

Introduction

In 1978 the Assembly of the SFR of Yugoslavia adopted the Law of Contract and Torts, and that Law is still in force today in the Federal Republic of Yugoslavia. Some states originating through secession from Yugoslavia have also taken over that Law incorporating it into their own legislation.*

There have been several amendments to the Law, including one in 1993 when all formulations which had political connotation and which referred to self-management socialism, self-management agreements and social understandings, as well as to the category of social ownership were eliminated.

Several more detailed regulations followed, such as the Law on Default Interest Rate (1993), with amendments effected in 1994 and 1996.

Significance and Basic Characteristics of the Law

The adoption of this Law had an enormous positive effect on Yugoslav law. It meant codification of the contract and torts law in Yugoslavia. After its coming into force there was no more need to apply legal rules

* The basis for preparing the draft of the Law was the "Sketch of the Law of Obligations and Contracts", drafted by Professor of the Belgrade Law School, Mihailo Konstantinovi}. That draft provoked wide professional and academic discussion among Yugoslav legal experts, while in many cases the courts have been inspired by solutions suggested by the author of the Sketch, so that, in a way, the Law was applied even before being formally promulgated.

from the old codes formerly in force in some regions of later Yugoslavia in the nineteenth century. In the case of Serbia, this was the 1844 Civil Code, and in Montenegro, the 1888 General Property Code. In the sphere of economic contractual relations, valid prior to the Law, these were the General Usages of Sale of Goods, of 1954. The usages, *per definitionem* are codified, i.e. written customs intended for the regulation of business transactions. However, since such transactions were not treated by statute, while the economy did not tolerate legal uncertainty, the General Usages of Trade included numerous rules covering the issues to be normally regulated by legislation (such as entering into contract, or contractual liability.). After the coming into force of the Law of Contract and Torts, the General Usages ceased to be applicable. The provisions of the Law, are applicable although it has, in fact, taken over a whole series of rules from the General Usages. For instance, a rule by which a contract is considered concluded even if the statement of acceptance of offer, made on time, reached the person making the offer after the deadline for acceptance – if he was aware or should have been aware that the statement was dispatched on time. The application of the General Usages is based, under the Law, on agreement, between the contracting parties, while only those customs of trade which are treated as usual practice may be applied. This, for instance, is the case in the meaning of the clauses "at the beginning of the month" or "immediate delivery".

The influence of Yugoslav court practice is present in many provisions of the Law. Thus a policy was adopted by the Law, chrystalized from numerous court decisions, regarding the alteration of the agreed price in construction contracts, should the price of materials forming the ground for calculation of the price of works increase. The relevant text of the law provisions provides for three different situations in such a case (Article 636 and the following), depending on the degree of fair fulfilment on the part of the operator.

Along the same lines, court practice supplied a solution for nullity of an insurance contract, not only if the insured event had occurred at the moment of conclusion of contract, but also if it was certain at that moment that such event would materialize. Thus there

can be no insurance against consequences of a flood if the only question in the specific case is the moment of its occurrence.

The text of the Law follows *contemporary legal tendencies* in the field of the law of contract and, more particularly the ideas accepted in the 1964 Hague Convention on the Uniform Law of Sale of Corporeal Movables and the 1964 Hague Convention on Concluding Contracts of Sale of Corporeal Movables. The relevant example concerns the conditions (prerequisites) for invoking contractual liability. The Law does not provide for debtor's liability for violation of contract in the case of his fault. In order to be exempted from liability for damage done to the other party to the contract due to violation of contract, the debtor should prove his inability to meet his obligation, or his delay in this respect, as being due to circumstances occurring after the entering into contract which were impossible for him to prevent, eliminate or avoid. According to Yugoslav court practice, also, in the case of goods perishing in transport due to a defect of a loaded truck, the carrier may not avoid liability simply by proving regular maintenance of his motor fleet, which would exclude his fault. The damage is considered to have taken place in the course of the carrier performing his professional activity, and the defect of a truck is but a normal element of his business risk.

The comparative law method was amply used in drafting the provisions of the Law. Using the patterns of some foreign legal systems, the Law contains numerous provisions otherwise unknown in earlier Yugoslav law. Two examples in that respect would suffice: the rule taken from the English and French laws by which liability of a debtor violating the contract is limited to the damage which was his duty to foresee at the time of entering into contract as a possible consequence of such violation, while taking into consideration the facts known, or likely to be known, to him at the time. The former Serbian Civil Code did not provide for such limitation of contractual liability. The liability of a debtor for breach of contract was limited but, as a rule, the debtor owed redress only for simple damage (*damnum emergens*). Compensation for the profit lost (*lucrum cessans*) was his liability only

if he violated the contract by wilful misconduct or gross negligence. The second example concerns a claim by one contracting party of changed circumstances after the conclusion of contract (the *rebus sic stantibus* clause) which, according to the Law, is possible not only if performance of his duty become more difficult - which is the rule in the General Trade Usages. Rescission or amendment of the contract is also possible, according to the Law, should changed circumstances prevent realisation of the purpose of contract - which amounts to acceptance of the English concept of frustration of contract.

Contents and Scope

The Law consists of two parts: the General Part and the Special Part. The General Part contains provisions relating to the foundations of obligation relations (contracts and torts): their origin, the effect, and termination. The provisions concerning the interpretation of contracts found in this part apply regardless of the kind of contract in question. The Special Part is composed of various kinds of contracts. The largest number of articles in that Part of the Law cover the contract of sale.

Among the provisions of the General Part of the Law of Contract and Torts one finds provisions by which every contractual obligation must have a permitted ground. A ground is not permitted if it is contrary to compulsory regulations, public policy or fair usage. A contract with an unpermitted ground is null and void. However, the ground of an obligation does not have to be indicated in the contract, meaning that the Law also permits the so-called abstract legal transactions. In principle, contracts are informal. A contract, on the other hand, must be concluded in writing if so prescribed or if the contracting parties have agreed accordingly in that respect. For instance, the Law provides a written form for construction contracts. In terms of special regulations, entering into contract is obligatory in certain situations. Thus the owners of motor vehicles must complete a contract of compulsory insurance for li-

ability to third parties. Otherwise, questions relating to that issue are regulated by the Law on Property and Life Insurance, enacted in 1996.

Among the provisions covering the origin of obligations in the General Part of the Law, there are also those concerning civil wrongs (torts). The Yugoslav law provides for both subjective and the objective grounds of liability for damage (i.e. on the ground of fault, and regardless of fault). In other words, a person causing loss to another is liable to redress it, unless successful in proving that the loss occurred without his fault. Consequently, the fault of the tort-feasor is assumed. In many other countries the tort-feasor's liability is also based on fault, but the burden of proof is borne by the party suffering loss. On the other hand, if the loss is caused by the use of a dangerous object or through the performance of a dangerous activity, the owner of such object or a person in such line of business shall be held liable unless he succeeds in proving that the damage originated from a cause outside the object itself whose effect could not have been foreseen or eliminated (*Force Majeur*). Again, the owner (operator) shall be exempt from liability if he proves that the damage has taken place exclusively through an act of the person suffering loss, or of a third party which he could not foresee and whose consequences he could not avoid or eliminate. According to Yugoslav court practice, even a manufacturing failure in the assembly (producing) of the breaking mechanism of a car does not exempt the operator (owner) of such car from liability or loss caused to a third party through the use of the car. However, such operator is entitled to claim reimbursement of the compensation paid - against the car manufacturer (because of his defective manufacturing).

A person liable for loss is obliged to restore, through natural or monetary compensation, the state of affairs existing prior to the origination of damage. In case of death, bodily injury or illhealth, damages may also be ordered to be paid in the form of an annuity. In specific situations the person suffering damage is also entitled to compensation of non-material damage. Thus, in the case of death of a person the court may grant damages to the members of such person's immediate family to cover for their psychological anguish. Damage to property is not a

ground for granting compensation of the non-physical damage (for instance, for inconvenience due to being prevented from using a car damaged through the fault of the other driver).

An obligation relationship between two persons may also take place on the ground of securities. Issuing securities is considered in the law as a unilateral statement of intention by the issuer. Special laws exist to regulate different kinds of securities. Thus, relations connected to bills of exchange are regulated by the 1946 Law on Bills of Exchange, and the relations arising in connection to cheques - by the 1946 Law on Cheques.

By the 1985 Amendments to the law of Contract and Torts, the obligation of the State is elaborated to cover loss caused by death, bodily injury or terrorist activity, as well as by public demonstrations and meetings. The right to such damages is not recognized for corporate bodies or for the organizers, participants and helpers in such events. The State is entitled to claim reimbursement of amounts paid on the above grounds from the person provoking the damage.

The Special Part of the Law contains provisions concerning various kinds of legal transactions. Thus the Law regulates the relations arising from twenty-two kinds of contracts and unilateral legal transactions. These include provisions dealing with kinds of obligation relations otherwise not regulated by similar foreign legislative acts. For instance, the Law contains provisions about three different kinds of contracts which are significant for the tourist trade. They include the following: the contract of organisation of travel, the intermediary contract of travel, and the contract of engaging catering capacities (the contract of allotment). In other countries these and similar transactions are mostly regulated in accordance with custom or trade usage. Particular chapters of this Part of the Law also include provisions concerning bank guarantees and letters of credit.

For special kinds of contracts which are regulated by the Law there also exist special regulations. These are, for the sake of example, the Law on Contracts of Carriage by Railroad Transport (of 1996), and the Law on

Contracts of Carriage by Road Transport (also of 1996). These items of legislation are of a *lex specialis* category in relation to the provisions regulating the activity of transport in the Law of Contract and Torts. Relations arising from the contract of maritime insurance are regulated by the Law on Maritime and Inland Navigation, of 1977, so that these relations are not included in the provisions relating to the contract of insurance found in the Law of Contract and Torts. This latter Law, namely, regulates only the so-called land insurance.

Economic (Commercial) Contracts

In Yugoslavia there are no special civil and special commercial laws, as is the case in some other European countries. The Law of Contract and Torts is applicable both to contractual and other obligation relations among persons not engaged in any kind of economic activity (i.e. citizens), and to relations among enterprises and other economic organisations. However, the Law takes into consideration the specific nature of economic obligation relations. In a series of its provisions there are stipulations that they are not to be applied to commercial contracts or that some special solution is provided for such cases. And contracts of that type are ones entered into by enterprises and other corporate bodies engaged in business operations (such as banks, insurance organisations, cooperatives), as well as by shop-owners and other individuals registered for the performance of some kind of economic activity in order to do their business.

Following are some examples of such provisions of the Law which are applicable only to the relations connected to commercial contracts.

A contracting party to this type of contract, in carrying out his obligation, is obliged to proceed with the care of a good businessman, and while performing an obligation arising from his professional activity – to proceed in accordance with the rules of profession and custom (the so-called care of a good expert). Persons not

engaged in an economic activity are required, in carrying out their contractual obligations, to act with the care of a good householder.

The time limit for claims arising from commercial contracts, as far as the statute of limitations is concerned, is shorter than the usual one. Furthermore, in case of several debtors in a divisible obligation arising from an economic (commercial) contract, the liability to the creditor is joint and several, unless such kind of liability is expressly excluded by the contracting parties. Otherwise, in other contractual relations with several debtors, the obligation is divided among them into equal parts, unless another kind of division is agreed upon, and each is liable for his part of the obligation. If, in a commercial contract of sale, the price is not determined, and there are no sufficient grounds to determine it, the buyer is obliged to pay the price usually paid to a seller at the time of entering into contract, and should there be no such price, a reasonable price should apply. In case of a contract not considered as an economic transaction, the price is an essential element of the contract. It must be specified in the contract or be determinable by sufficient indications. Otherwise, the contract is considered not concluded. A buyer in the case of a contract of sale in the sphere of economy is bound to notify the seller without delay on visible defects in the accepted goods. In other non-commercial cases of sale, i.e. those outside the sphere of economy, the deadline for such notification by the buyer is eight days. Also, it is a general rule of the Yugoslav law of obligations that a guarantee is of a subsidiary nature. A creditor may claim the fulfilment of obligation from a guarantor only if the debtor has failed to fulfill it within the time limit indicated to him in written form by the creditor. However, and unless otherwise agreed with the creditor, the guarantor of an obligation arising from a contract in the sphere of economy is jointly and severally liable as such.

Moreover, the Law also contains such provisions which may be applied in practice only in relation to the subjects engaged in economic activity. An example to that effect is the provision by which a contract may be concluded by the silence of the offeree, but only if such party maintains regular business relations with the of-

feror, and only in relation to the specific goods or services indicated in the offer.

The Principle of Equity

The Law provides for quite a number of situations which are regulated both in the General and the Special Part by application of the principle of equity. In such a way the possibility is opened to bring the law closer to justice and to eliminate the danger of implementing the law in a formalistic manner. Thus, in case of accident caused by a moving motor vehicle through the exclusive fault of one of the drivers, such driver shall pay damages to the owner of the other vehicle. Should both of them be at fault, each one is liable for the entire loss, proportionally to the degree of his fault. If neither of them is at fault, the liability shall be divided into equal parts, should equity considerations not require something else. Furthermore, unclear provisions in an onerous contract should be interpreted so as to achieve an equitable relationship of mutual giving by the parties.

In the above mentioned way the courts have acquired a position to be creative in their implementation of the provisions of the Law. Thus, for instance, a court may break or alter a contract due to subsequently changed circumstances if, according to general opinion, it would be unjust to keep it valid. After it has ordered the rescission of the contract, the court shall, at the request of the other party, bind the party claiming rescission, to compensate the other party with a just amount to cover the loss suffered by such party because of the rescission. Also, where in a contract of commercial agency or a contract of commission business the agreed remuneration, i.e. commission fee, is disproportionately high, as compared to the transaction effected and the result achieved, the court may, at the request of the principal, reduce it to an equitable amount. Again, in the case of standard-clause contracts, the court is authorized to decline the application of certain general terms and conditions of doing business of one party, being a component part of

the contract, should they deprive the other party of the right to object, or on the ground of which terms and conditions such party would lose some contractual rights or time limits, or, as the case may be, should these become too strict toward such party.

To conclude, we will refer to a remark about the Law which is frequently heard from laymen: the Law is considered a popular legislative text, characterized by an easily understandable style and wording. Not a single paragraph in the Law contains more than one sentence, and there is no reference to other articles either. There is also no insistence on professional legal terminology. Consequently, it is not a text which can instruct one about contracts and torts – but it can be understood by one not familiar with that branch of law.

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THE LAW OF CONTRACT AND TORTS*

PART ONE

GENERAL PART

Chapter I.

BASIC PRINCIPLES

Article 1. Contents of the Law

The present Law regulates the obligation relations originating on the ground of contract, the fact of causing damage (torts), acquiring without proper grounds,¹ conducting transactions without authority, unilateral expression of volition,² and other matters specified by law.

Article 2. Parties to Obligation Relations

Parties to the obligation relations can be natural and legal persons.³

Articles 3 to 9 were repealed by the 1993 Amendments to the present Law.

* Original title: *Zakon o obligacionim odnosima.*

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The following text is therefore the re-stated and official text of the Law of Contract and Torts.

¹ E.g. conversion.

² E.g. the law relating to unilateral contracts.

³ That is, individuals and/or corporate bodies.

Article 10. *Autonomy of Choice (Volition)*

Parties to the obligation relations shall be free, within the limits of compulsory legislation, public policy and good faith, to arrange their relations as they please.

Article 11. *Equality of Parties*

Parties to obligation relations shall be equal in terms of law.

Article 12. *The Principle of Good Faith and Honesty*

In establishing obligation relations and realizing rights and duties out of these relations, the parties shall adhere to the principles of good faith and honesty.

Article 13. *Prohibition of Misuse of Rights*

The realization of a right arising from obligation relations contrary to the purpose established or recognized by law regarding such right, shall be prohibited.

Article 14. *Prohibition of the Creation and Misuse of a Monopoly Position*

In establishing obligation relations the parties shall not create rights and duties by which a monopoly position is created or used in the market place.

Article 15. *The Principle of Equal Consideration*

(1) In establishing bilateral (consensual) contracts parties shall begin with the principle of equality of mutual consideration.

(2) Cases shall be determined by law where violation of this principle invokes legal consequence.

Article 16. *Prohibition of Causing Damage*

Everyone shall be bound to refrain from an act which may cause damage to another.

Article 17. *Responsibilities in Performing Obligations*

1) Parties to obligation relations shall be bound to carry out their obligation and shall be responsible for its performance.

(2) An obligation may be discharged only by mutual will of the parties to the obligation relations or on the basis of law.

Article 18. *Conduct in Carrying Out Obligations and Realizing Rights*

(1) In carrying out his obligation, a party to obligation relations shall be bound to act with the care required in legal transactions of the kind of obligation relations involved (the

care of a good businessman, or respectively the care of a good master of the house).

(2) In carrying out obligations relating to his professional activity, a party to obligation relations shall be bound to act with increased care, according to professional rules and usage (the standard of care of a good expert).

(3) In realizing his rights, a party to obligation relations shall be bound to refrain from acts which could hinder the performance of the obligation of the other party.

Article 19. *Settling Disputes in a Peaceful Way*

Parties to obligation relations shall endeavour to settle disputes by conciliation, mediation or in some other peaceful way.

Article 20. *Self - Regulating Character of the Provisions of the Present Law*

Parties may regulate their obligation relations in a way different from the one specified by the present Law, unless something else follows from a particular provision of the Law, or from its general meaning.

Article 21. *Applicability of Fair Trade Custom and Usage*

1) Parties to obligation relations shall be bound to proceed in engaging in legal transactions in accordance with fair trade custom and usage.

(2) Trade practices shall be applicable to obligation relations after the parties to the obligation relations have stipulated such application, or after relevant circumstances imply such intent.

Article 22. *Proceeding in Accordance to General Acts*

(1) In establishing obligation relations legal persons shall proceed in accordance with their general acts.

(2) However, a contract entered into, or some other legal action taken, contrary to these acts shall remain valid, unless the other party was aware, or should have been aware, of the fact or unless otherwise provided by the present Law.

Article 23. *Applicability of other Federal Laws*

Provisions of the present Law shall apply to obligation relations regulated by other federal laws in matters not regulated by these laws.

Article 24.

Repealed by the decision of the Constitutional Court of Yugoslavia.

Article 25. *Applicability of Particular Provisions*

(1) Provisions of the present Law relating to contracts shall apply to all kinds of contracts, unless something else is provided relating to contracts in the sphere of the economy.

(2) In the present Law contracts in the sphere of the economy means those entered into by enterprises and other legal persons engaged in economic activity, as well as by shop owners and other individuals performing a registered economic activity in order to carry out such activities, or in connection with such activities.

(3) Provisions of the present Law relating to contracts shall also apply accordingly to other legal transactions.

