contracting Parties**

Article 475

Rights and liabilities arising for the seller from the contract of sale shall arise from the contract of exchange for all contracting parties.

Section 3

## **CONTRACT OF ORDER FOR SALE**

### **Definition of Term**

Article 476

(1) By a contract of order for sale the mandatary undertakes to sell the thing delivered by the mandator for a set price within a set term, or return it to the order issuer this term.

(2) The order of sale may not be revoked.

### **Risk**

Article 477

The mandator shall remain the owner of a thing delivered to the mandatary and he shall bear the risk of it perishing by accident or being damaged but may not dispose of it until it is returned to him.

### **Mandatary is Deemed to Have Purchased a Thing**

Article 478

(1) If the mandatary fails to sell the thing and deliver the price to the mandator within a stipulated term, or return it within the same period, he shall be deemed to have purchased the thing.

(2) However, his creditors shall not be able to seize the thing until he pays the sale price to the order issuer.

Section 4

## **CONTRACT OF DONATION**

### **I GENERAL PROVISIONS**

#### **Definition of Term**

Article 479

(1) Contract of donation shall be created when the donor undertakes to transfer to the donee without expecting anything in return a thing or a right of ownership and the donee accepts it.

(2) Release of debt and discharge of a debt with a debtor's consent shall also be considered a donation.

(3) Renunciation of inheritance, renunciation of a right before it is acquired or a right

which is disputable, performance of a moral obligation or transfer of a thing or a right to another party with intention to require something in return shall not be considered as a donation.

### **Gift**

Article 480

- (1) Existing and future things, transferable ownership rights and existing and maximally one half of future property may be donated.
- (2) In case of doubt, only the existing property shall be an object of donation.
- (3) If one wishes to donate only future property this shall be explicitly stipulated in the contract.
- (4) A contract of donation by which the donor undertook to perform periodical donations shall end on the death of the donor, unless otherwise stipulated in the contract.

### **Delivery of Gift before Acceptance**

Article 481

- (1) If a thing has been delivered to the donee before he intimated his acceptance of the gift, the gift shall be deemed accepted, unless the donee has rejected it within the period granted by the donor.
- (2) In case of refusal of a gift the donor can request it be returned in accordance with the rules pertaining to unjust enrichment.

### **Form of Contract**

Article 482

- (1) A contract of donation of immovable property shall be concluded in a written form.
- (2) A contract of donation without actual delivery of the thing must be entered into in the form of a notarial act or certified (solemnized) private document.

### **Donor's Liability for Material and Legal Defects**

Article 483

- (1) The donor shall not be liable for material and legal defects of the gift, however, if he purposely failed to inform the donee of the defect, he shall be liable for the damage he suffered as a result.
- (2) There shall be no liability for damage if the donor was mistaken as regards to the ownership of the thing or when the donee, knowing that the thing belonged to another, accepted the donation.

## **II DONATION WITH A CHARGE**

### **Subject Matter of Charge**

Article 484

Stipulation of charge may obligate the donee to perform an action or omit performance of an action in favour of the donor, a third person, in public interest or in its own interest.

### **Performance of Charge**

Article 485

The donor, his successors and, if stipulated in public interest, the competent administrative body shall have the right to request performance.

The donor may request performance of charge only if he performed his action.

The donor shall not be entitled to request performance of the charge if after conclusion of the contract of donation its performance became impossible through no fault of the donee.

If the donee fails to perform the charge within the subsequent reasonable period, the donor may terminate the contract and request that the gift be returned, except where a third person has acquired the right to request performance of charge.

#### **Right to Refuse Performance of Charge**

Article 486

The donee shall be entitled to refuse performance of the charge if the value of the gift does not cover the costs of his performance, and he is not reimbursed for the difference or if the charge refers to an illegal action.

#### **Release from Obligation to Perform a Charge**

Article 487

The donee may release himself from obligation of performance of charge by returning the gift in the condition it was in when he was requested to perform the charge.

By returning the gift the donee may not release himself from the obligation to perform a charge if such performance is in the public interest.

### **III REMUNERATIVE DONATION**

Article 488

What has been effected as an award, prize or to honour an achievement shall also be deemed a gift, unless the donee had a previous right to demand reward.

If a donee was entitled to reward pursuant to a contract or law, the transaction at hand shall not be a donation but an onerous legal transaction.

### **IV MUTUAL DONATION**

Article 489

If agreed that the donee shall give a gift in return, donation shall exist only for the value in excess of such gift.

### **V MIXED DONATION**

Article 490

If the value of mutual donations in an onerous legal transaction is not equal, the excess in value shall be deemed a gift only if there was an intention to donate.

Donation from paragraph (1) of this Article may not be contested on account of excessive damage.

### **VI DONATION CAUSA MORTIS (IN PROSPECT OF DEATH)**

Article 491

A contract of donation to be performed after the death of the donor shall be drawn up in the form of a notarial act or a certified (solemnised) document.

### **VII WITHDRAWAL OF DONATION**

Article 492

Until his obligation of performance becomes due, a donor may withdraw from a contract of donation, if after concluding such contract his financial standing deteriorated to the extent that performance of contract would jeopardise his maintenance or prevent him from performing an obligation of maintenance.

### **VIII REVOCATION OF DONATION**

#### **Revocation on Account of Deteriorated Financial Standing of Donor**

Article 493

A donor whose financial standing after performance of the contract of donation deteriorates to the extent that he lacks funds for his immediate support, and there is no person legally obligated to support him, may revoke the donation and request the donee to return the gift.

(2) A donation may be revoked only if the gift or its value is still a part of the donee's property, and if the donee is not in need as regards to his support and maintenance of persons he is obligated to support pursuant to law.

(3) A donee is not obligated to return a gift if he secures the funds necessary to the donor for his maintenance within the limits of justified needs.

(4) A donor may not revoke a donation and request that a gift be returned if he placed himself in such situation intentionally or due to gross negligence or if the time elapsed between the delivery of the gift is ten years in case of immovable property or five years in case of movable property.

### **Revocation on Account of Ingratitude**

#### Article 494

A donor may revoke a gift on account of gross ingratitude

Gross ingratitude implies that the donee committed against the donor or member of his immediate family an act punishable by penal laws or grossly defaulted on his duties to the donor or member of his immediate family stipulated by law.

An heir of the donor may revoke the gift only if the donee intentionally killed the donor or prevented him from revoking the gift.

Donation may not be revoked due to gross ingratitude for which the donee was forgiven by the donor.

Renouncing the right to revocation on account of gross ingratitude of the donee shall have no legal effect.

### **Supplementation on Account of Due Maintenance**

#### Article 495

If a person obligated to provide maintenance to another violates that right, the person entitled to maintenance shall have the right to demand from the donee supplementation of what the donor is not longer able to provide.

Should there be several donees, the previous donee shall be obligated in this respect only if the contributions of subsequent donees do not suffice for supplementation of maintenance.

Supplementation may also be requested from the donee's heirs, if the gift or its value is part of the legacy.

### **Form of Revocation**

#### Article 496

A gift shall be revoked by a written statement delivered to the donee.

The signature in the statement must be certified by a notary public.

### **Expiry of Right to Revocation of Gift**

#### Article 497

The right to revoke a gift shall expire within one year after the time the person entitled to revocation became aware of the ground for revocation, unless otherwise stipulate by this or another special Act.

### **Effect of Revocation**

#### Article 498

In case of revocation of a gift, the donee shall restore to the donor the gift he received or his value.

Provisions of this Act governing unjust enrichment shall apply to revocation of gift.

## **LOAN CONTRACT**

### **I GENERAL PROVISIONS**

#### **Definition of Term**

##### Article 499

(1) By a loan contract, a lender undertakes to deliver to a borrower a certain amount of money or quantity of other fungible things, and the borrower undertakes to repay the lender the same amount of money or return the same quantity of a thing equal in kind and quality after a certain time.

(2) A borrower shall acquire the right of ownership on received things.

#### **Interest**

##### Article 500

(1) A borrower may undertake to owe interest in addition to the principal.

(2) In commercial contracts, a borrower shall owe interest even where not stipulated.

### **II RIGHTS AND OBLIGATIONS OF THE LENDER**

#### **Delivery of a Thing**

##### Article 501

(1) The lender shall deliver the thing at the stipulated time, and where the time of delivery has not been stipulated, at the time when requested the borrower.

(2) The right of the borrower to request delivery of stipulated things shall prescribe three months after the lender's default, but in all cases a year after the contract is entered.

#### **Poor Financial Standing of the Borrower**

##### Article 502

(1) Where the financial standing of the borrower renders it uncertain whether he will be able to repay a loan, the lender, may refuse to deliver the stipulated things, if at the time of entering into the contract he was unaware of the fact or if the borrower's financial standing deteriorated after the contract was contracted.

(2) However, he shall perform his obligation if the borrower or another person provides sufficient security therefore.

#### **Damage Due to Defect of Things Lent**

##### Article 503

(1) A lender shall compensate to the borrower damages arising from material defects of things lent.

(2) If the loan is interest-free, he shall be liable for damage only if he was aware or could not have been unaware of the defects of the things, and he failed to inform the borrower thereof.

### **III OBLIGATIONS AND RIGHTS OF THE BORROWER**

#### **Time Limit for Repayment**

##### Article 504

If the contracting parties failed to set a time limit for repayment of the loan, or it cannot be determined from the circumstances of the loan, the borrower shall repay the loan upon the expiration of a reasonable time limit not shorter than two months following the lender's request.

#### **Choice at Time of Repayment**

##### Article 505

(1) If the loan was not a loan of money, but it was stipulated that the borrower shall

repay the loan in money, he shall be entitled to return the things lent or repay the sum of money equal to the value of such things at the time and place stipulated for repayment.

(2) The same shall apply in cases where it is not possible to return the same quantity of a thing, equal in kind and quality.

### **Withdrawal from Contract**

Article 506

The borrower may withdraw from the contract before having been delivered the things by the lender, but he shall be liable for any damage the lender may suffer as a result thereof.

### **Loan Repayment before Expiry of Time Limit**

Article 507

Unless otherwise agreed, the borrower may repay the loan even before the expiry of the time limit stipulated for repayment, but shall notify the lender thereof in advance and compensate the damage.

## **IV SPECIAL PURPOSE LOAN**

Article 508

Where the purpose of the loan has been stipulated by the agreement, the lender may terminate the contract if the borrower has used it for another purpose.

Section 6

## **CONTRACT OF LOAN FOR USE**

### **I GENERAL PROVISIONS**

#### **Definition of Term**

Article 509

Contract of loan for use is concluded where the lender delivers a certain thing to the borrower for his use free of charge, under the obligation to return it to him after use.

#### **Object of Loan for Use**

Article 510

The object of loan for use shall be only a non-consumable thing.

Consumable things may be the object of loan for use only where the return of the same thing has been contracted.

### **II RIGHTS AND OBLIGATIONS OF THE BORROWER**

#### **Manner of Use**

Article 511

The borrower shall have the right to use a thing in the manner stipulated by contract, and if such manner of use has not been stipulated, in compliance with the nature and purpose of the thing.

#### **Maintenance Costs**

Article 512

The borrower shall bear the costs of regular maintenance of a thing, and if the thing is an animal for cost of food.

The borrower shall be reimbursement for extraordinary expenses in accordance with the rules of agency without mandate.

#### **Relenting**

Article 513

The borrower shall not pass the thing lent to a third person without the consent of the lender.

#### **Liability for Damage and Destruction of Thing**

#### Article 514

(1) The borrower shall be liable for damage and destruction of a thing if caused by his own fault and if he lent the thing to a third person without the consent of the lender, or when caused by a fortuitous event.

(2) The borrower shall not be liable for changes and tear and wear of a thing lent if caused by stipulated or customary use.

(3) If the thing was lost while in the hands of the borrower and the borrower paid its value to the lender, the borrower shall not be entitled to keep the thing should he find it again, if the lender is prepared to return what he has been given for the thing.

#### **Obligation to Return a Thing**

#### Article 515

(1) The borrower shall return the thing to the lender after expiration of the stipulated term.

(2) If the term for use was not agreed, but the purpose of use was agreed, the borrower shall return the thing after conclusion of the stipulated use or after expiration of term during which he could have achieved such purpose.

(3) If neither the term of the purpose of use have been stipulated (a lending pleaded for), the borrower shall return the thing at the request of the lender.

(4) The borrower shall not be obligated to return the thing lent prior to the expiry of the stipulated term, unless the lender may need it urgently as a result of unforeseen circumstances.

### **III RIGHTS AND OBLIGATIONS OF THE LENDER**

#### **Liability for Defects**

#### Article 516

(1) If the lender fails to disclose material or legal defects in a thing lent, he shall be liable to the borrower for damage arising therefrom.

There shall be no liability for damage if the borrower could easily have noticed the defect.

#### **Right to Termination of Contract**

#### Article 517

The lender is entitled to terminate the agreement and request that the thing be returned if the borrower has used it contrary to what has been agreed or contrary to its nature and purpose or has passed it for use to a third person without the consent of the lender.

### **IV PRESCRIPTION OF MUTUAL CLAIMS**

#### Article 518

The lender's claims for damage arising from alterations or deterioration of the thing lent and the borrower's claims for reimbursement of expenses and compensation for damage due to a defect in the thing lent shall prescribe within six months from the day of the return of the thing.

#### Section 7

### **LEASE CONTRACT**

## **I GENERAL PROVISIONS**

### **Definition**

#### Article 519



Under a lease contract, the lessor undertakes to deliver to the lessee a specified thing for enjoyment in exchange for a rent that the lessee undertakes to pay.

### **Application of Special Rules**

Article 520

The provisions of this Section shall not apply to leases regulated by special rules, except subordinately.

## **II OBLIGATIONS OF THE LESSOR**

### **Delivering the Thing**

Article 521

(1) The lessor shall deliver to the lessee the leased thing in a good state of repair, together with its accessories.

(2) The thing shall be considered to be in a good state of repair if in a state stipulated in the contract, or, in the absence of a contract, in a condition that ensures its enjoyment for the purpose for which the contract was entered into.

### **Maintaining the Thing in a Good State of Repair**

Article 522

(1) The lessor shall maintain the thing in a good state of repair during the term of the lease contract and shall carry out all the necessary repairs to keep it in such a state.

(2) He shall reimburse the lessee for any expenses incurred by the lessee in connection with the maintenance of the thing that the lessor should be obligated to perform himself.

(3) Costs of small repairs due to the regular enjoyment of the thing, as well as the costs of enjoyment itself, shall be borne by the lessee.

(4) The lessee shall notify the lessor of any repairs needed.

### **Termination of Contract and Reduction of Rent Due to Repairs**

Article 523

(1) Where the necessary repairs of the leased thing interfere significantly with its enjoyment over a longer period of time, the lessee may terminate the contract.

(2) He shall be entitled to a reduction of the rent in proportion with the limitation that such repairs impose on the enjoyment of the thing.

### **Alterations in the Leased Thing**

Article 524

(1) The lessor may not make any alterations in the leased thing without approval from the lessee during the term of the lease, where this would interfere with the enjoyment of the leased thing.

(2) Where the alterations cause a diminished enjoyment of the thing, the rent shall be reduced proportionately.

### **Liability for Material Defects**

Article 525

(1) The lessor shall be liable towards the lessee for all defects in the leased thing that interfere with its agreed or regular enjoyment, irrespective of the fact whether he knew of such defects or not and for any defects in the characteristics or traits either stipulated in the contract or implied.

(2) Minor defects shall not be taken into account.

### **Defects Not Covered by Lessor's Liability**

#### Article 526

(1) The lessor shall not be liable for any defects in the leased thing that the lessee knew about at the moment of entering into the contract or that he could not have known about.

(2) However, the lessor shall be liable for any defects in the leased thing of which the lessee remained unaware due to gross negligence, where the lessor knew about such a defect and deliberately failed to notify the lessee thereof.

#### **Expanded Liability for Material Defects**

##### Article 527

The lessor shall be liable for any defects in the leased thing where he has claimed that it had no defects.

#### **Contractual Exclusion or Limitation of Liability**

##### Article 528

(1) Liability for material defects in the leased thing may be contractually excluded or limited.

(2) The provision of the contract excluding or limiting this liability shall be null and void if the lessor knew about a defect and deliberately failed to notify the lessee about it or if the defect is such that it renders impossible the enjoyment of the leased thing or if the lessor has imposed such a provision using its monopolistic influence.

#### **Notifying the Lessor about Defects and Dangers**

##### Article 529

(1) The lessee shall notify the lessor without undue delay about any defect in the leased thing detected during the term of the lease, except where the lessor knows about such a defect.

(2) He shall also notify the lessor about any unforeseeable danger that might threaten the leased thing during the term of the lease, to enable him to take the necessary measures.

(3) The lessee who fails to notify the lessor about a defect detected in the thing or about any danger threat, of which the latter has no knowledge, the lessee shall lose the right to compensation for damages sustained by him as a result of such defects or danger to the leased thing and shall be obligated to compensate the lessor for any damages sustained by the lessor because of that.

#### **Rights of the Lessee in Case of Defects in the Thing**

##### Article 530

(1) Where the leased thing has a defect at the moment of its delivery that cannot be removed, the lessee may choose to, either terminate the contract or demand a reduction of rent.

(2) Where the thing has a defect that may be removed without greater inconveniences for the lessee and the delivery of the thing within a specified time limit does not constitute an important component element of the contract, the lessee may demand the lessor either to remove any such defect within an acceptable time limit or to reduce the rent.

(3) Where the lessor fails to remove the defect within the time limit set by the lessee, the lessee may terminate the contract or demand a reduction of rent.

(4) In any case, the lessee shall be entitled to damages compensation.

(5) The provisions of this Article shall apply equally in cases of defects detected during the term of the lease and in case where the thing lacks a characteristics that it ought to

possess under the contract or customarily or in case when it loses such a characteristics during the term of the lease.

### **Responsibility of the Lessor for Legal Defects**

#### Article 531

(1) Where a third party lays claim to the leased thing or part thereof and approaches the lessee with its claim, and where such a party arbitrarily takes the thing from the lessee, the lessee shall be obliged to notify the lessor thereof, except where the lessor is already aware of that; failing that, the lessee shall be held liable for the damage.

(2) Where it is determined that a third party has a rightful claim that fully excludes the right of the lessee to the enjoyment of the thing, the lease contract shall be terminated by operation of law, and the lessor shall be obligated to compensate the lessee for the damages.

(3) When the right of a third party only restricts the right of the lessee, the latter may either terminate the contract or demand a reduction of rent and, in each case, demand compensation for damages.

### **III OBLIGATIONS OF THE LESSEE**

#### **Contractual Enjoyment of the Thing**

##### Article 532

(1) The lessee shall enjoy the thing with diligence of an orderly and conscientious businessman and with reasonable host diligence.

(2) He shall be allowed to enjoy it only in accordance with the contractual or intended enjoyment of the thing.

(3) He shall be liable for any damage arising from the enjoyment of the leased thing which is in contravention of its contractual or intended enjoyment, irrespective of the fact whether it was he who enjoyed the thing or another person acting on his behalf, a sublessee or any other person for whom he has made it possible to enjoy the thing.

#### **Cancellation Due to Anti-Contractual Enjoyment**

##### Article 533

Where the lessee continues, even after being warned by the lessor not to do so, to enjoy the thing in a manner which is in contravention of the contract or the thing's intended purpose or neglect its maintenance and where there is a threat that serious damage might be inflicted on the lessor, the lessor may cancel the contract without notice.

#### **Rent Payment**

##### Article 534

(1) The lessee shall pay the rent within the time limits stipulated in the contract or regulated by law, or in the absence of a contract and law, in accordance with the customs in the place of delivery of the thing to the lessee.

(2) Unless otherwise agreed or customary in the place of delivery of the thing, rent shall be paid semi-annually where the term of the lease is one or more years; where the term of the lease is less than one year, rent shall be paid after expiry of the lease term.

#### **Cancellation Due to Non-Payment of Rent**

##### Article 535

(1) The lessor may cancel a lease contract in case of failure by the lessee to pay the rent within 15 days from the date when he was invited by the lessor to make the payment.

(2) However, the contract shall remain in force if the lessee pays due rent before the

cancellation is communicated to him.

### **Surrender of the Leased Thing**

Article 536

- (1) The lessee shall hold the leased thing and surrender it undamaged after the term of the lease.
- (2) Unless otherwise agreed, the thing shall be surrendered in the place where it was delivered.
- (3) The lessee shall not be liable for fair wear and tear of the thing resulting from its regular enjoyment nor for any damages attributable to its ageing.
- (4) Where he has made any alterations in the thing during the term of the lease, he shall restore the thing to its condition at the moment of its delivery for lease, unless otherwise stipulated.
- (5) He may remove any accessories added to the thing, where these can be separated from the thing without causing any damage thereto, but the lessor may keep them provided he reimburses the lessee for their value at the moment of surrender.

## **IV SUBLEASE**

### **When Thing Can Be Subleased**

Article 537

- (1) Unless otherwise agreed, the lessee may sublease the leased thing, provided no damage is inflicted therewith on the lessor.
- (2) The lessee shall warrant to the lessor that the sublessee will enjoy the thing in accordance with the lease contract.

### **Cancellation Due to Illicit Sublease**

Article 538

The lessor may cancel a lease contract if the leased thing has been subleased without his permission where that is required by law or contract.

### **Lessor's Direct Demand**

Article 539

The lessor may, for the purpose of collecting his claims on the lessee arising from the lease, demand directly from the sublessee the payment of the amounts owed by him to the lessee under the sublease.

### **End of Sublease By Operation of Law**

Article 540

A sublease shall end in each case with the expiry of the lease.

## **V ALIENATION OF THE LEASED THING**

### **Alienation after Delivery for Lease**

Article 541

- (1) In case of alienation of the thing after its delivery for lease, the acquirer of the thing shall take the place of the lessor and assume his rights and obligations arising from the lease towards the lessee.
- (2) The acquirer may not demand from the lessee to deliver the thing to him before expiry of the lease term and where the lease term has not been agreed contractually or by law, before expiry of the period of notice.
- (3) The transferor's liability shall be that of a solidary guarantor for the acquirer's obligations towards the lessee arising from the lease.

### **Right to Rent**

#### Article 542

(1) Unless otherwise agreed, the acquirer of the thing delivered for lease shall be entitled to rent as of its first next payment due after the acquisition of the thing and if the transferor has collected such rent in advance, he shall be obligated to transfer it to the acquirer.

(2) As of the date of receipt of notification regarding the alienation of the leased thing, the lessee shall make rent payments to the acquirer only.

#### **Alienation of the Leased Thing Prior to Its Delivery to the Lessee**

#### Article 543

(1) Where the thing which is the subject of a lease contract is delivered to the acquirer instead of the lessee, the acquirer shall take the place of the lessor and assume his obligations towards the lessee if at the moment of entering into a contract of alienation he was aware of the existence of such a lease contract.

(2) The acquirer who at the moment of entering into a contract of alienation is not aware of the existence of a lease contract shall not be obligated to deliver the thing to the lessee and the lessee may only demand compensation for damages from the lessor.

(3) The transferor's liability for the acquirer's obligations towards the lessee arising from the lease shall be that of a solidary guarantor.

#### **Cancellation of Contract On Account of Alienation of Thing**

#### Article 544

Where, due to alienation of the leased thing, the rights and obligations of the lessor are transferred to the acquirer, the lessee may cancel the contract, in accordance with the legally prescribed period of notice.

### **VI END OF LEASE**

#### **Expiry of the Term**

#### Article 545

(1) A lease contract entered into for a fixed term shall end upon expiry of the term of the lease.

(2) The same applies in cases where, in the absence of consent of the parties to the contract, the term of lease is determined by law.

#### **Tacit Lease Renewal**

#### Article 546

(1) Where the lessee continues to enjoy the thing after expiry of the lease term without opposition from the lessor, it shall be deemed that a new lease contract has been entered into for an indeterminate term, under the same conditions as the previous contract.

(2) Security provided by third parties for the initial lease shall terminate upon expiry of the initial lease term.

#### **Cancellation**

#### Article 547

(1) Lease contract with an indeterminate term or whose term may not be determined from the circumstances or local customs shall terminate by cancellation of either party in accordance with the specified period of notice.

(2) Where the length of the period of notice is not stipulated by contract, law or local customs, it shall be eight days, with the exception that no notice can be given at an inopportune moment.

(3) Where the leased things pose a health threat, the lessee may cancel the contract

without observing the period of notice, even if he was aware of that at the moment of entering into the contract.

(4) The lessee may not waive the right referred to in paragraph 3 of this Article.

### **Destruction of Thing Due to Force Majeure**

Article 548

(1) The lease shall terminate in case of destruction of the thing due to force majeure.

(2) In case of partial destruction or damage of the leased thing, the lessee may terminate the contract or keep the lease and demand an appropriate reduction of rent.

### **Death**

Article 549

In case of death of the lessee or the lessor, the lease shall continue with his successors, unless agreed otherwise.

Section 8

## **RENTAL CONTRACT**

### **I GENERAL PROVISIONS**

#### **Definition**

Article 550

Under a rental contract, the lessor undertakes to deliver to the lessee a specified thing for use and the lessee undertakes to pay the lessor a specified rent therefor.

#### **Lease Governed by Special Regulations**

Article 551

The provisions of this Section shall apply subordinately to lease regulated by special laws.

#### **Form**

Article 552

A rental contract shall be drawn up in a written form.

### **II OBLIGATIONS OF THE LESSOR**

#### **Delivery of the Thing**

Article 553

(1) The lessor shall deliver the thing to the lessee in a condition fit for the agreed use and maintain it as such.

(2) Where the thing is delivered in a condition unfit for the agreed use or in a condition that would significantly limit its use, the lessee may terminate the contract or demand a reduction of rent.

(3) In case of termination of the contract, the lessee shall be entitled to damages compensation due to non-fulfilment of the obligation.

#### **Maintenance of the Thing and Public Burdens**

Article 554

(1) To maintain the thing in a condition fit for the agreed use, the lessor shall be obligated to make the necessary repairs in due time and at his own cost, and the lessee shall be obligated to allow that.

(2) The lessor shall reimburse the lessee for any repair costs borne by the lessee, either because the repairs could not wait or because the lessor failed to make them in due time after being notified about them.

(3) Costs of small repairs and costs of regular use of the thing shall be borne by the lessee.

(4) The lessee shall notify the lessor without delay about any repair needs; failing that, he shall be liable for any damages arising there from.

(5) The lessor shall be liable for the payment of any taxes or other public burdens in respect of the rented thing.

#### **Termination of Contract and Reduction of Rent Due to Lack of Maintenance**

##### **Article 555**

Where, during the term of the lease, the thing deteriorates to such an extent that it is no longer fit for the agreed use or where its use is significantly diminished over an extended period of time due to the needed repairs and the lessee is not responsible for that, the lessee shall have the right to obtain a reduction of rent, or even terminate the contract if the thing is not made fit for use within an acceptable period of time.

#### **Prohibition of Alterations to the Rented Thing**

##### **Article 556**

(1) The lessor may not make any alterations to the rented thing that would interfere with its use without approval from the lessee.

(2) In case of alterations to the thing that cause its diminished use or deterioration in its agreed use, the lessee shall be entitled to a proportionate reduction of rent.

#### **Liability for Material Defects**

##### **Article 557**

(1) The lessor shall be liable for any defects in the thing that interfere with its agreed or regular use, irrespective of the fact whether he knew of such defects or not and for any lack of characteristics or traits stipulated in the contract, except minor defects.

(2) The lessor shall not be liable for any defects of which the lessee was aware at the moment of entering into the contract or of which he could not have not known, but he shall be liable for any defects of which the lessee remained unaware due to gross negligence on the part of the lessor who was aware of such defects but chose to withhold such information from him.

(3) The lessor shall be liable for any defects in the thing where he claimed that it had none.

(4) The lessee shall notify the lessor without delay about any defect that would appear during the term of the lease, unless the lessor is aware of such a defect; failing that, he shall lose the right to damages compensation on account of such a defect and shall reimburse the lessor for any damage he has sustained because of that.

(5) Liability provisions shall also apply to defects in the thing appearing during the term of the lease.

#### **Exclusion and Limitation of Liability**

##### **Article 558**

(1) Liability for material defects in the rented thing may be contractually excluded or limited.

(2) The provision of the contract excluding or limiting liability shall be null and void if the lessor knew about the defects and deliberately withheld such information or if the defect is such that it prevents the use of the thing or if the lessor has imposed such a provision using his monopolistic influence or favoured economic status.

#### **Rights of the Lessee in Case of Defects**

#### Article 559

In case of failure by the lessor to remove the defect within the time limit set by the lessee, the lessee may terminate the contract or demand a reduction of rent and in both cases he shall also be entitled to damages compensation.

#### **Liability for Legal Defects**

##### Article 560

(1) Where a third party lays claim to the rented thing or part thereof and approaches the lessee with its claim, or arbitrarily takes the thing from the lessee, the lessee shall be obligated to notify the lessor thereof, except where the lessor is already aware of that; failing that, he shall be held liable for the damage.

(2) Where it is determined that a third party has a rightful claim that fully excludes the right of the lessee to the use of the thing, the rental contract shall be terminated by operation of law, and the lessor shall be obligated to compensate the lessee for the damages.

(3) When the right of a third party only restricts the right of the lessee, the latter may, if he so chooses, either terminate the contract or demand a reduction of rent and in each case he may demand damages compensation.

### **III OBLIGATIONS OF THE LESSEE**

#### **Contractual Use of the Thing**

##### Article 561

(1) The lessee shall be obliged to use the thing in accordance with the contract and its intended use and he shall act with diligence of an orderly and conscientious businessman and with reasonable host diligence.

(3) He shall be liable for any damage arising from the use of the thing which is contrary to its agreed or intended use, irrespective of the fact whether it was he who used the thing or another person acting on his behalf, a sublessee or any other person to whom he has given the use of the thing.

#### **Cancellation Due to Anti-Contractual Use**

##### Article 562

Where the lessee continues, even after being warned by the lessor not to do so, to use the thing contrary to the contract or its intended use, neglect its maintenance and cause damages to the thing, particularly where he gives to a third party the use of the thing, the lessor may cancel the contract without notice.

#### **Rent Payment**

##### Article 563

(1) The lessee shall pay the rent within the time limits stipulated in the contract or regulated by law, or, in the absence of a contractual or legislative provision, as customary in the place where the thing is delivered to the lessee.

(2) Unless otherwise agreed or regulated, rent shall be paid after expiry of the lease term or semi-annually where the term of the lease is one or more years.

(3) Where the lease is entered into for an indeterminate term, unless otherwise stipulated, rent shall be paid monthly.

#### **Cancellation Due to Non-Payment of Rent**

##### Article 564

(1) The lessor may cancel a rental contract regardless of the notice period in case of lessee's default on two consecutive rent payments or significant portion thereof.

(2) However, the contract shall remain in force if the lessee pays due rent before the



cancellation has been communicated to him.

### **Lien and Right of Retention**

#### Article 565

The lessor of an immovable thing shall have a lien on the thing brought in by the lessee for due rent and other claims arising from the rental contract that may be the subject of seizure and may retain them until settlement of such obligations.

### **Surrender of the Thing**

#### Article 566

- (1) The lessee shall surrender the rented thing upon termination of the lease.
- (2) The lessee shall not be liable for fair wear and tear of the thing resulting from its regular use nor for any damages attributable to its ageing.
- (3) Unless otherwise agreed, the lessee shall, where he has made any alterations to the thing, restore the thing to the condition in which he received it.
- (4) The lessee may take away any accessories he added to the thing, where these can be removed without damaging it, but the lessor shall have the right to keep them provided he reimburses the lessee for their value at the moment of surrender.

### **IV SUBLEASE**

#### Article 567

- (1) The lessee may sublease the rented thing or assign his lease to another person on some other basis only subject to the lessor's approval.
- (2) The lessee guarantees the lessor that the sublessee will use the thing in accordance with the rental contract.

### **Relationship between the Lessor and the Sublessee**

#### Article 568

The lessor may, for the purpose of collecting his claims against the lessee, demand directly from the sublessee payment of the amounts owed by him to the lessee on the basis of the rental contract.

### **End of Sublease by Operation of Law**

#### Article 569

A sublease shall end in each case upon expiry of the lease.

### **V ALIENATION OF THE RENTED THING**

#### **Alienation after Delivery to the Lessee**

#### Article 570

- (1) In case of alienation by the lessor of the rented thing after its delivery to the lessee, the acquirer shall assume the rights and obligations of the lessor under the rental contract.
- (2) The acquirer may not demand from the lessee a surrender of the thing before expiry of the lease term, or where the lease term has not been determined by the contract or law, before expiry of the notice period.
- (3) As a solidary guarantor, the person alienating the thing shall be liable for the acquirer's obligations towards the lessee under the rental contract, unless otherwise agreed.

### **Right to Rent**

#### Article 571

- (1) Unless otherwise agreed, the acquirer shall have the right to rent as of the first due payment following the acquisition of the thing, but if the lessor has collected such rent in advance, he shall be obliged to give it to him.

(2) As of the moment of receipt of notification about the alienation of the rented thing, the lessee may make valid rent payments to the acquirer only.

#### **Alienation of the Rented Thing Before Delivery to the Lessee**

##### *Article 572*

(1) Where the thing which is the subject of a rental contract is alienated and delivered to the acquirer instead of the lessee, the acquirer shall assume the rights and the obligations of the lessor if at the moment of entering into a contract of alienation he was aware of the existence of such a rental contract or ought to have been aware of it, given the circumstances.

(2) The acquirer who at the moment of entering into a contract of alienation is not aware and needs not to be aware of the existence of a rental contract shall not be obligated to deliver the thing to the lessee and the lessee in such a case may only demand compensation for damages from the lessor.

(3) As a solidary guarantor, the person alienating the thing shall be liable for the acquirer's obligations towards the lessee under the rental contract, unless otherwise agreed.

#### **Cancellation of Contract Due to Alienation of the Thing**

##### *Article 573*

Where, due to alienation of the rented thing, the rights and obligations of the lessor are transferred to the acquirer, the lessee may cancel the rental contract in accordance with the legally prescribed period of notice.

## **VI END OF LEASE**

### **Expiry of Term**

##### *Article 574*

(1) A rental contract entered into for a fixed term or whose term is fixed by law shall end upon expiry of that term.

(2) Where the lessee continues to use the thing after expiry of the lease term stipulated in the contract without opposition from the lessor, it shall be deemed that the term of the contract has been extended for an indeterminate term under the same conditions.

### **Tacit Renewal of the Rental Contract**

##### *Article 575*

(1) A rental contract entered into for a fixed term shall be deemed tacitly renewed for the same term unless either of the parties to the contract, not later than thirty days before expiry of the term, notifies in writing the other party that it does not wish to enter into a next fixed term contract.

(2) Where one of the parties wishes to enter into a rental contract for the next term, but with certain modifications in its contents, it shall notify the other party thereof within the time limit and in the manner referred to in paragraph 1 of this Article, and where the other party does not accept the offer within fifteen days from the receipt of the notification, it shall be deemed that he does not wish to enter into a contract for the next period.