Chapter II.

THE ORIGIN OF OBLIGATIONS

Section 1.

CONTRACT

Subsection 1.

CONCLUDING A CONTRACT

I. CONSENTING MINDS

Article 26. *When a Contract Is Concluded*

A contract shall be concluded after the contracting parties have come to an agreement as to the essential constitutive elements (terms) of the contract.

Article 27. *Compulsory Conclusion and Compulsory Contents of a Contract*

(1) Should someone be under a legal duty to enter into a contract, the person interested may request that such contract be immediately concluded.

(2) Legislative provisions partially or entirely determining the contents of contracts shall make the component parts of such contracts, so as to supplement or replace terms of contract not conforming to them.

Article 28. *Expression of Will (Volition)*

(1) Intention to enter into a contract may be expressed by words, usual signs or other conduct, on the grounds of which one may safely conclude of its existence.

(2) Expression of will (volition) shall be made freely and seriously.

Article 29. *Permit and Approval*

(1) Should consent be required of a third person to enter into a contract, such consent may be expressed prior to entering into the contract, as permission, or after its conclusion, as approval, unless otherwise provided by law.

(2) Permission or approval must be expressed in the form prescribed for contracts whose conclusion depends on permission or approval.

Article 30. *Negotiations*

(1) Negotiations preceding the entering into contract shall not be binding, and each party shall at any moment be free to interrupt them.

(2) However, a party conducting negotiations without intending to enter into contract shall be liable for damage caused by conducting such negotiations.

(3) A party conducting negotiations with intent to conclude a contract, but afterwards withdrawing from them without a justified reason, thus causing damage to the other party shall be equally liable for damage.

(4) Unless otherwise agreed, each party shall bear their own expenses relating to preparations for entering into contract, while joint expenses shall be shared equally between the parties.

Article 31. *Time and Place of Entering into Contract*

(1) A contract shall be entered into at the moment the offerer acknowledges the statement of the offeree accepting the offer.

(2) A contract shall be considered concluded at the place at which the offerer had his seat of business, that is his residence, at the moment of making the offer.

Article 32. *Offer*

(1) An offer shall be a proposal for entering into a contract made to a specific person and containing all essential constitutive elements of the contract, so that its acceptance would amount to the entering into contract.

(2) Should contracting parties, after reaching agreement as to essential constitutive elements of contract, leave out some secondary points to be decided upon at a later time, the contract shall be considered concluded, while such secondary points – should contracting parties themselves fail to reach agreement thereof – shall be regulated by a court, which shall take into account preliminary negotiations, established practice between the contracting parties, and usage.

Article 33. *General Offer*

A proposal to conclude a contract made to an unspecified number of persons and containing essential constitutive elements of contract envisaged by the proposal, shall be valid as an offer, unless something else follows from circumstances of the case or usage.

Article 34. *Display of Merchandise*

Display of merchandise with a price indicated shall be considered as offer, unless something else follows from circumstances of the case or from usage.

Article 35. *Sending Catalogues and Advertisements*

(1) Sending catalogues, price-lists, tariffs and other information, as well as advertisements published in the press, presented by way of leaflets, by radio, television or in some other way, shall not be considered as an offer to enter into contract, but only as an invitation to make an offer⁴ under the terms announced.

(2) However, a sender of such an invitation shall be liable for damage caused to the offerer, after failing, without a justified reason, to accept the offer.

Article 36. *Effect of Offer*

(1) An offerer shall be bound by his offer unless his obligation to honour the offer is excluded, or unless such exclusion may be implied from the circumstances of the business transaction involved.

(2) An offer may be revoked only if the offeree receives the revocation prior to receiving the offer, or simultaneously with it.

Article 37. *How Long an Offer is Binding*

(1) An offer with an indication of the time limit for its acceptance shall be binding on the offerer until the expiration of that time limit.

⁴ Invitation to treat.

(2) Should the offerer indicate the acceptance time limit by letter or telegram, it shall be held that such time limit has commenced to run from the date indicated in the letter, or respectively, from the day of delivering the telegram to the post-office.

(3) In the case of an undated letter, the acceptance time limit for the offer shall run from the day of delivering the letter to the post-office.

(4) An offer made to an absent person, without indication of the acceptance time limit, shall be binding for the offerer in the course of a period usually needed for the offer to reach the person offered, for his considering it, for making his decision, and for the answer confirming the acceptance to reach the offerer.

Article 38. *Form of Offer*

(1) An offer of a contract falling within special statutory requirements regarding its form, shall be binding on the offerer only after being made in such a form.

(2) The same shall apply to acceptance of the offer.

Article 39. *Acceptance of Offer*

(1) An offer shall be accepted when the offerer receives a statement from the offeree that he accepts the offer.

(2) An offer shall also be accepted when the offeree delivers the goods or subject of the contract or pays the price, or does anything else which on the grounds of the offer, or former practice between the interested parties, or usage, may be construed as a statement of acceptance.

(3) Acceptance may be revoked if the offerer acknowledges a statement of revocation prior to the statement of acceptance, or simultaneously with it.

Article 40. *Acceptance of a Direct Offer*

(1) An offer made to a person present shall be considered rejected if not accepted immediately, unless the circumstances of the case indicate that the offeree was entitled to a certain time for considering the offer.

(2) An offer made by telephone, teleprinter or through direct radio communication, shall be considered as offer made to a person who is present.

Article 41. *Acceptance of Offer with a Proposal to Amend it*

Should the offeree state his intention to accept the offer, at the same time proposing to amend or supplement it, the offer shall be considered rejected by him, and that he has made his own offer to his former offerer.

Article 42. *Silence of the Person Offered*

(1) Silence of the person offered shall not mean the acceptance of an offer.

(2) A provision in an offer according to which silence of the person offered, or other omission on his part (for instance, failure to refuse the offer within the indicated time limit, or to restitute delivered goods or the subject of the contract offered to be entered into within the indicated time limit, and the like) can be considered as acceptance, shall not be effective.

(3) However, if the person offered is in permanent business relations with the offerer in the line of specific merchandise, he shall be considered to have accepted the offer concerning such merchandise, unless he immediately, or within the indicated time limit, rejects it.

(4) Similarly, a person offering to carry out another's orders concerning the performance of specific transactions, as well as a person whose professional activity includes carrying out such orders, shall be bound to carry out the orders received, unless he has immediately refused to do so.

(5) Should, in the case specified in the preceding paragraph, the offer, namely the order, not be refused, the contract shall be considered to have been entered into after the offer, namely the order, has reached the offeree.

Article 43. *Late Acceptance and Late Notification of Acceptance*

(1) Delayed acceptance of an offer shall be treated as a new offer made by the offeree.

(2) However, should notification of acceptance made on time reach the offerer after the expiration of the acceptance time limit, when the offerer knew, or should have known, that such notification was made on time, the contract shall be considered concluded.

(3) However, the contract in such a case shall not be considered concluded, should the offerer, immediately after acknowledging the notification or on the following workday at the latest, or even prior to such acknowledgment and after the expiration of the acceptance time limit for the offer, inform the offeree that, due to the delay, he does not consider himself bound by his own offer.

Article 44. *Death or Lack of Capacity of One Party*

An offer shall not lapse by the death or lack of capacity of one party prior to its acceptance, unless the result is opposite from the intention of the parties, usage, or the nature of the transaction.

Article 45. *Preliminary Contract*

(1) A preliminary contract is a contract by which a duty is assumed to enter, at a later time, into another, principal, contract.

(2) Terms concerning the form of the principal contract shall also apply to the preliminary contract, should the prescribed form be a prerequisite for the validity of the contract.

(3) A preliminary contract shall be binding if it contains the essential constitutive elements of the principal contract.

(4) At the request of an interested party, a court shall order the other party refusing to enter into the principal contract, to act accordingly within the time limit to be ordered to such party.

(5) Conclusion of a principal contract may be requested within a six month period, beginning with the expiration of a time limit provided for its conclusion, and should such time limit not be provided for, beginning with the day on which, according to the nature of the transaction and circumstances of the case, such contract was supposed to be entered into.

(6) A preliminary contract shall not be binding should circumstances after its conclusion change to a degree that such preliminary contract would not have been concluded at all if such circumstances had existed at the time.

II. SUBJECT

Article 46. *What Must Be a Subject of Obligation*

(1) A contractual obligation may consist of giving, acting, failing to act, or enduring (toleration/concession).

(2) It must be possible, permitted, and specific, that is determinable.

Article 47. *Subject as a Cause of Void Contract*

Should a subject of an obligation be impossible, unlawful, unspecified or undeterminable, the contract shall be void.

Article 48. *Subsequent Possibility*

A contract entered into under a postponing condition or time limit shall be valid, should the subject of obligation, being impossible at the beginning, become possible prior to taking effect of such condition or expiration of the time limit.

Article 49. *In the Case of Unlawful Subject*

A subject of obligation shall not be permitted if it is contrary to compulsory legislation, public policy or fair usage.

Article 50. *In the Case of Determinable Subject*

(1) A subject of obligation shall be determinable if the contract contains the indications by which it can be determined, or should the parties have left such determination to be effected by a third party.

(2) Should the third party be unwilling or unable to determine the subject of obligation, the contract shall be void.

III. GROUNDS

Article 51. *Permitted Grounds*

(1) Every contractual obligation must have a permitted ground.

(2) Grounds contrary to compulsory legislation, public policy or fair usage shall not be permitted.

(3) An obligation shall be presumed to be founded although its grounds are not expressed.

Article 52. *Nullity of Contract Because of Ground*

Should there be no ground, or should it not be permitted, the contract shall be void.

Article 53. *Motives for Entering Into a Contract*

(1) Motives from which a contract is entered into shall not affect its validity.

(2) However, after a prohibited motive has substantially influenced the decision of one contracting party to enter into contract, and after that fact has been made known, or should have been known to the other contracting party, such contract shall have no effect.

(3) A contract without consideration shall also have no legal effect if the other contracting party did not know that the prohibited motive substantially influenced the decision of this negotiating partner.

IV CAPACITY

Article 54. *Contracts by a Legal Person*

(1) A legal person may enter into contracts in the sphere of legal transactions within the framework of his legal capacity.

(2) A contract concluded contrary to the provision of paragraph 1 of the present article shall have no legal effect.

(3) A party in good faith may seek damages for loss suffered through entering into a contract having no legal effect.

Article 55. *Consent to Conclude a Contract*

(1) When a general act of a legal person contains provision, entered in the register, by which its agent may conclude a specific contract only by consent of some of its bodies, such consent may be given either in advance, or simultaneously, or subsequently, unless something else be entered in the register.

(2) The other party shall be entitled to request from the legal person that its authorized body makes a declaration in an appropriate time limit, regarding the consent, and should such body fail to act accordingly, the consent shall be considered not to have been extended.

(3) Subsequent consent shall have a retroactive effect, unless otherwise stipulated in the contract.

(4) Should the consent not be extended, the contract shall be considered not concluded.

(5) Should according to the provisions of this article the contract be considered not concluded, a party in good faith may request just compensation from the legal person involved.

(6) Provisions of the preceding paragraph shall also apply should the general act provide that its agent may conclude a contract only concurrently with the specific body of such legal person.

Article 56. *A Contract of a Person without Business Capacity*

(1) In order to enter into a valid contract a contracting party must have business capacity, otherwise required for concluding such a contract.

(2) A person having limited business capacity may conclude without approval by his legal representative, only contracts whose conclusion is permitted to such person by law.

(3) Remaining contracts of such persons, if concluded without his legal representative's approval, shall be challengeable, but can be made valid by his subsequent approval.

Article 57. *Right of a Negotiating Partner of a Person without Business Capacity*

(1) A negotiating partner of a person having no business capacity, not being aware of his business incapacity, may

repudiate the contract entered into with him without approval by his legal representative.

(2) The same right applies to a negotiating partner of a person having no business capacity, aware of the latter's business incapacity, but deceived by him into believing that he had the approval of his legal representative.

(3) This right shall expire thirty days after the negotiating partner becomes aware of the business incapacity of the other party, or of the lack of legal representative's approval; it shall also expire at an earlier date should the legal representative approve the contract prior to the expiration of such time limit.

Article 58. *Calling a Legal Representative to Make a Declaration*

(1) A negotiating partner of a person having no business capacity who concluded a contract with him without his legal representative's approval, may call the legal representative to declare the approval of such contract.

(2) Should the legal representative fail to declare within thirty days after such call for approving the contract, it shall be considered that his approval has been denied.

Article 59. *The Case of a Negotiating Partner Acquiring Business Capacity After Entering into Contract*

A person having business capacity may request that a contract be nullified, if concluded by him without necessary approval in course of his limited business capacity period, only after lodging an action with the court within three months beginning with the day of acquiring full business capacity.

V. DEFICIENCIES OF WILL

Article 60. *Threat*

(1) Should a contracting party or a third person provoke by threat the justified fear of the other party, so that the latter because of that enters into contract, the other party may request that such contract be nullified.

(2) A fear shall be considered justified should it become evident, on the ground of the circumstances of the case, that there was a serious danger to life, body or other important value of the contracting party or the third person.

Article 61. Substantial Mistake

(1) A mistake shall be substantial if relating to properties of the subject, to the person with whom the contract is to be made, should entering into it be limited to such person, as well as to circumstances considered decisive according to trade usage, or according to the intention of the parties, when the mistaken party would not otherwise have concluded a contract of such contents.

(2) A party mistaken may request nullity of contract on the ground of substantial mistake, unless on entering into the contract, he did not act with the care required in the sphere of trade.

(3) Should a contract be nullified because of mistake, the other party in good faith shall be entitled to claim damages for loss sustained, regardless of lack of fault for the mistake on the part of the mistaken party.

(4) A party mistaken shall not invoke such mistake after the other party became ready to perform the contract as if the mistake had not come about.

Article 62. Mistake Relating to Motive in Case of Contract without Consideration

A mistake about the motive as being decisive in assuming the obligation shall also be considered substantial in case of contract without consideration.

Article 63. Misunderstanding

Should parties believe they agree, while in fact a misunderstanding exists between them regarding the nature of contract or the ground or subject of obligation, the contract shall not take place.

Article 64. Indirect Statement

A mistake of a person serving as agent in expressing the intention of a party, shall be considered a mistake of his principal.

Article 65. Fraud⁵

(1) Should one party mislead or continue to mislead the other party with the intention of inducing him into entering into contract, the other party may request rescission of the contract even if the mistake was not of a substantial nature.

(2) A party who enters into contract because of fraud shall be entitled to request damages for loss sustained.

⁵ Fraudulent misrepresentation.

(3) Fraud being an act of a third person shall affect the contract if the other contracting party was aware, or should have been aware, of the fraud at the time of entering into contract.

(4) A contract without consideration may be also rescinded if the fraud is an act of a third person, regardless of whether the other contracting party at the time of entering into contract was aware, or should have been aware, of it.

Article 66. *An Apparent Contract*

(1) An apparent contract shall have no effect for the contracting parties.

(2) But, should the apparent contract simulate another contract, the other contract shall be valid after conditions for its legal validity have been met.

(3) The apparent nature of a contract shall not be claimed against a third person in good faith.

VI. FORM OF CONTRACT

Article 67. *Informality of Contract*

(1) Entering into contract shall not be subjected to any form, unless otherwise specified by law.

(2) Any statutory requirement for the conclusion of contract in a specific form shall apply also to all subsequent alterations and amendments to the contract.

(3) However, subsequent verbal amendments regarding secondary matters, not mentioned in the formal contract, shall be valid, unless contrary to the purpose of prescribing the form.

(4) Subsequent verbal agreements by which obligations of one or the other party are reduced or discharged shall be valid, should the specific form be prescribed only in the interest of contracting parties.

Article 68. *Rescission of Formal Contracts*

Formal contracts may be rescinded by informal agreement, unless otherwise specified in some cases by law, or unless the purpose for prescribing the form at entering into contract require the rescission of contract to be effected in the same form.

Article 69. *Form Agreed Upon*

(1) Contracting parties may agree that a specific form be a condition for validity of their contract.

(2) A contract for whose conclusion specific form is agreed may also be rescinded, amended or altered in some other way by informal agreement.

(3) Should contracting parties anticipate specific form only to serve as evidence of their contract, or to reach some other purpose, the contract shall be entered into after agreement has been reached as to its contents, while the contracting parties shall at the same time be bound to provide the contract with the anticipated form.

Article 70. *Sanction for Lack of Necessary Form*

(1) A contract not concluded in the prescribed form shall have no legal effect, unless something else follow from the purpose of the regulations providing for the form.

(2) A contract not concluded in the form agreed upon shall have no legal effect if the parties have made the validity of contract dependent on the specific form.

Article 71. *Presumption of Completeness of Document*

(1) Should a contract be concluded in specific form, either on the ground of law or by intention of the parties, the only valid part shall be the one made in this form.

(2) However, the simultaneous verbal agreements concerning secondary points not mentioned in the contract shall also be valid, provided they are not contrary to its contents or the reason for prescribing the statutory form.

(3) Also valid shall be the simultaneous verbal agreements by which obligations of one or both parties are reduced or eased, should the specific form be prescribed only in the interest of the contracting parties.

Article 72. *Making a Document*

(1) Should making a document in order to conclude a contract be necessary, the contract shall be concluded after such document is signed by all persons assuming obligations under it.

(2) An illiterate contracting party shall put his fingerprint on the document, followed by verification by two witnesses or by the court, or by some other agency.

(3) In concluding a bilateral contract it shall be sufficient for both parties to sign one document, or for each party to sign a copy of the document intended for the other party.

(4) The requirement of the written form shall be met by the parties exchanging letters, or by their coming to agreement by way of teleprinter or some other means making possible the exact determination of the contents of their statements and of their identities.

Article 73. *In Case of Performing a Contract Lacking the Form*

A contract whose conclusion is made dependent on the written form shall be considered valid although not entered into in such form, after contracting parties have performed, entirely or substantially, the obligations arising from such contract, unless something else obviously results from the purpose of prescribing the form.

VII. CONDITIONS

Article 74. *Conditions and their Effect*

(1) A contract shall be held conditionally concluded should its origination or termination depend on an uncertain fact.

(2) After being concluded under a postponable condition and after such condition is fulfilled, the contract shall take effect from its conclusion, unless something else follows according to law, the nature of transaction, or the intent of the parties.

(3) After being concluded under a rescinding condition, the contract shall cease to be valid after such condition is fulfilled.

(4) A condition shall be considered realized should its realization, contrary to the principle of good faith and honesty, be prevented by the party with the burden of such condition while it shall be considered that it was not realized should its realization, contrary to the principle of good faith and honesty, be caused by the party in whose favour such condition is set forth.

Article 75. *Prohibited or Impossible Conditions*

(1) A contract shall be void if it contains a postponable or rescinding condition which is contrary to compulsory regulations, public policy or fair usage.

(2) A contract entered into under an impossible postponable condition shall be void, while an impossible rescinding condition shall be considered as non-existent.

Article 76. *Protecting a Right Made Dependent on a Condition*

In the case of a contract entered into under a postponable condition, the creditor whose right is thus made dependent, may request adequate protection of such right should its realization become imperilled.

VIII. TIME LIMIT

Article 77. *Calculation of Time*

(1) A time limit specified in days shall commence on the first day after the event serving as the beginning of calculating the time limit, and shall terminate with the expiry of the last day of the time limit.

(2) A time limit specified in weeks, months or years shall terminate on the day and date coinciding with the event serving as the beginning of the commencement of the time limit, and should there be no such day in the last month, the end of the time limit shall fall on the last day of that month.

(3) Should the last day of the time limit fall on the day determined by law as a holiday, the following workday shall be counted as the last day of the time limit.

(4) The beginning of the month shall be the first day of the month, the middle – the fifteenth, and the end – the last day of the month, unless something else follow from the intent of the parties, or the nature of the contractual relationship.

Article 78. *Application of Rules Relating to Condition*

Where a contract becomes effective at a specified time, the rules relating to the postponing condition shall apply accordingly, while should the contract cease to be valid after the expiration of the specified time limit, the rules relating to rescinding conditions shall apply accordingly.

IX. DEPOSIT AND RESCISSION FEE

1. Deposit

Article 79. *Paying Back and Taking into Account a Deposit*

(1) Should at the moment of concluding a contract one party pay or give to the other a certain amount of money or certain quantity of other exchangeable objects of property, as a sign of the contract being concluded (a deposit), the contract shall be considered entered into after the money is deposited, unless something else has been agreed.

(2) If the contract is performed, the deposit must be paid back or accounted for in the fulfillment of the obligation.

(3) Unless otherwise agreed, the party who has paid the deposit shall not renege the contract leaving the deposit to the

other party, while the other party shall not do the same by paying back the double amount of deposit.

Article 80. *Breach of Contract*

(1) Should a party paying the deposit be responsible for breach of contract, the other party may request, at his choice, the fulfilment of the contract, should this still be possible, or seek damages, while accounting the deposit in such redress, or may pay it back, or stay satisfied with deposit already received.

(2) Should the party receiving the deposit be responsible for breach of contract, the other party may, at his choice, request the fulfilment of contract should this be still possible, or request damages and pay back the deposit, or request payment of a sum double the amount of the deposit.

(3) In any case, after the other party requested fulfilment of contract, such party shall be entitled also to damages for loss caused by the delay.

(4) After a request by the interested party, the court may reduce an excessively high deposit.

Article 81. *In Case of Part-Performance of Obligation*

(1) In case of part-performance of an obligation, the creditor shall not keep the deposit but shall instead be entitled to seek performance of the remaining part of the obligation and damages for loss caused by the delay, or may request damages for loss caused by incomplete performance; in both cases, however, the deposit shall be accounted for in the amount of damages.

(2) Should the creditor repudiate the contract and return what he has received as part-performance, he may choose one of the remaining claims belonging to one party where a contract is not performed through fault of the other party.

2. Rescission Fee

Article 82. *The Role of a Rescission Fee*

(1) Contracting parties may agree that one or both parties be authorized to repudiate the contract by paying a rescission fee.

(2) After a party benefitting from the agreed rescission fee possibility communicates to the other party his intention to pay the rescission fee, such party shall no longer be in a position to request fulfillment of the contract.

(3) A party authorized to repudiate shall be bound to pay the rescission fee simultaneously with a statement concerning repudiation.

(4) Should contracting parties fail to determine the time limit for the authorized party to repudiate the contract, such party may take such action until the expiration of the time limit determined for the performance of his obligation.

(5) This right of repudiation of contract shall also terminate after the party benefitting from it under the contract, begins to perform his duties arising from the contract, or begins to accept performance by the other party.

Article 83. *Deposit as a Rescission Fee*

(1) Should the right be agreed upon to repudiate the contract along with deposit, the deposit shall be considered as a rescission fee, and each party shall be entitled to repudiate the contract.

(2) In such a case, should a party paying the deposit repudiate, such party shall lose it, while should a party receiving the deposit repudiate, such party shall be obliged to pay back a sum double the amount of the deposit.

Subsection 2.

A G E N C Y

I. GENERALLY ON AGENCY

Article 84. *Possibility of Agency*

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

(2) Authority for agency shall be based on law, general acts of a legal person, an act of a competent body, or on expressing of mind of the person represented (authorization).

Article 85. *Effects of Agency*

(1) A contract concluded by an agent on behalf of his principal (the person represented), and within the limits of his authority, shall be directly binding for the person represented, and for the other contracting party.

(2) Under the same conditions, other legal transactions of the agent shall be legally effective for the person represented.

(3) An agent shall be obliged to inform the other party that he acts on behalf of his principal, but even after failing to do that, the contract shall still be legally effective regarding the principal, and the other party, should the latter party know or was able, on the ground of relevant circumstances, to conclude that the former person has been acting as an agent.

Article 86. *Transferring Authority*

(1) An agent shall not transfer his authority to another, unless entitled accordingly by law or contract.

(2) As an exception he may do the above after being prevented from doing the job himself, provided the interests of his principal require an immediate undertaking of the legal transaction.

Article 87. *Transgressing the Limits of Authority*

(1) Should an agent transgress the limits of authority, his principal shall assume an obligation only after approving of the transgression.

(2) Should a principal fail to approve the contract within the time limit usually necessary for considering and assessing such kind of contract, the approval shall be considered denied.

(3) An approval specified in the preceding paragraph shall have retroactive effect, unless the parties decide otherwise.

(4) Should the other party not be aware, or should not have been aware, of the transgression of authority, he may, immediately after becoming aware of the transgression, and not waiting for the statement of the principal concerning the contract, declare that he does not consider himself bound by the contract.

(5) Should the principal deny the approval, the agent and the principal shall be jointly and severally liable for loss caused to the other party, provided such party was not aware, or had not to be aware, of the transgression of authority.

Article 88. *Entering Into Contract by Unauthorized Person*

(1) A contract concluded by a person, as agent, on behalf of another and without his authorization, shall be binding for the principal represented without authority only after his subsequent approval of the contract.

(2) A party to a contract concluded in such a way may request from the principal represented without authority to affirm within an appropriate time limit whether he approves the contract.

(3) Should a principal represented without authority fail to approve the contract even in the indicated time limit, the contract shall be considered as not concluded.

(4) In such case a party to the contract may claim damages from the person who, as an agent, concluded the contract without proper authorization, when, at the moment of concluding the contract, that party was not aware, or was not supposed to be aware, that such person had no authority to enter into contract.

II. AUTHORIZATION

Article 89. *Issuing an Authorization*

(1) An authorization shall be a power of agency issued by the person granting the authority by way of legal transaction, to the authorized person (proxy).

(2) Existence and scope of authorization shall be independent of any legal relationship serving as a ground for issuing the authorization.

(3) A legal person may also be authorized to act as a proxy.

Article 90. *Particular Form of Authorization*

The form prescribed by law for a contract or some other legal transaction shall apply also to the authorization for concluding such contract, namely engaging in such transaction.

Article 91. *The Scope of Authority*

(1) An authorized person (proxy) may undertake only those legal transactions which fall within the scope of his authorization.

(2) An authorized person supplied with general authorization may undertake only those legal transactions which fall within the sphere of regular business.

(3) A transaction not falling within the sphere of regular business may be undertaken by the authorized person only after his being particularly authorized to undertake such transaction, that is such kind of business transactions.

(4) An authorized person shall not assume, without particular authorization extended for each and every case, an obligation relating to bills of exchange, which shall also apply to concluding a contract on guarantee, on settling accounts, on an arbitration tribunal, and shall not renounce a right without consideration.

Article 92. *Revocation and Restriction of Authorization*

(1) The person granting the authority may freely restrict or revoke the authorization, even after renouncing such right by contract.

(2) Revocation and restriction of any kind of authorization may be done by statement without particular form.

(3) Should revocation or restriction of authorization cause violation of a contract creating an order, or contract for

specific services, or some other kind of contract, the person authorized shall be entitled to damages for loss suffered.

Article 93. *Effect of Termination and Restriction of Authorization Regarding Third Persons*

(1) Revocation or restriction of authorization shall have no effect regarding a third person who has concluded a contract with the authorized person, or effected some other legal transaction, and who was not aware, or was not supposed to be aware, of the fact that the authorization has been revoked or restricted.

(2) In such a case a person granting the authority shall be entitled to claim damages for loss from the proxy, sustained through the above, unless the proxy was not aware, or had not to be aware, of the revocation, namely restriction of the authorization.

(3) The same shall also apply in other cases of termination of the authorization.

Article 94. *Other Cases of Termination of Authorization*

(1) An authorization shall be terminated with the termination of a legal person authorized by it, unless otherwise prescribed by law.

(2) An authorization shall be terminated in case of death of the authorized person.

(3) An authorization shall be terminated with the termination of a legal person, namely after death of a person granting it unless a transaction already commenced become impossible to interrupt without damage to legal successors, or should the authorization continue to be valid also in case of death of the person granting it, either according to his intention or due to the nature of the transaction.

III. BUSINESS AUTHORIZATION

Article 95. *Who May Grant Authorization and its Contents*

(1) A business authorization may be granted within the limits of law by an enterprise, namely by other legal person, thus authorizing the proxy to conclude contracts and engage in other transactions which are usual in the performance of their business activity.

(2) A business proxy shall not sell or mortgage real property, assume bill of exchange obligations, or obligations of guarantee, take loans and engage in litigation in court, un-

less particular authorization covering each of these transactions has been obtained.

(3) A business authorization may be restricted to the specific kind of business transactions, or to specified transactions, but these restrictions shall affect a third person only should such person was aware, or was supposed to be aware, of them.

Article 96. Business Authorization of a Store Owner

(1) Provisions concerning business authorization shall apply accordingly to business authorization of a store owner.

(2) A business authorization shall not be terminated in case of a store owner's death, nor in case of his losing business capacity.

IV. AUTHORITY OF TRAVELLING SALESMAN

Article 97.

(1) A travelling salesman of an enterprise shall be empowered to undertake only transactions relating to the sale of merchandise, and those listed in the authorization granted to him by such enterprise.

(2) In case of doubt, a travelling salesman shall be considered not empowered to enter into contracts but only to collect orders; however, a contract concluded by him shall remain valid should the enterprise granting the authorization approve of it subsequently.

(3) A travelling salesman authorized to sell goods, shall not be empowered to collect payment or sell on credit, unless having particular authority to sell on credit.

(4) A travelling salesman shall be authorized to accept for his principal complaints due to shortcomings of merchandise, as well as other statements relating to the performance of contract concluded through his mediation, including the taking of necessary measures on behalf of the principal, in order to preserve latter's rights stemming out of such contract.

V. AUTHORITY OF PERSONS PERFORMING PARTICULAR AFFAIRS

Article 98.

(1) Persons engaged in affairs involving entering into and performance of specific contracts, such as salesmen in stores, persons engaged in specific catering services, those

doing service jobs in post-offices, banks and the like, shall be authorized by that very fact to enter into and to perform such contracts.

Subsection 3.

INTERPRETATION OF
CONTRACT

Article 99. *Implementation of Terms and Interpretation of Controversial Terms*

(1) Terms of a contract must be implemented in the way they are worded.

(2) In interpreting controversial provisions one should not follow the literal meaning of the terms employed, but inquire instead into the joint intention of contracting parties, so that the provision should be understood so as to be in accordance with principles of the law of obligations, as determined by the present Law.

Article 100. *Unclear Provisions in Particular Cases*

Should a contract be concluded in conformity with a form printed in advance⁶, or prepared and proposed in some other way by one of the contracting parties, unclear provisions shall be interpreted so as to benefit the other party.

Article 101. *Supplementary Rule*

Unclear provisions in a contract without consideration should be interpreted in the way less strict for the debtor, while in case of an onerous contract – in the way which establishes an equitable relationship between mutual commitments.

Article 102. *Out-of-Court Interpretation of Contract*

(1) Contracting parties may provide that a third person shall interpret the contract in case of disagreement concerning the meaning and scope of terms of contract.

(2) In such a case, unless otherwise specified by contract, the parties shall be precluded from filing an action with the court or other competent agency, prior to obtaining interpretation of the contract, unless the third person refuse to interpret the contract.

⁶ "Boiler-plate" or standard clauses.

Subsection 4.

NULL AND VOID CONTRACTS

I. VOID CONTRACTS

Article 103. Nullity

(1) A contract contrary to compulsory regulations, public policy or fair usage shall be void unless the purpose of the rule violated refers to another sanction, or unless the law provides for something else in the specific case.

(2) Should entering into a particular contract be prohibited to one party only, the contract shall remain valid, unless otherwise provided by law for the specific case, while the party violating the statutory prohibition shall suffer corresponding consequences.

Article 104. Consequences of Nullity

(1) In case of nullity of contract each contracting party shall restitute to the other that what is received on the ground of such a contract, and should this be not feasible, or should the nature of that what has been performed prevent the action of restitution, an adequate redress in money shall be extended according to prices at the time of passing the court decision, unless otherwise provided by law.

(2) However, should a contract be void because of its contents or purpose being contrary to compulsory regulations, public policy or fair usage, the court may, entirely or partially, deny the request of the party not being in good faith for the restitution of that what has been given to the other party; the court may also direct the other party to hand over the value received on the ground of the prohibited contract, to the municipality in whose territory such party has its seat of business, residence or domicile.

(3) In deciding, the court shall consider the good faith of each and both parties, the significance of endangered property or interests, as well as the existing conceptions of morality.

Article 105. Partial Nullity

(1) Nullity of a contractual provision shall not imply nullity of the entire contract, if it can stand without the null provision and should such provision be neither a requirement for contract nor a motive decisive for making it.

(2) But the contract shall remain valid even should the null provision be a requirement or a decisive motive of con-

tract, after nullity was established exactly in order for the contract to be exempted from such provision and to become valid without it.

Article 106. *Conversion*

Should a null contract meet the requirements for validity of some other kind of contract, such other contract shall be valid as between the contracting parties, should this prove conformity with the purpose envisaged by the contracting parties at the moment of entering into contract, and should it be possible to presume that they would enter into such contract had they been aware of the nullity of their contract.

Article 107. *Subsequent Disappearance of the Cause of Nullity*

(1) A null and void contract shall not become valid if the prohibition or other cause of nullity subsequently disappeared.

(2) However, nullity shall not be claimed should the prohibition be of minor importance and after the contract has been performed.

Article 108. *Liability of Person at Fault for Nullity of Contract*

A contracting party at fault because of entering into a null and void contract shall be liable to the contracting partner for loss suffered due to nullity of contract, if the latter was not aware or, according to circumstances, was not supposed to be aware, of the existence of the cause of nullity.

Article 109. *Claiming Nullity*

The court shall keep in view the nullity as his task in line of duty, while it may be claimed by every person interested.

Article 110. *Unlimited Right to Claim Nullity*

The right to claim nullity shall not expire.

II. RESCINDABLE CONTRACTS

Article 111. *When a Contract is Rescindable*

A contract shall be rescindable after being concluded by a party having a limited business capacity, should its conclusion be followed by shortcomings in terms of intention of the parties, or should this be determined by the present Law or a particular precept.

Article 112. *Nullifying a Contract*

(1) A contracting party benefitting from the possibility of rescission specified in the contract, may request that the contract be nullified.

(2) But such party's contracting partner may request from him to declare, in a specified time limit not shorter than thirty days – as to whether he is going to honour the contract or not, since in the contrary case that partner shall consider the contract nullified.

(3) Should the contracting party being addressed fail to declare within the above time limit, or should he state that he does not honour the contract, the contract shall be considered nullified.

Article 113. *Consequences of Annulment*

(1) Should on the ground of nullified rescindable contract some commitment be honoured, restitution shall be effected, and should this prove not feasible, or should the nature of that what has been honoured be incompatible with the restitution, a redress in money shall be realized.

(2) Redress in money shall be realized at the prices at the time of restitution, that is at the time of rendering the court decision.

Article 114. *Restitution and Redress in Case of Nullification of a Contract of a Person with Limited Business Capacity*

After a contract is nullified due to limited business capacity of one contracting party, the contracting partner of such person may request only the restitution of that part of the honoured commitment which forms the property of the person with limited business capacity, or which was used to his benefit, as well as the restitution of that what was intentionally destroyed or transferred to another.

Article 115. *Liability for Nullification of a Contract*

A contracting party at fault for the cause of rescinding a contract shall be liable to his contracting partner for loss sustained due to the contract being annulled if he was not aware or did not have to be aware of existence of the cause of rescission.

Article 116. *Liability of a Person with Limited Business Capacity*

A person with limited business capacity shall be liable for loss caused by nullifying a contract after persuading his

contracting partner, by using misrepresentation, that he was a person with full business capacity.

Article 117. Termination of Rights

(1) A right to claim nullity of a rescindable contract shall be terminated one year after becoming aware of the ground for making a contract rescindable, namely after the termination of coercion.

(2) That right shall in any event be terminated within a three year period from the day of entering into contract.

(Articles 118 – 120 repealed by 1993 Amendments to this Law.)

Subsection 5.

B I L A T E R A L
(C O N S E N S U A L) C O N T R A C T S

**I. LIABILITY FOR SUBSTANTIVE AND
LEGAL FAILURE OF PERFORMANCE ⁷**

Article 121.

(1) Each party of a contract with consideration shall be liable for substantive failure of performance.⁸

(2) A contracting party shall also be liable for legal failure of performance, and shall be bound to protect the other party against third persons' rights and claims, which might exclude or restrict that party's right.

(3) These obligations of the transferor shall be accordingly subjected to provisions of the present Law concerning the liability of a seller for substantive and legal failure of performance, unless otherwise specified for a particular case.

**II. NON-PERFORMANCE OF CONTRACT
AS A GROUND OF OBJECTION**

Article 122. Rule of Simultaneous Performance

(1) With bilateral contracts no party shall be bound to fulfill his obligation unless the other party fulfill, or is simulta-

⁷ I.e. liability for fundamental, minor or technical breach of contract.

⁸ I.e. for breach of contract.

neously ready to fulfill, his obligation, unless something else is agreed upon by contract, or determined by law, or unless something else result from the nature of transaction.

(2) However, should one party claim at court that he is not bound to fulfill the obligation unless the other party fulfills or is ready to fulfill his own simultaneously, the court shall order him to meet his obligation after the other party has met his.