### **Cancellation**

##### *Article 576*

(1) A rental contract with indeterminate term or whose term cannot be determined on the basis of the circumstances or local customs may be terminated by cancellation of either party in accordance with the stipulated period of notice.

(2) Where the duration of the period of notice has not been stipulated by the contract

or by law or local customs, it shall be eight days in the case of rented movable and thirty days in the case of rented immovable thing.

(3) Cancellation of a rental contract for immovable thing shall be made in writing.

(4) Where the rented thing is in such a condition that its use presents a health threat, the lessee may cancel the contract without notice, irrespective of the fact whether he was aware of such a condition at the time of his entering into the contract.

(5) Waiver of the rights of the lessee referred to in paragraph 4 of this Article shall not have legal effect.

### **Death and Dissolution of a Party to the Contract**

#### Article 577

(1) In case of lessor's death or his dissolution as a legal person, the rights and obligations arising from the rental contract shall be transferred to his heir or his legal successor.

(2) The same shall apply in the case of death of a lessee or dissolution of a lessee as a legal person.

### **Perishing of the Thing**

#### Article 578

(1) The lease shall terminate if the rented thing perishes by force majeure or event beyond control of either of the parties to the contract.

(2) In the case of partial perishing or partial damage to the thing, the lessee may terminate the contract or demand a reduction of rent.

#### Section 9

### **LIFELONG SUPPORT CONTRACT**

#### **Definition**

##### Article 579

(1) Under a lifelong support contract, one party (provider of support) undertakes to support the other party or a third party (recipient of support) until his death and the other party undertakes to convey to the former all or a portion of his property, with the acquisition of things and rights being postponed until after the death of the recipient of support.

(2) Unless otherwise agreed, a lifelong support contract shall also comprise all accessories of the things or rights that are the subject of the contract.

#### **Form**

##### Article 580

(1) A lifelong support contract shall be drawn up in a written form and authenticated by a judge of the relevant court or notarized or be drawn up as a notarial contract.

(2) During authentication or drawing up, the authorized person shall read the contract to the parties thereto and warn them of its consequences.

#### **Entry in the Public Book**

##### Article 581

(1) Where immovable property is the subject of a lifelong support contract, the provider of support shall be authorised to require registration of such contract in the land register.

(2) Where the subject of a lifelong support contract is a movable property or some right for which a public register is kept, the provider of support shall be authorised to require that such contract be registered or in some other way adequately entered into such public register.

## **Liability for Debts**

### Article 582

The provider of support shall not be liable for the debts of the recipient of support after his death, but it may be agreed that he shall be liable for the debts of the recipient of support towards individual creditors existing at the moment of entering into the contract.

## **Termination of Lifelong Support Contract**

### Article 583

(1) Parties to the contract may terminate a lifelong support contract by mutual consent after its fulfilment has commenced.

(2) Where under a lifelong support contract the parties to the contract have agreed to living together and their mutual relations deteriorate to such an extent that their living together becomes unbearable, each party may request from the court to terminate the contract.

(3) Each party may demand that the contract be terminated in case of failure by the other party to fulfil its obligations.

## **Effects of Change of Circumstances**

### Article 584

(1) General provisions of this Act governing changes of circumstances shall apply to lifelong support contracts.

(2) The court may change the right of the recipient of support into a life annuity if this suits both parties to the contract.

## **Effect of Death of the Provider of Support on the Contract**

### Article 585

(1) In case the provider of support dies before the recipient of support, his rights and obligations arising from the contract shall pass to his spouse or his descendants who are called to the succession, provided they agree to it.

(2) Where they do not agree to the extension of the lifelong support contract, the contract shall be terminated and they shall not be entitled to reimbursement for the support provided.

(3) Where the spouse and descendants of the provider of support are not in a position to take over the contractual obligations, they shall have the right to demand from the recipient of support reimbursement for the support the recipient of support has received from the provider of support.

(4) The court shall fix the amount of reimbursement arbitrarily, taking into account the economic situation of the recipient of support and of persons authorised for extension of the lifelong support contract.

### Section 10

## **CONTRACT FOR SUPPORT UNTIL DEATH**

### **Definition**

#### Article 586

(1) Under a contract for support until death, one party (provider of support) undertakes to support the other party or a third party (recipient of support) until his death and the other party undertakes to make an *inter vivos* transfer of all or part of his property to the provider of support.

(2) The provider of support shall acquire the things or the rights which are the subject of the contract for support until death when, on the basis of such a contract, such things or such rights are transferred onto him in a manner provided for by law regulating acquisition.

### **Retention of the Right to Real Burden**

Article 587

Where the recipient of support gives his immovable property, he may stipulate that a real burden of support be placed on this property.

### **Effect of Death of the Provider of Support on the Contract**

Article 588

(1) Where the provider of support dies before the recipient of support, his rights and obligations arising from the contract shall be transmitted to his heirs, provided they agree to it.

(2) Where they do not agree to the extension of the contract for support until death, the contract shall be terminated and they shall have no right to demand reimbursement for the support provided and shall be obligated to return to the recipient of support what the provider of support acquired on the basis of such a contract.

(3) Where heirs of the provider of support are not in a position to return what the provider of support has acquired on the basis of the contract for support until death, they shall be obligated to reimburse the recipient of support for the value acquired.

(4) Where heirs of the provider of support are not in a position to take over the contractual obligations, they shall have the right to demand reimbursement for the support provided by the provider of support to the recipient of support but they shall be obligated to return to the recipient of support what the provider of support has acquired on the basis of the contract for support until death.

(5) The court shall fix the amount of reimbursement referred to in paragraphs 3 and 4 of this Article arbitrarily, taking into account the economic situation of the recipient of support and of persons authorised for extension of the contract for life-support and the rights enjoyed by the recipient of support on the basis of the real burden. (ueberpruefen!!!)

### **Application of the Provisions of Lifelong Support Contract**

Article 589

The provisions of this Act regulating lifelong support contracts shall apply *mutatis mutandis* to contracts for support until death.

Section 11

## **CONTRACT FOR WORK**

### **I GENERAL PROVISIONS**

#### **Definition**

Article 590

Under a contract for work, the contractor undertakes to carry out certain work, such as make or repair a thing, physical or intellectual work etc. in exchange for a price that the ordering party undertakes to pay.

#### **Relation towards Sale**

Article 591

(1) A contract under which one party undertakes to make a certain movable from own material shall be, for the avoidance of doubt, considered a sale.

(2) But the contract shall remain a contract for work where the ordering party undertakes to provide substantial portion of the material needed to make the thing.

(3) In any case, a contract shall be considered a contract for work where the parties to the contract have in mind a particular value of the contractor's work.

#### **Quality of Material Provided by the Contractor**

Article 592

(1) Where it is agreed that the contractor should make the thing out of own material, and the quality is not agreed, the contractor shall provide as a minimum a material of medium quality.

(2) He shall be accountable to the ordering party for the quality of the material used in the same way as the seller.

## **II SUPERVISION**

### **Article 593**

The ordering party shall have the right to supervise the work being carried out and give instructions where appropriate and the contractor shall be obligated to make it possible for him.

## **III AWARD OF CONTRACTS THROUGH BIDDING**

### **Award of Contracts Based on Prices**

#### **Article 594**

(1) An invitation for bids sent to a specified or an unspecified number of persons for the carrying out of specific works, under specific conditions and with specific guarantees, shall obligate the person issuing the invitation to award the contract to the person offering the lowest price, unless the person issuing the invitation for bids has excluded this obligation from the invitation for bids.

(2) Where the obligation to award a contract has been excluded, the invitation for bids shall be deemed an invitation to interested parties to submit their contract offers under the published conditions.

### **Invitation for Bids for an Artistic or Technical Solution**

#### **Article 595**

An invitation for bids sent to a specified or an unspecified number of persons for an artistic or technical solution of the planned work obligates the person issuing the invitation to award a contract to the bidder, under the conditions contained in the invitation for bids, whose solution is accepted by the commission comprised of members announced previously, unless the person issuing the invitation for bids has excluded this obligation from the invitation for bids.

## **IV OBLIGATIONS OF THE CONTRACTOR**

### **Defects in the Material and Instructions**

#### **Article 596**

(1) The contractor shall warn the ordering party of any defects in the material provided by the ordering party which he has noticed or ought to have noticed; failing that he shall be liable for damages.

(2) Where the ordering party has instructed that the thing be made from a material whose defects have been brought to his attention by the contractor, the contractor shall be obligated to act in accordance with the client's instruction, unless it is obvious that the material is unfit for the work ordered or if the use of such material might harm the reputation of the contractor, in which case the contractor may terminate the contract.

(3) The contractor shall warn the ordering party of any defects in his orders and of any other circumstances of which he was aware or ought to have been aware, that might be of significance for the work ordered or for its timely execution; failing that, he shall be liable for damages.

### **Obligation to Perform Work**

#### **Article 597**

(1) The contractor shall perform the work in accordance with the contract and the rules of the profession.

(2) He shall perform it within a specified period of time and where such time is not specified, within a period of time reasonably required to perform such work.

(3) He shall not be liable for any delays due to delayed supply of material by the ordering party, alterations required by the ordering party or failure by the ordering party to advance him the amounts due and generally for any delay caused by the client's behaviour.

#### **Termination of Contract On Account of Deviation from Agreed Conditions**

##### Article 598

(1) Where it appears during the performance of the work that the contractor does not act in conformity with the conditions of the contract and generally fails to work properly, and that the work performed will be defective, the ordering party may warn the contractor thereof and set him an appropriate time limit to bring his performance in line with his obligations.

(2) Where the contractor fails to act in accordance with the instruction from the ordering party until expiry of the given time limit, the latter may terminate the contract and demand damages compensation.

#### **Termination of Contract Before Term**

##### Article 599

(1) Where the performance of the work within a specified time limit constitutes an essential element of the contract, and the contractor is so late with the commencement or completion of the work that it is obvious that he will not complete it within the stipulated time limit, the ordering party may terminate the contract and demand damages compensation.

(2) He shall also have that same right when the time limit is not an essential element of the contract and it is clear that the ordering party, given such a delay, would not have an interest in the fulfilment of the contract.

#### **Employment of Third Party to Perform the Work**

##### Article 600

(1) Unless a contract or the nature of the work provide otherwise, the contractor is not obligated to perform the work personally.

(2) The performance of the work, however, remains the responsibility of the contractor even where he does not perform the work personally.

#### **Liability for Co-Workers**

##### Article 601

The contractor shall be liable for persons employed by him to perform the work that he took upon himself to perform as if he performed it personally.

#### **Direct Demands of Contractor's Co-workers on the Ordering Party**

##### Article 602

To settle their claims against the contractor, his co-workers may turn directly to the ordering party to demand settlement by charging the amount owed by him to the contractor at a given moment.

#### **Delivery of Completed Thing to the Ordering Party**

##### Article 603

(1) The contractor shall deliver to the ordering party the completed or repaired thing.

(2) The contractor shall be relieved of that obligation if the thing he completed or repaired perishes by reason beyond his control.

#### **V LIABILITY FOR DEFECTS**

### **Examination of the Work Performed and Notification**

#### Article 604

- (1) The ordering party shall examine the work performed as soon as practicably possible and shall notify the contractor without delay of any defects found.
- (2) Where the ordering party fails to examine and accept the work performed without good reason, after being invited by the contractor to do so, the work shall be deemed to have been accepted.
- (3) After examination and acceptance of the work performed, the contractor shall no longer be liable for any defects that could have been detected by means of a standard examination, except where he knew about them but failed to reveal them to the ordering party.

### **Hidden Defects**

#### Article 605

- (1) Where a defect is detected at a later stage which could not be detected by means of a standard examination, the ordering party may nevertheless refer to such a defect, provided he notifies the contractor about it as soon as possible, and not later than within one month from its detection.
- (2) After expiry of two years from the acceptance of the work, the ordering party may no longer refer to any defects.

### **Loss of Rights**

#### Article 606

- (1) The ordering party duly notifying the contractor about defects in the work performed shall lose his rights after two years following such notification, unless he was prevented to exercise such rights by fraudulent action on the part of the contractor.
- (2) However, even after expiry of this time limit, the ordering party shall have the right, provided he has duly notified the contractor about the defects, to object to the contractor's demand for payment and state his demand for reduction of payment due to the contractor and damages compensation.

### **When Contractor Loses Rights**

#### Article 607

The contractor may not invoke a liability provision for defects where defects relate to the facts of which he was aware or of which he could not have been unaware and which he failed to notify to the ordering party.

### **Right to Demand Removal of Defects**

#### Article 608

- (1) The ordering party duly notifying the contractor about a defect in the work performed may demand from him to remove any such defect within an appropriate time limit.
- (2) He shall also be entitled to compensation for damages sustained.
- (3) Where the removal of defects implies excessive costs, the contractor may refuse to carry out such removal, and in such a case the ordering party shall be entitled to choose between a reduction of price or termination of the contract and right to damages compensation.

### **Termination of Contract Due to Major Defects**

#### Article 609

When the work performed has a defect which makes it unfit for use or when it is performed contrary to the explicit terms of the contract, the ordering party may, without asking for previous removal of defects, terminate the contract and demand damages



compensation.

### **Rights of the Ordering Party in Case of Minor Defects**

Article 610

- (1) When the work performed has a defect which does not make it unfit for use or when the work is not performed contrary to the explicit conditions of the contract, the ordering party shall allow the contractor to remove such a defect.
- (2) The ordering party may grant the contractor an appropriate time limit to remove the defect.
- (3) Where the contractor fails to remove the defect within the given time limit, the ordering party may either remove the defect at the expense of the contractor or reduce price or terminate the contract.
- (4) Where a defect is an insignificant one, the ordering party shall not be able to use his right to contract termination
- (5) In each case he shall also be entitled to damages compensation.

### **Reduction of Price**

Article 611

The price shall be reduced by the amount of difference between the value of the work with no defects at the time of entering into the contract and the value that such work would have had at that time with defects.

## **VI OBLIGATIONS OF THE ORDERING PARTY**

### **Acceptance of the Work Performed**

Article 612

The ordering party shall be obligated to accept the work performed in conformity with the provisions of the contract and rules of the profession.

### **Determining the Price and Payment**

Article 613

- (1) The price of the work shall be fixed by the contract unless fixed by mandatory rates or some other mandatory enactment.
- (2) Where the price has not been fixed, it shall be fixed by court on the basis of the work performed, in accordance with the time normally needed to perform such work and the usual price paid for such a particular type of work.
- (3) The ordering party shall not be obligated to pay the price before examining the work performed and approving it, unless otherwise agreed.
- (4) The same shall apply where the performance of the work and delivery are agreed in successive phases.

### **Estimate with Express Warranty**

Article 614

- (1) Where the price is fixed on the basis of an estimate with express warranty being given by the contractor as to its accuracy, the contractor may not demand an increase in the price even if he has put in more work in performing the work and if the performance of work demanded costs in excess of those planned.
- (2) This does not preclude the application of rules governing contract termination and amendments due to a change of circumstances.
- (3) Where the price is fixed on the basis of an estimate without express warranty being given by the contractor as to its accuracy, and where in the course of performing the work exceeding the estimate appears inevitable, the contractor shall notify the ordering party

thereof without delay, or otherwise lose his right to increased costs.

## **VII RISK**

### **Where the Contractor Provides the Material**

#### Article 615

(1) Where the contractor provides the material for the production of a thing and the thing sustains damage or perishes due to any reason before its delivery to the ordering party, the risk shall be borne by the contractor and he shall have neither right to remuneration for the material provided nor for his work.

(2) Where the ordering party has examined the work performed and approved it, the work shall be deemed to have been delivered to the ordering party and to have been left in contractor's custody for safekeeping.

(3) Where the ordering party is in default due to a failure to accept the work offered for delivery, the risk of the work perishing accidentally or the risk of its accidental damage shall be borne by the ordering party.

### **Where the Ordering Party Provides the Material**

#### Article 616

(1) The risk of a thing perishing accidentally or of its accidental damage shall be borne by the ordering party if he provided the material for its production.

(2) In such a case the contractor shall be entitled to compensation only if the thing perished or was damaged after the ordering party defaulted or if the ordering party failed to act on an invitation duly extended by the contractor to examine the thing.

### **Risks Associated with Partial Delivery**

#### Article 617

Where it has been agreed that the ordering party shall examine and accept parts of the work as they are completed, the contractor shall be entitled to obtain payment for every part examined and approved by the ordering party, even where these may perish afterwards for reasons which are not his fault.

## **VIII RIGHT OF RETENTION**

#### Article 618

To ensure payment of the price for the work performed and the material used and other claims arising from a contract for work, the contractor shall have the right of retention in respect of the things he produced or repaired and other things provided by the ordering party in connection with his work.

## **IX END OF CONTRACT**

### **Termination by the Ordering Party**

#### Article 619

The ordering party may terminate the contract at any point before the completion of the work ordered but in such a case he shall be obligated to pay to the contractor the agreed price, reduced for the amount of costs the contractor did not have, but would have had had it not been for the termination of the contract and the amount of profit he made on the other side or the amount of profit he deliberately failed to make.

#### Section 12

## **CONSTRUCTION CONTRACT**

### **I GENERAL PROVISIONS**

#### **Definition**

#### Article 620

(1) Under a construction contract, the contractor undertakes to build within the agreed time period, in accordance with a certain project, a construction on a certain piece of land, or on such piece of land or existing construction carry out any other construction works, in exchange for a price that the ordering party undertakes to pay him.

(2) A construction contract shall be drawn up in a written form.

### **Construction**

#### Article 621

The term “construction” means buildings, dams, bridges, tunnels, water supply systems, sewage systems, roads, railroads, wells, and other constructions whose making involves large scale and complex construction works.

### **Supervision**

#### Article 622

The contractor shall enable the ordering party to carry out an on-going supervision of the work being performed as well as quantity, quality and conformity control of incorporated products.

### **Deviation from the Project**

#### Article 623

(1) For each deviation from the project or the works agreed, the contractor shall have a written approval from the ordering party.

(2) He may not demand an increase in the agreed price for the work performed without such an approval.

### **Urgent Unforeseen Works**

#### Article 624

(1) The contractor may carry out unforeseen works without prior approval from the ordering party where he could not obtain such an approval due to their urgency.

(2) Unforeseen works referred to in paragraph 1 of this Article shall be those necessary to be carried out:

- to ensure stability of the construction, prevent threat to the lives and health of people, the environment, nature, other constructions and things or stability of the neighbouring soil caused by extraordinary and unexpected events,
- to prevent damages as a result of such events, and
- in accordance with orders of competent public authorities.

(3) The contractor shall notify the ordering party about any such event and measures taken without delay.

(4) The contractor shall be entitled to fair remuneration for unforeseen works that had to be done.

(5) The ordering party may terminate the contract where such works would lead to a significant increase in the price, of which he shall notify the contractor without delay.

(6) In case of termination of the contract, the ordering party shall pay to the contractor a sum commensurate with the work carried out and a fair remuneration for the necessary costs incurred.

### **Price of Works**

#### Article 625

The price of works may be fixed per unit of work agreed (unit price) or as a total amount for the whole construction (total agreed price).

### **Change of Price**

#### Article 626

(1) Unless otherwise provided by the contract in terms of change of price, the contractor fulfilling his obligation within the agreed time limit may demand a price increase for the work performed if there was an increase, beyond his control, in the prices of elements on the basis of which the price of works was determined initially, from the moment of entering into the contract and the fulfilment of the contract, that would cause the price of the works to rise by over two percent.

(2) Where the contractor, by his own fault, fails to perform the works within the agreed time limit, he may demand a price increase for the work performed if there was an increase, beyond his control, in the prices of elements on the basis of which the price of works was determined initially, from the moment of entering into the contract and the date by which the works were agreed to be completed, that would cause the price of works, based on such new prices of elements, to rise by over five percent.

(3) In both cases, the contractor may only demand to be paid the difference between the price of works and the increase of over two and five percent, respectively.

(4) The contractor may not make any demands in respect of an increase in the prices of elements on the basis of which the price of works was determined if such increase took place after his default.

#### **Provision Stipulating Non-Variability of Prices**

##### Article 627

(1) In case where the prices of works are agreed as non-variable and the prices of elements on the basis of which the price of a work is determined increase after the contract is entered into, the contractor may, despite such a contractual provision, demand a change in the prices of works where the increase in the prices of elements, with the increase being beyond his control, is such that it would cause the price of works to rise by over ten percent.

(2) In this case too, the contractor may only demand to be paid the difference in the price which exceeds ten percent, unless the increase in the price of elements occurred after his default.

#### **Termination of Contract Due to Price Increase**

##### Article 628

(1) Where the agreed price has to be raised significantly, the ordering party may terminate the contract.

(2) In case of termination of the contract, the ordering party shall pay to the contractor a part of the agreed price commensurate with the work carried out and a fair remuneration for the necessary costs incurred.

#### **Right of the Ordering Party to Reduction of Price**

##### Article 629

(1) Where, from the moment of entering into a contract and the fulfilment of an obligation by the contractor, the prices of elements on the basis of which the price of works was determined, fall by over two percent and the works are carried out within the agreed time limit, the ordering party shall have the right to obtain a reduction of the agreed price of works in excess of that percentage.

(2) Where the prices of works are agreed as non-variable and the works are completed within the agreed time limit, the ordering party shall have the right to a reduction of the

agreed price, where the price of elements on the basis of which the price is determined decrease to such an extent that the price would be lower by over ten percent, and that for the difference in the price in excess of ten percent.

(3) In case of delay on the part of the contractor, the ordering party shall have the right to obtain a reduction of price of works commensurate with any reduction in the price of the elements on the basis of which the price of works was determined.

## **II CONSTRUCTION CONTRACT WITH "TURN-THE-KEY" PROVISION**

### **Article 630**

(1) Where the construction contract contains a "turn-the-key" provision or some other similar provision, the contractor undertakes independently to carry out all the work needed for building and use of the construction.

(2) The contract referred to in the paragraph 1 of this Article can also cover project engineering activities.

(3) The agreed price shall also cover the value of all unexpected and surplus works and it shall exclude the effect of work deficiencies on the agreed price, under the assumption that the change of the volume of agreed works has not occurred on the basis of an agreement between the contracting parties or for the reasons for which the client is deemed liable.

(4) Where more than one contractors are parties to the "turn-the-key" contract, they shall be solidarily liable towards the ordering party.

## **III LIABILITY FOR DEFECTS**

### **Application of Rules Governing Contracts for Work**

#### **Article 631**

Unless otherwise provided in the following provisions, the relevant provisions governing contracts for work shall apply appropriately to liability for defects in a construction.

### **Transfer of Rights Arising from Liability for Defects**

#### **Article 632**

The rights of the ordering party against the contractor as regards defects in a construction shall be transferred to all subsequent acquirers of the construction or parts thereof with the exception that they shall not be granted a new time limit for notification and claim but shall have that granted to the predecessor.

## **IV LIABILITY FOR ESSENTIAL REQUIREMENTS OF A CONSTRUCTION**

### **What It Consists Of**

#### **Article 633**

(1) The contractor shall be liable for any defects in the construction which relate to the fulfilment of essential legally prescribed requirements for a construction where these defects are detected within a period of ten years from delivery and acceptance of works.

(2) The contractor shall also be liable for any defects of the land where the construction was erected, detected within a period of ten years from the date of delivery and acceptance of works, except where geotechnical examination or other appropriate document has shown the land to be suitable for construction and there was no indication in the course of construction that would cause the said documents to be questioned.

(3) The same applies to the project engineer in case where the defect in the construction or land is attributable to a defect in the plan.

(4) The same applies to the person supervising the work where the defect in a construction or land is attributable to defective supervision.

(5) Their liability shall extend not only towards the ordering party but also towards any other acquirer of the construction.

(6) This liability cannot be contractually excluded or restricted.

### **Notification Obligation and Loss of Right**

#### Article 634

(1) The ordering party or any other acquirer shall notify the contractor, project engineer or person supervising the work of any defects within six months from the moment a defect is detected; failing that he shall lose the right to make claims in respect of such a defect.

(2) The right of the ordering party or any other acquirer vis-à-vis liability for defects of the contractor or project engineer shall cease within one year following the notification of the project engineer or contractor by the ordering party or the acquirer of the defect.

### **Reduction and Relief from Liability**

#### Article 635

(1) The contractor shall not be relieved from liability if in the performance of specific works he acted in accordance with the requirements of the ordering party.

(2) However, if he warned the ordering party before performance of a specific work about the threat of damage, his liability shall be reduced and where the circumstances of a specific case so warrant, he shall be relieved from liability.

### **Recourse**

#### Article 636

(1) Where the liability for damage lies with the contractor, project engineer and the person supervising the work, the liability of each of them shall be determined in accordance with their fault.

(2) The project engineer who has also been entrusted with the supervision of the planned work shall also be liable for defects in the performed work which are the fault of the contractor, if he could detect them through diligent supervision of the work but he shall have the right to demand appropriate compensation from the contractor.

(3) The person supervising the work shall also be liable for any defects in the work performed which are the faults of the contractor, if he could detect them through diligent supervision of the work, but he shall have the right to demand appropriate compensation from the contractor.

(4) The contractor who paid damages compensation due to defects in the work performed shall have the right to demand compensation from the project engineer commensurate with the defects in the work performed attributable to defects in the plans.

(5) The contractor who paid damages compensation due to defects in the work performed shall have the right to demand compensation from the person supervising the work commensurate with the defects in the work performed attributable to defective supervision.

(6) Where a person entrusted by the contractor with the performance of one part of the work is liable for a defect, the contractor shall, where he intends to demand compensation from such a person, notify that person about such defect within two months from the date he was notified about the defect by the ordering party.

#### Section 13

### **CONTRACT OF PARTNERSHIP**

## **I GENERAL PROVISIONS**

### **Definition**

#### Article 637

- (1) Under a contract of partnership, two or more persons mutually undertake to contribute their work and/or property to achieve a common objective.
- (2) Partnership is an association of persons and property without legal personality.

## **II PARTNERSHIP ASSETS**

### **Composition of Assets**

#### Article 638

- (1) Partnership assets consist of the contributions of the partners (capital) and assets acquired through operations of the partnership.
- (2) Partnership assets shall also include compensation for property destroyed, damaged or taken belonging to the partnership.
- (3) Partnership assets are common assets of the partners.
- (4) The property of the partners not contributed to common assets shall remain their own property, separate from common assets.

### **Contribution**

#### Article 639

- (1) A contribution may consist of things, rights, money, work and other goods.
- (2) Contribution of entire property shall imply only present property but where the contract also comprises future property, this shall imply only acquired and not inherited property, except where both are expressly agreed to.
- (3) A contract providing for contribution of only present or only future property shall be without effect unless a list and a description of elements constituting such contribution are provided.
- (4) A partner undertaking to contribute his work only shall be entitled to a share in the profits but not in the capital of the partnership, unless the value of his work, in terms of its assessed monetary value, is included in the capital.

### **Size of Contribution**

#### Article 640

- (1) Unless otherwise agreed, partners' contributions shall be equal.
- (2) A partner shall not be obligated to subsequently increase the agreed contribution, but if, on the ground of change of circumstances, the common objective could not be achieved without increasing the contribution, the partner refusing to increase his contribution may withdraw from a partnership or be expelled.
- (3) All partners shall, as a rule, be obligated to contribute equally towards the achievement of a common objective, regardless of the type and size of their contributions.

### **Contribution to Partnership Assets**

#### Article 641

- (1) Things and rights constituting a contribution shall become partnership assets on the basis of a partnership contract in the manner prescribed for the acquisition of certain ownership rights.
- (2) Each partner shall be liable for any material and legal defects of his contribution.
- (3) As regards the risk to be borne in case of accidental perishing or damage to a thing and liability for defects in the thing, the provisions governing lease contracts shall be applied *mutatis mutandis*, where the thing contributed consists in the enjoyment of the thing, and the

provisions of the contract of sale where the contribution consists in the ownership of the thing.

(4) The contribution consisting of money and things in terms of their assessed monetary value shall, for the avoidance of doubt, be deemed to be given into ownership.

(5) A partner may not dispose of his contribution or specific things or rights in common assets, nor request their partition.

(6) But a partner may dispose of the right to reimbursement of the expenses he had in carrying on the business of partnership, where these fall due before dissolution of the partnership, interest due to him for advance payments made and payments of amounts due to him after dissolution of the partnership.

### **III MANAGEMENT AND REPRESENTATION**

#### **Common Management**

##### Article 642

(1) The right to manage the business of a partnership shall belong to all the partners together.

(2) Decisions on managing the business of a partnership shall be reached by applying regulations governing the management of things in joint ownership.

(3) A partner contributing his work only without partaking in the capital, shall participate in the decision-making, but shall have no voting right.

#### **Transfer of Management, Representation, Ban on Competition**

##### Article 643

(1) Where, under a contract of partnership, the authorisation for managing the affairs is transferred to one or more partners, such partners shall be considered mandataries.

(2) Where the authorisation for managing the affairs is transferred to several partners, the provision of Article 642 (2) of this Act shall be applied *mutatis mutandis*, but where the contract of partnership stipulates that each partner can act separately, each of the other partners authorised to manage the business may object to an intended business activity of one of them and may prevent it from being carried on.

(3) The provisions of this Act governing mandates shall apply *mutatis mutandis* to the rights and obligations of partners entrusted with the management of the business of partnership, unless otherwise provided in the contract of partnership.

(4) No partner shall have the right to entrust the management of the business of partnership to a third party, or accept anybody to the partnership, or undertake a business activity in the pursuit of his own interests that would jeopardise the achievement of a common objective or be damaging to the partnership.

#### **Rendering of Accounts**

##### Article 644

(1) Partners entrusted with the management shall keep business books in an orderly manner and render accounts on common property balances and all income and expenses.

(2) No final settlement of accounts or distribution of profit and loss can be required before completion of a business operation, but in the case of long term business operations which earn annual income, the partners may demand that accounts be rendered and profits distributed after the end of each business year.

(3) A partner agreeing to the rendering of final settlement of accounts only or renouncing his right to demand rendering of accounts may, where he proves dishonest management practices, demand that accounts be rendered for completed and uncompleted



business operations under way.

(4) Other partners shall reimburse the partner managing the business for any expenses he incurred in that capacity and any damage sustained by him due to risks directly attributable thereto.

(5) In case of any advances in money, a partner shall be entitled to interest accruing from the day of the advance to the day of reimbursement.

(6) A partner managing the business of a partnership shall not be entitled to any special remuneration for personal effort that went into the management of the business of a partnership.

### **Right of Supervision**

Article 645

(1) The partners who entrusted the management to one or several fellow partners shall have the right to personally supervise the business affairs of the partnership and shall have the right to consult its business books and other records.

(2) Any stipulation whereby a partner's right referred to in paragraph 1 of this Article is denied or restricted shall be without effect where it can be suspected with reason that the affairs of the partnership were not managed in an orderly manner.

### **Revocation of Authorisation and Cancellation of Management**

Article 646

(1) Authorisation for managing the affairs transferred to one or several partners, unless otherwise provided in the contract of partnership, may be revoked by a unanimous decision of the other partners due to gross negligence in performing the duty, incapacity for successful management of affairs or other serious reasons.

(2) A partner may withdraw from the management position he was entrusted with where he has a good reason for that.

(3) In case of withdrawal, the provisions of this Act governing mandates relating to the renunciation of the mandatary shall apply *mutatis mutandis*.

## **IV RELATIONS WITH THIRD PARTIES**

### **Entering into Legal Transactions**

Article 647

(1) A partner may not legally bind the partnership by means of a legal transaction with a third party without explicit or tacit approval of other partners or their mandataries.

(2) A partner contributing to the partnership only a part of its property and taking part independently with the remaining part thereof in legal transactions may also qualify as a third party.

### **Claims and Liabilities of the Partnership**

Article 648

(1) Unless otherwise provided in the contract of partnership, the claims of a partnership shall belong to all partners together.

(2) A partner may demand from a debtor to fulfil his obligations to all partners together and only to him if he has been authorised by all other partners to receive such fulfilment.

(3) A debtor may fulfil an obligation towards a partnership to a partner of his choice, unless all the other partners or one of them demand fulfilment.

(4) Unless otherwise agreed with the creditor, all partners shall be solidarily liable for the obligations of the partnership.

(5) A third party, as a debtor of a partnership, may not offset his claim towards any of the partners against the claims belonging to the partnership.

(6) An objection that a claim belongs to partnership assets cannot be made vis-à-vis a debtor who was not, nor ought not to have been, aware of that.

## **V LIABILITY FOR DAMAGE**

### **Liability for Damage and Impermissibility of Offset**

Article 649

(1) A partner shall be liable for any damage inflicted upon a partnership, unless he can prove that the damage was not his fault.

(2) No offset shall be allowed of the damage with the benefits obtained for the partnership by a partner, except where the damage and the benefits arise from the same arbitrarily undertaken business activity.

## **VI PROFIT AND LOSS**

### **Definition**

Article 650

(1) Profit is that part of partnership assets which remains after deduction for the value of contributions, common debts and expenses.

(2) Loss arises when partnership assets fall below the value of partnership contributions.

### **Shares in Profit and Loss**

Article 651

(1) Unless the shares of partners in profit and loss are agreed in a contract of partnership, all partners shall have equal shares in the profit and loss, irrespective of the type and size of contribution.

(2) Where only a share in a profit or a loss is agreed, that stipulation shall, for the avoidance of doubt, apply to both profit and loss.

## **VII WITHDRAWAL AND EXPULSION OF PARTNERS**

### **Withdrawal from Partnership**

Article 652

(1) A contract of partnership entered into for an indeterminate term may be cancelled by a partner at any moment, except at an inopportune moment or to the detriment of other partners.

(2) The same shall apply to partnerships tacitly continued after expiration of their term as well as partnerships established during the lifetime of partners.

(3) A contract of partnership entered into for a fixed term may be cancelled before expiry of such term only due to legitimate reasons and particularly due to a breach by a partner, either by a deliberate act or act of gross negligence, of an essential obligation under the contract of partnership, inability to fulfil such an obligation, or death, or withdrawal of a partner, on whom the carrying on of the business of the partnership largely relied.

(4) A partner cancelling the contract contrary to provisions of paragraphs 1 and 2 of this Article shall be liable to the other partners for any damage incurred due to that.

(5) A creditor achieving seizure of a share of the partners' assets, may cancel the partnership regardless of the period of notice.

(6) During the term of the partnership, the creditor may not exercise the rights of the partners under a contract of partnership, except rights to a share in the profit.

(7) Any provision of the contract whereby the right of a partner to cancel the contract

is denied or restricted shall be without effect.

### **Expulsion of Partners**

#### Article 653

(1) A partner may be expelled from a partnership if there are legitimate reasons for that and in particular in case of a breach of an essential obligation under the contract of partnership, bankruptcy, incapacitation, or loss of confidence due to commitment of a punishable act.

(2) A decision on expulsion, unless otherwise agreed, shall be reached unanimously by all the other partners.

### **Effect of Withdrawal and Expulsion**

#### Article 654

(1) Withdrawal and expulsion shall become effective as of the date of notice of withdrawal from the partnership or date of communication of a decision on expulsion, respectively, even where these were contested, and later confirmed as valid before law.