Article 123. *In Case of Becoming Uncertain of Performance of Obligation by One Party*

(1) Should it be stipulated that one party shall first fulfil his obligation and should, after making the contract, the financial situation of the other party deteriorate so that it becomes uncertain whether such party will be able to fulfill his obligation, the party who promised to fulfill his obligation first, may postpone their fulfillment until the other party fulfill his obligation, or until that party supply sufficient guarantee to fulfill it.

(2) The same shall also apply if the financial situation of the other party was equally serious even prior to making the contract, if the other contracting partner was not aware of this, or was not supposed to be aware.

(3) In such cases the party promising to be the first to fulfill his obligation may request a guarantee to be extended to him in an adequate time limit, while should such time limit expire without result, he may repudiate the contract.

III. REPUDIATION OF A CONTRACT DUE TO NON-PERFORMANCE

Article 124. *Rights of One Party after the Other Fails to Perform His Obligation*

With bilateral contracts, if one party fails to perform his obligation, the other party, unless something else has been determined, may request performance of the obligation or, under the terms specified in subsequent articles, may repudiate the contract by simple statement, should rescission of contract be not effected on the ground of law, and in any case, such party shall be entitled to damages.

Article 125. *Where Performance within a Time Limit is an Essential Element of Contract*⁹

(1) Should performance within a time limit be an essential element (term) of contract, and the defaulter fails to meet

⁹ I.e. where time is of the essence.

his commitment within such time limit, the contract shall be repudiated on the ground of law.

(2) However, the first party may maintain the enforceability of the contract by immediately informing the defaulter, after the expiration of the time limit, that he is going to request performance of the contract.

(3) If the first party's request for performance has not been answered within a reasonable time limit, he may state his intention to repudiate the contract.

(4) These rules shall apply both in the case of contracting parties stipulating that the contract shall be deemed rescinded unless performed within the specified time limit, and in the case where performing the contract within the specified time limit is an essential element of contract according to the nature of transaction.

Article 126. *Performance within Time Limit as a Non Essential Element of Contract*¹⁰

(1) Should performance of obligation within a specified time limit be not an essential element (term) of contract, the defaulter shall preserve the right to perform his obligation even after the expiration of the time limit, while the first party may request its performance.

(2) Should the first party, however, want to rescind the contract, he shall leave the defaulter an appropriate subsequent time limit for performance.

(3) Should the defaulter fail to perform his obligation within the subsequent time limit, the same consequences shall take place as are otherwise applicable in the case of a time limit being an essential element of contract.

Article 127. *Repudiation of Contract without Leaving a Subsequent Time Limit*

A party to a contract may repudiate the contract without leaving the defaulter a subsequent time limit for performance, should the defaulter's conduct indicate that he will fail to perform his obligation even in course of subsequent time limit.

Article 128. *Repudiation of Contract Prior to Expiration of the Time Limit*

Should prior to the expiration of the time limit for performing the obligation it become obvious that one party is not going to meet his contractual obligation, the other party may repudiate the contract and claim damages.

¹⁰ I.e. where time is not of the essence.

Article 129. *Repudiation of Contract with Consecutive Obligations*

(1) Should in a contract with consecutive obligations one party fail to perform one obligation, the other party may, in a reasonable time limit, repudiate the contract regarding all future obligations, should existing circumstances obviously indicate that they, too, are not going to be performed.

(2) That party may repudiate the contract not only regarding future obligations, but also regarding obligations already performed should their performance alone be of no interest to him.

(3) The defaulter may preserve the contract after supplying an adequate guarantee.

Article 130. *Duty of Notification*

A party intending to repudiate the contract due to the defaulter's failure to perform his obligation, shall be bound to notify the defaulter immediately.

Article 131. *The Case of Impossible Repudiation*

A contract shall not be repudiated due to non-performance (breach) of a minor term.

Article 132. *Effect of Repudiation*

(1) After a contract is repudiated both parties shall be released from their obligations, except the obligation of compensating for subsequent loss.

(2) A party performing a contract entirely or partially shall be entitled to restitution of that what he has given.

(3) Should both parties be entitled to claim restitution of what has been given, mutual restitution shall be liquidated under the rules of performance of bilateral contracts.

(4) Each party shall owe to the other compensation for benefits enjoyed for the time being from that what he is obliged to retribute, that is to compensate.

(5) A party paying back money shall be obliged to pay interest on arrears from the day of receiving the payment.

**IV. REPUDIATION OR ALTERATION
OF CONTRACT DUE TO CHANGED
CIRCUMSTANCES (HARDSHIP)**

Article 133. *Prerequisites for Repudiation*

(1) Should after concluding the contract circumstances emerge which hinder the performance of the obligation of one party, or if due to them the purpose of the contract can not be

realized, while in both cases this is expressed to such a degree that it become evident that the contract meets no more the expectations of contracting parties, and that, generally speaking, it would be unjust to maintain its validity as it stands – the party having difficulties in performing the obligation, namely the party being unable, due to changed circumstances, to realize the purpose of contract, may request its repudiation.

(2) Repudiation of contract may not be requested if the party claiming the changed circumstances had a duty, at the time of entering into contract, to take into account such circumstances, or if he could have avoided or surmounted them.

(3) A party requesting repudiation of contract may not claim changed circumstances emerging after the expiration of time limit determined for the performance of his obligation.

(4) A contract shall not be repudiated should the other party offer or accept that the relevant terms of contract be altered in an equitable way.

(5) After pronouncing repudiation of contract, the court shall, at the request of the other party, impose a duty against the party requesting it, to compensate to the other party an equitable part of the loss sustained due to repudiation.

Article 134. *Duty of Notification*

A party authorized due to changed circumstances to request repudiation of contract shall have a duty to notify the other party on his intention to request repudiation immediately after becoming aware of the emergence of such circumstances, and in case of not acting accordingly, the first party shall be liable for loss sustained by the other party because of failure to be notified about the request on time.

Article 135. *Circumstances Relevant for Court Decision*

While deciding on repudiation of contract or on its alteration, the court shall be directed by principles of fair dealing, while especially taking into consideration the purpose of the contract, the normal risk involved with such contracts, general interest, as well as the interests of both parties.

Article 136. *Disclaim by Reason of Harship*

The parties may disclaim in advance in their contract the right to claim changed circumstances, unless that is contrary to the principles of good faith and fair dealing.

V. IMPOSSIBILITY OF PERFORMANCE

Article 137. *Impossibility of Performance Not Attributable to either Party*

(1) Should performance of obligation by one party in a bilateral contract become impossible due to an event not attributable to either party, the other party's obligation shall be terminated too, while a party performing part of his obligation may request restitution according to the rules of restitution in case of unjust acquisitions.

(2) Should partial impossibility of performance be due to events not attributable to either party, one party may repudiate the contract should partial performance fail to meet his needs; otherwise the contract shall remain valid, while the other party shall be entitled to request proportionate reduction of his obligation.

Article 138. *Impossibility of Performance Attributable to the other Party*

(1) Should performance of obligation by one party in a bilateral contract become impossible due to an event attributable to other party, his obligation shall be terminated, while he shall maintain his claim against the other party; such claim, however, must be reduced by an amount equal to the eventual benefit from being released from his own duty.

(2) In addition, such party shall renounce to the other party all rights against third persons relating to the subject of his obligation whose performance has become impossible.

VI. EXCESSIVE LOSS

Article 139. *Obvious Disproportion of Mutual Commitment*

(1) Should an obvious disproportion exist between commitments of contracting parties in a bilateral contract at the time of entering into contract, the party suffering loss may request that the contract be nullified after being unaware, at the time, of the real value thereof, or if not becoming aware of it afterwards.

(2) The right to claim nullity of contract shall expire one year after its (ie. the contract's) conclusion.

(3) Disclaiming such right in advance shall have no legal effect.

(4) The contract shall remain valid should the other party offer to raise the value up to the genuine amount.

(5) Such disproportion shall give no ground for avoiding a contract relating to games of chance, to auction sales, as

well as where a higher price for the property has been paid out of particular favour.

Article 140.

Repealed by the 1993 Amendments to the present Law.

VII. USURY CONTRACT

Article 141.

(1) A contract shall be null and void by which someone, while taking advantage of another being in need or in poor material situation, or by using his insufficient experience, recklessness or dependence, stipulates for himself, or in favour of a third person, the benefit which is in obvious disproportion to that what has been given or done to another in return, or what he has promised to give or do.

(2) Provisions of the present Law on consequences of nullity and partial nullity of contract shall apply accordingly to the usury contract.

(3) Should a person sustaining damage request that his obligation be reduced to a just amount, the court shall meet such request favourably should this be possible, and in such a case the contract with the corresponding alteration shall remain valid.

(4) A person sustaining damage may submit a request for reducing the obligation to a just amount within five years from entering into contract.

VIII. GENERAL CONDITIONS OF STANDARD CLAUSE CONTRACTS

Article 142. *Binding Character*

(1) General terms and conditions specified by one contracting party, either contained in a standard clause contract or being referred to by the contract, shall supplement particular agreements, as established between contracting parties in the same contract and, as a rule, shall be binding as those.

(2) General terms and conditions of contract must be published in a usual way.

(3) General terms and conditions shall be binding for a contracting party if they were known, or should have been known to such party at the moment of entering into contract.

(4) In case of discord between general terms and conditions and particular agreements, the latter shall apply.

Article 143. Nullity of some Provisions of General Terms and Conditions

(1) Provisions of the general terms and conditions shall be null and void if contrary to the very purpose of contract which is concluded, or to fair business usage, even after such general terms and conditions containing them have been approved by the competent agency.

(2) The court may deny application of specific provisions of the general terms and conditions precluding the other party to raise demurrers, or of those on the ground of which such party is left without contractual rights or loses time limits, or those which are otherwise unjust or excessively strict towards such party.

Article 144.

Repealed by the 1993 Amendments to the present Law.

IX. ASSIGNMENT OF CONTRACT

Article 145. Conditions of Assignment

(1) Each party in a bilateral contract may, after obtaining the other party's assent, assign the contract to a third person who thus becomes a holder of all of his rights and obligations arising from that contract.

(2) After effecting the assignment, the contractual relationship between the assignor and the other party shall be transferred to the assignee and the other party at the moment of acceptance by the other party of the assignment, and if the other party has extended his assent in advance, at the moment of his being notified about the assignment.

(3) An assent to assignment of the contract shall be valid only after being expressed in the form prescribed by statute for the contract assigned.

(4) Provisions concerning secondary rights connected to the contract of assuming a debt shall apply accordingly to the assignment of contracts.

Article 146. Liability of Assignor

(1) An assignor shall be liable to the assignee for the validity of the contract assigned.

(2) He shall not guarantee to him that the other party shall perform his obligations out of the assigned contract, unless assuming specific duty thereof.

(3) He shall not guarantee to the other party that the assignee shall perform the obligations out of the assigned contract, unless assuming specific duty thereof.

Article 147. *Objections*

The other party may raise against the assignee all objections arising from the contract assigned, as well as those he is entitled to out of their relationship with him, but excluding objections he is entitled to against the assignor.

Subsection 6.

GENERAL EFFECTS OF CONTRACT

I. CREATION OF OBLIGATIONS FOR CONTRACTING PARTIES

Article 148. *Effects of Contract as between Contracting Parties and their Legal Successors*

(1) A contract shall create rights and obligations for contracting parties.

(2) A contract shall also affect universal legal successors of the contracting parties, unless something else is contracted or something else result from the nature of contract.

(3) A right in favour of a third person may be instituted by contract.

II. A CONTRACT IN FAVOUR OF THIRD PERSON

Article 149. *Direct Right of Third Person*

(1) Should someone stipulate on his own behalf a claim in favour of a third person, such third person shall acquire his own and direct right against the debtor, unless something else be stipulated or something else result from circumstances of the transaction.

(2) A contracting party shall be entitled to request that the debtor performs what is contracted in favour of such third person.

Article 150. *Revocation of Benefit to a Third Person*

(1) A party to a contract in favour of a third person may revoke or alter the benefit thereof only until the third person declares his acceptance of what has been contracted in his favour.

(2) Should it be stipulated that the debtor shall perform his obligation to the benefit of the third person only after the

death of the contracting party, that party may until then, and even by his will, revoke the benefit contracted in favour of the third person, unless something else result from the contract itself or from relevant circumstances.

Article 151. *Objections of Debtor against a Third Person*

A debtor may raise against a third person all objections he is otherwise entitled to against a contracting party on the ground of a contract by means of which the benefit for the third person has been stipulated.

Article 152. *Refusal of a Third Person*

Should a third person refuse the benefit stipulated for him, or should the contracting party revoke it, the benefit shall belong to such contracting party, unless something else be stipulated or result out of the nature of transaction.

Article 153. *Promise of Action of a Third Person*

(1) A promise given to another by which a third person shall do or shall refrain from doing something, shall not be binding for the third person, while the promiser shall be liable for eventual loss sustained by the other person because the third person is not willing to assume the obligation or execute or refrain from a specific action.

(2) A promiser shall not be liable after he has promised to the other that he shall only intervene with the third person to make him assume a duty to do or refrain from something, if he is not successful in spite of all efforts on his part.

Section 2.

CIVIL WRONGS (TORTS)

Subsection 1.

GENERAL PRINCIPLES

Article 154. *Foundations of Liability*

(1) Whoever causes injury or loss to another shall be liable to redress it, unless he proves that the damage was caused without his fault.

(2) Liability shall ensue regardless of fault for injury or loss caused by objects of property or activities generating increased danger for the environment.

(3) Liability for injury or loss regardless of fault shall ensue also in other cases specified by law.

Article 155. *Injury or Loss*

Injury or loss shall be a diminution of someone's property (simple loss) and preventing its increase (profit lost), as well as inflicting on another physical or psychological pain or causing fear (non-material damage, or mental anguish).

Article 156. *Demand to Eliminate a Danger of Injury or Loss*

(1) Everyone may demand from another that he eliminates a source of danger threatening considerable damage to him or to an unspecified number of persons, as well as to refrain from an activity causing disturbance or danger of loss, should the ensuing disturbance or loss be impossible to prevent by adequate measures.

(2) On the demand of an interested person, the court shall order the taking of adequate measures to prevent the emergence of damage or disturbance, or to eliminate the source of danger – at the expense of the holder of the source of danger, should he himself fail to act accordingly.

(3) Should loss occur in the course of an activity undertaken in the interest of the general public, and otherwise permitted by a competent agency, the only recovery to be demanded shall concern loss exceeding normal limits.

(4) However, in such a case, it shall also be possible to demand taking socially justified measures in order to prevent the emergence of damage or to reduce it.

Article 157. *Demand to Cease with Violation of Individual Rights*

(1) Everyone shall be entitled to demand that the court or other competent agency order the cessation of an action by which the integrity of human person and family life is violated and other rights pertaining to his person.

(2) The court or the other competent agency may order cessation of the action by threatening the payment of a certain amount of money, determined as a lump sum or per time unit, to the benefit of the person suffering damage.¹¹

¹¹ A kind of punitive damages.

Subsection 2.

LIABILITY ON THE GROUND
OF FAULT

Article 158. *Existence of Fault*

Fault shall exist after a tort-feasor has caused injury or loss intentionally or out of negligence.

Article 159. *Non-responsible Persons*

(1) A person who, due to mental disease or retarded mental development, or for some other reason, is unable to reason (i.e. mentally incompetent), shall not be liable for loss or injury caused to another.

(2) Whoever causes loss or injury to another being in the state of temporary mental incompetence, shall be liable for it, unless being able to prove that he was not to be blamed for coming into such state.

(3) Should he came into such a state through fault of another, liability shall fall onto the person bringing him into such a state.

Article 160. *Liability of Minors*

(1) A minor of up to seven years of age shall not be liable for loss or injury caused by him.

(2) A minor of from seven to fourteen years of age shall not be liable for loss, unless it is proved that he was mentally competent while causing the damage.

(3) A minor of fourteen years of age shall be liable according to general rules of tort liability.

Article 161. *Justifiable Self-Defense, State of Emergency, Eliminating Danger From Another*

(1) Whoever in a justifiable defence causes loss or injury to an assailant shall not be liable to redress it, except in case of exceeding justifiable defence.

(2) Should someone cause loss or injury in a state of emergency, the person sustaining loss may demand recovery from the person at fault in creating the danger of loss or injury, or from persons from whom loss has been eliminated – but from the latter not more than up to the amount of benefit they have obtained through such elimination.

(3) Whoever suffers damage while eliminating a danger of injury or loss from another, shall be entitled to recover from him for the loss which he has been reasonably exposed to.

Article 162. Permitted Self-Help

(1) Whoever in case of permitted self-help inflicts loss or injury to a person provoking the need for self-help shall not be liable to redress it.

(2) Permitted self-help shall mean the right of every person to eliminate violation of a right in face of an imminent danger, should such protection be necessary and should the way of eliminating the violation of right correspond to circumstances of emerging danger.

Article 163. Assent of Person Sustaining Loss or Injury¹²

(1) Whoever to his own detriment permits another to take an action, shall not demand from him recovery of damage caused by such action.

(2) A statement of a person sustaining injury or loss by which he has agreed that harm be done to him through an action forbidden by law shall be null and void.

Subsection 3.

LIABILITY FOR ANOTHER

Article 164. Persons Mentally Ill and Retarded (Mentally Handicapped)

(1) Liability for loss caused by a person who, due to mental illness or retarded mental development, or for some other reasons, is not mentally competent, shall be borne by the person under a duty to take care of him on the ground of law or decision by competent authority, or on the ground of a contract.

(2) Such person may exempt himself from liability after proving that he applied due control, or that loss or injury would have ensued anyhow, regardless of applying diligent supervision.

Article 165. Liability of Parents

(1) Parents shall be liable for loss or injury caused to another by their child of up to seven years of age, regardless of their fault.

(2) They shall be exempted from liability should grounds exist for exclusion of liability according to the rules of liability, regardless of fault.

¹² "*Volenti non fit injuria*".

(3) They shall not be liable should loss or injury occur while the child was committed to another person's care and if such person was liable for loss or injury.

(4) Parents shall be liable for loss or injury caused by their child of over seven years of age, unless proving that the loss or injury took place without their fault.

Article 166. *Joint and Several Liability*

Should liability for loss and injury be both the parents' and the child's, their liability shall be joint and several.

Article 167. *Liability of Another Person for a Minor*

(1) Liability for loss or injury caused to another by a minor, while under supervision of a guardian, school or another institution, shall be borne by the guardian, the school, or the other institution, unless they prove that they applied due care, or that loss or injury would have ensued even in spite of applying diligent care.

(2) Should a minor also be liable for loss or injury, liability shall be joint and several.

Article 168. *Particular Liability of Parents*

Should a minor not be under the care of parents but of some other person, the person sustaining damage shall be entitled to request recovery from the parents should damage be due to bad upbringing of the minor, bad examples or sinful habits transferred to him by his parents, or if the injury or loss can be attributed to the fault of parents in any way.

(2) A person who in such a case is bound to effect supervision shall be entitled to request from the parents recovery of the amount (of damages) paid, if he has redressed the person suffering loss or injury.

Article 169. *Liability on the Ground of Equity*

(1) Should loss or injury be caused by a person otherwise not liable for it, and recovery can not be obtained from the person having a duty to supervise him, the court may – should equity so require and particularly due to material situation of the tort-feasor and the person suffering damage – order the tort-feasor to pay damages, entirely or partially.

(2) Should loss or injury be caused by a mentally competent minor unable to redress it, the court may – should equity so require and more particularly due to material situation of parents and the person suffering loss or injury – oblige the parents to pay damages, entirely or partially, although not being at fault.

Subsection 4.

THIRD PARTY LIABILITY
OF ENTERPRISES AND OTHER
LEGAL PERSONS

Article 170. *Liability of an Enterprise*

(1) Liable for damage caused by an employee while working or in relation to work, to a third person shall be the enterprise at which the employee was employed at the moment of causing the loss or injury, unless it is proved that the employee, in given circumstances, had proceeded as he should have.

(2) A person sustaining loss shall also be entitled to demand recovery directly from the employee, if he caused the damage wilfully.

(3) The provision specified in paragraph 1 of the present article shall not affect the rules of liability for loss or injury arising from a dangerous object of property or dangerous activity.

Article 171. *Liability of Other Persons*

(1) Provisions specified in the preceding article shall also apply to other employers in relation to liability for loss or injury caused by their employees in the course of work or in relation to work.

(2) A person paying damages to a person who has suffered injury or loss caused by an employee, wilfully or by gross negligence, shall be entitled to recover from such employee the amount paid.

(3) That right shall expire six months after the payment of damages.

Article 172. *Liability of a Legal Person for Injury or Loss Caused by its Body*

(1) A legal person (corporate body) shall be liable for damage caused by its members or branches to a third person in performing or in connection to performing its functions.

(3) Unless otherwise specified by the law for specific cases, a legal person shall be entitled to recover against a person being at fault for injury or loss inflicted wilfully or by gross negligence.

(3) That right shall expire six months after the payment of damages.

Subsection 5.

LIABILITY FOR LOSS OR INJURY
CAUSED BY DANGEROUS
OBJECTS OF PROPERTY OR
DANGEROUS ACTIVITY

I. GENERAL PROVISIONS

Article 173. *Presumption of Causality*

Injury or loss occurring in relation to a dangerous object of property or dangerous activity, shall be treated as originating from such object or activity, unless proven that these were not the cause of injury or loss.

Article 174. *Who is Liable for Injury or Loss*

The owner of a dangerous object of property shall be liable for injury or loss caused by it while for injury or loss caused by a dangerous activity the person performing it shall be liable.

Article 175. *Unlawfully Depriving an Owner of a Dangerous Object of Property*

Should an owner be deprived of a dangerous object of property in an unlawful way, the ensuing injury or loss shall not be blamed on him, but on the one depriving him of the dangerous object of property, should the owner be not responsible for that.

Article 176. *Sale of an Object of Property to a Third Person*

(1) Instead of an owner of object of property, a person to whom the owner has entrusted the object for use or a person otherwise bound to supervise it, while not being employed by him, shall be liable in the same way.

(2) However, in addition to such person, the owner of the object of property shall also be liable, should injury or loss arise from some concealed deficiency or concealed feature of the object which were not pointed out to him.

(3) In such case the person liable who has paid damages to the aggrieved person, shall be entitled to request from the owner the entire amount paid.

(4) An owner of a dangerous object of property who entrusts it to a person not trained or not authorized to handle it, shall be liable for injury or loss arising from the object.

Article 177. *Exemption from Liability*

(1) An owner shall be exempt from liability after proving that injury or loss took place due to a cause outside the object of property, whose effect could not have been foreseen, avoided or eliminated.

(2) An owner of the object shall also be exempt from liability after proving that injury or loss occurred entirely through an act of the person sustaining injury or loss or a third person, which act could not have been foreseen by him and whose consequences he was not able to avoid or eliminate.

(3) An owner shall be exempt from liability only partially if the person sustaining injury or loss partially contributed to the occurrence of injury or loss.

(4) Should injury or loss be partially due to an act of a third person, such person shall be liable to the person suffering injury or loss jointly and severally with the owner of the object of property, and shall also be bound to share the amount of compensation proportionally to the degree of his fault.

(5) A person being instrumental in an owner's use of an object of property shall not be considered as third person.

II. LIABILITY IN CASE OF ACCIDENTS CAUSED BY A MOTOR VEHICLE IN MOTION

Article 178.

(1) In case of an accident caused by a motor vehicle in motion and provoked entirely through the fault of one owner, the rules of liability on the ground of fault shall apply.

(2) Should both sides be at fault, each owner shall be liable for the entire injury or loss suffered by them in proportion to the degree of their own fault.

(3) Should neither party be at fault, the owners shall share the liability in equal portions, unless reasons of equity call for something else.

(4) Owners of motor vehicles shall be jointly and severally liable for damage inflicted on third persons.

III. LIABILITY OF PRODUCER OF DEFECTIVE OBJECTS

Article 179.

(1) Whoever puts on sale an object manufactured by him, which due to a defect unknown to him may cause injury

or loss to persons or property, shall be liable for injury or loss which could ensue due to such defect.

(2) Manufacturer shall be liable for dangerous properties of an object after failing to take all necessary measures to prevent injury or loss, which he was able to foresee, by applying a corresponding warning, safer packaging or some other measure.

Subsection 6.

SPECIAL CASES OF LIABILITY

Article 180. *Liability Because of Terrorist Acts, Street Demonstrations or Public Events*

(1) A State whose agencies, in conformity to existing regulations, were bound to prevent injury or loss, shall be liable for loss due to death, bodily injury or damaging or destroying property of an individual due to acts of violence or terror, as well as in the course of street demonstrations and public events.

(2) Organizers, participants and helpers in the acts of violence or terror, street demonstrations and public events which are aimed at subverting constitutional order shall not be entitled to damages on that ground.

(3) The State shall be entitled and shall have a duty to demand redress of the amounts paid, against a person provoking the damage.

(4) That right shall expire due to statute of limitations within the time limits specified by law for the expiration of claims for damages.

Article 181. *Liability of Organizer of Performances*

An organizer of assemblies of large number of people in closed or open-air spaces shall be liable for loss occurring by death or bodily injury suffered by someone due to emergency circumstances which arise in situations such as swaying of masses of people, general disorder, and the like.

Article 182. *Liability due to Refusal to Render Necessary Aid*

(1) Whoever without exposing himself to danger refuses to render aid to a person whose life or health are obviously threatened, shall be liable for ensuing loss if, according to the circumstances of the case, he had to foresee such damage.

(2) The court may, on the ground of equity, exempt such person from duty of compensating for the loss.

Article 183. *Liability Relating to Duty to Conclude a Contract*

A person having a statutory duty to conclude a contract shall be liable for damages, after failing, at the request by an interested person, to conclude such contract immediately.

Article 184. *Liability Relating to Conducting Affairs of General Interest*

Enterprises and other legal persons (corporate bodies) conducting a public utility service or other activity of similar nature of general interest, shall be liable for loss if they suspend or irregularly conduct their service without justified reason.

Subsection 7.

I N D E M N I T Y

**I. INDEMNITY FOR DAMAGE TO
PROPERTY**

Article 185. *Restitution and Indemnity in Form of Money*

(1) A responsible person shall be liable to re-establish the situation existing prior to the occurrence of damage.

(2) Should re-establishing of the previous situation fail to eliminate the damage entirely, the responsible person shall be liable to pay an indemnity in money to cover for the rest of the damage.

(3) Should restitution be impossible, or should the court find it necessary for the responsible person to do that, the court shall order such person to pay to the person suffering loss an adequate amount of money as compensation for loss.

(4) At the request of the person suffering loss, the court shall award compensation in money to him, unless the circumstances of the specific case justify the restitution.

Article 186. *When Duty of Compensation is due*

Compensation for damage shall be due from the moment of the damage taking place.

Article 187. *Indemnity in Case of Loss of Object Being Unlawfully Taken Away*

After an object of property, otherwise unlawfully taken away from the owner, is lost due to Act of God, the person responsible shall be liable to provide compensation in money.

Article 188. *Indemnity in the Form of an Annuity*

(1) In case of death, bodily injury or damage to health, indemnity shall, as a rule, be determined in the form of an annuity, either for the life of the injured person or for a definite period.

(2) An awarded annuity as a form of damages shall be paid in advance in monthly installments, unless the court provide otherwise.

(3) The judgment-creditor shall be entitled to demand necessary guarantees for payment of annuities, unless according to circumstances of the case, this would be not justified.

(4) Should the judgment-debtor fail to supply guarantee ordered by the court, the judgement-creditor shall be entitled to demand payment of a lump sum instead of annuities, of an amount established according to the amount of annuities and probable duration of the judgment-creditor's life, after deducting corresponding interest.

(5) The judgment-creditor may also, in other justified cases, demand – immediately or subsequently – to be paid a lump sum instead of annuities.

**II. SCOPE OF INDEMNITY
FOR DAMAGE TO PROPERTY**

Article 189. *Common Damage and Profit Lost*

(1) A person sustaining damage shall be entitled both to indemnity of common damage and compensation of profit lost.

(2) The amount of damages shall be determined according to prices at the time of the rendering court's decision, unless something else be ordered by law.

(3) In assessing the amount of the profit lost the profit which was reasonably expected according to the regular course of events or particular circumstances, and whose realization has been prevented by an act or omission of the tortfeasor shall be taken into account.

(4) Where an object is lost or damaged by a criminal offence committed wilfully, the court may determine the amount

of indemnity according to the value the object had for the person sustaining damage.

Article 190. Complete Recovery

While also taking into account the circumstances after the occurrence of damage, the court shall determine damages in the amount necessary to restore the material state of the person sustaining damage into the state it would have been without the damaging act or omission.

Article 191. Reducing Indemnity

(1) The court may, while taking into account the material situation of the person sustaining loss, order the person liable to pay an indemnity which is lower than the amount of damages if it was not caused either wilfully or by gross negligence, and if the liable person is in poor material situation, so that payment of full indemnity would bring him into poverty.

(2) If the tort-feasor has caused damage while doing something to the benefit of the person sustaining loss, the court may order a lower indemnity, while taking into account the degree of care the tort-feasor was otherwise applying in his own affairs.

Article 192. Divided Liability

(1) A person sustaining loss who has contributed to the occurrence of loss or to its becoming larger than otherwise, shall only be entitled to a proportionally reduced indemnity.

(2) Should it be impossible to establish which part of damage comes from an act of the person sustaining it, the court shall award the indemnity while taking into account the circumstances of the case.

**III. PARTICULAR PROVISIONS ON
REDRESSING PROPERTY DAMAGE IN
CASE OF DEATH, BODILY INJURY AND
HARM TO HEALTH**

**Article 193. Salary Lost and Expenses of Medical
Treatment and Funeral**

(1) Whoever causes another person's death shall be liable to reimburse the usual expenses of that person's funeral.

(2) He shall be also liable to reimburse expenses of that person's medical treatment for injuries inflicted, as well as

other expenses relating to medical treatment, including the salary lost due to disability for work.

Article 194. *Right of a Dependent of the Deceased*

(1) A person who was supported or regularly assisted by the deceased, as well as the one entitled by law to request maintenance from the deceased, shall be entitled to damages for loss sustained by the loss of support, or assistance.

(2) Such loss shall be redressed by paying annuities the amount of which shall be established by taking in consideration all the circumstances of the case, but which shall not be higher than the amount which would have been received by the person sustaining damage from the deceased if he were alive.

Article 195. *Redressing Damage In Case of Bodily Injury or Damage to Health*

(1) One who inflicts to another bodily injury or impairs his health, shall be liable to reimburse his medical expenses, as well as other related necessary expenses, including recovery of the salary lost due to inability to work during medical treatment.

(2) Should the injured person due to total or partial disability lose his salary, or should his needs become permanently increased, or should possibilities of his further development and advancement be destroyed or reduced, the person liable shall pay to the injured one specific annuities as damages for such loss.

Article 196. *Altering the Indemnity Awarded*

At the request by the person sustaining loss the court may raise the amount of annuities for the future, and it may, at the request by the tort-feasor, reduce or cancel it, should the circumstances be considerably changed which had otherwise been considered by the court in rendering the previous decision.

Article 197. *Non-Transferability of Right*

(1) The right to indemnity in the form of annuities, due to death of a close relative or due to bodily injury or harm to health, shall not be transferred to another person.

(2) The amounts of damages due may be transferred to another person should the amount of indemnity be determined by written agreement between the parties, or by final court decision.

IV. PARTICULAR PROVISIONS FOR REDRESSING PROPERTY DAMAGE IN CASE OF INSULT TO ONE'S HONOUR AND SPREADING FALSE STATEMENTS¹³

Article 198.

(1) Whoever insults another person's honour, or who ever utters or conveys false statements concerning another person's past, knowledge and ability, or concerning anything else of the kind, although being aware, or should have to be aware, that these are untrue, thus causing material damage to such person, shall be liable for damages.

(2) However, one shall not be liable for the loss caused who makes the false statement concerning another without knowing that it is not true, should he or the one acknowledging the statement have a serious interest in the matter.

V. INDEMNITY FOR NON-MATERIAL DAMAGE

Article 199. *Making a Public Sentence or a Correction*

In case of violation of an individual right, the court may order that, at the expense of the tort-feasor, the sentence, namely the correction, be made public, or it may order that the tort-feasor take back the statement causing the violation, or order something else which would reach the purpose, otherwise apt to be achieved by indemnity.

Article 200. *Money Indemnity*

(1) For physical pains suffered, for mental anguish suffered due to reduction of life activities, for becoming disfigured, for offended reputation, honour, freedom or rights of personality, for death of a close person, as well as for fear suffered, the court shall, after finding that the circumstances of the case and particularly the intensity of pains and fear, and their duration, provide a corresponding ground thereof – award equitable damages, independently of redressing the property damage, even if the latter is not awarded.

(2) In deciding on the request for redressing non-material loss, as well as on the amount of such damages, the court shall take into account the significance of the value vio-

¹³ I.e. defamation (slander and libel).

lated, and the purpose to be achieved by such redress, but also that it does not favour ends otherwise incompatible with its nature and social purpose.

Article 201. *Persons Entitled to Damages in Case of Death or Serious Disability*

(1) In case of death of a person, the court may award to members of his immediate family (spouse, children and parents) equitable damages for their mental anguish.

(2) Such damages may be also awarded to brothers and sisters should a permanent household unit exist between them and the deceased.

(3) In case of a particularly serious disability of a person, the court may award to his spouse, children and parents an equitable money indemnity for their mental anguish.

(4) The indemnity specified in paragraphs 1 and 3 of the present article may also be awarded to co-habitee, if a permanent household unit had existed between the co-habitee and the deceased, or injured person.

Article 202. *Satisfaction in Specific Cases*

A person being induced to unlawful intercourse or lewd act by deceit, force or misuse of a relationship of subordination or dependence, as well as a person being a victim of some other criminal offence in violation of personal dignity and morale shall be entitled to equitable damages for mental anguish suffered.

Article 203. *Recovery of Future Damage*

At the request by a person sustaining loss the court shall also award damages for future general loss if, according to regular course of events, it became certain that it will continue.

Article 204. *Inheriting and Assigning General Damages Claim*

(1) A claim of general damages shall pass to a successor only after being recognized by a final court decision or by a written agreement.

(2) Under the same conditions such claim may be the subject of assignment, clearance and debt enforcement.

Article 205. *Separate Liability and Reduction of Indemnity*

Provisions on separate liability and reduction of indemnity applicable to material loss shall apply accordingly to non-profit loss as well.

Subsection 8.

LIABILITY OF SEVERAL
PERSONS FOR THE SAME
DAMAGE

Article 206. *Joint and Several Liability*

(1) Liability for loss or injury caused by several persons shall be joint and several.

(2) An inciter and accomplice, as well as one assisting the liable persons in order to prevent discovery, shall be jointly and severally liable with them.

(3) Joint and several liability for loss shall also apply to the persons causing it, if acting independently from one another, should their shares in damage caused be impossible to determine.

(4) Should there be no doubt that damage is caused by two or several persons who are in some way interconnected, and should it be impossible to establish who is liable for damage, such persons shall be liable jointly and severally.

Article 207. *Joint and Several Liability of Principal and Contractor*

A principal and a real property contractor shall be jointly and severally liable for loss inflicted to a third person in relation to the execution of such works.

Article 208. *Refunding a Payer*

(1) A judgment-debtor liable jointly and severally paying off an amount higher than his share of damages may demand from any of the remaining debtors the recovery of what he has paid for them.

(2) The court shall determine the amount of share of individual judgment-debtors, considering the degree of their respective faults and the seriousness of consequences of their acts.

(3) Should it be impossible to establish the amount of shares of the judgment-debtors, each shall bear an equal share, unless equity require otherwise in proceeding with the specific case.

Subsection 9.

RIGHT OF PERSON SUSTAINING
LOSS AFTER THE EXPIRY UNDER
THE STATUTE OF LIMITATIONS
OF HIS CLAIM FOR RECOVERY

Article 209.

After his claim for recovery becomes unenforceable under the statute of limitations,¹⁴ the person sustaining loss may request from the person liable to renounce to him, on the basis of rules applicable to acquiring without ground, what he acquired by the act causing the loss.

Section 3.

ACQUIRING WITHOUT GROUND¹⁵

Subsection 1.

GENERAL RULE

Article 210.

(1) After part of a person's property is transferred in any kind of way to another, and such transfer has no ground in any legal transaction or in the law, the one who acquires property in such a way shall be bound to restitute it, and should this be impossible – to pay damages in the value of benefits gained.

(2) The duty of restitution, or paying damages shall also arise if something is received on a ground which did not materialize, or which subsequently ceased to exist.

Subsection 2.

THE RULE OF RESTORING

Article 211. *When Restoring Can not Be Claimed*

Whoever effects payment while knowing that he is not obliged to pay, shall have no right to claim reimbursement

¹⁴ I.e. time-barred.

¹⁵ I.e. conversion.

unless he reserves such right or unless he is paying off to avoid duress.

Article 212. *Twofold Payment of a Debt*

Whoever pays the same debt twice, and even once on the ground of a finally valid document, shall be entitled to claim reimbursement according to general rules of acquiring without ground.

Article 213. *Fulfilment of a Natural Obligation or a Moral or Social Duty*

That what is given or done as fulfilment of a natural obligation or a moral or social duty shall not be claimed.