(2) A partner withdrawing from a contract of partnership or who has been expelled from a partnership shall participate in the profit and loss until the date of withdrawal, and expulsion, respectively.

(3) The partner shall participate in the profit and loss arising from those transactions which at the time of his withdrawal from the partnership were not completed and which the remaining partners are authorised to complete in a manner most advantageous to them.

(4) The partner withdrawing from the partnership shall have the right, after the end of each business year, to demand a statement of all the transactions completed in the meantime, of payments due to him on that basis and on the status of the businesses not yet completed.

(5) The share in partnership assets of the partner referred to in paragraph 1 of this Article shall accrue to other partners, who shall be obligated to return to him the things he gave to the partnership for enjoyment, and relieve him of common obligations and give him adequate assurance where such obligations are not yet due and disburse him for the amount that he would have collected from common assets had the partnership dissolved at the time of his withdrawal or expulsion, respectively.

(6) Where common assets are not sufficient to cover common obligations and contributions, the partner withdrawing from the partnership shall be obligated to compensate partners for such a loss in an amount which equals his share in the partnership.

(7) Other rights and obligations of partners referred to in paragraph 1 of this Article shall be determined in accordance with the provisions governing the partition of common partnership assets in case of dissolution of partnership.

## **VIII DISSOLUTION OF PARTNERSHIP**

### **Reasons for Dissolution**

#### Article 655

A partnership is dissolved:

1. by the accomplishment of its objective or the impossibility of its accomplishment,
2. by expiration of its term,
3. by perishing of common assets,
4. by consent of all the partners,
5. by the death, or by ceasing to exist, withdrawal and expulsion of the partners where the partnership consists of two partners,
6. by court decision due to a legitimate cause.

### **Inheriting the Rights and Obligations of Partners**

#### Article 656

- (1) The rights and obligations of partners shall as a rule not pass to their heirs.
- (2) The partner's heirs shall notify other partners about the partner's death without delay and take measures to protect their interests, while the other partners shall be obligated to take over without delay the businesses that the deceased partner had been entrusted with.
- (3) The partner's heirs, where the partnership does not continue with them, shall be authorised to demand rendering of accounts and their settlement until the date of the testator's death, but shall also be obligated to settle any debts owed by the testator to the partnership.
- (4) Where a contract of partnership expressly includes the partner's heirs, they shall be obligated, if they accept the inheritance, to continue the partnership, but this obligation may not apply to heir's heirs.
- (5) Where the heir is not in a position to fulfil the obligations of the testator towards the partnership, a proportionate part shall be deducted from the share he inherited.

### **IX PARTITION OF COMMON ASSETS**

#### **Return of Things**

##### Article 657

- (1) After dissolution of a partnership shall follow a partition of common assets.
- (2) Things that a partner contributed for enjoyment and use to the partnership shall be returned to the partner who shall have no right to compensation for accidental perishing or damage to the thing, nor for its depreciation due to regular use.

#### **Sequence of Partition of the Common Assets**

##### Article 658

- (1) From common assets, partnership debts shall be settled first, and where these are not due and are doubtful, an adequate provision shall be made for their settlement.
- (2) After common debts have been settled, contributions are reimbursed, with nonmonetary contributions, except those consisting in work or contributions in things given for use, being reimbursed for their value at the time of contribution.
- (3) For debt settlement and reimbursement of contributions, common assets shall be liquidated, where necessary.
- (4) What is left of the common assets after settling the debts of the partnership and reimbursing the contributions shall be partitioned among the partners in accordance with their shares in the profit.
- (5) Where this is necessary for the purpose of assets partition, the partnership shall be deemed to continue with respect to the completion of businesses underway, entering into new businesses for the purpose of completing such businesses, as well as for the purpose of maintaining and administering common assets.
- (6) Unless otherwise provided in the contract of partnership, the authorisation given to a partner to manage the affairs of a partnership shall cease with the dissolution of a partnership, and the management of the businesses referred to in paragraph 5 of this Article shall be continued jointly by all the partners.

#### **Covering the Deficit**

##### Article 659

Where common assets are not sufficient to cover common debts and reimburse contributions, the partners shall compensate such deficit in proportion with their shares in the loss; in case of failure to collect from a partner the share due from him, his share of the debt

shall be distributed equally among all the other partners who shall be obligated to discharge it.

### **Application of the Provisions**

#### **Governing**

#### **the Dissolution of Joint Ownership Associations**

Article 660

Where not regulated by previous provisions, issues related to the partition of common assets shall be governed, *mutatis mutandis*, by rules regulating dissolution of joint ownership associations.

Section 14

### **CONTRACT OF CARRIAGE**

#### **I GENERAL PROVISIONS**

##### **Definition**

Article 661

(1) Under a contract of carriage, the carrier undertakes to carry a person or a thing to a specific place in exchange for a price that the passenger or the consignor undertakes to pay him.

(2) The carrier, under this Act, shall be a person involved in the business of providing carriage as his regular occupation as well as any other person contractually undertaking to provide carriage in return for a price.

##### **Obligations of Carriers in Line Haul**

Article 662

(1) The carrier providing carriage on a certain line (line haul) shall duly maintain such a published line.

(2) He shall carry any person or anything fulfilling the conditions laid down in the published general operating conditions.

(3) Where regular means of transport of the carrier are not sufficient to make all the requested carriages, priority shall be given to persons or things who, by virtue of special regulations have priority, while any further priorities shall be determined on the basis of chronological order of requests for carriage, with priority being given to longer distance carriages in case of simultaneously placed requests.

##### **Desistence from Contract**

Article 663

(1) The consignor or the passenger may desist from the contract before its fulfilment has commenced, but shall be obligated to compensate the carrier for any damage the carrier might sustain because of that.

(2) Where the carrier is so late with the commencement of carriage that the other party has no longer any interest in the agreed carriage, or where the carrier will not or cannot make the agreed carriage, the other party may desist from the contract and demand refund of the carriage charges paid.

##### **Carriage Charge**

Article 664

(1) Where carriage charges are fixed rates or otherwise fixed by other published mandatory enactment, no higher carriage charges than those fixed may be agreed.

(2) Where carriage charges are not fixed rates or are not otherwise fixed by other published mandatory enactment, or contract, the carrier shall be entitled to a carriage charge

common for a particular type of carriage.

(3) In other cases, the provisions governing remuneration under contract for work shall apply, *mutatis mutandis*.

### **Limitation of the Application of the Provisions of this Section**

Article 665

The provisions of this Section shall apply to all types of carriage unless provided otherwise by law for specific types of carriage.

## **II CONTRACT OF CARRIAGE OF THINGS**

### ***1 General Provisions***

#### **Delivery of the Thing**

Article 666

The carrier shall be obligated to deliver the thing he received for carriage at a designated place to the consignor or the consignee.

#### **Consignor's Obligation to Notify the Carrier**

Article 667

(1) The consignor shall notify the carrier about the nature, contents and quantity of the consignment and indicate the point of destination, name and address of the consignee, his name and address and everything else necessary for the carrier to fulfil his obligations without delay and hindrance.

(2) Where a consignment contains valuables, securities or other items of great value, the consignor shall notify the carrier of that at the time of their receipt by the carrier into his charge and shall state their value.

(3) In case of carriage of dangerous things or things which require special treatment during carriage, the consignor shall notify the carrier of that in time to enable him to take the necessary special measures.

(4) Failure by the consignor to reveal to the carrier information referred to in paragraphs 1 and 3 of this Article or where he gives him wrong information, shall make the consignor liable for any damage caused because of that.

#### **Bill of Lading**

Article 668

(1) The contracting parties shall issue a bill of lading for each consignment received for carriage.

(2) A bill of lading shall state the date and place of issue, the name and address of the consignor and carrier, licence number of the vehicle, nature, quantity and packing of the consignment, list of documents accompanying the bill of lading, date and place of loading, name and address of the consignee, point of destination and unloading, carriage charges, or a note indicating they were paid in advance, carriage costs, provision on the amount encumbering the consignment, signatures of both parties.

(3) A bill of lading may also contain other data as agreed between the parties.

(4) A bill of lading shall be completed in three copies, one for the consignee, one for the carrier in charge of the consignment and one for the consignor.

(5) A bill of lading may contain a provision "to the order of" or be made to the bearer in which case the consignor's copy shall indicate that it is a negotiable bill of lading, and the other copies shall indicate that a negotiable bill of lading has been issued.

#### **Contract of Carriage and Bill of Lading**

Article 669

The existence and validity of a contract of carriage shall be independent of the existence of bill of lading and its accuracy.

## ***2 Relation between the Consignor and the Carrier***

### **Packing**

#### Article 670

- (1) The consignor shall pack the things in a prescribed or usual way to prevent any damage or threat to the safety of people or property.
- (2) The carrier shall warn the consignor of any detectable faults in packing; failing that he shall be liable for any damage to the consignment due to such faults.
- (3) But the carrier shall not be liable for any damages to the consignment if the consignor, although warned of the faulty packing, insists that the carrier receives the consignment for carriage irrespective of such faults.
- (4) The carrier shall refuse the consignment where the faults in its packing are such to pose a threat to the safety of people or property or to cause a damage.
- (5) Any damage sustained by third persons due to faulty packing while the thing is in care of the carrier shall be borne by the carrier, who shall be entitled to demand reimbursement from the consignor.

### **Carriage Charges and Carriage-Related Costs**

#### Article 671

- (1) The consignor shall pay the carrier carriage charges and carriage-related costs.
- (2) Unless the bill of lading indicates the consignor as the payer of carriage charges and other carriage-related costs, it shall be deemed that the consignor is referring the carrier to collect them from the consignee.

### **Disposing of the Consignment**

#### Article 672

- (1) The consignor may dispose of the consignment and change instructions contained in the contract and may instruct the carrier to cancel further carriage of the consignment, to have the consignment returned, to deliver it to another consignee or to forward it to some other destination.
- (2) The right of the consignor to change instructions shall cease after arrival of the consignment to the point of destination, when the carrier hands over the bill of lading to the consignee or when the carrier asks the consignee to take delivery of the consignment or when the consignee alone requests its delivery.
- (3) Where a bill of lading is issued to the order of or made to a bearer, the rights of the consignor referred to in paragraph 2 of this Article shall belong exclusively to the legitimate holder of the bill of lading.
- (4) An authorised person exercising its right to issue new instructions to the carrier shall reimburse the carrier for any costs or damages he had due to that and on his request issue a guarantee ensuring reimbursement of his costs and damages.

### **Carriage Route**

#### Article 673

- (1) The carrier shall make the carriage using the agreed route.
- (2) Unless the carriage route is agreed, the carrier shall make the carriage using the route best suited to the interests of the consignor.

### **Hindrances to Performing Carriage**

#### Article 674

- (1) The carrier shall notify the consignor of any circumstances that might influence the performance of carriage and to act in accordance with the instructions obtained from the consignor.
- (2) The carrier shall not be obligated to act in accordance with the instructions of the consignor where the execution of such instructions might threaten the safety of people or property.
- (3) Where the situation does not allow the carrier to wait for the instructions from the consignor, the carrier shall act with the diligence of an orderly and conscientious businessman and reasonable host diligence and shall notify the consignor about the situation and demand his further instructions.
- (4) The carrier shall be entitled to compensation for damages sustained by him due to hindrances encountered through no fault of his own.

### **Reimbursement in Case of Interruption of Carriage**

#### *Article 675*

- (1) Where carriage is interrupted due to a cause which is the responsibility of the carrier, the carrier shall be entitled to a proportionate part of carriage charges but he shall also be obligated to compensate the other party to the contract for damages caused by an interruption of carriage.
- (2) Where carriage is interrupted due to a cause which is not the responsibility of either of the interested parties, the carrier shall be entitled to reimbursement consisting of the difference between the agreed carriage charge and carriage costs from the point where the carriage is interrupted to the point of destination.
- (3) The carrier shall not be entitled to any reimbursement where the consignment perishes due to force majeure during carriage.

### **Where Consignment Cannot be Delivered**

#### *Article 676*

- (1) In case where the consignee cannot be notified about the arrival of a consignment or where he refuses to take delivery of it, and generally where a consignment cannot be delivered or where the consignee fails to pay to the carrier due carriage charge and other amounts encumbering the consignment, the carrier shall be obligated to notify the consignor thereof and demand from him instructions and to take the necessary measures on his account to ensure safekeeping of the thing.
- (2) In case of failure by the authorised person to take action in respect of the consignment, the carrier shall have the right to sell it in accordance with the rules governing the sale of an owed thing in case of a creditor's delay and settle his claims from the price achieved and he shall be obligated to deposit with the court any amount left for the authorised person.

### **Carrier's Liability towards the Consignor**

#### *Article 677*

Where the carrier handed the consignment over to the consignee without collecting the amount encumbering the consignment, he shall be obligated to pay the amount due to the consignor but he shall be entitled to demand reimbursement from the consignee.

### ***3 Relation between the Carrier and the Consignee***

#### **Notifying the Consignee about the Arrival of the Consignment**

##### *Article 678*

- (1) The carrier shall notify the consignee without delay of the consignment's arrival, to



put it at his disposal as agreed and submit to him the bill of lading.

(2) Where a bill of lading is issued to the order of or made to the bearer, the carrier shall act in accordance with the provision of paragraph 1 of this Article only if the bill of lading states the name of the person at the point of destination that should be notified of the consignment's arrival.

### **Handing Over the Consignment**

Article 679

The carrier may refuse to hand over the consignment unless he is handed simultaneously a copy of the bill of lading where the consignee certifies that the consignment has been handed over to him.

### **Right of the Consignee to Demand Handing Over of the Consignment**

Article 680

(1) The consignee may exercise his rights under a contract of carriage vis-à-vis the carrier and demand from him handing over of the bill of lading and of the consignment only upon the consignment's arrival at the point of destination.

(2) On request of the consignee, the carrier shall hand over to him the consignment before its arrival at the point of destination only if he is authorised by the consignor to do so.

(3) The consignee may exercise his rights under a contract of carriage and demand from the carrier handing over of the consignment only provided he fulfils the conditions set out in the contract of carriage.

### **Identification of Consignment and Its Condition**

Article 681

(1) The authorised person shall have the right to demand that an official record be made of the consignment's identification and where the consignment is damaged, of its damages.

(2) Where it is determined that the consignment is not the one that was received into the charge of the carrier for carriage, or that the damage is greater than the carrier claimed, the costs of identification shall be borne by the carrier.

### **Payment of Carriage Charges**

Article 682

(1) By taking delivery of the consignment and the bill of lading, the consignee undertakes to pay carriage charges to the carrier, unless otherwise agreed in the contract of carriage or in the bill of lading, and pay him any amounts with which the consignment is encumbered.

(2) Where the consignee considers that he is not obligated to pay the carrier the amount charged by him, he may exercise his rights under the contract only provided he deposits the disputed amount with the court.

### ***4 Liability for Loss, Damage and Delay***

#### **Loss of and Damage to the Consignment**

Article 683

(1) The carrier shall be liable for total or partial loss of the consignment and its damage from the time he receives it into his charge for carriage until its delivery, unless he can prove that the damage is not his fault.

(2) The carrier's liability for damage may not exceed the amount fixed by law or international treaty.

(3) Unless otherwise agreed, the value of the goods shall be fixed on the basis of the

consignment's market price at the time and the place where it is placed into the charge of the carrier for carriage.

(4) Any provisions of the contract of carriage, general conditions of carriage, rates or some other enactment relieving the carrier fully or partially from liability under this Act, shifting the burden of proof from the carrier or providing for more favourable limitation of his liability and amount of compensation than those prescribed by law or an international treaty, shall be without effect.

### **Loss of or Damage to Consignment Consisting in Valuables**

#### Article 684

(1) In case of loss or damage to a consignment consisting in valuables, securities and other items of great value, the carrier shall compensate the amount of such damage which exceeds the amounts referred to in paragraph 2 of the previous Article of this Act only if the nature of such things and their value are disclosed to him at the time when the carrier receives them into his charge for carriage or if the damage was caused by his deliberate act or by gross negligence.

(2) Where the consignment consisting of such things also comprises other things, carrier's liability for the loss or damage of such things shall be governed by general rules regulating the liability of carriers.

### **Refund of Carriage Charges Paid**

#### Article 685

In case of total loss of a consignment, the carrier shall, in addition to making damages compensation, refund the consignor for the carriage charges paid.

### **Where the Consignee Takes Delivery of the Consignment Without Objection**

#### Article 686

(1) After the consignee takes delivery of the consignment without objection and pays the carrier his claims, the liability of the carrier shall cease, unless a damage is detected and officially recorded before taking delivery of the consignment.

(2) The carrier shall remain liable for damages to the consignment which could not be detected by means of a standard examination at the time of its delivery to the consignee, if the consignee has notified him about such damages immediately upon their detection, but no later than eight days after delivery of the consignment.

(3) The carrier may not invoke provisions referred to in paragraphs 1 and 2 of this Article if he caused the damage deliberately or by gross negligence.

### **Liability of the Carrier for Delay**

#### Article 687

(1) The carrier shall compensate the authorised person for any damages sustained due to delay in the amount fixed by law or international treaty, unless he can prove that the delay was not his fault.

(2) A delay shall be deemed to exist if a consignment is not delivered within the agreed time limit, and in case where the time limit is not agreed, if delivery takes more time than can reasonably be expected from a duly operating carrier, taking into consideration the specific circumstances and particularly, in case of part-load consignments, the time needed to stack consignments in the usual way.

### **Liability for Assistants**

#### Article 688

The carrier shall be liable for persons working under his instructions on the execution

of the carriage.

### **Where Relief from Liability and Limitation of Liability Have no Effect**

Article 689

Relief from liability and limitation of the amount of compensation shall be without effect if the authorised person can prove that the damage was caused by a deliberate act or act of gross negligence on the part of the carrier or his assistants.

### ***5 Participation of Several Carriers in Carriage***

#### **Where they are Solidarily Liable**

Article 690

(1) The carrier who entrusts another carrier with the performance of all or part of the carriage of a consignment that he received into his charge for carriage, shall be liable for the consignment's carriage from the moment he received the consignment into his charge to the moment of its delivery, but he shall be entitled to reimbursement from the carrier he entrusted the consignment to.

(2) Where the second carrier takes over from the first carrier the consignment and the bill of lading, he shall be deemed a party to the contract of carriage, with the rights and obligations of solidary debtor and solidary creditor, whose participations equal his participation in the carriage.

(3) The same shall apply in case where several carriers are engaged under one contract of carriage to take part in a successive carriage of a consignment.

(4) Each carrier shall have the right to demand that the condition of the consignment be determined at the moment when he receives it into his charge for the performance of his part of the carriage.

(5) Solidarily liable carriers shall participate in damages compensation in proportion with their participation in carriage, except those carriers who can prove that the damage did not take place during their carriage.

(6) Objections made to a successive carrier shall also apply to all the previous carriers.

#### **Several Liability of Carriers**

Article 691

Where several carriers chosen by the consignor take part in a successive carriage of one and the same consignment, each such carrier shall be liable for his part of the carriage only.

#### **Where the Carrier Has Lien**

Article 692

(1) To ensure reimbursement for the carriage and necessary costs incurred in connection with the carriage, the carrier shall have lien on the things placed under his charge for carriage and in connection with the carriage, as long as he holds them or has a document enabling him to dispose of them.

(2) Where several carriers take part in a successive carriage, their claims in connection with the performance of the carriage shall also be secured by such a lien, and the last carrier shall be obligated, unless the bill of lading stipulates otherwise, to collect all the claims under the bill of lading.

(3) The claims of a previous carrier and his lien shall be transferred to the next carrier in a succession who has paid him his claims.

(4) The same shall apply in case where the carrier has paid the shipper's claims.

#### **Conflicting Liens**

#### Article 693

(1) Where lien on the same thing is shared between the carrier, the commission agent, the shipper and the warehouse keeper, priority in settlement shall be given to any of these creditors' claims attributable to shipping or carriage and that in the reverse order of their establishment.

(2) Any other claims of the commission agent and the warehouse keeper, as well as any claims of the shipper and the carrier arising from advance payments, shall be paid only after all the claims referred to in paragraph 1 of this Article have been settled, and that in the order in which they were established.

### **III CONTRACT OF CARRIAGE OF PERSONS**

#### **General Provision**

##### Article 694

The carrier shall be obligated to carry persons safely using the means of transport stipulated in the contract of carriage and to ensure during carriage the type of comfort and hygiene considered necessary for a particular means of transport and the distance to be covered.

#### **Right of Passenger to a Specific Seat**

##### Article 695

The carrier shall ensure that the passenger gets a specified seat in the specified means of transport, as agreed.

#### **Liability of the Carrier for Delay**

##### Article 696

(1) The carrier shall carry the passengers to the agreed place on time.

(2) He shall be liable for any damage sustained by the passenger due to delay, except where delay is due to causes beyond his control despite his best professional efforts.

(3) The amount of liability for damage may not exceed the amount fixed by law or an international treaty.

#### **Liability of the Carrier for the Safety of the Passengers**

##### Article 697

(1) The carrier shall be liable for the safety of passengers from the beginning to the end of carriage, including the time of getting in and out of the vehicle, both in case of carriage undertaken against payment and gratuitous carriage, and shall be obligated to compensate any physical and consequential damage sustained as a result of failing health, injury or death of passengers, unless caused by acts of passengers or other external cause which could not be predicted, avoided or prevented.

(2) Unless causing the damage deliberately or by an act of gross negligence, the carrier shall be obligated to compensate the damage to the amount fixed by law or an international treaty.

(3) Any stipulation of the contract and general conditions of carriage, rates or any other enactment limiting this liability shall be without effect.

#### **Liability for Baggage Handed Over for Carriage and Other Effects**

##### Article 698

(1) The carrier shall carry the luggage placed into his care by the passenger at the same time as the passenger and deliver it to the passenger after completion of the carriage.

(2) The carrier shall be liable for any loss and damage to the luggage placed into his care by the passenger in accordance with the provisions governing the carriage of things.

(3) The carrier shall be liable for any damages sustained by the effects held by the passenger if his guilt is proven.

Section 15

## LICENCE CONTRACT

### I GENERAL PROVISIONS

#### Definition

Article 699

Under a licence contract, the licensor undertakes to grant to the licensee, either in full or in part, the right to utilize an invention, know-how, trademark, sample or model in exchange for a price that the licensee undertakes to pay.

#### Form

Article 700

A licence contract shall be drawn up in writing.

#### Duration of Licence

Article 701

Licence for utilization of a patented invention, sample or model may not exceed the duration of legal protection of such rights.

#### Exclusive Licence

Article 702

(1) Under a licence contract, the licensee shall acquire exclusive right to utilize the subject of licence only if that is expressly stipulated (exclusive licence).

(2) The licensor shall reserve the right to other possible utilizations of the subject of licence.

(3) Where no stipulation is made in the licence contract as to the type of licence, the licence shall be deemed to be a non-exclusive licence.

#### Territorial Limitation of the Right of Utilization

Article 703

(1) Territorial limitation of the right to utilize the subject of licence shall be allowed to the extent that it is not in contravention of the Croatian Constitution and laws.

(2) Failing any stipulation in the licence contract to the contrary, as regards territorial limitation of the right to utilize the subject of licence, the licence shall be deemed to be territorially unlimited.

### II OBLIGATIONS OF THE LICENSOR

#### Transfer of the Subject of Licence

Article 704

(1) The licensor shall transfer the subject of licence to the licensee within the stipulated time limit.

(2) The licensor shall transfer to the licensee the documentation needed for practical application of the subject of licence.

#### Giving Instructions and Notifications

Article 705

The licensor shall give the licensee all instructions and notifications needed for successful utilization of the subject of licence.

#### Feasibility and Usability Warranty

Article 706

The licensor shall warrant to the licensee the feasibility and usability of the subject of

licence.

### **Warranty That Licensor is the Holder of Rights**

Article 707

(1) The licensor shall warrant that the right of utilization which is the subject of the contract belongs to him, that it is free of any encumbrance and that it is not limited in favour of a third person.

(2) Where exclusive licence is the subject of the contract, the licensor shall warrant that he has not granted the right of use to another person either fully or in part.

(3) The licensor shall be obligated to keep and defend the right transferred to the licensee from any demands from third persons.

### **Obligation of the Licensor in Case of Exclusive Licence**

Article 708

Where an exclusive licence has been agreed, the licensor may not, in any manner, utilize the subject of licence, or parts thereof, or entrust it to another person in the territory covered by the licence.

## **III OBLIGATIONS OF THE LICENSEE**

### **Utilization of the Subject of Licence**

Article 709

The licensee shall utilize the subject of licence in the agreed manner, agreed scope and within the agreed territory.

### **Utilization of Subsequent Improvements**

Article 710

Unless otherwise provided by law or contract, the licensee shall not be authorised to utilize any subsequent improvements of the subject of licence.

### **Keeping the Subject of Licence Secret**

Article 711

Where the subject of licence is an unpatented invention or a secret know-how, the licensee shall be obligated to keep it secret.

### **Quality of Goods**

Article 712

(1) Where in addition to a production licence a licence for the use of a trademark is also given, the licensee may market the goods carrying such trademark only provided their quality equals that produced by the licensor.

(2) Any stipulation to the contrary shall be without effect.

### **Marking the Goods**

Article 713

The licensee shall mark the goods with the mark indicating production under licence.

### **Fee**

Article 714

The licensee shall pay the licensor the agreed fee at the moment and in the manner stipulated in the contract.

### **Reporting**

Article 715

Where the fee is determined on the basis of the scope of utilization of the subject of licence, the licensee shall report to the licensor on the scope of use and calculate the fee annually, unless a shorter time limit has been fixed in the contract therefore.

### **Change of the Agreed Fee**

Article 716

Where the agreed fee becomes clearly disproportionate in terms of the income earned by the licensee from the utilization of the subject of licence, the interested party may demand that the agreed fee be changed.

### **V SUB-LICENCE**

#### **When it Can be Granted**

Article 717

(1) An exclusive licensee may cede his right of utilization of the subject of licence to another person (sub-licence), unless otherwise stipulated in the contract.

(2) A licensee may not give sub-licence to another person without approval from the licensor.

#### **When the Licensor May Deny Approval**

Article 718

Where approval from the licensor is required for granting sub-licenses, the licensor may deny such approval to the licensee only for a serious reason.

#### **Cancellation Due to Illicit Sub-Licence**

Article 719

A licensor may cancel a licence contract without observing the period of notice in case of a sub-licence granted without his approval where that is required under law or the agreement.

#### **Direct Demand of the Licensor**

Article 720

(1) A sub-licence contract shall not create a special legal relationship between the sublicensee and the licensor, even where the licensor has given his approval as required.

(2) However, the licensor may, for the purpose of collecting his claims from the licensee arising from the licence, demand directly from the sub-licensee payment of the amount owed by him to the sub-licensor under the sub-licence.

### **V END OF CONTRACT**

#### **Expiry of Term**

Article 721

A licence contract entered into for a fixed term shall end upon expiry of its term, and no cancellation notice shall be required.

#### **Tacit Renewal of the Licence**

Article 722

(1) Where the licensee continues to utilize the subject of the licence after expiry of the licence term without opposition from the lessor, it shall be deemed that a new licence contract has been entered into for an indeterminate term, under the same conditions as the previous contract.

(2) Security provided by third parties for the initial licence shall terminate upon expiry of the initial licence term.

#### **Cancellation**

Article 723

(1) A licence contract entered into for an indeterminate term shall terminate upon cancellation by either of the parties, in accordance with the period of notice agreed under the contract.

(2) Unless otherwise agreed in the contract, the period of notice shall be six months.

### **Death and Bankruptcy**

Article 724

(1) In case of death of the licensor, the licence shall continue with his successors, unless otherwise agreed.

(2) In case of death of the licensee, the licence shall continue with his successors in business.

(3) In case of death of the licensee, dissolution of the legal person and opening of bankruptcy proceedings in the licensee, the licensor may terminate the contract.

Section 16

## **CONTRACT OF DEPOSIT**

### **I ABOUT DEPOSIT IN GENERAL**

#### ***1 General Provisions***

##### **Definition**

Article 725

(1) Under a contract of deposit, a depositary undertakes to receive a thing for deposit from a depositor, to keep it safe and to restore it to him on demand.

(2) Only movable things may be the object of deposit.

##### **Deposit of Things Owned by Others**

Article 726

(1) A person other than the owner of the thing may also enter in his name into a valid contract of deposit and the depositary shall be obligated to restore such thing to such person, unless he discovers that that is a stolen thing.

(2) Where a third person demands as an owner by means of a law suit the thing from the depositary, the depositary shall be obligated to disclose to the court the identity of the person he received the thing from and simultaneously notify the depositor about the instigated law suit.

#### ***2 Obligations of the Depositary***

##### **Safekeeping the Thing**

Article 727

(1) The depositary shall keep the thing as if it were his own, and in case of a deposit in exchange for remuneration, he shall act with the diligence of an orderly and conscientious businessman and reasonable host diligence in the safekeeping of the thing.

2) Where the place and the manner of safekeeping the thing have been agreed, the depositary may change them only if necessitated by a change of circumstances, or else shall be liable for accidental perishing or accidental damage of the thing.

(3) The depositary shall notify the depositor of any changes to the thing that he becomes aware of and of any threats of damage to it.

##### **Entrusting the Custody of the Thing to Another Person**

Article 728

Unless he obtains an approval from the depositor or there is an urgent necessity, the depositary may not entrust custody of the thing he was entrusted with for safekeeping to another person, or else he shall be liable for its accidental perishing and damage.

##### **Use of the Thing**

Article 729

(1) The depositary may not use the thing he was entrusted with for safekeeping.



(2) In case of illicit use of the thing the depositary shall owe the depositor an appropriate reimbursement and shall be liable for accidental perishing or damage that the thing may sustain because of such use.

(3) In case where non-consumable things are deposited and the depositary is allowed to use them, the relations between the contracting parties shall be governed by the rules of loans for use, with only the time and the place of restoring the things being governed by rules on deposit, unless the contracting parties have agreed otherwise.

### **Exoneration from Liability**

Article 730

The depositary that uses the thing without approval from the depositor and without urgent necessity, changes the location or the manner of its safekeeping or entrusts the thing for safekeeping to another person, shall not be liable for accidental perishing or damage of the thing that would have also taken place had he acted in accordance with the contract.

### **Restoring the Thing**

Article 731

(1) The depositary shall be obligated to restore the deposited thing to the depositor on demand, with all the fruits and other benefits derived from the thing.

(2) Where a term has been fixed for the restoration of the thing, the depositor may demand that the thing be restored to him before expiry of such term, except where the term has not been agreed upon in the sole interest of the depositor.

(3) The thing shall be restored at the place where it was handed over for deposit, unless the parties have agreed contractually on another place, in which case the depositary shall be entitled to reimbursement of the expenses for the transfer of the thing.

### **3 Rights of the Depositary**

#### **Reimbursement of Expenses and Damages Compensation**

Article 732

The depositary shall have the right to demand from the depositor to reimburse him for any justified expenses he has incurred to preserve the thing and to indemnify him for any damages sustained by him in connection with the deposited thing.

#### **Reimbursement**

Article 733

The depositary shall not be entitled to reimbursement for his efforts, except where such reimbursement has been agreed, where the depositary is engaged in the business of receiving things for safekeeping or where such reimbursement could be expected in view of the circumstances of the business.

#### **Restoring the Thing in Case of Gratuitous Deposit**

Article 734

(1) The depositary undertaking to keep the thing gratuitously for a certain period of time may restore it to the depositor before expiry of such period of time where there is a threat of its perishing or damage or where its further safekeeping might cause damage.

(2) Where the term of deposit is not fixed, the depositary may withdraw from the contract at any moment, but he shall be obligated to set the depositor appropriate time limit to take over the thing.

### **4 Special Cases of Deposit**

#### **Quasi Deposit**

Article 735

Where a fungible thing has been handed over for deposit and where the depositary has the right to spend it and the obligation to restore the same amount and the same type of thing, such depositary's relations with the depositor shall be governed by the rules of loan contracts, except as regards the time and the place of restoring the thing which shall be governed by rules of contracts of deposit, unless otherwise agreed between the parties.

### **Deposit in Emergency**

Article 736

The person entrusted with the care of property in case of disasters such as fire, earthquake, and flood, shall keep such property with special care.

## **II DEPOSITS WITH INKEEPERS**

### **Innkeeper as a Depositary**

Article 737

(1) Innkeepers shall be deemed depositaries in respect of the things brought in by the guests and shall be liable for their loss, destruction or damage up to the maximum amount of ten thousand kuna.

(2) They shall be exonerated from liability if a thing is lost, destroyed or damaged due to circumstances beyond their control, fault in the thing, behaviour of the guest or behaviour of persons accompanying or visiting him.

(3) The innkeeper shall owe full compensation to the guest where the guest has handed over to him a thing for safekeeping and the damage was incurred through the fault of the innkeeper or the person for whom he is responsible.

### **Things Brought In By the Guest**

Article 738

(1) Things brought into the hotel by the guest shall be deemed:

1) things deposited in the hotel during the entire stay of the guest;

2) things outside the hotel at the place designated by the innkeeper or under the supervision of the innkeeper or persons for whom he is responsible during the entire stay of the guest;

3) things supervised by the innkeeper or the person for whom he is responsible during the reasonable time before and after the guest's stay in the hotel.

(2) No liability provision governing the things brought into the hotel by the guest shall apply to vehicles, things held therein, and live animals, unless otherwise agreed.

### **Obligation of the Innkeeper to Accept Things for Safekeeping**

Article 739

(1) The innkeeper shall be obligated to accept for safekeeping money, valuables, securities and other items of great value brought into the hotel by the guest who wishes to hand them over for safekeeping, except where he does not have adequate facilities to accept them for safekeeping, where they are, considering the type and the category of hotel, of excessive value, where they are dangerous, bulky, or where their safekeeping is beyond the abilities of the innkeeper for any other legitimate reason.

(2) Unjustified refusal by the innkeeper to accept things for safekeeping shall make him fully liable for compensating the guest for any damage sustained by him because of that.

### **Obligation of the Guest to Report Damage**

Article 740

The guest shall be obligated to report any loss, destruction or damage sustained by the

thing as soon as he learns about them; failing that he shall only be entitled to compensation if he proves that the damage was caused through the fault of the innkeeper or the person for whom he is responsible.

### **Postings and Stipulations Exonerating Liability**

Article 741

Any contractual stipulation and posting placed on the premises of the innkeeper exonerating, limiting or making conditional the liability of the innkeeper for the things brought in by the guests shall be without any legal effect.

### **Right to Retain Things**

Article 742

Innkeepers accepting guests for overnight stays shall have the right to retain the things brought in by the guests until full payment is made for the accommodation and other services provided.

### **Extended Application of the Provisions on Deposits with Innkeepers**

Article 743

The provisions on deposits with innkeepers shall apply, *mutatis mutandis*, to hospitals, theatres, cinemas, sleeping cars, garages, public bathing places, camps, shopping areas, etc.