Article 214. *Scope of Restoring*

In restoring something which is acquired without ground, the relevant obligation shall include fruit and payment of interest on arrears, beginning with the day of acquiring, should the acquirer be dishonest, while otherwise beginning with the day of filing the claim.

Article 215. *Reimbursement of Expenses*

The acquirer shall be entitled to reimbursement of necessary and beneficial expenses, but if he is dishonest, the reimbursement of beneficial expenses shall be effected only up to the amount representing an increase in value at the moment of restoring.

Article 216. *When the Received Property Can Be Kept*

There shall be no claim of the amounts paid without ground as recovery for loss caused by bodily injury, damage to health or death, after the payment has been made to an honest acquirer.

Article 217. *Use of an Object for the Benefit of Another*

Should someone use his own or another person's object for the benefit of a third person, and the rules of doing business without an order do not apply, the third person is liable to restitute such object, or should this be impossible, to indemnify its value.

Article 218. *Expenses Incurred for Another*

Whoever pays for expenses or does something else for another person, which otherwise is a statutory duty of such other person, shall be entitled to claim recovery from such person.

Article 219. *Using Another Person's Object to One's own Benefit*

Should someone use another person's object for his own benefit, the owner may, independently of the right to damages, or lack of damages, request that such person compensate for the benefits obtained from such use.

Section 4.

**DOING BUSINESS WITHOUT ORDER
OR AUTHORITY¹⁶**

Subsection 1.

GENERAL RULE

Article 220.

(1) Doing business without an order means carrying out the transactions of another person, whether legal or material, without order or authority, but on account of the one otherwise normally engaged in them, and for the purpose of protecting that person's interests.

(2) Doing other person's business without invitation is permissible only should the transaction need to be carried out without delay, because of possible immediate danger of damage or loss of an obvious benefit.

Subsection 2.

**DUTIES AND RIGHTS OF A
MANAGER WITHOUT ORDER
(AUTHORITY)**

Article 221. *Duties of a Manager Without Order (Authority)*

(1) A manager without order (authority) shall notify the principal for whom he acts about his act as soon as possible and shall continue the business commenced, should this be

¹⁶ E.g., acting as agent without authority.

reasonably possible, until his principal is able to take over the matter.

(2) After completing the business transaction he shall render account thereof and shall hand over everything he has acquired while doing his business to his principal.

(3) Unless otherwise ordered by statute, a manager acting without order (authority) shall have the duties of authorised person.

Article 222. *Due Attention and Liability*

(1) While doing another person's business, a manager without authority is obliged to act according to the real and probable intentions and needs of his principal.

(2) He shall be bound to proceed with the care of a good businessman or of a good head of household.

(3) The court may, having regard to the circumstances of someone's engaging in other person's business, reduce the liability or exempt him entirely from liability for negligence.

(4) Liability of a manager without business capacity shall be governed by the rules concerning his contractual and tort liability.

Article 223. *Rights of a Manager without Order (Authority)*

(1) A manager without order (authority) who has acted in all respects reasonably regarding the circumstances of the case, shall be entitled to request his principal to relieve him of all duties assumed by him because of the business, to take over all duties entered into on his behalf, to redress all his necessary and useful expenses, as well as pay for any eventual loss sustained by him, even should the expected result not be achieved.

(2) He shall also be entitled to adequate compensation for his efforts, after deducting losses sustained by his principal, or after providing him with a benefit entirely corresponding to his intentions and needs.

Article 224. *Carrying on Business on Behalf of Another in Order to Help a Third Party*

Whoever carries on business on behalf of another in order to help a third party, while there are no grounds for applying the rules of doing business without order, shall be entitled to reimbursement of incurred expenses, but only up to the value of the benefit achieved by the other person.

Article 225. *Removal of Benefits*

Every manager acting without authority shall be entitled to take away objects which are the result of the increase of

other person's property, otherwise not being covered in terms of relevant expenses, provided such additions may be separated from a principal object without damage; however, the person having the business may keep such additions after paying to the manager without authority the amount of their current value, but not more than the amount of expenses incurred.

Subsection 3.

MANAGING OTHER
PERSON'S AFFAIRS DESPITE
A PROHIBITION

Article 226.

(1) Whoever carries on business on behalf of another in spite of a prohibition by his principal shall not have the rights of a manager acting without authority, provided he was aware or had to be aware under the circumstances of the prohibition.

(2) He shall be liable for damage caused by interfering in other person's affairs, even should damage occur without his fault.

(3) However, should the prohibition to engage into the affair be contrary to law or morals, and in particular should someone prohibit the other person to fulfill his statutory duties which must not be postponed, the general rules of managing business without authority shall apply.

Subsection 4.

UNDUE MANAGING

Article 227.

(1) Whoever engages in other person's business intending to keep the achieved benefit, although being aware that the business belongs to another, shall render account at the request of his principal as a manager without authority, and shall hand over to him all achieved benefits.

(2) The principal may also request the restitution of objects as well as compensation of the loss sustained.

Subsection 5.

A P P R O V A L

Article 228.

Should a person having the business subsequently approve of what has been carried out, the manager without authority shall be considered as person having received authority and as if he had acted from the beginning by authority of his principal.

Section 5.

**UNILATERAL EXPRESSION
OF INTENTION (VOLITION)¹⁷**

Subsection 1.

PUBLIC PROMISE OF AWARD

Article 229. *When Binding*

(1) A promise of an award made by public announcement to everyone who carries out a specific act, accomplishes something and finds himself in a particular situation, including a promise done under some other condition, shall bind the promisor to make good his promise.

(2) A promisor of an award or of any other prize-winning competition shall be bound to determine a time limit for the competition, and should he fail to determine it, everyone willing to participate in the competition shall be entitled to request that the court determine a corresponding time limit.

Article 230. *Revocation of Promise*

(1) A promise may be revoked in the way it is made, as well as by individual statement, but the one doing the act and not knowing or not in a position to know that the promise is revoked, shall be entitled to claim the promised award, while the one incurring necessary expenses in order to carry out the act as determined in the public announcement, shall be entitled to reimbursement until the revocation, unless the promisor prove that such expenses were not necessary.

¹⁷ Unilateral contracts.

(2) A promise of an award shall not be revoked after the time limit is determined in the advertisement for the act to be carried out, or for the information on the result achieved, or on taking place of a particular situation.

Article 231. *Who Is Entitled to an Award*

(1) The one who is the first to carry out the act envisaged by the award shall be entitled to the award.

(2) Should several persons carry out the act simultaneously, each shall be entitled to the award equally divided, unless equity require a different division.

Article 232. *In Case of an open Competition*

(1) In the case of an open competition, a decision on the award shall be made by the organizer of the open competition, or by one or several persons designated by him.

(2) Should the terms of the open competition or other general regulations applicable to specific open competition contain rules for granting the award, each participant in the open competition shall be entitled to request revocation of a decision on the award should the award fail to be granted in conformity with these rules.

(3) Ownership or other rights pertaining to the work (i.e. creation) awarded at an open competition shall be acquired by the organizer of the open competition only if this was indicated in the open competition announcement.

Article 233. *Termination of Obligation*

The obligation of the promisor of the award shall be terminated should no one inform him, within the time limit determined in the announcement, that the act has been carried out or an achievement made, or the conditions otherwise fulfilled as set forth in the public announcement, and should the time limit not be determined, such obligation shall be terminated one year after the announcement.

Subsection 2.

SECURITIES

I. GENERAL PROVISIONS

Article 234. *Notion*

Securities are written certificates by which their issuer assumes a duty to fulfill the obligation inscribed in such certificate to its legal owner.

Article 235. *Essential Constitutive Elements*

(1) Securities must contain the following essential constitutive elements:

- (i) designation as to the kind of securities;
- (ii) indication of the firm, or name and registered office and/or name and domicile of the issuer of securities;
- (iii) indication of the firm or title, or name of the person to whom, or at whose order, securities are made out, or a designation that securities are made out to its bearer;
- (iv) exact designation of the obligation of the issuer resulting from the securities;
- (v) indication of the place and date of issue of the securities, and in case of securities issued in series, their serial number;
- (vi) signature of the issuer of the securities, or the facsimile of signature of the issuer of securities issued in series.

(2) For some kinds of securities other essential constitutive elements may also be determined by particular law.

(3) A certificate not containing any of the essential constitutive elements shall not be accepted as security.

(4) Securities issued in series and not containing any of the essential constitutive elements thereof, shall have no legal effect.

Article 236. *Making Out of Securities*

Securities may be made out to the bearer, to a name, or to order.

Article 237. *Creation of Obligation*

An obligation out of securities shall originate at the moment the issuer of securities hands them over to their beneficiary.

Article 238. *Particular Conditions of Issuing Securities in Series*

Other terms and conditions of issuing securities in series shall be determined by particular law.

II. REALISATION OF RIGHTS

Article 239. *Who Is Entitled to a Right Arising from Securities*

(1) A claim arising from securities shall be connected to the paper itself and shall belong to its legal possessor.

(2) A bearer of the securities made out to bearer shall be considered to be their legal possessor.

(3) A person to whom the securities are made out, or one receiving duly transferred securities, shall be a legal possessor of securities made out to name or to order.

(4) An honest acquirer of securities made out to bearer shall become their legal possessor and he shall be entitled to the claim inscribed on their face even after the securities go out of the control of their issuer, or previous possessor without his agreement.

Article 240. *Who Is Entitled to Request Fulfilment*

Fulfilment of a claim arising from the securities may be requested, after their presentation for the purpose, only by their legal possessor, or by a person authorized by him.

III. TRANSFER OF SECURITIES

Article 241. *Transfer of a Right Arising from Securities Made out to Bearer*

A right arising from securities made out to bearer shall be transferred by their being handed over.

Article 242. *Transfer of a Right Arising from Securities Made out to Name*

(1) A right arising from securities made out to name shall be transferred by way of assignment.

(2) It may be prescribed by particular law that a right arising from securities made out to name may also be transferred by endorsement.

(3) The transfer of a right arising from securities made out to name shall be put into effect by inscribing on the face of the paper an indication as to the firm or title or name of the new possessor, by the transferrer's signature, and by inscribing an indication of the transfer into the securities register should such a register be kept by the issuer.

Article 243. *Transfer of a Right Arising from Securities Made out to Order*

A right arising from the securities made out to order shall be transferred by endorsement.

Article 244. *Kinds of Endorsement*

(1) An endorsement may be full, general or made out to bearer.

(2) A full endorsement shall contain a statement of the transfer and an indication of the firm, or the title or name of the person receiving the right arising from the securities transferred (the endorsee), and the signature of the transferor (the endorser), and it may also contain other data (such as place and date).

(3) A blank endorsement shall contain only the signature of the endorser.

(4) In case of a transfer to bearer the word "to the bearer" shall be inscribed instead of the indication of the name of the endorsee.

(5) An endorsement made out to bearer shall be valid as a general endorsement.

(6) A partial endorsement shall be invalid.

Article 245. *Transfer of Authorization and Transfer for Guarantee*

(1) Securities may also be transferred in the form of transfer of authorization, or as a transfer for guarantee.

(2) In the case of a transfer of authorization the clause "value in the authorization", while in case of transfer for guarantee a clause such as – "value for guarantee" shall be indicated.

Article 246. *Effect of the Transfer of a Right*

(1) By transferring a right arising from securities their new possessor shall acquire all rights otherwise pertaining to the previous possessor.

(2) A transfer of a right arising from securities made out to name, effected either by assignment or endorsement, shall have no effect as regards the issuer, unless he is informed thereof in writing or unless such transfer has been inscribed in the register for securities made out to name, should such register be kept by the issuer.

(3) A transferor or endorser, shall not be liable for an issuer's failure to fulfil the obligation, except in the case of a different statutory provision, or of a term to the contrary inscribed on the face of the security.

Article 247. *Effect of Transfer of Authorization and of Transfer for Guarantee*

A possessor of securities transferred to him as a "transfer of authorization" or "transfer for guarantee" may effect all rights arising from such paper, but the paper may be transferred by him to another only as a transfer of authorization.

Article 248. *Proving the Legality of a Transfer*

(1) The last endorsee shall prove his right arising from securities by an uninterrupted series of endorsements.

(2) This rule shall also apply accordingly to the last transferor.

Article 249. *Prohibition of Transfer*

(1) A prohibition of transfer by endorsement of the securities made out to order shall be effected by inscribing the indication "not by order", or by putting a similar clause with the same meaning.

(2) A right arising from securities whose transfer by endorsement is prohibited may be transferred only by assignment.

(3) A transfer by endorsement may be prohibited by an issuer and an endorser.

(4) Every transfer of securities made out to name may be prohibited by particular law or by statement of the issuer inscribed on the face of such securities.

IV. ALTERATIONS OF SECURITIES

Article 250. *Alterations Effected by Issuer*

(1) Securities made out to bearer or to order may be altered by the issuer, at the request and at the expense of the possessor of the paper, into securities made out to name.

(2) Should alteration be not expressly prohibited by him, the issuer of securities made out to name may, at the request and at the expense of the possessor, alter them into ones made out to bearer or to order.

Article 251. *Alterations Effected by Possessor at Transfer*

(1) Securities made out to order may be transferred by the endorser by means of endorsement to the bearer, unless otherwise provided by particular law.

(2) Securities made out to name may only be transferred by the transferor, or endorser, to a specific person.

(3) Securities made out to bearer may also be transferred by endorsement to a specific person.

Article 252. *Compounding and Dividing of Securities*

(1) Securities issued in a series may, at the request and at the expense of the possessor, be compounded into single or several securities.

(2) Securities may, at the request and at the expense of the possessor, be divided into several securities of smaller amount, but they shall not be made out to an amount lower than the lowest denomination of securities issued in such series.

V. PERFORMANCE OF DUTIES OUT OF SECURITIES

Article 253. *Termination of Duty*

A duty from securities ceases by their performance by the issuer of the securities to the legal possessor.

(2) A claim from securities shall also cease when they come into the issuer's possession unless otherwise provided by particular law.

(3) An honest issuer of securities made out to bearer shall be discharged from duty by performing them for the benefit of the bearer, even should such bearer fail to be legal possessor of the securities.

Article 254. *Prohibition of Performance*

(1) An issuer of securities made out to bearer knowing or having a duty to know that the bearer is not legal possessor of the securities or not authorized thereof by the legal possessor, shall be bound to refuse performance, or shall otherwise be liable for ensuing loss.

(2) An issuer of securities shall not perform his duties when this has been prohibited by the competent agency, or if he knew or had a duty to know that proceedings for redemption or annulment of the securities were in progress.

Article 255. *Payment of Interest or other Profits After Payment of the Principal*

A debtor paying off the principal to the possessor of securities shall be bound to pay off also the interest coupons, or other profits from the same principal submitted for payment, upon payment of the principal, should such claims not be time barred.

Article 256. *Objections to Request for Performance of a Duty*

(1) An issuer of securities may only raise to a request by its possessor only those objections which are confined to the issue of the securities, such as forgery, objections stemming from the contents of securities, such as a time limit or conditions, and objections he is entitled to against the possessor of the securities, such as settlement *per contra*, a defect in the acquisition of the securities and lack of authorization.

(2) An issuer may raise objection to the request by the possessor to whom he has assigned the securities, regarding a defect in the legal transaction being a ground for the transfer, but such defects may not be used against the request of a subsequent possessor.

(3) However, if the possessor of securities, while receiving the certificate from his predecessor, knew or had a duty to know that the former was handing him over the securities only to avoid an objection otherwise raised against him by the issuer, the issuer may also raise the objection against the possessor of the paper.

(4) Other kinds of objections may also be established by a particular law regarding specific kinds of securities.

VI. IDENTIFICATION PAPERS AND MARKS

Article 257. Identification Papers

Corresponding provisions covering securities shall apply accordingly to railway tickets, theater and other tickets, coupons and similar certificates incorporating specific duties of their issuer, which have no indication of the creditor on their face, and which, according to their nature and the circumstances of their issue may not be transferred to another.

Article 258. Identification Marks

(1) Checkroom or similar marks consisting of a piece of paper, metal or other material, usually with affixed number, or with an indication of the number of objects checked, and usually not containing specific indication as to the obligation of their issuer, shall serve only to indicate the bearer in an obligation relationship in the course of whose creation they have been issued.

(2) An issuer of an identification mark shall be discharged of his obligation if he performs it in good faith to the benefit of the bearer, but there shall be no presumption of the latter being a genuine bearer, or one authorized to request performance, so that in the case of dispute he shall be bound to prove his capacity.

(3) The bearer shall be entitled to request performance of an obligation although the identification mark has been lost by him.

(4) As to the rest, in each case the intention of the issuer and the recipient of the mark as well as common practice should be kept.

VII. REMAINING PROVISIONS

Article 259. *Replacement of Damaged Securities*

A possessor of a damaged security not being fit to be put on the market, but whose authenticity and contents may be precisely determined, shall be entitled to demand issue of a new security certificate in the same amount, upon handing over the damaged security and paying for the expenses.

Article 260. *Redemption of Securities*

Lost securities may be redeemed only if made out to name or to order, unless otherwise provided by particular law.

Article 261. *Expiration of a Claim out of Securities*

The rules of the statute of limitations shall apply to the expiration of a claim out of securities, unless otherwise provided by particular law.

Chapter III.

EFFECTS OF OBLIGATION

Section 1.

CREDITOR'S RIGHTS AND DEBTOR'S OBLIGATIONS¹⁸

Subsection 1.

THE RIGHT TO DAMAGES FOR LOSS

I. GENERAL RULES

Article 262. *Performance of an Obligation and Consequences of Breach of Obligation*

(1) A creditor in an obligation relationship shall be authorized to request from a debtor the performance of an obligation, while a debtor shall be obliged to perform it in good faith and entirely as formulated.

¹⁸ In this section the terms "creditor" and "debtor" mean the person who owes a duty and the person to whom a duty is owed, respectively.

(2) After a debtor fails to perform the obligation or is late in performance, the creditor shall also be entitled to claim damages for loss sustained as a consequence.

(3) A debtor obtaining from a creditor an adequate time limit for subsequent performance, shall be liable also for loss due to delay in performance.

(4) A debtor shall also be liable for partial or complete impossibility of performance, even without being at fault, if such impossibility took place after his becoming unduly late.

(5) However, the debtor shall be released of liability for loss after proving that the subject stipulated in the obligation would have been lost by chance and that he has performed his obligation on time.

Article 263. Release of Debtor from Liability

A debtor shall be released from liability for loss upon proving his inability to perform the obligation, or that his delay in performing the obligation was due to circumstances taking place after entering into contract which he was unable to eliminate or avoid.

Article 264. Extension of Liability by Contract

(1) The liability of a debtor may also be extended by contract in a case not usually falling in the sphere of his liability.

(2) However, the fulfillment of such contractual provision may not be requested, if so would be in contravention of the principle of good faith and integrity.

Article 265. Limitation and Preclusion of Liability

(1) A debtor's liability for intention or gross negligence may not be precluded in advance by contract.

(2) At the request by an interested contracting party, the court may, however, also annul the contractual provision on the exemption of liability for simple negligence, should such agreement be the result of the monopoly position of the debtor or, otherwise, of unequal mutual positions of the contracting parties.

(3) A provision of a contract shall be valid by which the highest amount of compensation is determined, unless such amount is in obvious disproportion to the damage and unless the law provides otherwise for the specific case.

(4) In case of limiting the amount of compensation, the creditor shall be entitled to full redress should the impossibility of performance of obligation be caused by wilful misconduct or gross negligence of the debtor.

Article 266. Scope of Compensation

(1) A creditor shall be entitled to compensation for simple damage and profit lost, which at the time of entering into contract should have been foreseen by the debtor as a possible consequence of breach of the contract, having regard to facts known to him at the time or which should have been known to him.

(2) In case of fraud or lack of performance through wilful misconduct, as well as of non-fulfilment due to gross negligence, the creditor shall be entitled to demand from the debtor compensation for the entire loss occurring due to breach of the contract, regardless of the debtor not being aware of particular circumstances causing the loss.

(3) Should in course of violation of the obligation, in addition to loss, a profit be realized for the creditor, it shall be taken into account to a reasonable degree in determining the amount of damages.

(4) A party claiming breach of the contract shall take all reasonable steps to reduce the loss caused by such breach, since otherwise the other party may request reduction of damages.

(5) The provisions of the present article shall also apply accordingly to breach of obligations not originating on the ground of contract, unless something else be provided for such obligations by the present Law.

Article 267. *Fault of Creditor*

In case of fault of a creditor or person under his responsibility for the ensuing loss, or for the extent of such loss, or for making the debtor's position hard, the compensation shall be reduced proportionally.

Article 268. *Liability for Failing to Notify*

A contracting party responsible for notifying the other party of facts relevant for their mutual relationship, shall be liable for loss sustained by the other party because of non notification or delay.

Article 269. *Application of Provisions on Torts*

Unless otherwise set forth by provisions of the present Subsection, the provisions of the present Law relating to tort liability shall apply accordingly to the compensation for injury and loss.

II. LIQUIDATED DAMAGES

Article 270. *General Rules*

(1) A creditor and a debtor may stipulate that the debtor shall pay to the creditor a specific sum or supply him with some other property benefit, should he fail to perform his obligation, or delay in performing it (liquidated damages).

(2) Unless something else results from contract, liquidated damages shall be considered as stipulated for the case of a debtor becoming late in performance.

(3) Liquidated damages shall not be stipulated in relation to monetary obligations.

Article 271. Method of Calculation

(1) Contracting parties may determine the amount of liquidated damages as they please, either in form of a lump sum or as a percentage, or for each day of delay, or in some other way.

(2) They shall be stipulated in the form prescribed for the contract from which the obligation envisaged by it arises.

Article 272. Accessory Character

(1) An agreement on liquidated damages shall share the legal destiny of the obligation covered by them.

(2) The agreement shall lose its legal effect should the breach or delay be a consequence of something not attributable to the debtor.

Article 273. Creditor's Rights

(1) Should liquidated damages be stipulated for breach of obligation, the creditor may request either the performance of obligation or liquidated damages.

(2) He shall lose the right to claim performance of obligation if he requests payment of liquidated damages.

(3) Should liquidated damages be stipulated for breach of contract, the debtor shall not be entitled to pay liquidated damages and repudiate the contract, unless this was the intent of the parties at the moment of stipulating the liquidated damages.

(4) Should liquidated damages be stipulated for the debtor's delay in performance, the creditor shall be entitled to demand both the fulfilment of obligation and the liquidated damages.

(5) The creditor shall not demand liquidated damages due to delay after accepting performance of the obligation and failing to notify the debtor immediately on his reserving the right to liquidated damages.

Article 274. Reducing the Amount of Liquidated Damages

At the debtor's request the court shall reduce the amount of liquidated damages if it finds that they are excessively high compared to the value and significance of the subject of obligation.

Article 275. *Liquidated Damages and Compensation for Loss*

(1) A creditor shall be entitled to request liquidated damages even should their amount exceed that of the loss sustained by him, as well as if he does not sustain any loss at all.

(2) Should the loss sustained by the creditor be higher than the amount of liquidated damages, he shall be entitled to demand the difference to cover the entire loss.

Article 276. *Compensation Determined by Statute and Liquidated Damages*

Should there be a statutory provision specifying the amount of compensation for breach of obligation or delay in performance under the terms: penalty, liquidated damages, compensation and the like, while the contracting parties have stipulated liquidated damages, the creditor shall have no right to request both liquidated damages and compensation provided by the statute, unless this was allowed by the statute itself.

III. DEFAULT INTEREST

Article 277. *When Owed*

(1) A debtor being late in the performance of a pecuniary obligation shall owe, in addition to the principal, default interest, at the rate determined by federal law.

(2) Should the rate of stipulated interest be higher than the rate of default interest, it shall continue to run even after the debtor's delay.

Article 278. *Right to Full Redress*

(1) A creditor shall be entitled to default interest regardless of whether he has sustained loss due to the debtor's delay.

(2) Should the loss sustained by the creditor due to the debtor's delay be higher than the amount to be received by way of default interest, he shall be entitled to request the difference up to the full redress.

Article 279. *Compound Interest*

(1) Unless provided by statute default interest shall not run on unpaid stipulated or default interest due, in addition to interest on other periodical payments falling due.

(2) Default interest may be requested on the amount of unpaid interest only from the day of filing such request for its payment with the court.

(3) Default interest on periodical payments falling due shall run from the day of filing such request for their payment with the court.

Subsection 2.

REFUTING DEBTOR'S LEGAL ACTS

Article 280. *General Rule*

(1) Every creditor whose claim is due for payment, regardless of the date of its taking place, shall be entitled to refute a legal act of his debtor taken to the detriment of creditors.

(2) A legal act shall be considered to have been taken to the detriment of creditors if due to it the debtor is left without sufficient means to satisfy the creditor's claim.

(3) The term "legal act" shall also include an omission due to which the debtor has forfeited a substantive right of his, or incurred a property obligation for himself.

Article 281. *Terms of Refuting*

(1) A disposal on the debt side may be refuted, if at the time of effecting the disposal, the debtor was aware or could have been aware that such action would do harm to his creditors, and if a third person benefitting from the legal act undertaken was aware of the fact, or could have been aware of it.

(2) If the third person is the debtor's spouse or in close blood relation or a remoter relative up to the fourth degree, or an in-law relative of the same degree, there shall be a presumption that such third person was aware of the fact that the debtor's disposal was to the detriment of creditors.

(3) In case of a gratuitous disposal and a legal act equal to it, the debtor shall be considered to have been aware that the disposal undertaken would do harm to creditors, so that in refuting such acts there shall be no requirement that the third person was aware, or was supposed to be aware of the fact.

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

Article 282. *Impossibility of Refuting*

It shall not be possible to refute, on the ground of being detrimental to creditors, usual gifts for an occasion, prize gifts, or gifts given out of gratitude and being commensurate to the financial possibilities of the debtor.

Article 283. Refuting Procedure

(1) Refuting shall be effected either by action in the court or by objection.

(2) An action to refute shall be lodged against a third person being a party to the legal act, or to whose benefit the act to be refuted was undertaken, or against his universal legal successors.

(3) Should a third person transfer, by a transaction on the debit side, the benefit acquired through the disposal to be refuted, the action may be lodged against the acquirer only if the latter was aware that the acquisition of his predecessor was prone to be refuted, but if such benefit was transferred by a gratuitous transaction, the action may be lodged against the acquirer even if he was not aware of the fact.

(4) A defendant may avoid the refuting by performing debtor's obligation.

Article 284. Effect of Refuting

Should the court uphold the claim, the legal act shall become ineffective only as to the plaintiff and only to the degree necessary for meeting his claim.

Article 285. Time Limit for Lodging the Action

(1) An action to refute may be lodged within a year in case of the disposal specified in article 281, paragraph 1, while in all other cases, within a three year time limit.

(2) The time limit specified in the preceding paragraph shall be computed from the day of undertaking the legal action being refuted, or from the day on which the omitted action should have been taken.

Subsection 3.

THE RIGHT OF RETAINMENT (IUS RETENTIONIS)

Article 286. Effecting of the Right of Retainment

(1) A creditor with a claim due, in possession of the debtor's property,¹⁹ shall be entitled to retain it in possession until his claim is paid off.

(2) Should a debtor become unable to effect payment, the creditor may use his right of retainment event though his claim is not yet due.

¹⁹ That is, personal property or chattels.

Article 287. *Exceptions*

(1) A creditor shall have no right of retainment if the debtor requests the restoration of the property coming out of his possession against his will, or if the debtor requests the restoration of the property entrusted to the creditor for custody or use.

(2) He may not keep an authorization obtained from the debtor, nor other certificates, identification papers and similar items of the debtor, or other objects which cannot be put on sale.

Article 288. *Duty of Restoring Property Prior to Performance of Obligation*

A creditor shall restore the property to the debtor if he has supplied him with corresponding guarantee to cover his claim.

Article 289. *Effect of the Right of Retainment*

A creditor in possession of a debtor's property on the ground of the right of retainment shall be entitled to recover out of its value in the same way as a pledgee, but shall be bound, prior to proceeding with collection, to notify the debtor of his intention in due time.

Section 2.

CREDITOR'S RIGHTS IN PARTICULAR CASES

Article 290. *The Case of Obligation Consisting of Giving Objects Specified by Kind*

Should an obligation consist of giving objects (of property) specified by kind, and the debtor delays performance, the creditor may, after notifying the debtor thereof procure at his own choosing the object (of property) of the same kind, and may request from the debtor both the recovery of price and the redress of loss, or the recovery of value of the object owed, and the redress of loss.

Article 291. *An Obligation Consisting in Doing*

Should an obligation consist in doing, and the debtor fails to perform such obligation on time, the creditor may, after notifying thereof the debtor, do himself, at the expense of the debtor, what the debtor was obliged to do, while re-

questing from the debtor the redress of loss caused by the delay, as well as other possible losses because of the manner of performance.

Article 292. *An Obligation Consisting in Failing to Act*

(1) Should an obligation consist of an omission to act, the creditor shall be entitled to the redress of loss by fact of the debtor proceeding contrary to his obligation.

(2) Should something be constructed contrary to an obligation, the creditor may request its elimination at the expense of the debtor, and that the debtor redress the loss sustained by him in relation to the construction and the demolition.

(3) If the court finds it obviously more useful, while taking in consideration the interest of society and the justified interest of the creditor, the court may decide that there shall be no demolition of what has been constructed, ordering instead that redress of the creditor's loss be effected in money.

Article 293. *Right to Claim Damages instead of that what Is Awarded*

(1) Should a debtor fail to perform his obligation within the time limit determined by a final court decision, the creditor may call him to perform it in an adequate time limit, and state that after the expiration of such time limit he will not accept performance, requesting instead the redress of loss caused by breach of obligation.

(2) After the expiration of the subsequent time limit the creditor may request only the redress of loss caused by the breach.

Article 294. *Court Penalties*

(1) If the debtor fails to perform his non-monetary obligation determined by final decision on time the court may, at the creditor's request, determine a subsequent and adequate time limit for the debtor and may pronounce, with the purpose of inducing the debtor, and independently of any damages, that the latter, after failing to perform his obligation within such time limit, shall be bound to pay to the creditor a certain amount of money for each day of delay, or for some other time unit, beginning with the expiration of that time limit.

(2) After the debtor's subsequent performance of the obligation, the court may reduce the amount specified above, while taking into account the purpose serving as a ground for its payment.

Chapter IV.

TERMINATION OF OBLIGATIONS

Section 1.

GENERAL RULE

Article 295.

(1) An obligation shall be terminated after being fulfilled, as well as in other cases provided by law.

(2) By termination of the principal obligation, the pledge, mortgage and other accessory rights shall also be extinguished.

Section 2.

FULFILMENT

Subsection 1.

GENERAL RULES OF FULFILMENT

I. WHO CAN FULFIL AND FULFILMENT EXPENSES

Article 296. *Fulfilment by Debtor or Third Person*

(1) An obligation may be fulfilled not only by a debtor but also by a third person.

(2) A creditor shall be bound to accept fulfilment by every person having a legal interest in fulfilling the obligation, even should the debtor be opposed to such fulfilment.

(3) A creditor shall be bound to accept fulfilment by a third person should the debtor agree, unless according to the contract or the nature of obligation itself, the obligation should be fulfilled by the debtor personally.

(4) A creditor may accept fulfilment by a third person without the debtor's knowledge, and even if the debtor has notified him about his disagreement to the third person's fulfilling the obligation.

(5) Should, however, the debtor offer to immediately fulfill his obligation himself the creditor shall not accept fulfilment by the third person.

Article 297. *Fulfilment by One without Business Capacity*

(1) A debtor without business capacity, may also duly fulfill an obligation should its existence be certain and after its fulfilment is due.

(2) But fulfilment may be contested should such person pay off an expired debt or a debt coming out of a game or bet.

Article 298. *Fulfilment Expenses*

Fulfilment expenses shall be covered by the debtor if not caused by the creditor.

II. FULFILMENT BY SUBROGATION

Article 299. *Fulfilment by Transfer of Right to the Fulfiller (Subrogation)*

(1) In the case of fulfilment of another person's obligation each fulfiller may stipulate with the creditor, prior to the fulfilment or in course of it, that the claim which is fulfilled be transferred to him, together with all, or only some, of the accessory rights.

(2) A creditor's rights may be also transferred to the fulfiller on the ground of a contract between the debtor and the fulfiller concluded prior to fulfilment.

(3) In such cases the subrogation of the rights of the creditor to the fulfiller shall take place at the moment of fulfilment.

Article 300. *Statutory Subrogation*

If an obligation is fulfilled by a person having some legal interest in the matter, the creditor's claim shall be transferred to him by the law itself at the moment of fulfilment, together with all accessory rights.

Article 301. *Subrogation in Case of Partial Fulfilment*

(1) In case of partial fulfilment of the creditor's claim, all accessory rights by which such claim is guaranteed shall be transferred to the fulfiller, unless necessary for the fulfilment of the rest of creditor's claim.

(2) However, the creditor and the fulfiller may stipulate that they shall use the guarantees commensurately to their respective claims, while they may also stipulate that the fulfiller shall have the right of priority in effecting collection.

Article 302. Evidence and Means of Guarantee

(1) A creditor shall be bound to hand over to the fulfiller the means by which the claim is proved or guaranteed.

(2) Exceptionally, the creditor may hand over an object received in pledge from the debtor or from some other person, to the fulfiller only should the pledger agree; otherwise, the pledge shall stay with the creditor to hold and preserve to the account of the fulfiller.

Article 303. How Much May Be Claimed against a Debtor

A person receiving a transferred claim shall not request from a debtor more than has been paid to the creditor.

Article 304. Exemption from Liability of a Creditor for the Existence and Collectability of the Claim

(1) A creditor who accepts fulfilment from a third person shall not be liable for the existence and collectability of the claim at the time of fulfilment.

(2) The above shall not exclude application of the rules of acquiring without ground.

III. PERSONS TO ACCEPT FULFILMENT

Article 305. Authorized Person

(1) The fulfilment must be effected to the creditor or to a person designated by law, court decision, contract between the creditor and the debtor, or the creditor himself.

(2) The fulfilment shall also be valid if effected to a third person, should subsequently it be approved by the creditor, or should he acquire benefit out of it.

Article 306. Fulfilment to a Creditor without Business Capacity

(1) The fulfilment effected to a creditor without business capacity shall exempt the debtor only after being to the benefit of the creditor or after the subject of fulfilment has remained in his possession.

(2) A creditor without business capacity may approve, after regaining business capacity, of the fulfilment accepted by him at the time of his being without business capacity.

IV. SUBJECT OF FULFILMENT

Article 307. *Contents of Obligation*

(1) The fulfilment shall consist of performing that which forms the content of obligation, so that a debtor may not effect fulfilment by something else, nor a creditor request something else.

(2) There shall be no valid fulfilment should that which is delivered by the debtor as a matter owed, and accepted by the creditor as such, turn out not to be a matter genuinely provided for by contract, so that the creditor shall be entitled to restitute that what has been delivered to him, and to request the subject owed to him.

Article 308. *Substitution of Fulfilment*

(1) An obligation shall be terminated should the creditor, by agreement with the debtor, accept something else instead of what was owed to him.

(2) In such a case the debtor shall be liable as a seller for substantive and legal defects in the object delivered instead of what was owed by him.

(3) However, a creditor, instead of claiming on the ground of the debtor's liability for substantive and legal defects in the object, may request from the debtor – but not more than a guarantor – the fulfilment of the original claim and the corresponding damages.

Article 309. *Delivery for Sale*

Should a debtor deliver to a creditor goods or some other right to sell them and satisfy the claim out of the proceeds of sale, handing over the excess to the debtor, the obligation shall be terminated only after the creditor has collected the necessary amount from the proceeds of sale.

Article 310. *Partial Fulfilment*

(1) A creditor shall not be bound to accept partial fulfilment, unless the nature of obligation demands otherwise.

(2) A creditor shall, however, be bound to accept partial fulfilment of a monetary obligation, unless having a particular interest to refuse it.

Article 311. *Obligation to Deliver Objects Specified by Kind*

(1) Should objects be specified only according to their kind, the debtor shall be bound to deliver objects of average quality.

(2) However, should the purpose of the objects be known to him, he shall be bound to deliver objects of corresponding quality.

V. MAKING ALLOWANCE FOR FULFILMENT

Article 312. *Sequence of Making Allowance*

(1) Should several obligations of the same kind exist between the same parties and what is fulfilled by the debtor fail to satisfy the entire claim, should there be no agreement between the creditor and the debtor, the allowance shall be made in an order determined by the debtor, at the moment of fulfilment at the latest.

(2) Should there be no statement by the debtor on making allowance, the obligation shall be settled in the order of their becoming due (for fulfilment).

(3) Should several obligations become due at the same time, the first to be settled shall be the ones supplied by weakest guarantee, and should all of them be guaranteed in the same way, the first to be settled shall be the ones representing the heaviest burden for the debtor.

(4) Obligations being entirely equal in all the above respects shall be settled in the order of their occurrence, while in case of simultaneous occurrence, what was done in order to effect fulfilment shall be distributed over all obligations proportionally to their amounts.