Section 17

## **WAREHOUSE CONTRACT**

### **I GENERAL PROVISIONS**

#### **Definition**

Article 744

(1) Under a warehouse contract a warehouse keeper undertakes to accept for storage specific goods and to take the necessary or agreed measures to preserve such goods in a certain condition and to hand those over on demand of the depositor or other authorised person, in exchange for a price that the depositor undertakes to pay him.

(2) When handing over the goods, the depositor shall give all the necessary information pertaining to such goods and declare their value.

#### **Liability of the Warehouse Keeper**

Article 745

(1) The warehouse keeper shall be liable for any damage sustained by the goods unless he can prove that it was caused by force majeure, the fault of the depositor, inherent defect or nature of the goods or defective packaging.

(2) The warehouse keeper shall warn the depositor of any inherent defects or nature of the goods, or defective packaging that might cause damages to the goods as soon as he becomes aware of such defects or ought to have become aware of them.

(3) In case of unavoidable changes to the goods which threaten that the goods might go bad or that they might perish, the warehouse keeper shall sell the goods without delay in the most advantageous manner, if the depositor, after being called upon by the warehouse keeper, could not do it himself in due time.

(4) The warehouse keeper shall take actions to preserve the rights of the depositor vis-à-vis the carrier who handed over to him, for the account of the depositor, damaged or defective goods.

#### **Obligation to Insure the Goods**

Article 746

(1) The warehouse keeper shall be obligated to insure the goods accepted for storage

only if that has been agreed upon.

(2) Where the contract does not specify the risks to be covered by insurance, the warehouse keeper shall insure the goods against the usual risks.

### **Limitation of Damages Compensation**

Article 747

Damages compensation that the warehouse keeper is obligated to pay due to perishing, shrinkage or destruction of the goods from the moment of their acceptance to the moment of their delivery cannot exceed the real value of the goods, unless the damage was caused deliberately or by gross negligence on the part of the warehouse keeper.

### **Commingling of Fungible Goods**

Article 748

(1) The warehouse keeper may not mix fungible goods with the goods of the same type and quality, unless the depositor has agreed to it, or unless it is obvious that the goods can be mixed without threat of damage to the depositor.

(2) In case of commingled goods, the warehouse keeper may, on demand of the authorised person, without participation of other authorised persons, separate from commingled fungible goods the part that belongs to that person.

### **Examination of Goods and Taking of Samples**

Article 749

The warehouse keeper shall allow the authorised person to examine the goods and to take samples from the goods.

### **Reimbursement of Expenses and Lien of the Warehouse Keeper**

Article 750

(1) In addition to reimbursement for storing the goods, the warehouse keeper shall be entitled to reimbursement of the expenses incurred by preserving the goods.

(2) He shall have lien on such goods pending settlement of his claims arising from the warehouse contract and other claims in connection with the storing of the goods.

### **Withdrawal of Goods and Sale of Unclaimed Goods**

Article 751

(1) The depositor may withdraw the goods before expiry of the agreed term.

(2) Where the depositor fails to withdraw the goods after expiry of the agreed term or after expiry of one year if the term for storing has not been agreed, the warehouse keeper may sell the goods at a public sale for the account of the depositor but he shall notify the depositor of his intention and give him at least eight additional days to collect the goods.

### **Defects upon Withdrawal of Goods**

Article 752

(1) The person withdrawing the goods shall be obligated to examine the goods at the moment of their withdrawal.

(2) He shall notify the warehouse keeper without delay of any defects in the goods detected at the moment of withdrawal of the goods; failing that the goods shall be deemed to have been duly accepted.

(3) The person withdrawing the goods shall notify the warehouse keeper within eight days, using a reliable means of communication, of any defects in the goods that could not be detected by means of routine examination at the moment of their withdrawal; failing that the goods shall be deemed to have been duly accepted.

### **Application of the Rules of Deposit**

#### Article 753

Warehouse contracts shall be governed, *mutatis mutandis*, by rules of deposit, unless otherwise provided by warehouse rules.

## **II WAREHOUSE RECEIPT**

### **Obligation to Issue a Warehouse Receipt**

#### Article 754

A warehouse keeper authorised by law to issue warehouse receipts for the goods accepted for warehousing shall issue such a receipt to the depositor on his request.

### **Constituent Parts and Contents of the Warehouse Receipt**

#### Article 755

- (1) The warehouse receipt shall consist of the receipt and a warehouse lien.
- (2) The receipt and the warehouse lien shall state: the name of company or depositor, its head office or his domicile, the name of the warehouse keeper and his address, the date and number of the warehouse receipt, place where the warehouse is situated, the type, the nature and the quantity of the goods, statement indicating the amount of insurance coverage for the goods and other information needed to identify the goods and to determine their value.
- (3) The receipt and the warehouse lien shall refer to each other.

### **Warehouse Receipts for Parts of Goods**

#### Article 756

- (1) A depositor may demand from the warehouse keeper to divide the goods into specific parts and to issue to him a warehouse receipt for each part of the goods separately.
- (2) Where he has already obtained a warehouse receipt for the entire consignment, he may demand from the warehouse keeper to divide the goods into separate parts and to issue to him, in exchange for the warehouse receipt he has obtained, a separate warehouse receipt for each particular part.
- (3) The depositor may demand from the warehouse keeper to issue to him warehouse receipts only for one part of the fungible goods he has left in his care.

### **Rights of the Holder of the Warehouse Receipt**

#### Article 757

- (1) The holder of the warehouse receipt shall have the right to demand that the goods indicated therein be handed over to him.
- (2) He may dispose of the goods indicated in the warehouse receipt by transferring the warehouse receipt.

### **Transferring the Receipt and the Warehouse Lien**

#### Article 758

- (1) The receipt and the warehouse lien may be transferred by endorsement, either together or separately.
- (2) A notation indicating the date of transfer shall be made in them upon each transfer.
- (3) On request of the recipient of the receipt or warehouse lien, the transfer onto him shall be entered in the warehouse register, which shall also register his headquarters or his domicile, respectively.

### **Right of the Holder of Receipt**

#### Article 759

(1) The transfer of receipt without warehouse lien shall give the recipient the right to demand delivery of the goods only if he pays out the warehouse lien or deposits with the warehouse keeper for the warehouse lien holder the amount payable to him on the claim's due date.

(2) The holder of the receipt without warehouse lien may demand that the goods be sold, if the price achieved is sufficient to settle the amount owed to the holder of the warehouse lien, with any surplus being payable to him.

(3) In case of fungible things, the holder of the receipt without warehouse lien may demand that the warehouse keeper delivers to him one part of the goods, provided he deposits with the warehouse keeper for the account of the holder of the warehouse lien an adequate amount of money.

### **Right of Warehouse Lien Holder**

#### Article 760

(1) Transfer of the warehouse lien without receipt shall give the recipient lien on the goods.

(2) Upon the first transfer, a notation shall be made in the warehouse lien indicating the name of the creditor company or person, its business headquarters or his domicile, the amount of claim, including any interest, and due date.

(3) The first recipient of the warehouse lien shall notify the warehouse keeper without delay that the lien has been transferred onto him, and the warehouse shall be obligated to enter this transfer into its register and make a note on the warehouse lien itself that a transfer has been made.

(4) Failing that, the warehouse lien may not be further transferred by endorsement.

(5) If the warehouse lien does not state the amount of claims of the lien creditor, it shall be deemed that the claim is covered to the full amount of the value of the goods stated therein.

### **Protest Due to Non-Payment and Sale of Goods**

#### Article 761

(1) The holder of the warehouse lien without receipt, whose claim covered by the lien is not paid when due, shall file his protest in accordance with the Bill of Exchange Act, or else lose the right to settlement.

(2) The holder of the warehouse lien filing a protest may, after expiry of eight days from the claim's due date, demand the sale of liened goods and the transferor who paid to the lien holder the claim covered by the lien shall have the same right.

(3) From the amount earned through such a sale, an amount shall be deducted to settle the costs of sale, claims of the warehouse keeper under the warehouse contract and other claims of the warehouse keeper in connection with the stored goods, insured claims of the lien holder and the rest shall belong to the holder of the receipt.

### **Demand for Payment from Lien Transferor**

#### Article 762

(1) The holder of the warehouse lien may demand payment from the transferor only if he could not achieve full settlement through the sale of liened goods.

(2) Such a demand shall be made within the time limit stipulated in the Bill of Exchange Act in respect of claims against the endorsers, which starts running from the date of sale of the goods.

(3) The holder of the warehouse lien shall lose the right to demand payment from the

transferor if he fails to demand the sale of goods within thirty days from the protest.

Section 18

## MANDATE CONTRACT

### I GENERAL PROVISIONS

#### Definition

Article 763

(1) A mandate contract is a contract obligating and empowering the mandatary to perform certain acts for the account of the mandator.

(2) The mandatary is entitled to reimbursement for his work, unless otherwise agreed, or follows from the nature of the relationship.

#### Persons Obligated to Respond to Mandate Offer

Article 764

Any person engaging professionally in the business of performing other persons' businesses or advertising himself publicly for such services, shall notify the other party without delay about his refusal to accept the offered mandate relating to such a business; failing that he shall be liable for any damage the other party might sustain because of that.

### II OBLIGATIONS OF THE MANDATARY

#### Fulfilment of the Mandate in Accordance with the Instructions

Article 765

(1) The mandatary shall be obligated to fulfil the mandate in accordance with the given instructions and to act with the diligence of an orderly and conscientious businessman and reasonable host diligence in performing it and, while staying within the limits of the mandate, act in the best interests of the mandator.

(2) Where the mandatary finds that the fulfilment of the mandate in accordance with the given instructions would harm the interests of the mandator, he shall notify him accordingly and require new instructions.

(3) Where the mandator has not given any specific instructions regarding the acts that need to be carried out, the mandatary shall act with the diligence of an orderly and conscientious businessman and with reasonable host diligence in the best interests of the mandator and in the case of a gratuitous mandate, act as if he would act under the same circumstances in his own matter.

#### Departure from the Mandate and the Instructions

Article 766

(1) The mandatary may depart from the given mandate and instructions only with an approval from the mandator, and where it is not possible to ask for the mandator's approval, because of the short time available or some other reason, he may depart from the mandate and instructions only if all the circumstances are such that such a departure is in the best interests of the mandator.

(2) Where the mandatary exceeds the limits of the mandate or departs from the given instructions in cases other than those referred to in paragraph 1 of this Article, he shall not be deemed a mandatary but a manager without mandate, unless he obtains subsequent approval from the mandator for his activity.

#### Replacement

Article 767

(1) The mandatary shall fulfil the mandate personally.

(2) He may entrust the performance of the mandate to another person only if he has

obtained an approval therefor from the mandator or where the circumstances so warrant.

(3) In such cases he shall be accountable only for the selection of the person to replace him and the instructions he has given to him.

(4) In other cases he shall be accountable for the work of the person replacing him and for accidental perishing or damage sustained during that person's work.

(5) The mandator may in any case demand directly from the person replacing the mandatary the fulfilment of the obligations under the mandate.

### **Rendering of Accounts**

#### **Article 768**

Upon fulfilment of the mandate, the mandatary shall render account for the work performed and hand over to the mandator without delay all that he has received on the basis of the performance of the work he was entrusted with, regardless of whether what he has received for the mandator was owed to him or not.

### **Reporting**

#### **Article 769**

The mandatary shall also report on the state of affairs and render accounts before the specified deadline, if so requested by the mandator.

### **Liability for the Use of Mandator's Money**

#### **Article 770**

In the case where the mandatary uses for his own purposes money he received for the mandator, he shall be charged interest at the highest permissible agreed rate for all the time of such use and he shall be charged default interest for all the sums owed he failed to surrender on time, counting from the due date for surrender.

### **Solidary Liability of Mandataries**

#### **Article 771**

Where the performance of an act has been entrusted to several persons jointly under a single mandate, such persons shall be solidarily liable for the obligations under that mandate, unless otherwise agreed.

## **III OBLIGATIONS OF THE MANDATOR**

### **Advance Reimbursements**

#### **Article 772**

The mandator shall advance to the mandatary, on his request, the necessary sums for the foreseen expenses.

### **Reimbursement of Costs and Assumption of Obligations**

#### **Article 773**

(1) The mandator shall reimburse the mandatary for any necessary costs incurred in the performance of the mandate together with interest accruing from the day when they were incurred, even if the mandatary's effort, through no fault of his own, was unsuccessful.

(2) He shall assume all the obligations that the mandatary took upon himself in the performance, in his name, of the acts he was entrusted with, or relieve him of such obligations in some other manner.

### **Damages Compensation**

#### **Article 774**

The mandator shall compensate the mandatary for any damage sustained by him through no fault of his own in the performance of the mandate.

### **Amount of Reimbursement**



#### Article 775

Unless otherwise agreed, the amount of reimbursement owed by the mandator shall be the amount customarily paid, and in the absence of customs, it shall be an equitable compensation.

#### **Payment of Reimbursement**

##### Article 776

(1) Unless otherwise agreed, the mandator shall reimburse the mandatary upon the completion of the work.

(2) Where the mandatary has, through no fault of his own, fulfilled the mandate only partially, he shall be entitled to reimbursement commensurate with the amount of work done.

#### **Lien**

##### Article 777

To ensure reimbursement for the work done and of the costs incurred, the mandatary shall have lien on the movable things of the mandator received on the basis of the mandate as well as on any sums collected for the account of the mandator.

#### **Solidary Liability of Mandators**

##### Article 778

In case where several persons have entrusted the mandatary with the fulfilment of the mandate, they shall be solidarily liable to him.

### **IV TERMINATION OF THE MANDATE**

#### **Revocation of the Mandate**

##### Article 779

(1) The mandator may revoke the mandate.

(2) In case of revocation of the mandate, the mandator shall be obligated to make adequate reimbursement to the mandatary in accordance with the mandate contract stipulating that the mandatary is owed reimbursement for his efforts, and to compensate him for any damage sustained by him as a result of the mandator's revocation of the mandate, unless legitimate reasons are given for the revocation.

#### **Renunciation**

##### Article 780

(1) The mandatary may renounce the mandate at any time, except at an inopportune moment.

(2) He shall be liable for the damage caused to the mandator by his renunciation if he submits it without a legitimate reason and at an inopportune moment.

(3) The ~~mandator shall~~ mandatary shall continue with the work that cannot be deferred until the mandator can take care of it.

#### **Death, Dissolution of Legal Person**

##### Article 781

(1) The mandate shall terminate upon the death of the mandatary.

(2) The heirs of the mandatary shall notify the mandator as soon as possible about his death and take the necessary measures to protect his interests, until he can take care of them.

(3) The mandate shall terminate upon the death of the mandator only if so agreed or if the mandatary undertook to fulfil the mandate because of his personal relations with the mandator.

(4) In that case the mandatary shall be obligated to continue with the work entrusted to

him to prevent damage to the heirs until they can take care of it.

(5) Where the mandator or mandatary is a legal person, the mandate shall terminate with the dissolution of such legal person.

### **Bankruptcy, Business Incapacitation**

Article 782

The mandate shall terminate in case of bankruptcy proceedings being initiated against the mandator or the mandatary or full or partial business incapacitation of either of them.

### **Moment of Termination of the Mandate**

Article 783

(1) Where the mandator revokes the mandate, dies, goes bankrupt, or becomes fully or partially incapacitated for business, the mandate shall terminate at the moment when the mandatary learns about any such event which causes the mandate to terminate.

(2) Where the mandatary has been issued a written power of attorney, he shall return it after termination of the mandate.

### **Exceptions**

Article 784

Where the mandate is given so that the mandatary can achieve a settlement of his claim against the mandator, the mandator may not revoke the mandate and the mandate shall not terminate upon the death or bankruptcy of the mandator or the mandatary, nor full or partial business incapacitation of either of them.

Section 19

## **COMMISSION CONTRACT**

### **I GENERAL PROVISIONS**

#### **Definition**

Article 785

(1) Under a commission contract, the commission agent undertakes to perform against commission charge one or more transactions in his name and for the account of the principal.

(2) The commission agent shall be entitled to a commission charge even where it has not been agreed upon.

#### **Application of the Rules of Mandate Contract**

Article 786

The rules of mandate shall apply, *mutatis mutandis*, to commission contracts, unless otherwise provided by the rules of commission.

#### **Concluding Transactions under Conditions Different from the Mandate**

Article 787

(1) Where a commission agent has concluded a transaction under conditions less favourable than those stipulated by the mandate when he should note have done that, he shall reimburse the principal for any difference and compensate him for any damage.

(2) In case referred to in paragraph 1 of this Article, the principal may refuse to accept the transaction concluded, provided he notifies the commission agent thereof without delay.

(3) But the principal shall lose this right if the commission agent shows his willingness to reimburse him immediately for the difference and compensate him for the damage caused.

(4) Where the transaction is concluded under conditions more favourable than those stipulated by the mandate, any benefits derived there from shall belong to the principal.

#### **Sale of Goods to Over-Indebted Person**

Article 788

The commission agent shall be liable for damage caused to the principal in case of sale of goods to a person he knew or ought to have known was over-indebted.

### **Where the Commission Agent Purchases the Principal's Goods or Sells Him His Goods**

Article 789

(1) The commission agent entrusted with the task of selling or buying certain goods listed in the stock exchange or the market may, subject to the principal's approval, keep the goods as a buyer, or deliver them as a seller, at the price applicable at the moment of executing the task he was entrusted with.

(2) In such a case the relationship between the commission agent and the principal shall be that governed by the contract of sale.

(3) Where the stock exchange or the market price and the price determined by the principal do not agree, the commission agent – the seller shall have the right to the lower of the two prices while the commission agent – the buyer, shall pay the higher price.

## **II OBLIGATIONS OF THE COMMISSION AGENT**

### **Taking Care and Insurance**

Article 790

(1) The commission agent shall be obligated to take care of the goods with diligence of an orderly and conscientious businessman.

(2) He shall also be liable for accidental perishing or damage sustained by the goods if he failed to insure it, where he ought to have done it in accordance with the mandate.

### **Notification of the Condition of the Goods Received**

Article 791

(1) When taking delivery of the goods from the carrier sent to him by the principal, the commission agent shall be obligated to determine its condition and notify the principal without delay about the date of arrival of the goods and visible damages of the goods or any shortages; failing that he shall be liable for damages sustained by the principal because of that.

(2) He shall be obligated to take all the necessary measures to preserve the rights of the principal vis-à-vis the responsible person.

### **Notification of Changes to the Goods**

Article 792

The commission agent shall notify the principal of any changes to the goods that might cause them to depreciate, and where there is no time to wait for his instructions, or where the principal stalls with giving instructions, and there is a threat of significant damage to the goods, the commission agent shall sell the goods in the most advantageous manner.

### **Notifying the Principal of the Names of Co-Contractors**

Article 793

(1) The commission agent shall notify the principal of the person he carried out the transaction he was entrusted with by the principal.

(2) This rule shall not apply in case of sale of movable things through commission shops, unless otherwise agreed.

### **Rendering of Accounts**

Article 794

(1) The commission agent shall render account of the transaction performed without undue delay.

(2) He shall surrender to the principal everything he has received in connection with the transaction executed for his account.

(3) The commission agent shall transfer to the principal all claims and other rights acquired vis-à-vis the third person he executed the transaction with in his name and for the account of the principal.

### **Guarantees For the Co-Contractor**

#### **Article 795**

(1) The commission agent shall be liable for the fulfilment of the obligations of his cocontractor only if he gave specific guarantees that he would fulfil his obligations (del credere commission) in which case they shall be solidarily liable.

(2) The commission agent guaranteeing for the fulfilment of the obligations of his cocontractor shall be entitled to increased commission (del credere commission premium).

## **III OBLIGATIONS OF THE PRINCIPAL**

### **Commission Charge**

#### **Article 796**

(1) The principal shall pay to the commission agent a commission charge upon completion of the transaction undertaken by the commission agent or if the completion of the transaction is prevented by a cause attributable to the principal.

(2) In case where the completion of transaction takes place in stages, the commission agent may demand payment of the commensurate amount of the commission charge after completion of each stage.

(3) In case of non-fulfilment of the concluded transaction due to reasons beyond control of the commission agent or the principal, the commission agent shall be entitled to adequate reimbursement for his efforts.

(4) The commission agent acting in bad faith towards the principal shall not be entitled to a commission charge.

### **Amount of Commission Charge**

#### **Article 797**

Unless fixed by the contract or rates, the commission charges owed to the commission agent shall be based on the concluded transaction and the performance.

### **Reimbursement of Expenses**

#### **Article 798**

(1) The principal shall reimburse the commission agent for any reasonable expenses incurred in the fulfilment of the mandate, with interest accruing from the date when they were incurred.

(2) The principal shall owe to the commission agent special reimbursement for the use of his warehouse and transport facilities, unless these are covered by the commission charge.

### **Advances to the Commission Agent**

#### **Article 799**

Unless otherwise agreed in the commission contract, the principal shall not be obligated to advance any sums to the commission agent needed by him to carry out the transaction.

## **IV LIEN**

#### **Article 800**

(1) The commission agent shall have lien on things that are the object of the commission contract as long as he, or someone else on his behalf, holds them or as long as he holds a document giving him the right to dispose of them.

(2) The commission agent may use the value of these things to settle his claims against the principal arising from all the commission transactions with the principal and loans and advance payments made to the principal, before all other creditors of the commission agent, irrespective whether such claims are attributable to these things or something else.

(3) The commission agent shall have priority to collect his claims from the claims accrued for the account of the principal during the fulfilment of the mandate.

## **V RELATIONS WITH THIRD PERSONS**

### **Principal's Rights to Claims from Transactions with Third Persons**

#### Article 801

(1) The principal may demand fulfilment of claims from a transaction concluded by the commission agent with a third person and for his account, only after they have been assigned to him by the commission agent.

(2) However, as regards the relation of the principal with the commission agent and his creditors, these claims shall be considered to be the claims of the principal from the moment they were established.

### **Limitation of Rights of Creditors of the Commission Agent**

#### Article 802

To settle their claims, the creditors of the commission agent may not, not even in case of his bankruptcy, take measures of execution in respect of things and rights that the commission agent has acquired in his name but for the account of the principal while fulfilling the mandate, except in the case of claims arising from the acquisition of such rights and things.

### **Bankruptcy of the Commission Agent**

#### Article 803

(1) In case of bankruptcy of the commission agent, the principal may demand separation from the bankruptcy estate of the things he handed over to the commission agent for sale for his account, and also of the things that the commission agent has acquired for his account.

(2) In the same case, the principal may demand from a third person to whom the commission agent has sold the things to pay him their price or the part thereof not yet paid.

#### Section 20

## **AGENCY CONTRACT**

## **I GENERAL PROVISIONS**

### **Definition**

#### Article 804

(1) Under an agency contract, the agent undertakes to negotiate during the term of the contract contracts with third persons in the name and for the account of the principal and to, if so agreed, conclude contracts with third persons in the name and for the account of the principal, in exchange for a commission that the principal undertakes to pay to the agent for each contract concluded by him or concluded through his agency.

(2) A person authorised under this Act or any special law to represent another person shall not be deemed an agent in terms of paragraph 1 of this Article.

(3) The principal may have more agents for the same type of work in the same

territory.

### **Agent for Another Principal**

Article 805

The agent may not undertake to do the same type of work in the same territory for another principal without approval from the principal.

### **Form**

Article 806

Agency contracts shall be drawn up in a written form.

### **Power of Attorney**

Article 807

The agent may require from the principal to be issued a power of attorney.

### **Accepting Fulfilment**

Article 808

The agent may not demand or accept fulfilment of the claims of his principal unless specifically authorised therefore.

### **Declarations on Behalf of the Principal**

Article 809

The agent shall be authorised to make the necessary declarations to his co-contractor to preserve the rights of his principal.

### **Security Measures**

Article 810

To protect the interests of the principal, the agent may take the necessary security measures.

## **II OBLIGATIONS OF THE AGENT**

### **Protecting the Interests of the Principal**

Article 811

(1) The agent shall protect the interests of the principal and act in accordance with the principles of fairness and diligence of an orderly and conscientious businessman in the performance of his work.

(2) The agent shall in particular do everything necessary to intermediate and conclude transactions he is authorised for, in accordance with reasonable instructions from the principal.

(3) Any stipulations of the agency contract in contravention of provisions of paragraphs 1 and 2 of this Article shall be without effect.

### **Notification Obligation**

Article 812

(1) The agent shall notify the principal of all the relevant market developments, particularly those of importance for each specific transaction.

(2) The agent shall notify the principal on a regular basis about the fulfilment of his contractual obligations, third persons willing to negotiate with the principal or enter into contracts with him and about the contracts he concluded in the name and for the account of the principal.

(3) Any stipulation of the agency contract in contravention of the provisions of paragraphs 1 and 2 of this Article shall be without effect.

### **Acting in Accordance with the Instructions**

#### Article 813

In negotiating and concluding contracts, the agent shall act in accordance with the instructions from the principal.

### **Keeping Secrets**

#### Article 814

(1) The agent shall keep business, professional and official secrets of the principal of which he becomes aware in connection with the work he is entrusted with.

(2) He shall be liable if he uses them or reveals them even after expiry of the agency contract.

### **Returning Things Given for Use**

#### Article 815

After termination of the agency contract, the agent shall return to the principal all the things the principal has given him for use during the term of the contract, unless otherwise agreed.

### **Special Case of Liability**

#### Article 816

(1) The agent shall be liable towards the principal for the fulfilment of the obligation under a contract concluded through his agency, or which he concluded under authorisation in the name of the principal, only if he gave specific guarantees therefore in writing.

(2) In such a case he shall be entitled to a special commission (del credere commission).

## **III OBLIGATIONS OF THE PRINCIPAL**

### **General Rule**

#### Article 817

(1) In his relations with the agent, the principal shall act in accordance with the principles of fairness and diligence of an orderly and conscientious businessman.

(2) Where this is necessary for the performance of his work, the principal shall, at his expense, provide to the agent samples, plans, price lists, promotional material, general operating conditions and other documentation.

(3) Any stipulations of the agency contract in contravention of provisions of paragraphs 1 and 2 of this Article shall be without effect.

### **Notification Obligation**

#### Article 818

(1) The principal shall give the agent all the notification necessary for the fulfilment of his contractual obligations.

(2) The principal shall notify the agent within a reasonable time period about the acceptance or non-acceptance of the offer and non-fulfilment of the contract in whose conclusion the agent took part.

(3) The principal shall notify the agent without delay about the need to downsize the scope of his activities to a level below reasonable expectations of the agent, to enable the agent to decrease his efforts appropriately; failing that he shall be liable for the damage sustained by the agent.

(4) The provisions of the agency contract in contravention of the provisions of paragraphs above of this Article shall be without effect.

## **Commission**

### Article 819

- (1) The principal shall pay the agent a commission for the contracts concluded through his agency during the term of the agency contract and for the contracts which the agent concluded in the name and for the account of the principal, provided he was authorised therefore.
- (2) The agent shall also be entitled to a commission for contracts that the principal concluded directly with clients found by the agent.
- (3) The agent entrusted on the basis of an agency contract with a sole agency in a certain territory or for a certain group of clients shall also be entitled to a commission for those contracts which the principal concluded in that territory or with that group of clients without the agent's agency.
- (4) Each reimbursement whose amount depends on the number or the value of realised transactions shall be deemed a commission.
- (5) The agent shall be entitled to a commission for a contract concluded by the principal after expiry of the agency contract, if the concluded contract is mainly the result of the agent's efforts before expiry of the agency contract and if such a contract is concluded within reasonable time after expiry of the agency contract or if the offer of a third person for the conclusion of a contract is received by the agent or principal before expiry of the agency contract.
- (6) The agent shall not be entitled to the commission referred to in paragraphs 1 to 3 of this Article if the entitlement to such a commission, in accordance with paragraph 5 of this Article belongs to the previous agent, except where the circumstances of the case are such that it would be fair to split the commission between the two agents.

## **Amount of Commission**

### Article 820

- (1) If the amount of commission is not fixed by the contract or a rate, the agent shall be entitled to the amount of commission commonly paid for such type of work in the place where the agent carried out the work for the principal.
- (2) Where the agent acted through his agency for the principal in different places, he shall be entitled to a commission commonly paid in the place of his domicile or headquarters, as the case may be.
- (3) Where it is not possible to determine the amount of commission commonly paid, the agent shall be entitled to the amount of commission that would be equitable, given the circumstances of the case, and particularly the number and the value of transactions performed by the agent for the principal and their demanding nature and the scope of the agent's efforts.

## **Special Commission**

### Article 821

The agent who, under authorisation by the principal, has collected a principal's claim, shall be entitled to a special commission on the amount collected.

## **Acquiring Right to Commission**

### Article 822

- (1) An agent shall acquire a right to a commission at the moment when the principal has fulfilled, or ought to have fulfilled, his performance under a contract between himself and



a third person or where the third person is, under a contract with the principal, obligated to fulfil his performance first, at the moment when the third person has fulfilled or ought to have fulfilled his performance, even where he has not done it for reasons attributable to the principal.

(2) In case of a contract between the principal and a third person stipulating consecutive performances to be fulfilled through a certain period of time, the agent shall have the right to a proportionate share of the commission in accordance with the rules referred to in the paragraph above of this Article.

(3) The provisions of the agency contract which are in contravention of paragraphs 1 and 2 of this Article shall be without effect if they put the agent in a worse position than that determined under these paragraphs.

### **Statement of Commission**

#### Article 823

(1) The principal shall furnish the agent quarterly with a statement of commission due to the agent, calculated for each month separately.

(2) The statement of commission shall contain all the essential elements on which it is based.

(3) The principal shall calculate and pay to the agent quarterly commission not later than until the end of the month following the last month of the accounting quarter.

(4) The parties may agree on a calculating period of less than three months.

(5) The principal shall, on request of the agent, furnish the agent, at his own expense, with an excerpt from his business books relating to transactions entitling the agent to a commission and notify him of any circumstances which can affect the commission.

(6) If the principal denies the request of the agent referred to in the previous paragraph or if the agent has doubts as to the accuracy of the excerpt from the principal's business books submitted by the principal or the notification provided by the principal, he shall be authorised to demand examination of the principal's business books by an authorised auditor as regards the data that the commission depends on and to have such data submitted to him.

(7) The provisions of the agency contract which are in contravention of paragraphs above of this Article shall be without effect if they put the agent in a worse position than that determined under these paragraphs.

### **Losing Right to Commission**

#### Article 824

(1) The agent shall lose the right to commission in case of non-fulfilment of a contract between the principal and a third person through no fault of the principal.

(2) Where, in the case referred to in the paragraph above of this Article, the agent has received commission he shall be obligated to return it.

(3) The provisions of the agency contract which are in contravention of paragraphs above of this Article shall be without effect if they put the agent in a worse position than that determined under these paragraphs.

### **Expenses**

#### Article 825

(1) The agent shall not be entitled to reimbursement of his regular operating expenses, unless otherwise agreed.

(2) But he shall be entitled to reimbursement of special expenses incurred on behalf of the principal or on his order.

## **IV RIGHT OF RETENTION**

### Article 826

To ensure payment of his due claims under the contract, the agent shall have the right to retain the sums collected for the principal under his authorisation and all the things of the principal which he received from the principal or some other person in connection with the contract, as long as he keeps them or as long as some other person keeps them on his behalf, or as long as he holds a document enabling him to dispose of them.

## **V END OF CONTRACT**

### **Term of the Contract**

#### Article 827

- (1) Unless otherwise agreed, the agency contract shall be concluded for an indeterminate term.
- (2) A contract concluded for a fixed term shall terminate after expiry of its term.
- (3) Where the parties continue to perform the contract concluded for a fixed term after expiry of such term, it shall be deemed that they have concluded a new contract of the same contents for an indeterminate term.

### **Cancellation of Contract**

#### Article 828

- (1) In case of an agency contract concluded for an indeterminate term, each party may cancel it by giving written notice to the other party, in accordance with the periods of notice determined under this Article.
- (2) The length of the period of notice shall depend on the term of the contract and shall be one month for each year that the contract has entered into.
- (3) In case of a contract lasting for over five years, the period of notice shall be six months.
- (4) The parties may not agree a shorter period of notice, and where they agree on a longer period of notice, such period shall be equal for both parties.
- (5) Unless otherwise agreed, the period of notice shall start running on the first day of the month following the month of written notification to the other party of the cancellation and shall end on the last day of the last month of the period of notice.
- (6) The provisions of this Article shall also apply to a contract concluded for a fixed term, which shall be considered, on account of its continued performance after expiry of its fixed term, a contract concluded for an indeterminate term, with the fixed term of the contract being taken into consideration when calculating the length of the period of notice.

### **Termination of Contract**

#### Article 829

- (1) Each party may terminate a contract concluded for an indeterminate term without notice or terminate a fixed term contract before expiry of its term due to serious reasons that have to be indicated, and particularly because of failure by the other party to fulfil its contractual obligations.
- (2) This right may not be contractually excluded or limited.
- (3) Where the notice of termination of a contract concluded for an indeterminate term has been given without indicating any serious reasons, it shall be deemed a cancellation with regular period of notice.
- (4) Each party to the contract shall be entitled to damages compensation if the other party did not have a legitimate reason to terminate the contract.

(5) Unfounded termination shall entitle the other party to terminate a contract concluded for an indeterminate term without observing the period of notice, and to terminate a fixed term contract before expiry of its term.

## **VI SPECIAL FEE**

### **Article 830**

(1) After the contract has ended the agent shall be entitled to a special fee if he has found new clients for the principal or has made a significant contribution in terms of increasing the principal's business with the existing clients, and the principal has derived significant benefits from such clients after the contract has ended, and if the circumstances warrant such reimbursement, particularly in case of loss of commission in transactions with such clients.

(2) The special fee shall also be owed in case of contract's termination due to the death of the agent.

(3) When determining the special fee account shall be taken of the commission paid to the agent for contracts concluded after the end of the contractual relation with the principal as well as a possible prohibition or restriction imposed on his pursuit of the business following the end of his relation with the principal.

(4) The amount of special fee may not exceed the amount of the average annual commission in the last five years, and in case of a contractual relation with a duration of less than five years, the amount of average annual commission during the term of the contract.

(5) As regards excerpts from the business books of the principal and notifications of the circumstances influencing the amount of special fee to be paid, the provisions of this Act governing the rights of agents in terms of calculation of due commission shall apply, *mutatis mutandis*.

(6) Payment of special fee shall not exclude the right of the agent to demand damages compensation which exceeds the amount of special fee.

### **Reasons for Which the Right to Special Fee Can Be Excluded**

#### **Article 831**

The principal shall not be obligated to pay a special fee in case:

- of cancellation or termination of the contract by the agent; however, in such cases the agent may still demand payment of the special fee if the reason for the cancellation or termination lies with the principal or if he terminated or cancelled the contract because of his old age or illness which prevents him from further pursuit of the contractual relationship,
- of termination of the contract by the principal because of faulty behaviour on the part of the agent,
- the agent has transferred the contract to another person, in accordance with the agreement with the principal.

### **Loss of Right to Special Fee**

#### **Article 832**

The agent shall lose the right to a special fee and damages compensation if he fails to notify the principal within one year after the contract has ended of his intention to demand them.

### **Prohibition of Limitation or Exclusion of Agent's Rights**

#### **Article 833**

The parties to the contract may not limit or exclude the rights of the agent stipulated

under this Chapter of the Act before the end of the contract.

## **VII CONTRACTUAL PROVISION ON THE PROHIBITION OR RESTRICTION OF THE PURSUIT OF BUSINESS**

### **Article 834**

- (1) The parties may agree to prohibit the agent from pursuing, after the end of the contract, either fully or in part, the business of agency.
- (2) Such a contractual stipulation shall be valid if made in a written form and if related to the same territory, the same persons or the same goods as the agency contract.
- (3) In case the contract ends for reasons attributable to the principal, such a contractual provision shall bind the agent only if the principal pays him a special fee after the end of the contract and if he pays him during the prohibition or restriction of the pursuit of his business an additional monthly fee in the amount which equals the average monthly amount of commission he was entitled to in the past five years, and, where the duration of the contract was less than five years, in the amount which equals the average monthly amount of commission he was entitled to during the term of the contract.
- (4) The contractual provision prohibiting or restricting the pursuit of the business may bind the agent for a maximum period of two years following the end of the contract.
- (5) The agent who terminates the contract on account of faulty behaviour on the principal's part, shall be entitled to notify the principal by means of a written declaration, within one month from the date of termination of the contract, that he will not respect the provision on the prohibition or restriction of the pursuit of his business.
- (6) Any provision of the contract prohibiting or restricting the pursuit of the business in contravention of the provisions of this Article shall be without effect if it puts the agent in a worse position than that determined under these paragraphs.

### **Section 21**

## **BROKERAGE CONTRACT I GENERAL PROVISIONS**

### **Definition**

#### **Article 835**

Under a brokerage contract, the broker undertakes to connect the principal with a person willing to negotiate with the principal the entering into a contract, in exchange for a certain commission that the principal undertakes to pay to the broker, should a contract be entered into.

### **Application of the Provisions of the Contract for Work**

#### **Article 836**

A contract providing for the broker's right to a certain commission despite the fact that his efforts have proved futile shall be governed by the provisions applicable to contracts for work.

### **Accepting Fulfilment**

#### **Article 837**

- (1) No brokerage mandate shall authorise the broker to accept the fulfilment of the obligation arising under a contract entered into through his brokerage.

(2) For that special power of attorney in writing shall be required.

#### **Revocation of the Brokerage Mandate**

Article 838

The principal may revoke the brokerage mandate at any given moment, unless he has waived his right to it and unless that is in contravention of the principles of conscientiousness.

#### **Non-Existence of the Obligation to Enter into a Contract**

Article 839

The principal shall not be obligated to enter into contract negotiations with a person found by the broker, nor enter into a contract with such a person under the conditions he communicated to the broker, but he shall be liable for damages if he acts contrary to the principles of conscientiousness.

### **II OBLIGATIONS OF THE BROKER**

#### **Obligation to Seek Opportunities**

Article 840

(1) The broker shall seek opportunities for negotiating contracts with diligence of an orderly and conscientious businessman and shall acquaint the principal with any such opportunity.

(2) The broker shall act as an intermediary in the negotiations and shall endeavour to make happen the entering into a contract, if he has specifically undertaken to do that.

(3) He shall not be liable if he fails in his endeavours despite his efforts.

#### **Notification Obligation**

Article 841

The broker shall notify the principal of all the circumstances important for the intended transaction of which he was aware or ought to have been aware.

#### **Broker's Liability**

Article 842

(1) The broker shall be liable for any damage sustained by either of the parties he brokered between on account of his brokerage for an incapacitated person where he knew or might have known of such person's incapacitation or a person that he knew or ought to have known could not fulfil the obligations arising under that contract, and generally for each damage caused by his fault.

(2) The broker shall be liable for any damage caused to the principal on account of his notification to a third person, without approval from the principal, of the contents of the mandate, negotiations or conditions of the contract entered into.

#### **Broker's Journal and Excerpt from the Broker's Journal**

Article 843

The broker shall keep records (broker's journal) of all the important information concerning the contracts concluded through his brokerage and provide a signed excerpt (broker's statement) from that journal.

### **III Obligations of the Principal**

#### **Commission**

Article 844

(1) The broker shall be entitled to a commission also where it has not been agreed upon.

(2) Where the amount of commission has not been determined by a rate or any other enactment, the contract, or a custom, it shall be determined by the court based on the broker's

efforts and the service rendered.

### **Where the Broker Acquires the Right to a Commission**

Article 845

- (1) The broker shall acquire the right to a commission at the moment when the contract he brokered is entered into, unless otherwise agreed.
- (2) But if the contract is entered into under a suspenseful condition, the broker shall acquire the right to a commission only upon the fulfilment of such a condition.
- (3) Where the contract is entered into under the condition of avoidance, the fulfilment of the condition shall have no affect on the broker's right to a commission.
- (4) In case of invalidity of the contract, the broker shall have the right to a commission if he was not aware of the cause of invalidity.

### **Reimbursement of Expenses**

Article 846

- (1) The broker shall not be entitled to reimbursement of the expenses incurred in the performance of the mandate, except where so agreed.
- (2) But where the contract provides for his right to reimbursement of expenses, he shall have the right to such reimbursement even in cases where the contract has not been entered into.

### **Brokering for Both Parties**

Article 847

- (1) Unless otherwise agreed, the broker with a mandate to act from both parties may demand from each party only half of the commission and a half of expenses, where reimbursement of expenses has been agreed upon.
- (2) The broker shall take care of the interests of both parties with diligence of an orderly and conscientious businessman.

### **Loss of Right to a Commission**

Article 848

The broker who works for another party in contravention of the contract or interests of his principal shall lose the right to a commission and reimbursement of expenses.

Section 22

## **CONTRACT OF SHIPMENT (FORWARDING)**

### **I GENERAL PROVISIONS**

#### **Definition of Terms**

Article 849

- (1) A shipper shall be obliged, under the contract of shipment, to enter into a contract of carriage of goods in his own name and on behalf of a consignor, for the purpose of organising a carriage, and into other contracts required in order to perform carriage of goods, as well as to perform other common activities and tasks. The consignor shall undertake to pay a certain remuneration to the shipper.
- (2) If so provided by the contract, the shipper may also conclude the contract of carriage of goods and perform other legal transactions in the name and on behalf of the consignor.

#### **Withdrawal from the Contract**

Article 850

A consignor may withdraw from the contract at any time, but shall be obliged, in that case, to compensate for all the costs of the shipper incurred until that time and to pay a

proportionate remuneration for the work done.

### **Application of Rules on Commission and Commercial Agency Contracts**

#### Article 851

Rules on commission and commercial agency contracts shall apply, as appropriately, to consignor and shipper relations that are not regulated by this Section.

## **II OBLIGATIONS OF A SHIPPER**

### **Notification of Defective Order**

#### Article 852

A shipper shall notify the consignor of the defects in his order, especially of those that expose the shipper to larger costs or damage.

### **Notification of Defective Packaging**

#### Article 853

If the thing is not packed or generally prepared for carriage in a proper manner, the shipper shall notify the consignor of these defects. If waiting for the consignor to eliminate these defects is detrimental to the shipper, the latter shall eliminate them at the expense of the consignor.

### **Protection of Consignor's Interest**

#### Article 854

- (1) The shipper shall at any time act in the best interest of the consignor and with a due care.
- (2) The shipper shall immediately notify the consignor of the damage inflicted on the thing and of all the circumstances significant for the consignor, and shall take all the measures necessary for the protection of his rights in relation to the responsible person.

### **Acting According to the Instructions of the Consignor**

#### Article 855

- (1) The shipper shall follow the instructions concerning the route, means and method of transport and other instructions issued by the consignor.
- (2) If it is not possible to act in accordance with the instructions contained in the order, the shipper shall ask for new instructions, and in the case of lack of time or possibility, the shipper shall act in the best interest of the consignor.
- (3) The shipper shall immediately notify the consignor of any departure from the order.
- (4) If the consignor has failed to determine the route or means or method of transport, they shall be determined by the shipper in the best interest of the consignor in the given circumstances.
- (5) If the shipper has failed to follow the given instructions, he shall also be liable for the damage caused by *force majeure*, unless it is proved that the damage would have occurred even if he had followed the instructions.

### **Liability of the Shipper for Other Persons**

#### Article 856

- (1) The shipper shall be responsible for the selection of the carrier and for the selection of other persons with whom he entered into contract (storage of goods, etc.) in executing the order, but shall not be liable for their work, unless this is stipulated in the contract.

(2) The shipper who, instead of executing the order himself, has entrusted the execution to another shipper shall be liable for his work.

(3) If the order contains explicit or tacit authorisation for a shipper to entrust the execution of the order to another shipper, or if this is evidently in the consignor's interest, the shipper shall be liable only for the selection, unless he has agreed to take responsibility for another shipper's work.

(4) Liabilities referred to in this Article may not be excluded or limited by a contract.

### **Customs Clearance Procedures and Payment of Customs Duty**

#### **Article 857**

Unless otherwise stipulated in the contact, the order for shipment of the thing across the border shall contain the responsibility of the shipper for carrying out of the required customs procedures and payment of customs duty and costs for the account of the consignor.

### **Where a Shipper is a Carrier**

#### **Article 858**

(1) The shipper may also perform fully or partly a carriage of goods whose shipment was entrusted to him, unless otherwise agreed.

(2) If the shipper has also performed carriage or a part of the carriage, he shall have rights and obligations of the carrier. In that case, he shall be entitled to an appropriate remuneration for carriage, in addition to remuneration for shipment and a reimbursement of shipping costs.

(3) The same shall apply to other activities contained in the order, customs or general conditions.

### **Insurance of Shipment**

#### **Article 859**

(1) The shipper shall insure the shipment only if this has been agreed.

(2) If the risks to be insured are not stipulated in the contract, the shipper shall insure the things against common risks.

### **Rendering of Account**

#### **Article 860**

(1) After the completion of work, the shipper shall render the account to the consignor.

(2) At the consignor's request, the shipper shall render the account in the course of the execution of order as well.

## **III CONSIGNOR'S OBLIGATIONS**

### **Payment of Remuneration**

#### **Article 861**

Consignor shall remunerate the shipper as agreed in the contract and if this has not been agreed in the contract, in accordance with the tariff or another by-law, or in the absence of these, as decided by the court.

### **When the Shipper may Request Remuneration**

#### **Article 862**

The shipper may request the remuneration when he has fulfilled his obligations stipulated in the contract of shipment.

### **Costs and Advance Payments**

#### **Article 863**



(1) The consignor shall reimburse the necessary costs to the shippers, which have been incurred in executing the order for shipment of goods.

(2) The shipper may request reimbursement of costs as soon as they have been incurred.

(3) The consignor shall, at the shipper's request, make advance payments to the shipper for costs arising from executing the order.

#### **Where Reimbursement is Agreed to be Paid by a Consignee**

##### Article 864

If it is agreed that the shipper will collect his claims from a consignee, the shipper shall retain the right to demand the reimbursement from the consignor, if the consignee has failed to make payment.

#### **Dangerous Things and Valuables**

##### Article 865

(1) The consignor shall notify the shipper of the characteristics of things that may threaten the safety of persons or goods, or that may cause damage.

(2) When valuables, securities or other expensive things are contained in the shipment, the consignor shall notify the shipper thereof and communicate their value at the time of presentation for shipment.

#### **IV SPECIAL CASES OF SHIPMENT**

##### **Shipment with Total (Fixed) Reimbursement**

###### Article 866

(1) Where the contract of shipment stipulates the total amount to be paid for executing the order for shipment of goods, it shall include remuneration for shipment, carriage and reimbursement of all other costs, unless otherwise agreed.

(2) In that case, the shipper shall also be responsible for the work of the carrier and other persons who he has made use of on the basis of authorities granted by the contract.

##### **Collective Shipment**

###### Article 867

(1) The shipper may, in executing the received orders, organise the collective shipment, unless this is excluded by the contract.

(2) If a difference in freight to the benefit of the consignor arises from the collective shipment, the shipper shall be entitled to a special additional remuneration.

(3) In the case of a collective shipment, the shipper shall be responsible for loss or damage to a thing inflicted in the course of carriage, which would not have occurred had there not been collective shipment.

#### **V SHIPPER'S LIEN**

##### Article 868

(1) For the purpose of securing the collection of all claims arising from the contract of shipment, the shipper shall have a lien on the things handed over for the purpose of shipment and relating to shipment, as long as he holds them or holds a document allowing him a free disposal of the things.

(2) Where another shipper participates in shipment, he shall take care of the collection of claims and exercising of a lien of the previous shippers.

(3) Where another shipper has settled the shipper's claims on the consignor, these claims and the shipper's lien shall, by operation of law, be assigned to another shipper.

(4) The same shall apply if another shipper has settled the carrier's claims.

Section 23

CONTRACT OF EXAMINATION OF GOODS AND SERVICES

**Definition of Terms**

Article 869

(1) Under the contract of examination of goods one party to the contract (examiner) undertakes to carry out examination (control) of goods professionally and impartially and to issue the examination document (certificate), whereas the other party (ordering party) undertakes to pay a remuneration for the examination carried out.

(2) The examination of goods may include identification, determination of quality, quantity and other characteristics of goods.

**Scope of Examination**

Article 870

The examiner shall carry out control to the extent and in a manner stipulated in the contract, and if no such stipulations are made in the contract, to the extent and in a manner corresponding to the true state of affairs.

**Nullity of Individual Provisions of the Contract**

Article 871

(1) The provisions of the contract imposing duties on the examiner that could effect his impartiality in carrying out examination or the validity of the certificate of examination shall be null and void.

(2) The examination shall be deemed completed only upon the issuance of the certificate.

**Storing of Goods or Sample**

Article 872

(1) Goods handed over by the ordering party to the examiner for the purpose of carrying out of the contracted examination shall be stored by the examiner and secured from substitution.

(2) The examiner shall keep the produced samples for a minimum of six months, unless otherwise stipulated.

**Obligation to Report to the Ordering Party**

Article 873

The examiner shall report to the ordering party in a timely manner on any significant circumstances in the course of examination and storing of goods, especially on necessary and useful costs incurred on behalf of the ordering party.

**Remuneration**

Article 874

(1) The examiner shall be entitled to a contracted or generally accepted remuneration for the examination and storing of goods.

(2) The examiner shall be entitled to reimbursement of all necessary and useful costs incurred on behalf of the ordering party.

**Lien**

Article 875

The examiner shall have a lien on the goods handed over to him for examination for the purpose of securing the contracted or generally accepted remuneration or reimbursement of necessary and useful costs.

### **Examination of Goods Entrusted to Another**

#### Article 876

- (1) The examiner may entrust carrying out of the contracted examination to another person, unless this is expressly forbidden by the ordering party.
- (2) The examiner shall be responsible to the ordering party for the work of another examiner.

### **Examination of Goods and Performance of Individual Legal Transactions**

#### Article 877

- (1) The examiner shall be authorised, on the basis of the explicit order of the ordering party, to perform individual legal transactions in the name and on behalf of the ordering party, in addition to the contracted examination of goods.
- (2) The examiner shall be entitled to a special, generally accepted or contracted remuneration for the performed legal transactions.

### **Examination of Goods under a Guarantee**

#### Article 878

- (1) The examiner may guarantee for the unaltered state of the examined goods in the contracted period.
- (2) The examiner shall be entitled to an additional contracted or generally accepted remuneration for the guarantee provided.

### **Examination of Services and Things not Intended**

#### **For Sale**

#### Article 879

If examination refers to services or things that are not intended for sale, the examiner and ordering party shall have the same rights and obligations as in the examination of goods.

### **Cancellation of Contract**

#### Article 880

The ordering party may cancel the contract as long as the requested examination is not completed. In that case the former shall be obliged to pay to the examiner the proportionate part of the remuneration and reimburse the necessary and useful costs, as well as to compensate for any damage.

#### Section 24

### **PACKAGE TRAVEL CONTRACT**

#### **I GENERAL PROVISIONS**

#### **Definition of Terms**

#### Article 881

- (1) Under a package travel contract, the organizer of the package undertakes to provide to a traveller a combination of at least two services, consisting of either transport, accommodation or other tourist services, provided over a period of more than 24 hours or including at least one overnight accommodation (a package), and the traveller undertakes to pay a single total (lump-sum) price.
- (2) The provisions of this Section shall also apply if payment for individual travel services referred to in paragraph 1 of this Article is made separately.
- (3) A person selling a package of travel services put together by another person shall also be considered as the organizer of the package.

#### **Advertising Material**

#### Article 882

- (1) Any advertising material, such as journey program or brochure, relating to a package and supplied by the organizer to the traveller, shall not contain any misleading information concerning the price or any other provision of the package travel contract.
- (2) Advertising material made available to the traveller shall contain clear, comprehensive and accurate information concerning: the price of the package travel; destination; means, characteristics and categories of transport used; type of accommodation, its location, category and its main features, its tourist classification under the rules of the host country; the meal plan; the itinerary; the amount or percentage of the price which is to be paid in advance and the timetable for payment of the total balance; passport and visa requirements and health formalities required for the journey and the stay at the destination; minimum number of persons required for the package to take place and the deadline for informing the traveller in the event of cancellation.
- (3) The particulars contained in the advertising material are binding on the organizer and may be altered only following an agreement with the traveller or if these alterations have been clearly communicated to the traveller before the conclusion of the contract, in which case this possibility must be expressly indicated in the advertising material.

#### **Providing Prior Information**

##### Article 883

- (1) The organizer shall provide the traveller, in writing or in such other documentary form as shall be accessible to the traveller, before the contract is concluded, with general information on passport and visa requirements and health formalities required for the journey and the stay at the destination, as well as on the periods required for meeting them.
- (2) Where, before obtaining the prior information, the traveller is provided with the journey program or some other advertising material containing the particulars referred to in paragraph 1 of this Article, the prior information may only make reference to that program or advertising material.

#### **Form and Terms and Conditions of the Contract**

##### Article 884

- (1) The package travel contract shall be concluded in a written form or in such other documentary form as shall be comprehensible and accessible to the traveller and at least one copy of the contract shall be given to the traveller.
- (2) The organizer of the package shall inform the traveller of the terms and conditions of the contract, before the conclusion of the contract.
- (3) The provisions in paragraphs 1 and 2 of this Article shall not apply to belated conclusion of last-minute reservations or contracts.
- (4) Depending on the particular package, the package travel contract shall in particular contain the following provisions: company name or first and last name, head office and address of the organizer and its insurer, if insurance is included in the package; destination, the relevant period of stay, with dates; [means, characteristics and category of transportation, date, time and place of departure and return](#); accommodation, its location, its tourist category, its main features and tourist classification under the rules of the host country; the meal plan; the itinerary, visits, excursions and other services which are included in the package and in the total price; the price of the package, an indication of a possibility of price revisions, in accordance with this Act, and fees chargeable for certain services that are not included in the

price (e.g. tourist taxes, landing, embarkation and disembarkation fees at ports and airports); payment schedule and method of payment; special requirements which the traveller has communicated to the organizer when making the booking, and which the latter has accepted; the minimum number of persons required for the package to take place, and the deadline for informing the traveller in the event of cancellation; periods within which the traveller must make any complaints concerning the failure to perform or improper performance of the contract.

## **II OBLIGATIONS OF THE ORGANIZER**

### **Protection of Travellers' Rights and Interests**

#### **Article 885**

(1) The organizer of the package shall provide the services to the travellers of the content and nature stipulated in the contract and shall protect the travellers' rights and interest, in accordance with the business practice in this industry.

(2) If a traveller, in the course of journey, communicates any failure of performance or improper performance of any of the contracted services, the organizer or his local representative shall make prompt efforts to find appropriate solutions.

### **Obligation to Provide Information**

#### **Article 886**

The organizer shall provide the traveller in writing or in such other documentary form that is accessible to the traveller, with the following information in good time before the start of the journey: the times and places of intermediate stops and transport connections, details of the place to be occupied by the traveller (e.g. number of sleeper compartment on train, cabin on ship, etc.); the name, address and telephone number of the organizer's local representative, or, failing that, of the person on whose assistance a traveller in difficulty can call, or, failing that, an emergency telephone number or any other information that will enable him to contact the organizer; in the case of the journey by minors, information enabling direct contact to be established with the child or the person responsible; information on the optional conclusion of an insurance policy to cover the cost of cancellation by the traveller or the cost of assistance, including repatriation, in the event of accident or illness.

### **Confidentiality of Information**

#### **Article 887**

Information received concerning the traveller, his luggage, his movements and the names of the persons accompanying him may be disclosed to the third persons by the organizer only by the traveller's consent or at the request of the competent public authority.

### **Liability for Damage**

#### **Article 888**

(1) The organizer of the package shall be liable for all the damage inflicted on the traveller by non-performance, partial performance and improper performance of obligations relating to the package stipulated in the contract and in this Act.

(2) If transport services, accommodation or other services related to the performance of the package contract are rendered by the organizer, the organizer shall be liable for any damage caused to the traveller, under the rules applicable to these services.

### **Liability for Damage Where Rendering of Particular Services is Entrusted by the Organizer to a Third Party**

#### **Article 889**

(1) The organizer who has entrusted rendering of transport services, accommodation

or other services related to the package to the third party shall be liable for the damage caused to the traveller, which occurred as a result of complete or partial failure to render these services, in accordance with the applicable rules.

(2) Even though the services have been rendered in accordance with the contract and rules applicable to them, the organizer shall be liable for the damage inflicted on the traveller in relation to their rendering, unless he has proved that he has acted with due care in selecting the persons who have rendered the services.

(3) The traveller has a right to demand directly from the third party liable for damage a full or supplementary compensation for the damage suffered.

(4) The organizer shall have all the rights that the traveller would have against the third party liable for that damage (right of recourse), to the extent to which he has compensated for the damage.

(5) The traveller shall present to the organizer the documents and everything that is necessary for exercising the right of recourse.

### **Price Reduction**

#### Article 890

(1) If the services stipulated in the package travel contract have been rendered incompletely or improperly, the traveller shall have a right to a proportionate price reduction, under condition that he has filed a complaint with the organizer within eight days following the end of the journey.

(2) The request for a price reduction shall not effect the traveller's right to ask for the compensation of damage.

### **Exclusion and Limitation of Liability for Damage**

#### Article 891

(1) The provisions of the package travel contract excluding or limiting the organizer's liability for damage shall be void.

(2) The contractual provision determining in advance the ceiling for compensation for damage shall, nevertheless, be valid, unless it is evidently disproportionate to the damage.

(3) This limitation on the amount of compensation shall not be valid if the organizer has inflicted the damage intentionally, or due to gross negligence, or if the damage has caused a personal injury.

### **Insurance**

#### Article 892

(1) The organizer shall conclude the liability insurance contract for the damage, as provided for under this Act.

(2) In the agreement with the traveller, the organizer may also provide cover against other travel risks.

### **Package Travel Security**

#### Article 893

(1) The organizer shall provide security for every package travel with a bank or insurance company for a price refund to the traveller, if, as a result of his bankruptcy or insolvency, the journey is not organized, or, for a compensation for the travellers' costs of return to the place of departure, if the journey is terminated for the same reasons.

(2) The security may be in a form of an insurance policy, cash deposit or a bank guarantee.

(3) The organizer shall issue a security certificate to the traveller, which allows him a direct exercise of rights against the bank or insurance company.

### **III TRAVELLER'S OBLIGATIONS**

#### **Payment of Price**

Article 894

The traveller shall pay the agreed price for the package travel to the organizer at the agreed time or as appropriate.

#### **Obligation to Provide Information**

Article 895

The traveller shall, at the organizer's request, produce, in a timely manner, all the information required for the organization of the package, and especially for obtaining the transportation tickets, and accommodation booking, as well as documents required for border crossing.

#### **Meeting of the Prescribed Conditions**

Article 896

The traveller shall take care that he himself, his personal documents and his luggage comply with the conditions prescribed by border crossing, customs, sanitary, monetary and other rules.

#### **Traveller's Liability for Damage**

Article 897

The traveller shall be liable for the damage caused to the organizer by the traveller's failing to meet the obligations arising from the contract and the provisions of this Act.

#### **Notification of Failure to Perform**

Article 898

(1) The traveller shall notify the person who has rendered the service as soon as possible, in writing or in any other appropriate form, of a failure to perform or improper performance of any service stipulated in the contract, and shall notify the organizer within 8 days following the end of the journey.

(2) The traveller's obligation referred to in paragraph 1 of this Article shall be clearly and expressly indicated in the package travel contract.

### **IV SPECIAL RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE CONTRACT**

#### **Transfer of the Package**

Article 899

(1) Where the traveller is prevented from proceeding with the package, he may transfer his booking, having first given the organizer reasonable notice of his intention before the departure, to a person who satisfies the specific conditions applicable to the contracted package.

(2) The transferor of the package and the transferee shall be solidarily liable to the organizer for payment of the price and for any costs arising from such a transfer.

#### **Revision of the Agreed Price**

Article 900

(1) The organizer may ask for an upward revision of the agreed price, if, following the conclusion of the contract, there was a change in the exchange rate of the contracted currency, increase in transportation costs, including the cost of fuel, and in dues, taxes or fees

chargeable for certain services (at ports and airports), effecting the price of the package, and of which the organizer did not have or could not have any knowledge.

(2) The prices laid down in the contract may only be changed by the organizer if the contract expressly provides for the possibility of an upward or downward revision and states precisely how the revised price is to be calculated.

(3) Where the price increase exceeds 10% of the agreed price, the traveller is entitled to withdraw from the contract without the obligation to compensate for the damage and with a right to a refund of the paid balance.

(4) During the twenty days prior to the departure date stipulated, the price stated in the contract shall not be increased.

(5) If the changes referred to in paragraph 1 of this Article resulted in a price reduction, the organizer shall compensate the traveller for the difference in price.

### **Traveller's Right to Withdraw from the Contract**

#### Article 901

(1) The traveller may partially or completely withdraw from the contract at any time.

(2) If the traveller withdraws from the contract in good time before the start of the journey, which is determined with respect to the type of the package (timely withdrawal), the organizer shall only be entitled to a compensation for administrative costs.

(3) In the case of untimely withdrawal from the contract, the organizer may require from the traveller a compensation corresponding to a percentage of the agreed price, which is determined with respect to the time remaining before the start of the journey, and which shall be economically justified.

(4) The organizer shall only have a right to a compensation of costs, where the traveller has withdrawn from the contract due to circumstances which could not be prevented or eliminated, and which could have presented justified grounds for not entering into contract, had they existed at the time of concluding the contract, and also in the case the traveller has provided for an adequate transferee or the transferee has been provided by the organizer himself.

(5) If the traveller withdraws from the contract following the start of the journey, for the reasons that are not stated in paragraph 4 of this Article, the organizer shall be entitled to a full amount of the agreed price of the package.

### **Organizer's Right to Cancel the Contract**

#### Article 902

(1) The organizer may cancel the contract, partially or completely, without the obligation to compensate the traveller for damage, if prior or during the performance of the contract external or unforeseeable circumstances have occurred, which could not be prevented or eliminated, and which could have presented justified grounds for not entering into contract, had they existed at the time of concluding the contract.

(2) The organizer may also cancel the contract without the obligation to compensate for the damage on the grounds that the number of persons enrolled for the package is less than the minimum number required for the organization of the package, and the traveller is informed of the cancellation within the appropriate period, which may not be shorter than five days before the day the journey should have started.

(3) If the organizer has cancelled the contract in favour of the traveller, the traveller shall not be entitled to ask for a compensation for damage caused by this cancellation.

(4) In the case of cancellation of the contract before the beginning of its performance,



the organizer shall refund the entire balance received from the traveller.

(5) If the organizer has cancelled the contract due to reasons of extraordinary circumstances, which occurred during the performance of the contract, the organizer shall compensate the traveller for the difference in price between the services agreed and those supplied, and shall take all the measures necessary for the protection of the traveller's interests.

### **Alteration of Terms of the Contract**

#### Article 903

(1) If the organizer alters significantly the important provisions of the contract (itinerary, accommodation, price) before the start of the journey, he shall immediately notify the traveller thereof in writing.

(2) If the organizer proposes the altered contract to the traveller, the proposal shall specify the alterations made and their impact on the price of the package.

(3) If the traveller does not accept the alterations of the contract, he may withdraw from the contract with no obligation to compensate for damage or costs, or may take a substitute package, where the organizer is able to offer him such a substitute. The traveller shall not be obliged to make any additional payments if the replacement package offered is of higher quality, and if it is of lower quality, the organizer shall refund the difference in price to the traveller.

(4) The traveller shall inform the organizer of his decision within two working days following the day of receipt of the proposal for the alterations.

(5) If a traveller, pursuant to paragraph 2 3 of this Article, withdraws from the contract, the organizer shall immediately repay all the sums paid by the traveller under the contract and shall compensate for any damage.

(6) The traveller shall not be entitled to the compensation, referred to in paragraph 4 5 of this Article, where the alterations of the significant provisions of the contract occurred due to extraordinary external circumstances which the organizer could not foresee, forestall or eliminate.

(7) Where, after departure, a significant proportion of the services contracted for is not provided or the organizer perceives that he will be unable to procure a significant proportion of the services to be provided, the organizer shall make suitable alternative arrangements, at his expense, for the continuation of the package, and where appropriate, compensate the traveller for the difference between the services agreed and those actually supplied.

(8) If it is impossible to make such arrangements or these are not accepted by the traveller for good reasons, the organizer shall, where appropriate, provide the traveller, at no extra cost, with equivalent transport back to the place of departure, or to another return-point to which the traveller has agreed and shall, where appropriate, compensate the traveller.

#### Section 25

### **AGENCY TRAVEL CONTRACT**

#### **Definition of Terms**

##### Article 904

Under the agency travel contract, the agent undertakes to enter into package travel contract or contract relating to the supply of one or more specific services allowing for the organization of a journey or stay, in the name and on behalf of the traveller, while the traveller undertakes to pay a fee.

#### **Obligation to Issue Travel Certificate**

#### Article 905

(1) Where under the agency travel contract the agent undertakes to enter into the package travel contract, the agent shall at the time of concluding the contract issue a travel certificate which shall, in addition to the particulars prescribed by this Act for the package travel certificate and the name and address of the organizer of the package, contain the name and address of the agent and a note that he acts as an agent.

(2) If in the travel certificate the agent does not specify that he is an agent, the package travel agent will be considered to be the organizer.

(3) Where the agency travel contract is related to the conclusion of the contract concerning an individual service, the agent shall issue a certificate containing the description of the service and indicating the price.

#### **Acting on the Traveller's Instructions**

##### Article 906

(1) The agent shall act on to the instructions issued by the traveller in a timely manner, if they are in accordance with the contract, agent's common business procedures and interests of other travellers.

(2) If the traveller has not issued the required instructions, the agent shall act to the best interest of the traveller, as appropriate under the circumstances.

#### **Selection of Third Persons**

##### Article 907

The agent shall act with due diligence in selecting the third persons to supply the services stipulated in the contract and shall be liable to the traveller for their selection.

#### **Appropriate Application of the Provisions of the Package Travel Contract**

##### Article 908

The provisions of this Act concerning the package travel contract shall apply to the agency travel contract as appropriately, unless otherwise provided for in this Section.

#### Section 26

### CONTRACT OF THE SUPPLY OF ACCOMMODATION

#### (ALLOTMENT CONTRACT)

### **I. GENERAL PROVISIONS**

#### **Definition of Terms**

##### Article 909

(1) Under the contract of the supply of accommodation, the innkeeper undertakes to make available to a travel agency, in a certain period, a certain number of beds or accommodation units in a particular establishment, provide accommodation services to the persons referred to by the agency and pay a fee to the agency, while the agency undertakes to refer the guests or notify the innkeeper that it cannot be done, within the agreed time limits, and pay for the service price, if the agency has made use of the contracted accommodation.

(2) Unless otherwise provided for in the contract, it shall be considered that accommodation facilities have been made available for a period of one year.

#### **Form of the Contract**

##### Article 910

The contract of the supply of accommodation shall be concluded in a written form.

### **II OBLIGATIONS OF A TRAVEL AGENCY**

#### **Obligation to Provide Information**

##### Article 911

- (1) A travel agency shall provide information to the innkeeper on the course of booking of the contracted accommodation.
- (2) If it is not capable of fully occupying the contracted accommodation, the travel agency shall notify the innkeeper thereof within the agreed or generally accepted time limits and shall provide him with a guest list and determine the period until which the innkeeper may freely dispose of the accommodation.
- (3) The accommodation that is not marked as occupied on the guest list shall be considered as available as of the date of receipt of the list by the innkeeper, in the period to which the list refers.
- (4) After the expiry that period, the travel agency shall again have the right to make bookings with respect to the contracted accommodation.

#### **Obligation to Respect the Contracted Price**

##### Article 912

A travel agency may not charge, to the person it refers to the accommodation facility, a higher price than that stipulated by the contract of the supply of accommodation or the innkeeper's price list.

#### **Obligation to Pay for the Accommodation Services**

##### Article 913

- (1) The accommodation services shall be paid by a travel agency to the innkeeper, after they have been rendered, unless otherwise provided for by the contract.
- (2) The innkeeper shall have a right to ask for an appropriate advance payment.

#### **Obligation to Issue a Special Document**

##### Article 914

- (1) A special written document shall be issued to the persons referred to by the travel agency, pursuant to the contract of the supply of accommodation.
- (2) The special document shall be registered in the name of a person or a particular group, shall not be transferable and shall contain an instruction to the innkeeper to provide the services indicated.
- (3) Mutual claims between the travel agency and the innkeeper shall be calculated on the basis of the special document.

### **III OBLIGATIONS OF AN INNKEEPER**

#### **Obligation to Make the Contracted Accommodation Available**

##### Article 915

- (1) The innkeeper shall assume the final and irrevocable obligation to make available the agreed number of beds or other accommodation units, in the certain period, and to provide the services indicated in the special written document, to the persons referred to by the travel agency.
- (2) The innkeeper may not enter into contract with another travel agency concerning the supply of the accommodation which is the subject of the already concluded contract of the supply of accommodation.

#### **Obligation of Equal Treatment**

##### Article 916

The innkeeper shall provide services to the persons referred to by the travel agency under the same conditions as to the persons with whom it has directly entered into the accommodation services contract.

#### **Obligation of the Innkeeper not to Change the Service Price**

#### Article 917

- (1) The innkeeper may not change the contracted prices, unless he has notified the travel agency thereof at least six months in advance, except in the case of the exchange rate fluctuations of the currencies effecting the contracted price.
- (2) The revised prices may be applied after the expiry of one month following their delivery to the travel agency.
- (3) The revised prices may not be applied to services for which the guest list has already been delivered.
- (4) The revision of prices shall in no way effect the bookings already confirmed by the innkeeper.

#### **Obligation to Pay the Fee**

#### Article 918

- (1) The innkeeper shall pay the fee to the travel agency for the turnover based on the contract of the supply of accommodation.
- (2) The fee shall be determined as a percentage of the price of the accommodation services rendered.
- (3) If the percentage of the fee is not determined by the contract, the travel agency shall be entitled to a fee set by its general business conditions, or in the absence of those, by the common business practice.

#### **IV TRAVEL AGENCY'S RIGHT TO WITHDRAW FROM THE CONTRACT**

#### **Assumptions**

#### Article 919

- (1) A travel agency may temporarily withdraw from the use of the contracted accommodation, without terminating the contract of the supply of accommodation and without being responsible to compensate the innkeeper for damage, if it has notified the innkeeper of the cancelled use within the agreed time limit.
- (2) If the time limit for withdrawing from the contract is not stipulated in the contract, it shall be determined in accordance with the common business practice in hospitality industry.
- (3) Where the withdrawal notice is not sent within the prescribed time limit, the innkeeper shall be entitled to a compensation for damage.
- (4) A travel agency may entirely withdraw from the contract without being liable to compensate for damage, if the withdrawal notice is sent within the agreed time limit.

#### **Obligation of a Travel Agency to Occupy the Contracted Accommodation**

#### Article 920

- (1) A special obligation of a travel agency to occupy the contracted accommodation may be stipulated in the contract of the supply of accommodation (payment regardless of occupancy).
- (2) In that case, if the contracted accommodation is not occupied, the travel agency shall compensate the innkeeper per unused bed or another accommodation unit and per day.
- (3) In that case, the travel agency shall not have the right to cancel the contract, either partially or entirely, regardless of the timely sent notice.

#### Section 27

#### **INSURANCE CONTRACT**

#### **I COMMON PROVISIONS FOR PROPERTY AND PERSONAL INSURANCE**

#### ***1 General Provisions***

## **Definition of Terms**

### Article 921

Under the insurance contract, an insurer undertakes to a policyholder to pay the indemnity to the insured person or insurance beneficiary upon the occurrence of an insured event, while the policyholder undertakes to pay insurance premiums to the insurer.

### **Insured Event**

#### Article 922

- (1) An insured event shall be an incident caused by the insured risk.
- (2) The risk covered by the insurance (insured risk) shall be future, uncertain and independent of the exclusive consent of the policyholder or the insured.
- (3) The insurance contract shall be void if, at the time of its conclusion, the insured event has already taken place, or it is in progress, or it is about to take place, or there is no longer a possibility of its occurrence.
- (4) Nevertheless, if it is agreed that the insurance will cover a certain period preceding the conclusion of the contract, such a contract shall be void only if at the moment of its conclusion the interested party is aware that the insured event has already occurred, or that there is no longer a possibility of its occurrence.

### **Exemption of certain Classes of Insurance**

#### Article 923

- (1) The provisions of this Section shall neither apply to marine insurance, nor to other classes of insurance to which the marine insurance rules are applicable, nor to air transport insurance, accounts receivable insurance or reinsurance relationships.
- (2) The marine insurance rules shall apply to the insurance of goods in land transportation, as appropriately.
- (3) The provisions of this Section shall not apply to the classes of insurance that are regulated by a separate law.

### **Derogation from the Provisions of this Section**

#### Article 924

- (1) The contract may derogate only from those provisions of this Section where such a derogation is expressly permitted, as well as from those provisions allowing the policyholders to act at their discretion.
- (2) Derogation from other provisions shall be permitted only if it is, unequivocally, to the benefit of the insured, unless it is forbidden by this Act or any other law.

## ***2 Conclusion of the Contract***

### **When Contract is Concluded**

#### Article 925

- (1) The insurance contract shall be concluded only when the application concerning the insurance has been accepted.
- (2) After the conclusion of the insurance contract, the insurer shall immediately provide the policyholder with a clearly written up and signed insurance policy or any other document relating to insurance (covering note, etc.)
- (3) Notwithstanding the provision of paragraph 1 of this Article, personal insurance contract shall be concluded when both parties have signed the insurance policy.
- (4) A written application made to the insurer as regards the conclusion of the insurance contract shall be binding on the applicant for a period of eight days following the day when the application is received by the insurer, unless the applicant has determined a

shorter time limit. Where a medical examination is required, this time limit shall be 30 days.

(5) If the insurer fails to reject the application which does not depart from his terms and conditions for the insurance in question, within that time limit, the application shall be deemed to have been accepted and the contract concluded.

(6) In that case, the contract shall be considered concluded at the time the application is received by the insurer.

### **Policy and other Insurance-Related Documents**

#### **Article 926**

(1) The policy shall include the following particulars: parties to the contract, insured person or thing or another object of insurance, risk covered by the insurance, duration of the contract and duration of the insurance cover, the amount insured or indication that the insured amount is unlimited, premium or contribution (stake), date when the policy is issued and signature of the parties to the contract.

(2) The insurance policy may temporarily be replaced by the covering note or another insurance-related document where material provisions of the contract are entered.

(3) The insurer shall notify the policyholder that general and/or special insurance terms and conditions represent an integral part of the contract and shall provide the policyholder with the text of the terms and conditions, unless they are already printed on the policy.

(4) Fulfilment of the obligation referred to in paragraph 3 of this Article shall be indicated in the policy.

(5) In the case of disparity between any of the provisions of the general or special conditions and a provision of the policy, the latter shall apply; in the case of disparity between the printed and typed provision, the typed one shall apply, and in the case of disparity between the typed provisions and those that are handwritten, the handwritten provision shall apply.

(6) In accordance with the agreement between the parties, the policy may be registered in the name of a person, may be of the order or bearer type, or issued on behalf of whomever it may concern.

### **Conclusion of the Contract by Paying the Premium**

#### **Article 927**

Cases where the contractual relationship in the field of insurance arises on the payment of the premium may be included in the terms and conditions of insurance.

### **Conclusion of Contract in the Name of Another Person without Authorisation**

#### **Article 928**

(1) The person who has concluded the insurance contract in the name of another person without his authorization shall be liable to the insurer for the obligations, until the person in whose name the contract has been concluded authorizes that contract.

(2) The interested party may authorize the contract even after the occurrence of the insured event.

(3) If the authorization has been refused, the policyholder shall owe the premium for the period until the date of notification of the authorization refusal.

(4) Nevertheless, an agent without a mandate who has notified the insurer that he acts without authorisation in the name and for the account of another person shall not be liable for

the obligations arising from insurance.

**Insurance on Another Person's Behalf or  
on Behalf of Whomever it May Concern**

Article 929

(1) In the case of insurance on another person's behalf or on behalf of whomever it may concern, the liability to pay the premium and other liabilities arising from the contract shall be met by the policyholder. The latter, however, may not exercise the insurance rights, even where he holds the policy, without the approval of the person whose interest is insured and to which that person is entitled.

(2) The policyholder shall not be obliged to deliver the policy to the interested person until the premiums paid to the insurer and costs associated with the contract have been compensated for.

(3) These claims of a policyholder shall be senior and payable from the remuneration owed and he shall have a right to ask for their settlement directly from the insurer.

(4) The insurer may communicate to any beneficiary of insurance on behalf of another person all the objections against the policyholder, to which he is entitled in accordance with the contract.

**Insurance Agents**

Article 930

(1) Where the insurer has authorized another person to represent him and has failed to determine the scope of his authorities, the agent shall be authorized to enter into insurance contracts, negotiate contract revisions or its extensions, issue insurance policies, collect premiums and receive the statements addressed to the insurer, in the name and for the account of the insurer.

(2) If the insurer has limited the authority of his agent, of which the policyholder is not aware, these limitations shall be considered non-existent.

***3 Obligations of the Insured Person or Policyholder***

**Duty to Report**

Article 931

On the conclusion of the contract, the policyholder shall report to the insurer all the circumstances that are material for assessing the risk, of which he is aware or of which he should have been aware.

**Intentional Misrepresentation or Concealment**

Article 932

(1) In the case a policyholder has intentionally misrepresented or has intentionally concealed a circumstance the nature of which is such that the insurer would not have entered into the contract had he been aware of the true state of affairs, the insurer may ask for a cancellation of the contract.

(2) In the case of contract cancellation, referred to in paragraph 1 of this Article, the insurer shall have a right to retain and collect the premiums until the date when the application for the contract cancellation is submitted. However, the insurer shall be liable to pay the indemnity if the insured event has occurred prior to that date.

(3) The insurer's right to demand the insurance contract cancellation shall expire, if he has failed to communicate to the policyholder, within three months following the day he has become aware of misrepresentation or concealment that he intends to exercise this right.

(4) If several objects of insurance are covered by the insurance contract, the contract

shall remain effective with respect to those objects of insurance to which the intentional misrepresentation or concealment by the policyholder does not refer.

### **Unintentional Misrepresentation or Incomplete Representation**

#### Article 933

- (1) If the policyholder has misrepresented or has concealed the material information, and this has been done unintentionally, the insurer may, at any time, state that he terminates the contract or propose the premium increase proportionate to the increased risk, within one month after he has become aware of misrepresentation or incomplete representation.
- (2) In that case, the contract shall terminate upon the expiry of 14 days following the day when the insurer notified the policyholder of the contract termination. In the case of the insurer's proposal for the premium increase, the termination shall take effect by operation of law, where the policyholder fails to accept the proposal within 14 days following the day of its receipt.
- (3) In the case of the contract termination, the insurer shall refund a portion of the premium relating to a period until the end of the insurance period.
- (4) If the insured event has occurred before the misrepresentation or incomplete representation is identified, or after it is identified, but before the contract is terminated or before the agreement on the premium increase is reached, the compensation shall be reduced in proportion to the rate of the premiums paid and the premium rate that should have been paid in accordance with the actual risk.

### **Extending the Scope of Application of the Previous Provisions**

#### Article 934

The provisions concerning the consequences of intentional or unintentional misrepresentation or concealment of the circumstances material for risk assessment shall also apply where insurance contract is concluded in the name and for the account of another, or for the benefit of the third party, or on behalf of another person, or on behalf of whomever it may concern, if these persons have been aware of misrepresentation or concealment of the circumstances material for risk assessment.

### **Cases where the Insurer Cannot Invoke Misrepresentation or Incomplete Representation**

#### Article 935

- (1) The insurer who has been aware or should have been aware of the circumstances material for risk assessment, at the time of entering into contract, and which the policyholder has misrepresented or concealed, cannot invoke misrepresentation or concealment.
- (2) The same shall hold true, if the insurer has become aware of these circumstances in the course of the period of insurance and has failed to exercise his legal powers.

### **Duty to Pay and Receive Premium**

#### Article 936

- (1) The policyholder shall pay the insurance premium and the insurer shall receive payment of the premium by any person who has a legal interest in such a payment.
- (2) The premium shall be paid within the agreed time limits, and if it is to be paid as a lump-sum, the premium shall be paid on entering into contract.
- (3) The place of the premium payment shall be the place where the policyholder is domiciled or resident, unless another place is stipulated in the contract.

### **Consequences of Failure to Pay the Premium**

#### Article 937



- (1) If it is agreed for the premium to be paid on entering into the contract, the insurer's liability to pay the indemnity stipulated in the contract shall become effective as of the date of the premium payment.
- (2) If it is agreed for the premium to be paid after entering into contract, the insurer's liability to pay the indemnity stipulated in the contract shall become effective as of the date of beginning of the period of insurance, stipulated in the contract.
- (3) If a policyholder, or any other interested party, fails to pay the premium due after the conclusion of the contract on the due date, the insurance contract shall terminate, by operation of law, upon the lapse of thirty days following a delivery of the registered letter to the policyholder informing him of the premium due date. However, this time limit cannot lapse before the expiry of thirty days from the premium due date.
- (4) In any case, the insurance contract shall terminate by operation of law, if the premium is not paid within one year following its due date.
- (5) The provisions of this Article shall not apply to life insurance and accident insurance.

### **Risk Increase**

#### Article 938

- (1) The policy holder shall, as regards property insurance, notify the insurer of any change in the circumstances that might be material for risk assessment, and as regards personal insurance, only if the risk increased as a result of a change in profession of the insured person.
- (2) The policyholder shall notify the insurer of the increased risk without delay, if the risk has increased as a result of his actions, and if the increase in risk has occurred without his participation, he shall notify the insurer within fourteen days from the day he has become aware or should have become aware of that fact.
- (3) If the risk increase is such that the insurer would not have entered into contract, had such risk existed at the time of entering into contract, he may cancel the contract.
- (4) If the risk increase is such that the insurer would have entered into contract, had such risk existed at the time of entering into contract, only if the premium were higher, he may propose the new premium rate to the policyholder.
- (5) If the policyholder does not accept the new premium rate within fourteen days following the receipt of the proposal for a new rate of the premium, the contract shall terminate by operation of law.
- (6) Nevertheless, the contract shall remain in force and the insurer may no longer exercise his authority to propose to the policyholder the new rate of premium or to cancel the contract, if he has failed to exercise these authorities within one month from the date when he has, in any way, become aware of the increased risk, or even prior to the expiry of that time limit, if he has shown that he agrees to extend the contract (if he receives the premium, pays the indemnity for the insured event which occurred after that increase in risk, etc.)

### **Where the Insured Event Occurs in the Meantime**

#### Article 939

If the insured event occurs before the insurer is notified of the increased risk or after he has been notified of the increase in risk, but before the contract is terminated or agreement reached with the policyholder on the increase in the premium, the indemnity shall be reduced proportionate to the premiums paid and the premiums that should be paid in accordance with the increased risk.

### **Risk Decrease**

#### Article 940

(1) In the case the risk decreased after the conclusion of the insurance contract, the policyholder shall be entitled to ask for an appropriate premium reduction, counting from the date when he has notified the insurer thereof.

(2) If the insurer does not accept a premium reduction, the policyholder may cancel the contract.

### **Obligation to Report on the Occurrence of the Insured Event**

#### Article 941

(1) The insured person shall, except in the case of life insurance, report to the insurer on the occurrence of the insured event within three days from the date he has become aware of that fact.

(2) If the insured person fails to meet his obligation within the prescribed time limit, he shall compensate the insurer for the damage that the latter might have as a result of that.

### **Nullity of the Provisions Stipulating a Forfeiture of the Right**

#### Article 942

The provisions of the contract stipulating a forfeiture of the right to indemnity, if the insured person fails to meet any of the prescribed or contracted obligations, following the occurrence of the insured event, shall be void.

### **4 Obligations of the Insurer**

#### **Payment of Indemnity**

##### Article 943

(1) In the case the insured event has occurred, the insurer shall pay the indemnity stipulated in the contract within the agreed time limit, which may not be longer than fourteen days, counting from the date when the insurer has received a notice of the occurrence of the insured event.

(2) Where a certain period of time is required to establish the existence of the insurer's liability or its amount, the insurer shall pay the indemnity stipulated in the contract within thirty days following the date of receipt of the claim for damages or shall notify the insured, within the same period, that there are no grounds for his claim.

(3) If the amount of the insurer's liability is not determined within the time limits provided for in paragraphs 1 and 2 of this Article, the insurer shall immediately pay the undisputed amount of a portion of his liability as an advance payment.

(4) If the insurer fails to settle his liability within the time limits prescribed in this Article, he shall pay default interest to the insured person, starting from the date of receipt of the notice of the insured event, as well as a compensation for an injury the latter sustains therefrom.

#### **Exclusion of Insurer's Liability for Damage Caused Intentionally or Deceitfully**

##### Article 944

If a policyholder, insured person or beneficiary has caused the occurrence of the insured event intentionally or deceitfully, the insurer shall be released from any performance obligations. Any provision which derogates there from shall have no legal effect.

#### **Insurer's Objections**

##### Article 945

(1) The insurer may present the same objections against the claim of the insured person from the insurance contract and against the claim of any other person invoking that

contract, as against the policyholder.

(2) However, in compulsory liability insurance, the insurer may not present the same objections against the claim of the third party, as against the insured person.

(3) Exceptionally, only the objections that have been raised before the insured event has occurred may be presented by the insurer against a claim of a third person, in the case of voluntary liability insurance, and the person enjoying certain rights to the object of insurance, whose rights have been transferred, by operation of law, from the destroyed or damaged object to the indemnity.

### ***5 Period of Insurance***

#### **Beginning and Cessation of Effectiveness of Insurance**

##### Article 946

(1) The insurance contract shall be effective as of the expiry of the date stipulated as the date of beginning of the insurance period until the end of the last day of the period covered by the insurance contract.

(2) If the period of insurance is not determined by the contract, any party to the contract may cancel the contract at the due date of the premium, notifying the other party thereof in writing, no later than three months before the premium due date.

(3) If the insurance contract is concluded for a period of more than five years, any party to the contract may cancel the contract upon the lapse of that period, notifying the other party thereof in writing, with a six-month notice.

(4) The contract may not preclude a right of any party to cancel the contract as provided for in paragraphs 2 and 3 of this Article.

(5) The provisions of this Article shall not apply to life insurance contract and accident insurance contract.

#### **Effect of Bankruptcy on Insurance**

##### Article 947

(1) In the case of bankruptcy of a policyholder, insurance shall continue, but any party shall have a right to cancel the insurance contract within three months following the initiation of bankruptcy proceedings. In that case, a portion of the premium paid, which relates to the remaining period of insurance, shall be included in the bankruptcy estate of the policyholder.

(2) In the case of bankruptcy of the insurer, the insurance contract shall terminate upon the lapse of thirty days from the initiation of bankruptcy proceedings.

(3) Bankruptcy proceedings shall not effect validity of the insurance contract.

## **II PROPERTY INSURANCE**

### ***1 General Provisions***

#### **Insurable Interest**

##### Article 948

(1) The property insurance contract may be concluded by any person or it may be concluded in favour of any person who has a reasonable interest in the object of insurance.

(2) The insured person may only be a person who has or expects to have a reasonable interest in non-occurrence of the insured event, since that person would otherwise suffer a material loss.

(3) The insured person may require a compensation for damage covered by the insurance, only if he had a legally permitted material interest in the object of insurance at the time of occurrence of the insured event.

#### **Purpose of Property Insurance**

#### Article 949

(1) Property insurance contract shall provide a compensation for damage which has been inflicted upon the property of the insured person as a result of the occurrence of the insured event.

(2) The amount of indemnity may not exceed the amount of damage suffered by the insured person in the event of occurrence of the insured event.

(3) As regards the insurance of crops and fruits and other products of land, the amount of damage shall be determined with respect to the value which they would have at the time of harvesting, unless otherwise provided for.

(4) The provisions of the contract limiting the compensation to the amount not exceeding the amount of damage shall be valid.

(5) In determining the amount of damage, a lost gain shall be taken into account only if this has been stipulated.

(6) If in the same period of insurance several insured events occur in succession (successive damages), the indemnity for each of them shall be determined and fully paid with respect to the entire amount of insurance, without reductions by the amount of previously paid compensations in that period.

(7) If the value of the insured property is agreed in the insurance contract (agreed value), the indemnity shall be determined with respect to that value.

#### **Insured Event Prevention and Salvage**

##### Article 950

(1) The insured person shall take the prescribed, agreed and any other reasonable measures necessary to prevent the occurrence of the insured event, and if the insured event does occur, he shall take all the reasonable measures in his power to restrain its injurious effects.

(2) The insurer shall compensate for any costs, losses and other injuries inflicted by an attempt to eliminate the immediate risk of occurrence of the insured event, and to restrain its injurious effects, even if these attempts have failed, under the assumption that actions have been taken in accordance with the provision referred to in paragraph 1 of this Article, or at the order or upon the approval of the insurer.

(3) The insurer shall make this compensation even if it, together with the compensation for damage arising from the insured event, exceeds the insured amount.

(4) If the insured person fails to meet his obligation of forestalling the insured event or obligation of salvage, for no justified reason, the insurer's liability shall be reduced proportionate to the increase in damage inflicted as a result of this failure.

#### **Abandoning of Damaged Insured Thing**

##### Article 951

The insured shall not have a right to abandon the damaged thing to the insurer and request a payment of a full amount of indemnity, following the occurrence of the insured event, unless otherwise provided for.

#### **Thing Perished as a Result of the Event not Covered by the Policy**

##### Article 952

(1) If the insured thing or thing for the use of which the liability insurance contract has been concluded, perished in the period of insurance as a result of an event not covered by the insurance contract, the contract shall cease to be effective as of the date it has perished, and

the insurer shall refund to the policyholder a portion of the premium proportionate to the remaining period of insurance.

(2) Where one of several things included in a single contract has perished as a result of an event that is not covered by the contract, the insurance shall continue to be effective with respect to other things, and the necessary modifications shall be carried out due to a decrease in the objects of insurance.

### ***2 Limitation on Insured Risks***

#### **Damage Covered by Insurance**

##### Article 953

(1) The insurer shall compensate for damages inflicted accidentally or through the fault of a policyholder, insured person or beneficiary, unless such liability, in the case of a particular damage, is explicitly excluded by the insurance contract.

(2) The insurer shall not be liable for damage caused intentionally by these persons and the contractual provision stipulating his liability in such a case shall be void.

(3) Nevertheless, if the insured event has occurred, the insurer shall compensate for any damage caused by a person for whose actions the insured person is responsible on any basis, regardless of whether this damage is caused intentionally or due to gross negligence.

#### **Damage Caused due to Defects in the Insured Thing**

##### Article 954

The insurer shall not be liable for damage to the insured thing which results from its defects, unless otherwise agreed.

#### **Damages Caused by Operations of War and Riots**

##### Article 955

(1) The insurer shall not be responsible to compensate for damages caused by operations of war or riots, unless otherwise agreed.

(2) The insurer shall provide evidence that the damage is caused by any of the above stated events.

### ***3 Overinsurance and Contract with Multitude of Insurers***

#### **Overinsurance**

##### Article 956

(1) Where, on entering into contract, one party has fraudulently contracted an amount of insurance which exceeds the actual value of the insured property, the other party may request the cancellation of the contract.

(2) In the case of contract cancellation, the insurer shall have a right to retain and collect premiums until the date of submitting the application for the contract cancellation, but he shall be liable to pay the indemnity up to the actual value of the insured property, if the insured event has occurred prior to that date.

(3) If the agreed amount of insurance exceeds the value of the insured property, and both parties have acted with due care, the contract shall remain effective, the amount of insurance shall be reduced to not less than the actual value of the insured property and the insurance premium shall be reduced correspondingly.

#### **Subsequent Value Reduction**

##### Article 957

If the insured value decreases during the period of insurance, any party to the contract shall have a right to a corresponding reduction in the amount of insurance and the premium, starting from the date when such a request has been communicated to the other party.

## **Multiple and Double Insurance**

### **Article 958**

(1) Where a property is insured against the same risk with two or more insurers, for the same interest, for the same period and for the same insured person, so that the aggregate amount of insurance does not exceed the insurable value of that property (multiple insurance), every insurer shall be fully liable for meeting the obligations arising from the contract that he himself has entered into.

(2) Where the aggregate amount of insurance exceeds the insurable value of property (double insurance), and the policyholder has acted with due care, all these insurances shall be valid and every insurer shall have a right to the agreed premium for the current period of insurance, while the insured person shall be entitled to request from every individual insurer a compensation in accordance with the contract concluded with him, which shall not exceed the amount of damage.

(3) Upon the occurrence of the insured event, the policyholder shall notify thereof every insurer against the same risk, and communicate to him the names and addresses of other insurers and the amounts of insurance of individual contracts concluded with them.

(4) After the payment of compensation to the insured, every insurer shall account for a portion of the compensation proportionate to the ratio between the amounts of insurance to which he has agreed to the aggregate amount of insurance. The insurer who has paid a larger amount shall be entitled to request a compensation for the excessive payment from the other insurers.

(5) If a contract is entered into without an indication of the amount of insurance or if the cover is unlimited, such a contract shall be deemed as a contract concluded with the largest amount of insurance.

(6) Other insurers shall be liable for the portion of insurance that an insurer cannot pay, in proportion to their shares.

(7) If a policyholder has concluded an insurance contract whereby a double insurance has occurred and he has not been aware of the previously concluded insurance contract, he may, regardless of the fact whether he himself or another party has concluded the previous contract, request the corresponding reduction in the amount of insurance and the premium referring to the subsequent insurance contract, within one month from the date when he has become aware of the previous insurance. However, the insurer shall retain the premiums received and he shall be entitled to the premium for the current period.

(8) If the double insurance is a result of a reduction in the value of the insured property during the period of insurance, the policyholder shall have a right to a corresponding reduction in the amount of insurance and the premium, starting from the date when he has communicated his request for reduction to the insurer.

(9) Where, on the occurrence of the double insurance, the policyholder has failed to act with due care, any insurer may request the cancellation of the contract.

## **Co-insurance**

### **Article 959**

Where an insurance contract is concluded with several insurers who have agreed to jointly bear and distribute the risk, every insurer designated in the insurance policy shall be liable to the insured person for a full compensation.

## **4 Subinsurance**

### **Article 960**

(1) Where it has been established that the value of the insured property, at the time of occurrence of the insured event, exceeds the amount of insurance, the indemnity shall be reduced proportionate to the value of the insured property at the time of occurrence of the insured event.

(2) The insurer shall be liable to pay the full indemnity, up to the amount of insurance, if it is agreed that the ratio between the value of the insured property and the amount of insurance shall not be material for determining the amount of indemnity.

### ***5 Contract Assignment and Payment of Indemnity to Another Person***

#### **Contract Assignment to Assignee of the Property Insured**

##### Article 961

(1) In the case of alienation of the insured property, and the property for the use of which the liability insurance contract has been concluded, rights and obligations of the policyholder shall be assigned, by operation of law, to the assignee, unless otherwise agreed.

(2) However, where only a portion of the insured property, which does not constitute a separate unity with respect to insurance, is alienated, the insurance contract shall terminate, by operation of law, as regards the alienated property.

(3) Where, as a result of alienation of property, the probability of occurrence of the insured event increases or decreases, the general provisions referring to risk increase or decrease shall apply.

(4) A policyholder who fails to notify the insurer that the property insured has been alienated shall continue to be liable for paying the premiums falling due even after the date of alienation.

(5) The insurer and assignee of the property insured may withdraw from the insurance contract, with a 15-day advance notice, but they shall be obliged to deliver the notice no later than thirty days after having become aware of the alienation.

(6) The insurance contract may not be cancelled if the insurance policy is of the bearer or order type.

#### **Indemnity to Lien Holders and Holders of Other Rights**

##### Article 962

(1) After the occurrence of the insured event, a lien and other rights that existed previously on the thing insured shall be transferred to the indemnity owed, both in the case of own property and in the case of insurance of property of other persons in view of a liability to protect and return them, and the insurer may not indemnify the insured without the consent of the holders of these rights.

(2) These holders of rights may request directly from the insurer to settle their claims, in the order of priority legally prescribed and up to the amount of insurance.

(3) However, if at the time of claim settlement, the insurer has not been aware and could not have been aware of these rights, the payment of indemnity to the insured remains valid.

### ***6 Assignment of Rights of the Insured against the Responsible Person to the Insurer (Subrogation)***

##### Article 963

(1) By the paying the indemnity under the insurance contract, all the rights of the insured against the person who is on any basis liable for damage, shall be assigned to the insurer, by operation of law, up to the amount of the indemnity paid.

(2) If this assignment of rights to the insurer is hindered, partially or completely, through the fault of the insured, the insurer shall be released from his liability to the insurer as appropriate.

(3) Assignment of rights of the insured to the insurer may not be effected to the detriment of the insured. Consequently, if the indemnity paid by the insurer to the insured is, for any reason, smaller than the damage he has sustained, the insured shall be entitled to a remaining portion of indemnity which is to be disbursed from the funds of a responsible person before the settlement of the insurer's claim arising from the rights assigned to him.

(4) Notwithstanding the rules on the assignment of rights of the insured to the insurer, these rights shall not be assigned to the insurer if the damage has been caused by a person related in direct line with the insured or a person for whose actions the insured is liable, or who lives with him in the same household, or a person employed with the insured, unless these persons have caused the damage intentionally.

(5) Nevertheless, if any of the persons referred to in paragraph 4 of this Article has been insured, the insurer may request from the insurer of that person a compensation for the amount paid to the insured.

### ***7 Liability Insurance***

#### **Insurer's Liability**

##### Article 964

(1) In the case of liability insurance, the insurer shall be liable for damage inflicted by the insured event, only if the third party (injured party) has requested compensation for damage.

(2) The insurer shall bear the costs of dispute and other reasonable costs, up to the amount of insurance, for the purpose of ascertaining liability of the insured.

(3) Costs of measures taken at the request of the insurer or in agreement with him, for the purpose of protection from unreasonable and excessive claims by third parties, shall also be compensated for under the insurance contract.

#### **Injured Party's Own Right and Direct Claim**

##### Article 965

(1) In the case of liability insurance, the injured party may request directly from the insurer a compensation for damage suffered due to the event for which the insured is responsible, but maximum to the amount of the insurer's liability.

(2) The injured party shall have own right to indemnity, as of the date of occurrence of the insured event, and any other subsequent modification to rights of the insured towards the insurer shall be without prejudice to the right of the injured party to indemnity.

### **III PERSONAL INSURANCE**

#### ***1 General Provisions***

#### **Determination of the Insured Amount**

##### Article 966

In the personal insurance contracts (life insurance and accident insurance), the insured amount that the insurer is obliged to pay on the occurrence of the insured event, shall be determined in the policy in accordance with the agreement of the parties to the contract.

#### **Life Insurance Policy**

##### Article 967

(1) In addition to general particulars of any policy, a life insurance policy should contain the following: name of a person to whose life a policy relates, date of birth of that



person or time limit on which enjoyment of right to the insured amount depends.

(2) Life insurance policy may be registered in the name of a person, or may be in a form of order, but may not be in a bearer form.

(3) For an endorsement of a policy in a form of order to be valid it should contain name of beneficiary, date of endorsement and signature of endorser.

### **Misrepresentation of Age of the Insured**

Article 968

Notwithstanding the general provisions concerning the consequences of misrepresentation and concealment of the circumstances material to the risk assessment, the following rules shall apply to misrepresentation of age in the life insurance contracts:

1) life insurance contract shall be void and the insurer shall return all the received premiums if, on the conclusion of the contract, age of the insured has been falsely represented and his actual age exceeds the limit provided for in the terms and conditions and tariffs of the insurer;

2) if it has been falsely represented that the insured is of younger age and his actual age does not exceed the limit stipulated for life insurance, the contract shall be valid, and the insured amount shall be reduced in proportion to the relation of the agreed upon premium and premium prescribed for life insurance of a person of that age;

3) if the insured is of younger age than reported on the conclusion of the contract, the premium shall be reduced to the appropriate amount, and the insurer shall refund a difference between the received premiums and premiums to which he is entitled.

### **Consequences of Failure to Pay the Premium and Reduction in the Insured Amount**

Article 969

(1) Where a life insurance or accident insurance policyholder has failed to pay a premium on its due date, the insurer shall not have a right to require its collection in court proceedings.

(2) If a policyholder, upon an invitation by the insurer which must be served by registered mail, fails to pay the due premium within the time limit indicated in that letter, which may not be shorter than one month counting from the date when the letter has been served, the insurer may only communicate to the policyholder that the insured amount is reduced to the amount of the surrender value, provided that at least three annual premiums have been paid until that time, or, otherwise, that the contract is cancelled.

(3) If the insured event has occurred prior to the contract cancellation or reduction in the insured amount, the insured amount shall be deemed to have been reduced, or that the contract has been cancelled, depending on whether the premiums are paid for a minimum of three years or not.

### **Insurance of a Third Party**

Article 970

(1) Life insurance may refer to a life of a policyholder, or to a life of a third party.

(2) The same applies to accident insurance.

(3) If insurance refers to the event of death of a third party, for a contract to be valid, a written consent of that party in a policy or in a separate letter shall be given when the policy is signed, indicating the insured amount.

### **Insurance against Death of a Minor or Legally Incompetent Person**

Article 971

(1) Insurance against death of a third party under fourteen years of age and of legally incompetent person shall be void and the insurer shall refund to a policyholder all the premiums received under such contract.

(2) A written consent of a legal representative and a written consent of any insured person shall be required for the insurance against death of a third party over fourteen years of age to be valid.

### **Right to Compensation and to the Insured Amount**

#### Article 972

(1) In the personal insurance, the insurer who has paid the insured amount may not have, on any basis, a right to compensation from the third party responsible for the occurrence of the insured event.

(2) A right to compensation from the third party responsible for the occurrence of the insured event shall be exercised by the insured or the beneficiary, irrespective of his right to the insured amount.

(3) The provisions of paragraphs 1 and 2 of this Article shall not apply to the case where accident insurance is contracted as liability insurance.

### **2 Risks Excluded**

#### **Suicide of the Insured**

##### Article 973

(1) Insurance contract against death of a person shall not cover a risk of suicide committed in the first year of insurance.

(2) In the case a suicide is committed within three years following the date of conclusion of the contract; the insurer shall not be obliged to pay the insured amount to the beneficiary, but rather mathematical reserves under the contract, unless other more favourable provisions for the insured have been contracted.

#### **Intentional Murder of the Insured**

##### Article 974

The insurer shall be released from the obligation to pay the insured amount to the beneficiary if he has intentionally caused death of the insured. However, the insurer shall pay the mathematical reserves under the contract to the policyholder, and if latter is the insured - to his heirs, provided that at least three annual premiums have been paid until that time.

#### **Accident Caused Intentionally**

##### Article 975

The insurer shall be released from the obligation arising from the accident insurance contract, if the insured has intentionally caused the accident.

#### **Operations of War**

##### Article 976

(1) If death of the insured was caused by operations of war, the insurer, unless otherwise agreed upon, shall not be obliged to pay the insured amount to the beneficiary, but shall rather pay the mathematical reserves under the contract.

(2) The insurer shall be released from the obligation arising from the accident insurance contract, if the accident has been caused by operations of war, unless otherwise stipulated.

#### **Contractual Exclusion of Risk**

##### Article 977

Other risks may also be excluded from the life insurance or accident insurance

contract.

### ***3 Rights of a Policyholder Prior to the Occurrence of the Insured Event***

#### **Surrender**

Article 978

- (1) At the request of a whole life policyholder, the insurer shall pay to him the policy surrender value, if a minimum of three annual premiums have been paid until that time.
- (2) Conditions when the policyholder may request payment of the surrender value shall be specified in the insurance contract, as well as the method of calculation of this value, in accordance with the insurance terms and conditions.
- (3) A right to surrender the policy may not be exercised by creditors of a policyholder or a beneficiary, but the surrender value shall be paid to the beneficiary at his request if designation of the beneficiary is irrevocable.
- (4) Exceptionally, the policy surrender may be requested by the creditor who has received the policy as a pledge, if the claim secured by the pledge is not settled on a due date.

#### **Advance Payment**

Article 979

- (1) At the request of the whole life insurance policyholder, the insurer may pay to the former a portion of the insured amount in advance; up to the amount of the policy surrender value, which the policyholder may return at a later point.
- (2) The policyholder shall pay interest on the received advance.
- (3) If the policyholder defaults on payment of interest due, this shall be taken as if he has requested the surrender.
- (4) The insurance policy shall contain conditions for advance payment, possibility to return the amount received as advance payment to the insurer, the interest rate, consequences of default on payment of interest due, as determined in the insurance terms and conditions.

#### **Insurance Policy Offered as a Pledge**

Article 980

- (1) The life insurance policy may be offered as a pledge.
- (2) Pledging of the policy shall take effect for the insurer only if he has been notified in writing of offering the policy as a pledge to a creditor.
- (3) Where the policy is in the order form, pledging is performed by endorsement.

### ***4 Life Insurance in Favour of the Third Party***

#### **Designation of Beneficiary**

Article 981

- (1) Life insurance policyholder may designate, in the contract, and in a subsequent legal transaction, or in the will, a person who shall be entitled to the rights under the contract.
- (2) If life insurance relates to a life of another person, a written consent of that person shall also be required in order to designate a beneficiary.
- (3) A beneficiary need not be designated by name, but it is rather sufficient that the document contains the particulars essential for his designation.
- (4) Where children or descendants are designated as beneficiaries, those born later shall also be entitled to the benefit of the insurance, and the person who is married to the insured at the time of his death shall be entitled to the benefit of a spouse.

#### **Apportionment of Benefit among Several Beneficiaries**

#### Article 982

Where children, descendants and heirs in general are designated as beneficiaries, and if the policyholder has failed to determine in what way the insurance benefits are to be apportioned among them, the apportionment shall be carried out in proportion to their share of the succession, and if the beneficiaries are not the heirs, the insured amount shall be apportioned in aliquot shares.

#### **Revocation of the Provision on Designation of a Beneficiary**

##### Article 983

(1) The provision by means of which a particular person is entitled to the benefit of insurance may be revoked only by a policyholder and not by his creditors or his heirs.

(2) The policyholder may revoke the provision concerning the insurance benefit as long as the beneficiary has not in any way stated that he accepts it. At that time the provision shall become irrevocable.

(3) Nevertheless, the policyholder may revoke the provision concerning the insurance benefit even after the beneficiary's statement of acceptance, if the beneficiary has attempted to murder the insured. If the benefit is gratuitous, the provisions relating to revocation of gifts shall also apply.

(4) The benefit shall be deemed to have been refused by the beneficiary, where after the policyholder's death he has failed to make a statement of acceptance within one month, upon the invitation of the policyholder's heirs.

(5) The statement indicating that a designation of beneficiary of insurance is irrevocable shall be considered void.

#### **Own Right and Direct Right of a Beneficiary**

##### Article 984

(1) The insured amount to be paid to the beneficiary shall not be included in the legacy of the policyholder, not even where his heirs are designated as his beneficiaries.

(2) Only the beneficiary shall have a right to the insured amount, as of the time of conclusion of the insurance contract, regardless of how and when he has been designated as beneficiary and regardless of whether he has made the statement of acceptance before or after the death of the insured. Consequently, he may apply directly to the insurer, requesting the payment of the insured amount.

(3) If the policyholder has designated his children, descendants or heirs in general as his beneficiaries, each designated beneficiary shall be entitled to an appropriate share of the insured amount even if he has refused the inheritance.

#### **Creditors of the Policyholder and the Insured**

##### Article 985

(1) Creditors of the policyholder and the insured shall not have any right to the insured amount contracted in favour of the beneficiary.

(2) However, if the premiums paid by the policyholder are unreasonably high in view of his financial position at the time of payment, his creditors may request for a portion of the premium disproportionate to the policyholder's financial position to be assigned to them, if conditions are met on which the creditors are entitled to contest the debtor's legal transactions.

#### **Assignment of the Insured Amount**

##### Article 986

A right to the insured amount may be assigned by the beneficiary to another

person even before the occurrence of the insured event, but a written consent of the policyholder shall be required, where a name of the assignee shall be indicated. If insurance relates to a life of another person, the same written consent from that person shall also be required.

#### **Where a Designated Beneficiary Dies before Maturity**

Article 987

Where a person, gratuitously designated as beneficiary, dies before maturity of the insured principal or annuity, heirs of that person shall not be entitled to the benefit of insurance, but rather the co-beneficiary, and if the latter has not been designated, the policyholder.

#### **Insurance against Death without a Designated Beneficiary**

Article 988

If a life insurance policyholder fails to designate the beneficiary, or if the provision concerning the designation of beneficiary does not become effective due to the revocation or refusal of a particular person, or for any other reason, and the policyholder fails to designate another beneficiary, the policyholder shall be entitled to the insured amount.

#### **Payment of the Insured Amount to Unauthorised Person in Good Faith**

Article 989

(1) When the insurer has paid the insured amount to the person who would have been entitled to that insured amount had the policyholder failed to designate the beneficiary, he shall be released from the obligation under the insurance contract, if at the time of payment he has not been aware or could not have been aware that the beneficiary is designated by a will or some other document that has not been delivered. In that case the beneficiary shall have a right to request a refund from the person who has received the insured amount.

(2) The same shall apply to the case where a beneficiary has been changed.

Section 28

### **CASH DEPOSIT WITH A BANK**

#### **I CASH DEPOSIT**

##### **Definition of Terms**

Article 990

(1) The cash deposit contract shall be concluded where a bank undertakes to receive, and a depositor undertakes to place a certain amount in cash with the bank.

(2) Under this contract, a bank shall have a right to dispose of the cash deposited and shall be obliged to return it on the terms and conditions stipulated in the contract.

##### **Opening of the Account**

Article 991

(1) On the basis of a cash deposit contract, a bank shall open an account to be credited and debited with all payables and receivables arising from transactions with the depositor, or from transactions for his account with the third party.

(2) The payables or receivables which the parties to the contract have agreed to exclude from the contract shall not be credited or debited to the contract.

##### **Elimination of the Amount Owed**

Article 992

(1) The bank shall make payments from the account to the extent of the funds available.

(2) If the bank has made one or more payments to the account and from the account under the deposit contract, which result in a negative balance in the account, it shall immediately notify the depositor thereof, who shall immediately take measures for the purpose of elimination of the amount owed.

### **Types of Cash Deposit**

#### Article 993

(1) A cash deposit may be sight deposit or time deposit, with a notice period and without a notice period, for a special purpose and for no purpose.

(2) Cash deposit in the account shall be considered to be sight, and a portion or the entire amount to be at a disposal of depositor at any time, unless otherwise agreed.

### **Account Balance**

#### Article 994

(1) A bank shall notify a depositor of any change in the balance in his account.

(2) A bank shall notify a depositor of the account balance at the end of each year, and more frequently if this is agreed or generally accepted.

### **Place of Payments and Withdrawals**

#### Article 995

Payment or withdrawal orders against the depositor's account shall be forwarded to the head office of the bank where the account has been opened, unless otherwise agreed between the parties to the contract.

### **Existence of Several Accounts**

#### Article 996

Where one person has several accounts with a single bank or with its several business units, each of these accounts shall be independent.

### **Payment of Interest**

#### Article 997

(1) A bank shall pay interest on the money deposited, unless otherwise prescribed by the law.

(2) The amount of interest shall be determined by the deposit contract, and if no provisions concerning interest have been stipulated, legally prescribed interest shall be paid.

## **II. SAVINGS DEPOSIT**

### **Savings Book**

#### Article 998

(1) If cash deposit has been received as savings deposit, a bank or a savings bank shall issue a savings book to a depositor.

(2) A savings book may only be registered in the name of a person.

### **Entries in the Savings Book**

#### Article 999

(1) All payments and withdrawals of cash shall be entered in the savings book.

(2) Entries in the savings book certified by a bank's stamp and a signature of the authorised person shall represent evidence of the payments and withdrawals made.

(3) Any contract concluded contrary to the previous provisions shall be void.

### **Payment of Interest**

#### Article 1000

(1) Interest shall be paid on savings deposit.

(2) The amount of interest shall be determined by the deposit contract, and if no such provisions have been stipulated in the contract, legally prescribed interest shall be paid.

### **Types of Savings Deposits**

Article 1001

Savings deposits may be sight or time deposits, with a notice period and without a notice period.

Section 29

## **DEPOSITING OF SECURITIES**

### **Definition of Terms**

Article 1002

Under the securities deposit contract, a bank undertakes to receive securities, for a certain compensation, for the purpose of custody and exercising of the related rights and obligations.

### **Exercising of Rights**

Article 1003

A bank may exercise rights related to the deposited securities exclusively for the account of a depositor, unless otherwise stipulated.

### **Bank's Duties**

Article 1004

(1) A bank shall provide custody of securities with due care, as required for a depository, for a compensation and shall perform all the activities necessary, for the depositor's account, for the purpose of protecting and exercising of depositor's rights arising from securities.

(2) A bank shall charge interest due and principal and all other amounts a right to which is granted by the securities deposited, as soon as they fall due, unless otherwise agreed between the parties.

(3) A bank shall make the collected amounts available to the depositor, and if the letter has a cash deposit account with a bank, they shall be credited by the bank to that account.

### **Returning of Securities**

Article 1005

(1) A bank shall return the securities at any time, at the request of a depositor.

(2) Returning of securities shall, in general, be performed at the same place where depositing took place.

(3) Securities themselves shall be the subject of returning, unless it is agreed by the parties to the contract that the returning may be carried out by paying the appropriate amount.

(4) Returning may be carried out only to the depositor or his legal successors, or persons designated by them, even where it is evident from the securities that they belong to third parties.

### **Requests from Third Parties**

Article 1006

A bank shall notify a depositor of any requests by the third parties concerning the securities deposited.

Section 30

## **CURRENT ACCOUNT WITH A BANK**

### **Definition of Terms**

Article 1007

Under the current account contract with a bank, a bank undertakes to open a special account for a person and to receive and make payments across that account to the extent of the available cash funds and the granted overdraft facility.

### **Form of Contract**

Article 1008

Current account contract shall be concluded in a written form.

### **Funds in the Current Account**

Article 1009

(1) Funds in the current account shall be created by making payments on the part of a depositor and collection of cash carried out for his account.

(2) A bank shall make payments across the current account for the depositor even where there is no cover in the account, to the extent stipulated in the current account contract or in a special agreement.

(3) This liability of a bank may be excluded by a current account contract.

### **Setting off Balances across Several Accounts**

Article 1010

If a depositor has several current accounts with the same bank, positive and negative balances in these accounts shall be set off, unless otherwise provided for.

### **Disposing of the Balance**

Article 1011

A current account beneficiary may at any time dispose of the balance paid to the account in his favour, unless a notice period is contracted.

### **Application of the Rules of the Mandate Contract**

Article 1012

(1) A bank shall be responsible for executing a mandate of a depositor, in accordance with the mandate contract.

(2) If the mandate should be executed at a place where a bank has no business unit, the bank may execute it through another bank.

### **Duration of the Account**

Article 1013

Where duration of the current account is not stipulated in the current account contract, it may be cancelled by each party upon a fifteen day notice period.

### **Commission and Compensation for Costs**

Article 1014

(1) A bank may charge a commission for the services rendered, which are covered by the current account contract, and a compensation for special costs incurred in relation to that contract.

(2) These claims shall be debited to the current account in favour of the bank, unless otherwise agreed between the parties.

### **Delivery of Bank Statement**

Article 1015

(1) A bank shall issue a bank statement following any change in the current account balance and deliver it or make it available to the counterparty in the agreed manner.

(2) Bank statement shall be considered to be approved, if it has not been contested within the agreed time limit or, in the absence of that, within fifteen days following the date of its receipt.



(3) Even after its approval, the bank statement may be contested due to an error in writing or in accounting, or due to omission or duplication, but no later than within one year following the receipt of the account of the balance settlement after the closing of the current account. Otherwise this right shall be extinguished.

Section 31

## SAFE DEPOSIT BOX CONTRACT

### **Definition of Terms**

Article 1016

(1) Under the safe deposit box contract, a bank undertakes to provide a safe deposit box to a depositor for his use in a particular period, and a depositor undertakes to pay a certain fee to a bank for the use of the safe deposit box.

(2) A bank shall take all the measures necessary for ensuring a good condition and surveillance of the safe deposit box.

### **Access to the Safe Deposit Box**

Article 1017

(1) Only a depositor and a person he has authorised may have access to the safe deposit box.

(2) A bank shall not keep a copy of the key or keys handed over to a depositor.

### **Objects that May not be Placed in a Safe Deposit Box**

Article 1018

(1) A depositor may not place an object in his safe deposit box, which may threaten the safety of a bank and other safe deposit boxes.

(2) In the case a depositor fails to comply with that obligation, a bank may communicate to the depositor that it cancels the safe deposit box contract.

### **Bank's Rights in the Event of Non-Payment**

Article 1019

(1) If a depositor fails to make a single instalment payment of a fee upon its maturity to a bank, the bank may cancel the contract after the expiry of one month from the date of sending a reminder to a depositor by the registered mail.

(2) After a cancellation of the contract, the bank may invite the depositor to empty the safe deposit box and to hand over the key, and if the depositor fails to do that, the bank may file a court petition to open the safe deposit box and establish its contents, and to deposit the objects found for safekeeping with the court or the bank.

(3) Fees due to the bank, arising from the safe deposit box contract, shall be considered as a senior debt and shall be collected from the cash found in the safe deposit box and from the amount received by selling other valuables found in the safe deposit box.

### **Application**

Article 1020

The provisions of this Section shall apply as appropriately to the safe deposit box contracts concluded by other legal persons authorised for their keeping (post offices, airports, railway station, etc.).

Section 32

## LOAN CONTRACT

## **Definition of Terms**

### Article 1021

Under the loan contract, a bank undertakes to make a certain amount of cash funds available to a borrower for a definite or indefinite period of time, for a specific purpose or for no specific purpose, and the borrower undertakes to pay the agreed interest to a bank and to return the used amount of money at a time and in a manner agreed upon.

## **Form and Content**

### Article 1022

- (1) The loan contract shall be concluded in a written form.
- (2) The loan amount, terms and conditions of granting, using and repaying the loan shall be stipulated in the loan contract.

## **Contract Cancellation**

### Article 1023

- (1) The loan contract may be cancelled by a bank prior to the expiry of the agreed period, if the loan has been used contrary to the agreed purpose.
- (2) The loan contract may also be cancelled by a bank prior to the expiry of the agreed period, in the case of a borrower's insolvency, even where it is not established by a court decision, in the case of legal person termination or borrower's death, provided that in such cases a lender's position would significantly deteriorate.

## **Cancellation of Contract and Early Repayment**

### Article 1024

- (1) A borrower may cancel the contract before he has started utilising the loan.
- (2) A borrower may repay the loan prior to the period determined for repayment, but he shall notify the bank thereof in writing.
- (3) In both cases a borrower shall compensate for damage, if the damage is inflicted upon a lender.
- (4) Where a loan is repaid prior to the agreed period, a bank may not calculate the interest as of the date of loan repayment until the date when the loan should have been repaid under the loan contract.

### Section 33

## **LOAN CONTRACT BASED ON PLEDGED SECURITIES**

### *Definition of Terms*

#### Article 1025

Under the loan contract based on pledged securities, a bank shall grant a loan in a certain amount, secured by pledged securities that are owned by a borrower or by a third party who has agreed to that.

### *Form and Content*

#### Article 1026

- (1) Loan contract based on pledged securities shall be concluded in a written form.
- (2) The securities that are pledged shall be indicated in the contract, as well as the company name and head office, or name and residence of the security holder, amount and terms and conditions of the loan granted, as well as the amount and value of securities taken into account in granting a loan.

### *Where a Bank may Sell the Pledged Securities*

#### Article 1027

If a borrower has failed to repay the granted loan at its maturity, a bank may sell the pledged securities, in accordance with the right of pledge, for the purpose of debt collection.

#### Section 34

#### ~~LETTERS OF CREDIT~~ CONCEPT

#### ***Bank's Liability and Letter of Credit Form***

#### Article 1028

~~(1) By accepting the applicant's order to open a letter of credit a bank undertakes to the applicant to pay out a certain amount of cash to a beneficiary, if conditions determined in the order for opening of the letter of credit are not met until the specified period.~~

~~(2) The letter of credit shall be made in writing.~~

(1) By accepting the mandator's order to open a letter of credit the bank assumes obligation towards the mandator to open a letter of credit for a beneficiary under the conditions determined in the accepted order for opening of the letter of credit.

(2) An open letter of credit is irrevocable and final obligation of the bank to the beneficiary of the letter of credit to pay out a specific amount of money if the beneficiary within a specified deadline applies for the payment in accordance with the conditions determined in the letter of credit.

#### ***Where a Liability to a Beneficiary Arises***

### **Application of harmonized customs and practice**

#### Article 1029

~~(1) A bank shall be liable to a beneficiary as of the date it notifies him that the letter of credit has been opened.~~

~~(2) The applicant shall be bound by the issued order as of the date when the order is received by the bank.~~

If the contracting parties have not foreseen otherwise, harmonized customs and practice published by the International Chamber of Commerce in Paris, in force on the day of the opening of the letter of credit, shall be applied to the letter of credit business.

#### ***Independence of Letter of Credit from Other Legal Transactions***

#### Article 1030

~~The letter of credit shall be independent from the contract of sale or other legal transaction in relation to which it has been opened.~~

#### ***Documentary Letter of Credit***

#### Article 1031

~~Documentary letter of credit shall exist when a bank undertakes to pay out a certain amount of cash to a beneficiary, or to accept and pay a bill of exchange provided that documents are delivered under terms and conditions specified in the letter of credit.~~

#### ***Duty of a Bank that Opened a Letter of Credit***

#### Article 1032

~~A bank that opened a documentary letter of credit shall make payments under terms and conditions determined in the letter of credit.~~

#### ~~Types of Documentary Letter of Credit~~

~~Article 1033~~

~~(1) Documentary letter of credit may be revocable or irrevocable.~~

~~(2) The letter of credit shall always be irrevocable, unless explicitly agreed otherwise.~~

#### ~~Revocable Letter of Credit~~

~~Article 1034~~

~~Revocable documentary letter of credit shall not impose an obligation on a bank towards a beneficiary, so that the bank may modify it or revoke it at any time, at the applicant's request or at its own discretion.~~

#### ~~Irrevocable Letter of Credit~~

~~Article 1035~~

~~(1) Irrevocable documentary letter of credit shall impose an independent and direct obligation on a bank towards a beneficiary.~~

~~(2) This obligation may be suspended or modified only upon a mutual agreement of all the interested parties.~~

~~(3) Irrevocable documentary letter of credit may, upon the authorisation or at the request of the issuing bank, be confirmed by some other bank, which, together with the issuing bank, assumes an independent and direct obligation towards a beneficiary.~~

~~(4) Notification of letter of credit opening to a beneficiary by another bank shall not, by itself, imply a confirmation of that letter of credit.~~

#### ~~Bank's Duties Concerning the Documents~~

~~Article 1036~~

~~(1) A bank shall examine whether the documents are fully compliant with the requirements of the applicant, as determined in the letter of credit.~~

~~(2) Upon receiving the documents, a bank shall, within a reasonable time limit, notify the applicant thereof, and shall warn him of any irregularities and defects.~~

#### ~~Limitation of Bank's Responsibility~~

~~Article 1037~~

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~~PROVISIONAL TRANSLATION~~

~~(1) A bank shall not assume any responsibility if the documents submitted correspond, with respect to their appearance, to the terms and conditions of the letter of credit.~~

~~(2) The bank shall not assume any responsibility concerning the goods that are subject of the opened letter of credit.~~

#### ~~Negotiability and Divisibility of Letter of Credit~~

~~Article 1038~~

~~(1) Documentary letter of credit shall be negotiable or divisible only if a bank which opens the letter of credit is authorised, by the instructions of the first beneficiary, to make payment, entirely or partially, to one or more third parties.~~

~~(2) Letter of credit may be transferred, on the basis of explicit instructions, only by a bank which has opened it, and this could be done only once, unless otherwise agreed.~~

### Section 35

#### ~~BANK GUARANTEE~~ **FIRST DEMAND BANK GUARANTEE**

#### ~~Definition of Terms~~ **CONCEPT**

~~Article 1039~~

~~(1) A bank guarantee shall imply any obligation to pay a particular amount of cash, irrespective of its name, at a written request of an obligee and upon submitting the documents to a bank, if they are specified in the guarantee.~~

~~(2) A bank guarantee shall be an independent obligation of a bank, separate from the~~

~~underlying transaction.~~

~~(3) A guarantee shall be issued in a written form.~~

- (1) First demand bank guarantee shall be any written obligation for payment, irrespective of its name, with which the bank (the guarantor) undertakes, upon a written demand of the beneficiary, to pay a specific amount of money to the beneficiary, if the requirements of the guarantee are fulfilled.”
- (2) Bank guarantee shall be an independent obligation, separate from the main business on the basis of which it has been issued, even in case such a business is not mentioned within.

### **Settlement of Liability Guarantee confirmation**

Article 1040

~~A bank shall settle its liability arising from a guarantee in cash, even where nonmonetary obligation is secured by the guaranty.~~

If another bank has confirmed a liability arising from the guarantee, the beneficiary may file the claims under the guarantee either to the guarantor or to a bank which has confirmed it.

### **Confirmation of a Guarantee Counter guarantee**

Article 1041

~~If another bank has confirmed a liability arising from the guarantee, the obligee may file its claims under the guarantee either to a bank which has issued the guarantee or to a bank which has confirmed it.~~

- (1) Counter guarantee shall be any written obligation for payment, irrespective of its name, with which the bank (the counter guarantor) undertakes to pay a specific amount of money to the guarantor upon the submission of a written demand in accordance with the requirements of the counter guarantee.
- (2) Counter guarantee is separated from the guarantee and from the main business it refers to, even if it is not mentioned in the counter guarantee.

### **Assignment of Rights under Guarantee Termination of guarantee validity**

Article 1042

~~An obligee may assign his rights under the bank guarantee to a third party only by assigning the claim secured by the guarantee and by a transfer of his obligations concerning the secured claims, unless otherwise agreed upon.~~

- (1) Date of validity of the guarantee can be determined by it until a specified date or until the submission of a document which confirms the initiation of an event which indicates the termination of its validity.
- (2) If the guarantee provides both deadlines for the termination of validity of the guarantee, its validity shall terminate after the expiration of the first of the two deadlines.

## **Guarantee “without objection” Transfer of rights of payment arising from the guarantee**

### Article 1043

~~(1) If a bank guarantee contains a notation “without objection”, “first demand”, or contains wordings that have the same meaning, the bank may not make objections against the obligee, identical to those made by the applicant, as an obligor, against the obligee on the basis of the secured liability.~~

~~(2) The applicant shall compensate the bank for any amount that a bank has paid under the guarantee issued with the above stated notation.~~

~~(3) The obligee shall owe to the applicant the amount received under the guarantee, to which he would otherwise not have a right due to justified complaints of the applicant.~~

(1) The right to demand payment arising from the guarantee cannot be transferred to a third person, unless explicitly provided for in the guarantee or in its annexes.

(2) The abovementioned shall not affect the right to receive the amount arising from the guarantee that would be transferred to a different person in the guarantee or in its annexes.

### Section 36

#### APPLICATION OF PROVISIONS ON BANKING TRANSACTIONS

### Article 1044

The provisions of this Act concerning contracts related to banking transactions shall apply, as appropriately, to other legal persons if they are legally authorised to perform individual banking operations.

### Title IX

#### NON-CONTRACTUAL OBLIGATIONS

### Chapter 1

#### CAUSING OF DAMAGE

### Section 1

#### GENERAL PRINCIPLES

#### **Presumptions of Liability**

### Article 1045

(1) A person who has caused damage to another person shall compensate for this damage, unless he has proven that the damage has not occurred as a result of his own fault.

(2) Lack of duty of care shall be presumed.

(3) Where damage results from things or activities representing a major source of danger for the environment liability shall be imposed regardless of the fault.

(4) Liability shall also be imposed regardless of the fault in other cases prescribed by the law.

#### **Damage**

### Article 1046

Damage shall imply a loss of a person’s assets (pure economic loss), halting of assets increase (loss of profit) and violation of privacy rights (non-material damage).

#### **Request for Elimination of Risk of Damage**

### Article 1047

(1) Any person may request from another person to eliminate a major source of danger for him or for another person, as well as to refrain from activities causing disturbance or a risk of damage, if disturbance or damage cannot be prevented by applying the appropriate measures.

(2) The court shall order, at the request of an interested party, to take the appropriate measures for preventing the occurrence of damage or disturbance, or to eliminate a source of danger, at the expense of a possessor of a source of danger, if the latter fails to do so himself.

(3) If damage is a result of performing an act of public interest for which an approval has been obtained from the competent authority, only a compensation for damage exceeding the usual limits may be required (excessive damage).

(4) Nevertheless, in that case taking of socially justified measures may be required in order to prevent the occurrence of damage or to reduce damage.

### **Request for Termination of Violation of Privacy Rights**

Article 1048

Any person may request from the court or another competent authority to order a termination of the activity which violates his privacy rights and elimination of its consequences.

Section 2

## **LIABILITY AS A RESULT OF FAULT**

### **Existence of Fault**

Article 1049

Fault shall exist where a defendant has caused damage intentionally or by acting carelessly.

### **Persons not Liable for Damage**

Article 1050

(1) A person who, due to mental illness or deficiency or for any other reason, is not capable of making judgements shall not be responsible for damage inflicted upon another person.

(2) A person who has caused damage to another person in the state of temporary incapacity to make judgements shall be liable for that damage, unless he proves that incapacity has not been caused by his fault.

(3) If his incapacity has been caused through the fault of another person, that person shall be liable for damage.

### **Liability of a Minor**

Article 1051

(1) A minor under 7 years of age shall not be liable for damage.

(2) A minor over 7 years of age and under 14 years of age shall not be liable for damage, unless his capacity to make judgements on occurrence of damage has been proved.

(3) A minor 14 years of age shall be liable under general rules regulating liability for damage.

### **Justified Self-Defence, Necessity, Elimination of Damage Caused to Another**

Article 1052

(1) A person who has caused damage to his attacker shall not be liable to redress this damage, unless self-defence is excessive.

(2) If a person causes damage in the state of necessity, an injured party may require compensation from a person by whose fault the damage has occurred, or from the persons

from whom the damage has been eliminated, but not in excess of benefit conferred.

(3) A person who has suffered damage eliminating a risk of damage for another person shall have a right to require a redress for a damage to which he has been reasonably exposed.

### **Legitimate Self-Help**

Article 1053

(1) A person who, in the case of legitimate self-help, inflicts damage on a person, who has caused a need for self-help, shall not be liable to compensate for such damage.

(2) Legitimate self-help shall imply a right of every person to eliminate a violation of rights in the case of imminent danger, provided that such a protection is necessary and provided that the method of eliminating the violation of rights corresponds to the circumstances in which the danger occurs.

### **Consent of an Injured Party**

Article 1054

(1) A person who has allowed, to his own detriment, another person to take certain actions shall not have a right to request from the latter a compensation for damage caused by these actions.

(2) An injured party's statement of consent to a damage caused by an action which is prohibited by the law shall be void.

Section 3

## **LIABILITY FOR ANOTHER PERSON**

### **Mentally Ill and Deficient Person**

Article 1055

(1) A person obliged to exercise supervision, pursuant to law or a competent authority's decision or a contract, of a person who is incapacitated to make judgements due to mental illness or deficiency shall be liable for the damage caused by the latter.

(2) That person may be exonerated from liability if it is proved that he has exercised supervision to which he is obliged or that the damage could not have been prevented even with due care in exercising supervision.

### **Liability of Parents**

Article 1056

(1) Parents shall be liable for damage caused to another person by their child under 7 years of age, regardless of their fault.

(2) They shall be exonerated from liability if there are grounds for exoneration from liability under the rules concerning liability, regardless of the fault.

(3) They shall not be liable if the damage was caused at the time their child was entrusted to another person and if that person is liable for damage.

(4) Parents shall be liable for damage caused to another person by their minor child 7 years of age, unless they have proved that the damage has not occurred as a result of their fault.

### **Solidary Liability**

Article 1057

Where a child, in addition to his parents, is liable for damage, their liability shall be solidary.

### **Liability of Another Person for a Minor**

Article 1058

(1) A tutor, school or another institution shall be liable for damage caused to another



person by a minor when he is under supervision of that tutor, school or another institution, unless they have proved that they have exercised supervision to which they are obliged or that the damage could not have been prevented even with due care in exercising supervision.

(2) If a minor is also liable for damage, liability shall be solidary.

### **Special Liability of Parents**

#### Article 1059

(1) Where supervision of a minor is not within the authority of the parents, but rather within the authority of another person, an injured party shall have a right to request a redress from parents if the damage is caused due to bad upbringing of the minor, bad examples or vices inherited from parents, or the damage can otherwise be accounted for by the parents' fault.

(2) A person entrusted with the supervision of a minor, in this case, shall have a right to request from the parents to compensate for the amount paid, if that person has paid the compensation to the injured party.

### **Equity Principle**

#### Article 1060

(1) Where damage was caused by a person who is not responsible for the minor, and where the compensation cannot be obtained by a person who was obliged to supervise the minor, the court may order the defendant to redress the damage, partially or fully, as required by the principle of equity, and especially in view of a financial position of the defendant and the injured party.

(2) Where damage was caused by the minor himself, who has capacity to make judgements but is not in a position to compensate for damage, the court may, as required by the principle of equity, and especially in view of a financial position of parents and injured party, impose obligation on the parents to compensate for damage, partially or fully, although the damage was not caused by their fault.

### **Employer's Liability**

#### Article 1061

(1) The employer shall be liable for damage caused to a third party by an employee at work or in relation with work, during the time he is employed with the employer, unless it has been proved that there are grounds for exclusion of liability of employees.

(2) An injured party shall also have a right to request a redress of damage directly from the employee if he has caused the damage intentionally.

(3) The employer who has redressed the damage caused to the injured party shall be entitled to ask for a compensation for costs of redress of damage from the employee, if the latter has caused the damage intentionally or due to gross negligence.

(4) The right referred to in paragraph 3 of this Article shall be prescribed by 6 months from the day of redress.

### **Liability of Legal Person for Damage Caused by its Body**

#### Article 1062

(1) A legal person shall be liable for damage caused by its body to a third person in carrying on or in relation to its activities.

(2) Unless otherwise provided for by law for a particular case, a legal person shall have a right of compensation from the person who has caused damage intentionally or due to gross negligence.

(3) This right shall be prescribed by 6 months from the day of redress.

Section 4

LIABILITY FOR DAMAGE CAUSED BY  
DANGEROUS THING OR ACTIVITY

***1 General Provisions***

**Presumption of Causality**

Article 1063

Damage caused in relation with a dangerous thing or dangerous activity shall be considered as resulting from that thing or activity, unless it has been proved that they have not caused the damage.

**Who is Liable for Damage**

Article 1064

The owner shall be liable for damage resulting from a dangerous thing, and the person engaged in the respective activity shall be liable for damage resulting from a dangerous activity.

**Unlawful Repossession of Dangerous Thing from its Owner**

Article 1065

If a dangerous thing is unlawfully repossessed from its owner, the owner shall not be liable for damage, but rather a person who has repossessed the dangerous thing, provided that the owner is not responsible for that.

**Entrusting a Thing to Another Person**

Article 1066

(1) A person who is entrusted by the owner with the thing for his use or a person who is otherwise obliged to supervise the thing and is not employed with the owner shall be the person liable, rather than the owner of the thing and together with the owner of the thing.

(2) In addition, the owner of the thing shall also be liable if the damage has been caused as a result of a hidden defect or a hidden characteristic of the thing to which he has failed to make reference.

(3) In that case, a responsible person who has paid the compensation to the injured party shall be entitled to claim the full amount from the owner.

(4) The owner of a dangerous thing who has entrusted it to a person who is not trained or authorised to handle the thing shall be liable for damage resulting from that thing.

**Release from Liability**

Article 1067

(1) The owner shall be released from liability if he proves that the damage results from another unforeseeable cause not incident to the thing, which could not be prevented, avoided or eliminated.

(2) The owner shall be released from liability if he proves that the damage has occurred exclusively due to an action of the injured party or a third party, which the former could not foresee and the consequences of which could not be avoided or eliminated.

(3) The owner shall be partly released from liability if the injured party has partly contributed to the occurrence of damage.

(4) If a third party partly contributed to the occurrence of damage, that party shall be liable to the injured party solidary with the owner of the thing, and shall make compensation proportionate to the degree of its fault.

(5) The person of whom the owner has made use in the use of the thing shall not be considered a third party.

## ***2 Liability for Damage Caused by a Motor Vehicle in Operation***

### **Motor Vehicle**

#### Article 1068

- (1) A motor vehicle shall be a self-propelled vehicle designed for running on land, either on rails or not.
- (2) A trailer connected to the motor vehicle shall also be considered a constituent part of the motor vehicle.
- (3) A motor vehicle shall be in operation if it is used for the intended purpose regardless of whether the motor, which propels it, is running at that time or not.

### **Liability for Damage to Third Parties**

#### Article 1069

- (1) The owner of a motor vehicle shall be liable for damage inflicted upon the third parties in relation with the operation of the motor vehicle.
- (2) Co-owners or joint owners of a motor vehicle shall be solidarily liable for damage.
- (3) The owners of motor vehicles shall be solidarily liable to the third parties for damage caused by operation of two or more motor vehicles.
- (4) Third party shall be an injured party who is not at the same time the owner, unauthorised user of a motor vehicle, or a person responsible for the operation of a motor vehicle.

### **Liability in the Case of Unauthorised Use of a Motor Vehicle**

#### Article 1070

- (1) An unauthorised user of a motor vehicle shall be liable to the third parties instead of the owner and together with the owner.
- (2) Apart from an unauthorised user, the owner of a motor vehicle shall also be solidarily liable, if the latter by his own fault or by the fault of the persons who were supposed to look after the vehicle, allowed for an unauthorised use of the vehicle.
- (3) An unauthorised user shall be a person who, at the time of a loss event, uses the motor vehicle without the authorisation of the owner, and is not employed with the owner in relation with the operation of the motor vehicle, neither is he a member of his household, nor has the owner entrusted the vehicle to that person.

### **Liability to Third Person Carried by the Motor Vehicle**

#### Article 1071

- (1) Liability for damage of the owner shall refer to damage suffered by a third person carried in a motor vehicle, while as regards things, only to the things carried on that party or with that person.
- (2) Any contractual provision that would exclude or limit the liability, referred to in paragraph 1 of this Article, in advance, shall be null.

### **Mutual Claims of Motor Vehicle Owners**

#### Article 1072

- (1) Where damage is caused by operation of two or more vehicles, all damage shall be compensated for by the owner of the vehicle who is exclusively at fault for the loss event.
- (2) In case where the fault is mutual, every owner shall be liable to the other one for his damage in proportion to his degree of fault.
- (3) If no party is at fault, the owners' liability shall be apportioned by equal shares, unless it is just to require otherwise.
- (4) Owner's fault shall also imply fault of a person who he has made use of at the

occurrence of the loss event or to whom he has entrusted the vehicle.

## Section 5

### LIABILITY FOR DEFECTIVE PRODUCT

#### General Rule

##### Article 1073

- (1) A producer who has placed a product on the market shall be liable for damage caused by defectiveness of that product, regardless of fault.
- (2) The provisions of this Section shall refer to material damage caused by death or physical injury and to damage caused by destroying or damaging the injured party's thing, different from the defective product, if the nature of the product is such that it is generally intended for personal use and if the injured party mainly used this thing for that purpose.
- (3) The injured party shall have a right, under the provisions of this Section, to a compensation for damage caused by destroying or damaging the thing, only for the portion of damage which does not exceed the kuna equivalent of EUR 500.
- (4) Compensation for a non-material damage caused by defective product may only be requested in accordance with the general rules concerning liability for damage.
- (5) Special provisions of this Act concerning the compensation for material damage in the case of death, physical injury or health impairment shall apply, as appropriately, ~~the scope to~~ [the scope](#) of compensation for material damage caused by death or physical injury.
- (6) The provisions of this Section shall not apply to damages caused by a nuclear accident.
- (7) The provisions of this Section shall not preclude the application of rules on liability for damage caused by a dangerous thing or dangerous activity, rules on liability for material defects of performance, and rules on contractual and non-contractual liability for damage.
- (8) The injured party shall prove the defect of a product, damage and causality between product defect and damage.

#### Product

##### Article 1074

- (1) Product shall be any movable thing, ~~as well as an autonomous part incorporated in a~~ [even when it is incorporated in a](#) movable or immovable thing.
- (2) Electric energy and other forms of energy shall also be products.

#### Defective Product

##### Article 1075

- (1) Product shall be defective where, taking into account all the circumstances and especially the manner in which a product is presented, purposes for which it can be reasonably used and the time when it is placed on the market, it does not ensure safety which can reasonably be expected from such a product.
- (2) Product shall not be defective only on grounds that an improved product has subsequently been placed on the market.

#### Producer

##### Article 1076

- (1) A producer shall be a person who has manufactured a finished product, a person who has produced the raw material, autonomous or dependent part incorporated in the finished product, as well as a person presenting himself as a producer by designating the product by his name, stamp or any other mark of distinction.
- (2) If the product is imported, the person who imported the product for the purpose of

sale, lease or any other form of placing on the market, shall be considered a producer and shall be solidarily liable with the persons referred to in paragraph 1 of this Article.

(3) Where a producer cannot be identified, any person who has placed the product on the market shall be considered a producer, unless this person has notified the injured party, within a reasonable period of time, of the person from whom he has purchased the product.

(4) The provision referred to in paragraph 3 of this Article shall also apply if it cannot be established who imported the product, even though the producer's name or name of a company are specified on the product.

### **Solidary Liability**

Article 1077

Where several persons are liable for damage caused as a result of product defect, their liability shall be solidary.

### **Exoneration from Liability**

Article 1078

(1) A producer shall be exonerated from liability if he has proved:

- that he did not place the product on the market,
- that ~~it is evident from the circumstances~~ it is likely on the basis of circumstances that neither a defect nor its cause existed at the time the product was placed on the market,
- that the product is not produced for sale, lease or any other business purpose, not that it is produced or placed on the market within his operations,
- that the defect results from non-compliance with the enforcement measures that were in force at the time the product was placed on the market,
- that the development stage of science or technical knowledge, at the time the product was placed on the market, did not allow for detection of defects,
- that damage is caused exclusively by the action of the injured party or a person for whom that party is liable, or by the action of a third party which could not have been foreseen by the producer or the consequences of which could not have been avoided or eliminated.

(2) A producer of the raw material or of a part of the product shall also be exonerated from liability if he has

proved that a defect is caused as a result of construction of the main product or the instructions issued by the producer of the main product.

(3) The producer shall partially be exonerated from liability if the injured party, or a person for whom that party is liable, has partially contributed to the occurrence damage.

(4) Where a third party has partially contributed to the occurrence of damage, that party shall be liable solidarily with the producer.

### **Prohibition against Contractual Exclusion or Limitation of Liability**

Article 1079

(1) The contract with the injured party shall not exclude or limit the producer's liability in advance.

(2) Any contractual provision contrary to the provision contained in paragraph 1 of this Article shall be null.

### **Time Limits for Exercising the Rights**

Article 1080

(1) Claims for a redress for damage caused by a defective product shall be prescribed by 10 years from the date when the injured party has become aware or should have become aware of damage, defect and a person who produced the product.

(2) A right to a redress for damage caused by a defective product shall expire within ten years from the date of its placing on the market, unless within that period, a procedure before court or some other competent authority has been initiated against the producer for the purpose of establishing or settling the claim for a redress for damage referred to in this Section.

Section 6

## **SPECIAL CASES OF LIABILITY**

### **Liability of Events Organiser**

Article 1081

An organiser of a gathering of a larger number of persons in the open or enclosed space shall be liable for damage caused by a death or physical injury inflicted on a person due to extraordinary circumstances that may occur, such as civil disturbance, general riot, etc.

### **Liability for a Refusal to Provide Emergency Aid**

Article 1082

(1) A person who is not in danger and who has refused to provide emergency aid to a person, whose life and health are evidently threatened, shall be liable for damage arising there from, if the former should have foreseen that damage under the circumstances.

(2) Where it is just, the court may exonerate this person from liability to compensate for damage.

### **Liability for a Failure to Conclude the Contract**

Article 1083

A person who is obliged under the law to conclude a contract shall compensate for damage if he has failed to immediately conclude the contract at the request of the interested party.

### **Liability Concerning the Performance of Activities of Public Interest**

Article 1084

Persons engaged in utility or similar activities of public interest shall be liable for damage if they cease to perform or irregularly perform this activity for no justified reason.

Section 7

## **REDRESS FOR DAMAGE**

### ***1 Redress for Material Damage***

#### **Restitution and Pecuniary Compensation**

Article 1085

(1) A responsible person shall make restitution for the damage occurred.

(2) If restitution does not eliminate the damage completely, the responsible person shall pay the compensation for the remaining damage in cash.

(3) Where restitution is not possible, the responsible person shall pay to the injured party an appropriate sum of money as a compensation for damage.

(4) A pecuniary compensation shall be awarded by a court, if so requested by the injured party and if restitution is not justified by the circumstances.

#### **When Liability to Compensate for Damage is Due**

Article 1086

Liability to compensate for damage shall be considered due as of the time of damage occurrence.

#### **Compensation Where Things Seized Unlawfully Perished**

#### Article 1087

If a thing that has been seized unlawfully from its owner has perished due to *force majeure*, a responsible person shall make a pecuniary compensation.

#### **Compensation in a Form of Annuity**

##### Article 1088

(1) In the case of death, physical injury or health impairment, compensation shall be determined, in general, in a form of annuity, either set up for the lifetime or for a particular period of time.

(2) Annuity shall be paid monthly in advance.

(3) An obligee shall be entitled to request a provision of security for the annuity payment, unless this is not warranted under the circumstances.

(4) If an obligor has failed to provide the security as determined by the court, an obligee shall have a right to request a lump-sum payment, instead of annuity payment, the amount of which is determined with respect to the amount of annuity and a life expectancy for the obligee, less corresponding interest.

(5) The obligee may also in other cases, on reasonable grounds, request, initially or subsequently, a lump-sum payment rather than annuity payment.

#### **2 Scope and Amount of Material Damage**

##### **Pure Economic Loss and Loss of Profit**

##### Article 1089

(1) The injured party shall have a right to a compensation for both pure economic loss and a loss of profit.

(2) The amount of damage shall be determined with respect to the prices at the time of delivery of court judgement, unless otherwise provided for by the law.

(3) In assessing the amount of profit lost, a profit which could have reasonably been expected under the normal or special circumstances shall be taken into account, the realisation of which has been prevented by acting or failing to act on the part of the defendant.

(4) Where a thing is destroyed or damaged by a criminal act committed intentionally, the court may determine the amount of compensation in relation to the value the thing used to have for the injured party.

##### **Full Compensation**

##### Article 1090

The court shall, taking into account the circumstances that have occurred following the occurrence of damage, determine the amount required in order to reverse the injured party's financial position to the state in which it would have been had the wrongful act or failure to act not occurred.

##### **Reduction of Compensation**

##### Article 1091

(1) The court may decide, taking into account the financial position of the injured party, to impose on a responsible person the compensation lower than the amount of damage, if the damage has not been caused intentionally or due to gross negligence, and if the responsible person is indigent and a full payment of the compensation would greatly impoverish that person.

(2) If the defendant has caused damage performing something of interest to the injured party, the court may reduce the compensation, taking into account due care demonstrated by the defendant in his own business.

### **Contribution of the Injured Party to its Own Damage**

#### Article 1092

- (1) The injured party who has contributed to the occurrence of damage or to the increase in damage shall only be entitled to a proportionally reduced compensation.
- (2) Where it is not possible to determine which portion of damage can be accounted for by the injured party's action or failure to act, the court shall decide on the compensation taking into account the circumstances.

### ***3 Special Provisions Concerning Compensation for Material Damage in the Case of Death, Physical Injury and Health Impairment***

#### **Loss of Income, Costs of Medical Treatment and Funeral**

##### Article 1093

- (1) A person who has caused the other person's death shall compensate for the usual costs of funeral.
- (2) That person shall also compensate for the costs of medical treatment of the injuries sustained and for other costs related to the treatment, as well as for income lost as a result of incapacity to work.

#### **Right of a Person Supported by the Deceased**

##### Article 1094

- (1) A person supported or regularly assisted by the deceased person, as well as a person who had a legal right to request a support from the deceased, shall be entitled to a compensation for damage suffered by a loss of support or assistance.
- (2) Such damage shall be compensated for by the annuity payment, the amount of which is determined in view of all the circumstances, but cannot exceed the amount that the injured party would have received from the deceased had he survived.

#### **Compensation for Damage in the Event of Physical Injury or Health Impairment**

##### Article 1095

- (1) A person who has inflicted a physical injury on or has impaired health of another person shall compensate that person for the costs of medical treatment and for other related costs, as well as for income lost as a result of incapacity to work during the treatment.
- (2) If the injured person loses income, as a result of complete or partial incapacity to work, or his needs have permanently increased, or possibilities for his further development and progress are ruined or diminished, the responsible person shall pay to the injured person an annuity as a compensation for damage.

#### **Modification of the Awarded Compensation**

##### Article 1096

The court may increase the annuity for a future period, at the request of the injured party, but it may also reduce or suspend the annuity if the circumstances admissible to the court at the time of delivering the previous judgement have changed significantly.

#### **Non-Transferability of Rights**

##### Article 1097

- (1) A right to a compensation for damage in a form of annuity in the event of death of a person related or as a result of physical injury or health impairment may not be transferred to another person,
- (2) The due amount of compensation may be transferred to another person if the amount is determined by a written agreement of the parties or by final court judgement.

### ***4 Compensation for Material Damage in the Event of Violation***



***of Personality Rights and Disclosure of False Information***

Article 1098

(1) A person who has compromised reputation of another person, stated or disclosed false information on another person's past, knowledge, competence, or similar, and is aware or should be aware that they are false, thereby causing material damage to that person, shall compensate for that damage.

(2) Nevertheless, the person shall not be liable for damage caused if the false information has been disclosed to another without knowledge that it is false, or if none of the parties had serious interest in that.

***5 Redress for Non-Material Damage***

**Disclosure of Judgement or its Modification**

Article 1099

In the even of violation of personality rights, an injured party may request, at the expense of the defendant, a disclosure of the judgement or its modification, withdrawal of statement which has caused damage, or similar action which may attain the purpose of achieving a just pecuniary compensation.

**Just Pecuniary Compensation**

Article 1100

(1) In the event of violation of personality rights, the court shall, where it finds that this is justified by the seriousness of the violation and circumstances, award a just pecuniary compensation, irrespective of the compensation for material damage and in the absence of the latter.

(2) In deciding on the amount of just pecuniary compensation, the court shall take into account a degree and duration of the physical and mental pain and fear caused by the violation, the objective of this compensation, and the fact that it should not favour the aspirations that are not compatible with its nature and social purpose.

(3) In the event of compromised reputation and other personality rights of a legal person, the court shall, if it assesses that this is justified by the seriousness of the violation and the circumstances, award to that legal person a just pecuniary compensation, irrespective of the compensation for material damage and in the absence of the latter.

**Persons Entitled to Just Pecuniary Compensation in the Event of Death or Especially Severe Disability**

Article 1101

(1) In the event of death or especially severe disability of a person, the immediate family members (spouse, children and parents) shall be entitled to a just pecuniary compensation for non-material damage.

(2) Such compensation may also be awarded to brothers and sisters, grandparents and grandchildren and extra-marital spouse, provided that there was a more permanent co-habiting union between them and the deceased or injured person.

(3) Parents shall also have a right to a just pecuniary compensation in the event of loss of conceived but unborn child.

**Satisfaction in Special Cases**

Article 1102

A person against whom a criminal act against sexual freedom or sexual morality has been committed by deceit, under duress or by an abuse of any form of relationship of subordination or dependency shall also have a right to a just compensation.

### **When the Liability of a Just Pecuniary Compensation Matures**

Article 1103

The liability of a just pecuniary compensation shall mature as of the date of submitting a written request or claim, unless the damage has been caused subsequently.

### **Just Pecuniary Compensation for a Future Non-Material Damage**

Article 1104

The court shall, at the request of an injured party, also award a just pecuniary compensation for future non-material damage, if it is certain that it will continue into the future.

### **Succession and Assignment of Claims for Non-Material Damage Compensation**

Article 1105

(1) A claim for compensation for non-material damage shall be transferred to a heir only if the injured party has filed a written request or claim.

(2) Under the same circumstances, this claim may be subject to assignment, set-off and seizure.

### **Contribution of the Injured Party to its Own Damage and Compensation Reduction**

Article 1106

The provisions concerning the contribution of the injured party to its own damage and a reduction in compensation for material damage shall apply, as appropriately, to non-material damage.

Section 8

### **LIABILITY OF SEVERAL PERSONS FOR THE SAME DAMAGE**

#### **Solidary liability**

Article 1107

(1) All participants shall be solidarily liable for damage caused by several persons together.

(2) The abettor and aider, as well as the person who helped that the responsible persons are not identified shall be liable solidarily.

(3) The persons who have caused the damage acting independently from one another shall be solidarily liable for the damage caused, if their respective shares in the damage caused cannot be determined.

(4) Where the damage has undoubtedly been caused by one of two or more specific persons that are mutually related in a certain way, and it may not be determined which one of them has caused the damage, these persons shall be solidarily liable.

#### **Solidary Liability of a Client and Contractor**

Article 1108

A client and a contractor for construction work shall be solidarily liable to a third party for damage caused in relation with the performance of such work.

#### **Payer's Recourse**

Article 1109

(1) A solidary debtor who has made payment in excess of his share in the damage may request from all other debtors to compensate for the amount he has paid instead of them.

(2) The amount of share of each individual debtor shall be determined by the court in

view of degree of the respective fault and seriousness of the consequences arising from their acts or omissions.

(3) If the shares cannot be determined, each debtor shall account for an equal share, unless it is just to decide otherwise in a specific case.

#### Section 9

### RIGHT OF AN INJURED PARTY FOLLOWING THE PRESCRIPTION OF THE CLAIM

#### Article 1110

Following the prescription of the claim, an injured party may request from the responsible person, under the rules of unjust enrichment, to assign to the former the benefit conferred by the act which has caused damage.

#### Chapter 2

### UNJUST ENRICHMENT

#### Section 1

### GENERAL RULE

#### Article 1111

(1) Where a portion of assets of a person is transferred in any manner to the assets of another person and such a transfer is not based on a legal transaction, decision of a court or another competent authority or law, the acquirer shall return that portion of assets, or if this is not possible, compensate for the value of the benefit conferred.

(2) Transfer of assets shall also imply benefit conferred by the performed act.

(3) The liability to return or compensate for the value shall occur when something is received on the basis which has not been realised or which has subsequently been suspended.

#### Section 2

### RULES OF RECOURSE

#### **Where a Recourse May Not be Requested**

#### Article 1112

(1) A person who has made payment, being aware that he is not obliged to pay, shall not have a right to demand a recourse, unless he has retained a right of recourse, in case he has made payment in order to avoid enforcement or in case the debt repayment depends on the fulfilment of conditions.

(2) Nevertheless, if the debt is unconditional, a refund of the paid amount may not be requested since the payment has been made prior to the maturity.

#### **Double Debt Repayment**

#### Article 1113

A person, who has repaid the same debt twice, even if it includes payment on the basis of a seizure document, shall be entitled to demand recourse under the rules of this Section.

#### **Fulfilment of Corporal or Moral Liability**

#### Article 1114

Recourse in the case of the thing given or done on the basis of fulfilment of a corporal or moral liability may not be requested.

#### **Extent of Recourse**

#### Article 1115

When the thing, acquired in unjust enrichment, is returned, fruits shall be returned and default interest shall be repaid, provided that the person enriched has acted in bad faith, as of the date of acquisition, and otherwise, as of the date of submitting the application.

#### **Compensation for Costs**

#### Article 1116

The person enriched shall have a right to a compensation for necessary and useful costs, but if he has acted in bad faith, he shall be entitled only to a compensation for necessary costs.

#### **When That which is Received Can be Retained**

#### Article 1117

(1) A recourse relating to unjustly paid amounts for the compensation for damage in the event of physical injury, health impairment or death may not be requested, if the payment has been made to the person enriched in good faith.

(2) The person enriched shall be considered as acting in bad faith as of the date of delivery of a decision on the acceptance of an extraordinary legal remedy and shall return that which is received on the basis which has been suspended, with interest charged as of the date the person started to act in bad faith.

#### **Use of the Thing for the Benefit of Another**

#### Article 1118

Where a person has used his own or another person's thing for the benefit of a third party, and there are no conditions for the application of the rules of management without mandate, the third party shall return the thing, or if this is not possible, compensate for its value.

#### **Expense Incurred for Another**

#### Article 1119

Where a person has incurred an expense, or similar, for another, which the former has been obliged to do under the law, he shall have a right of recourse against the latter.

#### **Use of Another Person's Thing for Own Benefit**

#### Article 1120

Where a person has used another person's thing for his own benefit, the owner may, irrespective of a right to a compensation for damage, or in its absence, request from the former to compensate for the benefit conferred from use of the thing.

### Chapter 3

## MANAGEMENT WITHOUT MANDATE

### Section 1

#### GENERAL RULE

#### Article 1121

Management of the business of another without mandate or authorisation may be undertaken only if the business cannot be postponed, and if damage or evident loss of profit is imminent.

### Section 2

## RIGHTS AND OBLIGATIONS OF A MANAGER WITHOUT MANDATE

#### **Obligations of a Manager without Mandate**

#### Article 1122

(1) The manager shall, as soon as possible, inform the principal of the management he has undertaken and shall proceed with the business, if this is reasonably possible, until the principal is capable of taking care of the business.

(2) After the business is completed, the manager shall render the account and assign to the principal all the gains earned in conducting his business.

(3) The manager shall have the obligations of a mandatary, unless otherwise provided

for by the law.

### **Due Care and Liability**

#### Article 1123

- (1) When undertaking management of the business of another, the manager shall follow the actual or assumed needs of the principal.
- (2) He shall act with diligence of an orderly and conscientious businessman or with reasonable host diligence.
- (3) The court may, in view of the circumstances under which a person has undertaken to manage the business of another without mandate or authorisation, diminish his liability or completely release him from liability for negligence.
- (4) The rules concerning contractual and non-contractual liability shall apply to liability of a manager without a legal capacity.

### **Rights of a Manager without Mandate**

#### Article 1124

- (1) The manager without mandate who has at any time acted properly and worked as required by the circumstances, shall have a right to demand from the principal to exonerate him from liabilities assumed for the purpose of this business, to assume liabilities arising from the transactions entered into in the principal's name, to compensate for all necessary and useful costs, as well as to compensate for damage suffered, even though the expected result has not been attained.
- (2) An appropriate compensation for efforts shall be awarded to the manager if he has eliminated the damage for the principal, or if he conferred the benefit corresponding, in any way, to the principal's intentions and needs.

### **Management of the Business of Another in Order to Provide Assistance to Another Person**

#### Article 1125

The person who undertakes management of the business of another in order to provide assistance to another, and where conditions for management without mandate do not exist, shall be entitled to a compensation for the costs incurred, but maximum to the amount of the benefit conferred on another person.

### **Taking Away of Increments**

#### Article 1126

The manager without mandate shall have a right to take away the things by means of which he has produced increments in the assets of another, for which the costs incurred are not compensated for, if they may be separated without damaging the thing to which they are attached. However, the principal may retain these increments, if he compensates for their present value, but maximum to the amount of the costs incurred.

#### Section 3

### **MANAGEMENT OF THE BUSINESS OF ANOTHER DESPITE PROHIBITION**

#### Article 1127

- (1) A person who undertakes the management of the business of another despite the principal's prohibition, of which he has been aware or should have been aware, he shall not have the rights granted to the manager without mandate.
- (2) He shall be liable for damage caused by interfering into the business of another, even if the damage has not occurred at his fault.
- (3) Nevertheless, if the prohibition against conducting the business is contrary to the

law or moral, and especially if a person has forbidden another person to fulfil his legal obligation which may not be postponed, the general rules concerning the management without mandate shall apply.

#### Section 4

### QUASI MANAGEMENT

#### Article 1128

(1) A person who conducts the business of another for the purpose of withholding the benefit conferred, although he knows that the business is of another person, he shall, at the request of the principal render the account as if he were a manager without mandate and provide him with all the benefits conferred.

(2) The principal may also request restitution and compensation for damage.

#### Section 5

### APPROVAL

#### Article 1129

Where the principal has subsequently approved the work done, the management without mandate shall be considered a mandatary from the beginning of conducting the business.

## Chapter 4

### PUBLIC PROMISE OF REWARD

#### **When it is Binding**

#### Article 1130

(1) A publicly announced reward to a person who performs a certain act, achieves something, finds himself in particular situation or fulfils some other condition, shall be binding on the promisor.

(2) A promisor of a reward or any other competition shall determine the period of competition. If he fails to determine the competition period, any person wishing to take part in the competition shall have a right to demand from the court to determine the appropriate period.

#### **Promise Withdrawal**

#### Article 1131

(1) The promise may be withdrawn in the same manner in which it has been announced, as well as by a personal statement. However, a person who has performed an act and has not been aware or should not have been aware that the promise of a reward has been withdrawn, shall have a right to demand the reward promised, and a person who has incurred necessary costs before the withdrawal, for the purpose of performing the act determined in the public announcement, shall be entitled to the compensation of these costs, unless a promisor has provided evidence that these costs have been incurred in vain.

(2) The promise of a reward may not be withdrawn if a time limit for performing the act, i.e. for a notification of the achieved result, of the occurrence of a specific situation or of fulfilment of another condition, is determined in the announcement.

#### **Who Has a Right to a Reward**

#### Article 1132

(1) A person who has first performed an act for which a reward is promised shall have

a right to a reward.

(2) Where several persons have performed an act at the same time, each person shall be entitled to an equal portion of the reward, unless a different appropriation is just.

### **Competition and Reward**

Article 1135

(1) A competition organiser or one or more persons designated by him shall decide on giving of the reward in the case of competition.

(2) If the competition terms and conditions or some other general regulations applicable to a specific competition, set the rules under which the reward should be given, every participant in the competition shall have a right to demand the annulment of a decision on the reward given, provided that the reward has not been presented in accordance with these rules.

(3) Ownership or some other right over a work rewarded in the competition shall be granted to the competition organiser only if this is indicated in the competition announcement.

### **Termination of Liability**

Article 1134

The liability of the promisor shall terminate if no party has notify him, within the time limit determined in the announcement, that they have performed an act or accomplished something or fulfilled the conditions, in general, determined in the public announcement, and where the time limit is not determined, upon expiry of one year following the publication of the announcement.

## **Chapter 5**

### **SECURITIES**

#### ***1 General Provisions***

##### **Definition of Terms**

Article 1135

(1) Security shall imply a certificate by means of which their issuer undertakes to meet the obligation indicated in that certificate to its legal holder.

(2) Securities may be issued in an electronic form, as determined by the law.

(3) The provisions of this law relating to securities issued in a form of a written certificate shall apply, as appropriately, to securities in an electronic form, unless otherwise provided for by a special regulation.

##### **Essential Particulars**

Article 1136

(1) Securities shall contain the following essential particulars:

- 1) indication of a type of securities;
- 2) company name and head office, or name and residence of the securities issuer;
- 3) company name or name of a person in whose name the securities are registered, or an indication that they are of the order or bearer type;
- 4) specified obligation of the issuer, arising from the securities;
- 5) place and date of issue of the securities, and if they are issued in series, their serial number;
- 6) issuer's signature, or facsimile of the signature of an issuer of securities that are issued in series.

(2) Other essential particulars may also be prescribed by a separate law for individual

securities.

(3) A certificate or electronic record which does not contain any of the essential particulars shall not be deemed to be securities.

(4) Securities issued in series, which do not contain any of the essential particulars, shall not have a legal effect.

### **In whose Name Securities May be Registered**

Article 1137

Securities may be registered in the name of a person, or may be of the order or bearer type, unless otherwise provided for by the law.

### **Occurrence of Liability**

Article 1138

The liability arising from securities shall occur at the time the issuer has delivered the securities to the beneficiary.

### **Special Conditions for Issuing Securities in Series**

Article 1139

Other conditions for issuing securities in series shall be determined by a separate law.

## ***2 Exercising of Rights***

### **Who May Exercise Rights under Securities**

Article 1140

(1) A claim arising from securities shall be attached to the securities themselves and shall belong to their legal holder.

(2) A legal holder of bearer securities shall be their bearer.

(3) A legal holder of registered or order type securities shall be a person in whose name the securities are registered, or a person to whom they have been lawfully transferred.

(4) The acquirer of bearer securities in good faith shall become their legal holder and shall be granted a right to a claim attached to them even where the securities are no longer held by their issuer or the previous holder, and without their consent.

### **Who May Request Settlement of Claims**

Article 1141

Settlement of claims based upon securities may be requested, upon their presentation, only by their legal holder or a person authorised by him.

## ***3 Transfer of Securities***

### **Transfer of Rights Arising from Bearer Securities**

Article 1142

A right arising from bearer securities shall be transferred by their delivery.

### **Transfer of Rights Arising from Registered Securities**

Article 1143

(1) A right arising from registered securities shall be transferred by assignment.

(2) A separate law may regulate that rights arising from registered securities may also be transferred by endorsement.

(3) A right arising from registered securities shall be transferred by indicating on the security itself the company name or the name of the new holder, signing by the transferor and recording the transfer in the register of securities, if such a register is kept with the issuer.

### **Transfer of Rights Arising from Securities in Order Form**

Article 1144

A right arising from securities in order form shall be transferred by endorsement.



## **Types of Endorsement**

### Article 1145

- (1) Endorsement may be special, in blank or in bearer form.
- (2) A special endorsement shall contain a statement of transfer, name of company or name of person to whom a right arising from a security is transferred (endorsee), and a signature of the endorser, or may contain other particulars as well (place, date, etc.).
- (3) Endorsement in blank shall contain only the endorser's signature.
- (4) In the case of endorsement in bearer form, a wording "to the bearer" shall be placed instead of the name of endorsee.
- (5) Endorsement in a bearer form shall have the same effect as the endorsement in blank.
- (6) A partial endorsement shall be void.

## **Transfer of Power of Attorney and Transfer by Way of Pledge**

### Article 1146

- (1) Securities transfer may be effected as a transfer of power of attorney or transfer by way of pledge.
- (2) In the case of transfer of power of attorney, a wording "value under power of attorney" shall be placed, and in the case of transfer by way of pledge, a wording "value pledged" shall be placed.

## **Effect of Transfer of Rights**

### Article 1147

- (1) By transferring the rights arising from securities, their new holder shall enjoy all rights of his predecessor.
- (2) Transfer of rights arising from registered securities, whether performed through [assignment](#) [cession](#) or endorsement, shall not take effect in respect of the issuer until the latter is notified thereof in writing, or until such transfer is entered in the register of registered securities, where such register is kept with the issuer.
- (3) The assignor or endorser shall not be liable for a failure to meet the obligation on the part of the issuer, unless otherwise provided for by law, or unless a provision to the contrary is recorded on the security itself.

## **Effect of a Transfer of Power of Attorney or Transfer by Way of Pledge**

### Article 1148

The holder of securities transferred by a transfer of power of attorney or by way of pledge may exercise all rights arising from these securities, but they may be transferred to another person only as a transfer of power of attorney.

## **Providing Evidence as to the Lawfulness of Transfer**

### Article 1149

- (1) The final endorsee shall prove his right arising from securities by a continuous succession of endorsements.
- (2) This rule shall also apply to the final assignee, as appropriately.

## **Prohibition against Transfer**

### Article 1150

- (1) Transfer of securities in order form by way of endorsement shall be prohibited by a wording "not to the order of" or by placing a similar wording with the identical meaning.
- (2) A right from securities, the transfer of which through endorsement is prohibited, may only be transferred by assignment.

(3) Both the issuer and endorser may prohibit a transfer by endorsement.

(4) Any form of transfer of the registered securities may be prohibited under a separate law or a statement of the issuer recorded on the registered securities.

#### ***4 Changes in Securities***

##### **Changes that May be Effected by the Issuer**

###### Article 1151

(1) Bearer securities or securities in order form may be converted into registered securities by the issuer, at the request and at the expense of the holder.

(2) Unless such a conversion is expressly prohibited, the issuer of registered securities may convert these securities into bearer securities or securities in order form, at the request and at the expense of the holder.

##### **Changes that May be Effected by the Holder at Transfer**

###### Article 1152

(1) Securities in order form may be transferred to the holder by the endorser through endorsement, unless otherwise provided for by a separate law.

(2) Registered securities may be transferred by the assignor or endorser only to a particular person.

(3) Bearer securities may be transferred to a particular person through endorsement.

##### **Merger and Division of Securities**

###### Article 1153

(1) Securities issued in series may be merged into one or more securities at the request and at the expense of a holder.

(2) Security may be divided, at the request and at the expense of a holder, into several securities, but they may not be below the lowest face value of the security issued in that series.

#### ***5 Performance of Obligation Arising From Securities***

##### **Termination of Obligation**

###### Article 1154

(1) Obligation arising from securities shall terminate by the performance of obligation on the part of the issuer towards the legal holder.

(2) A claim based upon a security shall also terminate when the issuer acquires the security, unless otherwise stipulated by a separate law.

(3) The issuer of bearer securities in good faith shall be released from obligation upon the performance of obligation towards a bearer even if the latter is not a legal holder of securities.

##### **Prohibition against Performance**

###### Article 1155

(1) If the issuer of bearer securities has been aware or should have been aware that the bearer is not a legal holder and that he is not authorised by the legal holder, the issuer shall refuse performance of obligation, or shall otherwise be liable for damage.

(2) Issuer of securities may not perform his obligation in a timely manner if this has been prohibited by the competent authority, or if the issuer has been aware or should have been aware that redemption or cancellation procedure has been initiated.

##### **Payment of Interest and Other Income after Payment of Principal**

###### Article 1156

A debtor who has disbursed principal to the holder of securities shall disburse interest

coupons or other income based on the same securities that are presented for payment, following the payment of principal, if these claims are not prescribed.

### **Objections to the Request for Performance of Obligation**

(1) The issuer may communicate the objection to the request of the holder of securities only concerning the issue of securities, such as forgery; as well as the objections arising from the contents of securities, such as time limits or terms and conditions; finally, the objection against the holder of securities himself, such as off-set, lack of legally prescribed procedure for acquiring securities and lack of authority.

(2) The issuer may communicate the objection to the request of the holder to whom he has assigned the securities, concerning the defects of a legal transaction on the basis of which a transfer has been carried out, but the objections may not be lodged to the request of any subsequent holders concerning the same defects.

(3) However, if the holder of securities, when receiving the securities from his predecessor, is aware or should be aware that the latter transfers the securities in order to avoid the objection of the issuer against him, the issuer may also communicate this objection against the holder of the securities.

(4) Other objections concerning individual types of securities may also be regulated by a separate law.

## ***6 Identification Papers and Marks***

### **Identification Papers**

#### Article 1158

The provisions concerning securities shall apply, as appropriately, to railway tickets, theatre tickets and other tickets, coupons and other similar certificates, which contain a certain obligation for their issuer, but do not identify the obligee, nor do they or the circumstance in which they have been issued indicate that they may be transferred to another person.

### **Identification Marks**

#### Article 1159

(1) Cloakroom or similar tickets composed of a piece of paper, metal or other material, which usually have a number imprinted or where the number of given objects is specified, and which usually do not contain anything specific concerning the obligation of their issuer, shall serve only to indicate the obligee in an obligation in the creation of which they have been issued.

(2) The issuer of an identification mark shall be released from the obligation when he performs the obligation in good faith for the benefit of the bearer, but as regards the bearer, the presumption shall not be valid that he is the actual obligee or that he is authorized to request the performance. In case of a dispute, the bearer shall be obliged to prove his authority.

(3) The obligee may request performance of the obligation even if he has lost the identification mark.

(4) As regards other issues, the intention of both the issuer and the receiver of the mark and the usual custom should be respected in each individual case.

## ***7 Other Provisions***

### **Substitute of a Damaged Security**

#### Article 1160

A holder of a damaged security which is not fit to be exchanged, but the genuineness and content of which can be precisely determined, shall be entitled to request issuance of a

new security in the same amount, but shall be obliged to return the damaged security and to compensate for the costs incurred.

### **Redemption of Securities**

Article 1161

A lost security may be redeemed only if it is registered or in order form, unless otherwise provided for by a separate law.

### **Prescription of Claim Arising from a Security**

Article 1162

The rules concerning prescription shall apply to a claim arising from a security which has been prescribed, unless otherwise provided for by a separate law.

P a r t T h r e e

## TRANSITIONAL AND FINAL PROVISIONS

### **Application of this Act**

Article 1163

(1) The provisions of this Act shall not apply to obligations that have occurred prior to entering into force of this Act.

(2) The provisions of this Act relating to liability for defective product shall not apply to the products placed on the market prior to entering into force of this Act.

### **Regulations that Cease to be Valid**

Article 1164

(1) As of the date of entering into force of this law, the following regulations shall cease to be valid:

- Civil Obligations Act (Official Gazette Nos. 53/91, 73/91, 111/93, 3/94, 7/96, 112/99 and 88/01) and
- provisions of Articles 116 to 121 of the Inheritance Act (Official Gazette Nos. 48/03 and 163/03).

(2) As of the date of beginning of application of the provisions of Article 26, paragraphs 1 to 3 and Article 29 paragraphs 2 to 6 and paragraph 8 of this Act, the provisions of Articles 1, 2, 4, 5, 6, 7, 8, 9 paragraph 1, item 1 and Article 10 of the Interest Act (Official Gazette No 94/04) shall cease to be valid.

### **Entering into Force**

Article 1165

This Act shall enter into force upon the expiry of six months from the date of its publication in the Official Gazette. Nevertheless, the provisions of Article 26, paragraphs 1 to 3 and Article 29 paragraphs 2 to 6 and paragraph 8 shall apply upon the expiry of two years from the date of entering into force of this Act.