Article 313. *Making Allowance for Interest and Expenses*

Should a debtor, in addition to the principal owe interest and expenses, allowance shall be made so as to pay first the expenses, then the interest and, finally, the principal.

VI. TIME OF FULFILMENT

Article 314. *When a Time Limit Is not Determined*

When a time limit is not determined, if the purpose of the transaction, the nature of obligation and the remaining circumstances do not require a specific time limit for fulfilment, the creditor may request immediate fulfilment of the obligation, while the debtor, on his part, may request from the creditor an immediate acceptance of fulfilment.

Article 315. *Fulfilment before Time Limit*

(1) Should a time limit be stipulated solely in the interest of the debtor, he shall be entitled to fulfil the obligation even prior to the expiry of the time limit stipulated, but shall be bound to notify the creditor accordingly, while taking care that fulfilment be not effected in bad time.

(2) In other cases, should a debtor offer fulfilment before the time limit prescribed, the creditor may refuse the fulfilment, but may also accept it while retaining his right to claim damages, after promptly notifying the debtor thereof.

Article 316. *Right of Creditor to Request Fulfilment before Time Limit*

A creditor shall be entitled to request fulfilment before the time limit should the debtor fail to supply him with a guarantee promised, or should he, at his request, fail to complete a guarantee reduced without his fault, or should the time limit be stipulated solely in his interest.

Article 317. *When Determining a Time Limit Is Left to One Party*

Should determining a fulfilment time limit be left to the creditor or to the debtor, the other party, should the authorized person fail to determine the time limit even after a corresponding warning, may address the court to determine an adequate fulfilment time limit.

Article 318. *Monetary Obligation*

(1) Should payment be effected through a bank or other organisation keeping the creditor's account, the debt shall be considered settled unless contracting parties determine otherwise, if the bank or organisation keeping the account has received remittance in favour of the creditor, or an order from the debtor's bank or organisation, to transfer the amount designated in the order to the creditor's account.

(2) Should payment by mail be stipulated, the parties shall be held to have agreed that payment of the amount due to the post-office shall mean the meeting of the debtor's obligation to the creditor, while should this manner of payment not be stipulated the debt shall be settled when the remittance has reached the creditor.

(3) Should particular regulations or contract provide payment by postal money order to a specific account, the parties shall be considered to have agreed that payment is effected when the debtor pays the amount due through money order to the designated account.

VII. PLACE OF FULFILMENT

Article 319. *General Rules*

(1) A debtor shall be bound to fulfill the obligation and the creditor to accept the fulfilment at a place determined by the legal transaction or by law.

(2) Should the place of fulfilment not be determined, and should it be impossible to determine it according to the purpose of transaction, the nature of obligation or other circumstances, the fulfilment of obligation shall be effected at the debtor's seat of business²⁰ or his domicile at the time of origination of obligation, and should there be no domicile, at his residence.

(3) However, in the case of a debtor being a corporate body with several branches in various places, the seat of business of a branch obliged to effect the acts necessary to fulfill the obligation shall be considered as the place of fulfilment if the creditor was aware of these circumstances when negotiating the contract, or should have been aware of them.

Article 320. *Place of Fulfilment of Monetary Obligation*

(1) A monetary obligation shall be fulfilled at creditor's seat of business or his domicile, and should there be no such domicile, of his residence.

(2) Should payment be effected by a transfer order, a monetary obligation shall be discharged at the registered office of the organisation keeping account of the creditor's monetary means.

(3) If a creditor has changed the place of his business seat, or his domicile at the time of creation of the obligation, so that higher costs relating to fulfilment resulted, such increase shall be to the charge of the creditor.

VIII. RECEIPT

Article 321. *Presumption Relating to Receipt*

(1) Whoever fulfills an obligation entirely or partially shall be entitled to request that the creditor issues him a receipt at his own expense.

(2) A debtor paying his debt through a bank or a post-office, may request the creditor to issue to him a receipt only after having a specially justified reason.

²⁰ I.e. registered office or business premises.

(3) Should a receipt be issued stating that the principal is entirely paid off, it shall be presumed that interest, court and other expenses, if any, have also been paid.

(4) Likewise, should a debtor of periodical payments, such as rent and other claims accounted for from time to time, like ones resulting from the use of electric power or water, or use of telephone, possess a receipt confirming his payment of a later claim, it shall be presumed that he has also paid out the ones previously due.

Article 322. Refusal to Issue a Receipt

Should a creditor refuse to issue a receipt, the debtor may deposit with the court the subject of his obligation.

IX. RESTORING A BOND

Article 323.

(1) After entirely fulfilling his obligation, a debtor may, in addition to a receipt, seek that the creditor restores the relevant bond to him.

(2) Should the creditor be unable to restore the bond, the debtor shall be entitled to demand that the creditor issue to him an officially certified document stating that the obligation has been terminated.

(3) Should the bond be restored to the debtor, the obligation shall be considered completely fulfilled.

(4) A debtor fulfilling an obligation only partially shall be entitled to request such fulfilment be inscribed on the face of the bond.

Subsection 2.

D E L A Y

I. DEBTOR'S DELAY

Article 324. When a Debtor Is Late with Fulfilment

(1) A debtor shall be late if he fails to fulfill the obligation within a time limit specified for fulfilment.

(2) Should the fulfilment time limit be not specified, the debtor shall be late if requested to fulfill the obligation by the creditor orally or in written, or by means of an out-of-court warning, or by initiating proceedings with the aim of achieving fulfilment of the obligation.

II. CREDITOR'S DELAY

Article 325. *When a Creditor Is Late*

(1) A creditor shall be late if he refuses without justified ground to accept the fulfilment, or if he prevents fulfilment through his conduct.

(2) A creditor shall also be late if being ready to accept fulfilment of the debtor's simultaneous obligation, he fails to offer fulfilment of his due obligation.

(3) A creditor shall not be late if he proves at the time of offering fulfilment, or at the time determined for fulfilment, that the debtor was unable to fulfill his obligation.

Article 326. *Effects of Creditor's Delay*

(1) A creditor's delay shall exonerate the debtor from delay, so that the risk of accidental loss of property or of its damage shall pass to the creditor.

(2) Interest shall stop running from the day of the creditor's delay.

(3) A late creditor shall be liable to redress the debtor for loss caused due to his delay, and to cover expenses of continued custody of the property.

Subsection 3.

DEPOSITING AND SALE OF THE OBJECT OWED

Article 327. *Depositing at the Court*

(1) Should the creditor be late in fulfilment, or unknown, or should it be uncertain who or where the creditor is or whether the creditor is without business capacity and without a representative, the debtor may deposit the object owed at the court for the creditor.

(2) The same right shall pertain to third persons having a legal interest in the fulfilment of the obligation.

(3) A debtor shall be bound to notify the creditor on the effected deposit, should he be aware of him and of his domicile.

Article 328. *A Court Competent for Depositing*

(1) A deposit shall be made at the court having jurisdiction for the place of fulfilment, unless economical reasons or the nature of the transaction require a deposit to be made at the place where the object is located.

(2) Any other court having the jurisdiction must accept the object in deposit, while the debtor shall be bound to redress the creditor for eventual loss sustained due to depositing at another court.

Article 329. *Deposit for Custody to Other Person*

(1) Should the subject of obligation be an object (of property) to be left for custody at the court, the debtor may request that the court designate a person to whom he shall leave the object for custody, at the expense and to the account of the creditor.

(2) In case of an obligation arising from contract in the sphere of economy, delivering such object to a public warehouse for custody and to the account of creditor, shall produce the effect of depositing at the court.

(3) A debtor shall be bound to notify the creditor on effected delivery for custody.

Article 330. *Taking Back a Deposited Object*

(1) A debtor may take back a deposited object.

(2) A debtor shall notify the creditor on taking back the object.

(3) The right of a debtor to take back the deposited object shall be terminated if the debtor renounces such right at court, if the creditor declares his acceptance of the object, or if established by a final decision that the deposit has met the conditions of due fulfilment.

Article 331. *Effect of Deposit*

(1) By depositing the object owed, the debtor shall be relieved from obligation at the moment of deposit.

(2) The fact of the debtor's delay in fulfilment shall no more be relevant, and his delay shall be terminated.

(3) The risk of accidental loss or damage shall pass to the creditor from the moment of depositing the object.

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

(5) Should the debtor take back the object deposited, it shall be held that there was no deposit while his joint debtors and guarantors shall remain liable.

Article 332. *Depositing Expenses*

The expenses of a valid and unrevoked deposit shall be borne by the creditor, should they exceed the expenses of fulfilment which fall on the debtor.

Article 333. *Sale in Place of Depositing an Object*

(1) Should an object be unfit for custody, or should its keeping and maintenance require expenses not commensurate

to its value, the debtor may sell it at public sale at the place designated for fulfilment, or at some other place, should this be in the interest of the creditor, while the amount obtained, after deducting sale expenses, shall be deposited by him at the court of that place.

(2) Should the object have a current price, or should its value be small in comparison to the public sale expenses, the debtor may sell it privately.

(3) Should the object be perishable, the debtor shall sell it without delay and in the most appropriate way.

(4) In any event the debtor shall notify the creditor of the sale intended whenever possible and, after the sale is effected, of the price obtained and of its deposit at court.

Article 334. *Delivering the Object to Creditor*

The court shall deliver the object deposited to the creditor under conditions set forth by the debtor.

Article 335. *Sale to Cover Custody Expenses*

(1) After failing to pay for custody expenses within a reasonable time limit, at the request of the custodian, the court shall order that the object be sold, while determining also the manner of such sale.

(2) The amount obtained by sale shall cover sale and custody expenses, while the rest shall be deposited at the court for the creditor.

Section 3.

OTHER WAYS OF TERMINATION OF OBLIGATIONS

Subsection 1.

OFFSETTING (COMPENSATION)

Article 336. *General Conditions*

A debtor may offset the claim by a creditor against him with his claim against the creditor, should both claims be of a monetary nature, or be other exchangeable objects of the same kind and quality, should both claims be due.

Article 337. *Statement of Offsetting*

(1) There shall be no offsetting as soon as conditions for it are materialized; instead, one party must declare to the other his intention to claim offset.²¹

(2) When the offset is claimed, offsetting shall be considered to have taken place at the moment of materialisation of the relevant conditions.

Article 338. *Lack of Reciprocity*

(1) A debtor shall not offset what is owed to the creditor against what is owed by the creditor to his guarantor.

(2) However, the guarantor may offset the debtor's obligation to the creditor against the debtor's claim against the creditor.

(3) If a party has given his own object as a pledge securing another person's obligation, he may request from the creditor the restitution of the object pledged when conditions for the termination of such obligation by offset materialize, or if the creditor has missed the offsetting through his own fault.

Article 239. *An Expired Claim*

(1) A debt may be offset against an expired claim only if such claim has not expired at the moment when conditions for the offsetting materialized.

(2) Should conditions for offsetting materialize after one of the claims has expired, the offsetting shall not take place if the debtor of the expired claim has raised the objection of expiration due to statute of limitations.

Article 340. *Offset Against Assigned Claim*

(1) A debtor of an assigned claim may claim offset regarding the recipient against those of his claims which, until the notification of assignment, he could have offset regarding the assignor.

(2) He may also offset with him those of his claims against the assignor which he had acquired prior to notification of assignment whose fulfilment was not due at the moment of his being notified of the assignment, but only should the corresponding time limit fall before the time limit for fulfilment of the assigned claim, or co-incide with it.

(3) A debtor expressing his firm intention to the recipient to accept the assignment shall not be able to offset any of his claims with him against the assignor.

(4) Should the assigned claim be entered in the books of title, the debtor may effect the offset regarding the recipient

²¹ I.e. to counterclaim.

only should his claim be entered together with the assigned claim, or should the recipient be notified accordingly about such claim at the time of the assignment.

Article 341. *Ban on Offsetting*

There shall be no termination by way of offset of:

- (i) a claim impossible to seize;
- (ii) a claim relating to an object or to a value of the object delivered to the debtor for custody or for loan, or taken unlawfully by the debtor, or kept unlawfully by him;
- (iii) a claim occurring through wilful misconduct;²²
- (iv) a claim for damages for damage to health or causing death;
- (v) a claim arising from statutory duty or alimony.

Article 342. *Ban on Other Party's Claim*

A debtor shall effect no offset should his claim become due only after a third person has imposed a ban on the creditor's claim against him.

Article 343. *Taking into Account by Way of Offset*

Should several obligations exist between two persons which may be terminated by way of offset, the offset shall be effected under the rules otherwise applicable for taking into account in the matter of fulfilment.

Subsection 2.

REMISSION OF DEBT

Article 344. *Agreement*

(1) An obligation shall be terminated if the creditor declares to the debtor that he is not going to request its fulfilment, and if the debtor agrees accordingly.

(2) The validity of such agreement shall not depend on being negotiated in the form of negotiations for the transaction giving rise to the obligation.

Article 345. *Renouncing the Means of Guarantee*

Restituting a pledge and renouncing other means of guarantee of fulfilment of obligation shall not amount to the creditor's renouncing the right to demand its fulfilment.

²² Intentional tort.

Article 346. *Remission of Debt of a Guarantor*

(1) Remission of a debt of a guarantor shall not exempt the principal debtor, while remission of debt to the principal debtor shall exempt the guarantor.

(2) In case of several guarantors, after the creditor's exempting one of them, the others shall remain obligated, but their obligations shall decrease by the amount of the exempted guarantor's part.

Article 347. *General Remission of Debts*

A general remission of debts shall mean termination of all the creditor's claims against the debtor, except ones unknown to creditor at the moment of effecting remission.

Subsection 3.

SUBSTITUTION (INNOVATION)

Article 348. *Conditions of Substitution*

(1) An obligation shall be terminated if a creditor and a debtor agree to substitute the existing obligation by a new one, and should the new obligation have a different subject or a different legal ground.

(2) The agreement between the creditor and the debtor by which a provision concerning time limit, place or way of fulfilment is added or substituted, a subsequent agreement on interest, on liquidated damages, on guaranteeing fulfilment, or concerning any other supplementary provision, or agreement on issuing a new document of debt, shall not be considered as substitution (innovation).

(3) Unless otherwise stipulated, drawing a bill of exchange or cheque in consequence of an earlier obligation shall not be considered as substitution (innovation).

Article 349. *Intent to Effect Substitution*

There shall be no presumption of substitution should the parties fail to express their intent to terminate an existing obligation after creating a new one, so that the earlier obligation shall not come to an end and shall continue to exist alongside the new one.

Article 350. *Effect of Substitution*

(1) By contract of substitution (innovation) a previous obligation shall come to an end, while the new one shall come into being.

(2) Together with the previous obligation, a pledge and a guarantee, shall also come to an end, unless something else has been stipulated with the pledger or the guarantor.

(3) The same shall apply to other accessory rights related to previous obligations.

Article 351. *Defect in Previous Obligation*

(1) Substitution shall have no effect if a previous obligation was invalid or already terminated.

(2) Should the previous obligation be only annullable, the substitution shall be valid should the debtor be aware of the defects in the previous obligation.

Article 352. *Effect of Nullity*

Should a contract of substitution be nullified, it shall be held that there was no substitution at all, and that the previous obligation did not come to an end.

Subsection 4.

INTEGRATION (MERGER)

Article 353.

(1) An obligation shall be terminated by integration (merger) if the same person becomes both creditor and debtor.

(2) Should a guarantor become a creditor, the obligation of the principal debtor shall not come to an end.

(3) An obligation entered in the books of titles shall come to an end by integration only after entering the corresponding cancellation.

Subsection 5.

IMPOSSIBILITY OF FULFILMENT

Article 354. *Termination of Obligation Due to Impossibility of Fulfilment*

(1) An obligation shall come to an end should its fulfilment be impossible due to circumstances for which the debtor is not to blame.

(2) A debtor shall be expected to prove the existence of the circumstances exempting him from liability.

Article 355. *If Objects Specified by Kind are the Subject of Obligation*

(1) Should subject of obligation be objects (of property) specified by kind, the obligation shall not come to an end even should all of such objects, possessed by the debtor, be lost due to circumstances for which he is not to blame.

(2) However, should the subject of obligation relate to objects specified by kind which have to be taken out of a specific mass of such objects, the obligation shall come to an end should the entire mass be lost.

Article 356. *Assigning a Right against a Third Person Liable for Impossibility of Fulfilment*

A debtor owing a specific object, who is otherwise exempted from his obligation because of impossibility of fulfilment, shall be bound to assign to the creditor the right he would otherwise have against a third person as a result of such impossibility.

Subsection 6.

FLOW OF TIME, NOTICE

Article 357. *Time Limit in a Permanent Debit Relationship*

A permanent²³ debit relationship within a specified period shall come to an end on the expiration of the relevant time limit, unless prescribed by statute or stipulated that the debit relationship shall continue to be effective after the expiration of the time limit for an indefinite period, if not cancelled on time.

Article 358. *Cancellation of a Permanent Debit Relationship*

(1) Should the time limit of a permanent debit relationship be not determined, each party may interrupt it by cancellation.

(2) Such cancellation must be communicated to the other party.

²³ Long-term.

(3) Cancellation may be effected at any time, but not at a bad time.

(4) A permanent debit relationship shall come to an end on the expiration of a cancellation time limit specified by contract, and should such time limit not be specified by contract, the relationship shall come to an end on the expiration of the time limit specified by statute or trade practice, or on the expiration of an adequate time limit.

(5) The parties may stipulate that their debit relationship shall come to an end by the fact of communicating the cancellation, unless something else be specified by statute for a specific case.

(6) The creditor shall be entitled to request from the debtor that what is due prior to termination of obligation on the ground of expiration of the time limit or cancellation.

Subsection 7.

D E A T H

Article 359.

In case of death of a debtor or a creditor, the obligation shall come to an end only if created as a result of the personal characteristics of one of the contracting parties or of the personal capacity of the debtor.

Section 4.

UNENFORCEABILITY DUE TO STATUTE OF LIMITATIONS

Subsection 1.

GENERAL PROVISIONS

Article 360. General Rule

(1) A right to request fulfilment of an obligation shall come to an end if time barred by statute of limitations.

(2) Unenforceability due to the statute of limitations shall follow the expiration of the period specified by statute during which the creditor was entitled to request fulfilment of the obligation.

(3) The court shall not consider the fact of an obligation being time barred should the debtor fail to invoke it.

Article 361. *Starting Point of Unenforceability due to Statute of Limitations*

(1) Unenforceability due to the statute of limitations shall begin to run on the first day following the day the creditor was entitled to request fulfilment of the obligation, unless something else be provided by statute for specific cases.

(2) Should an obligation consist of an omission, missing or suffering something, the unenforceability due to statute of limitations shall begin to run on the first day following the day the debtor proceeds contrary to his obligation.

Article 362. *Coming to Effect of Unenforceability due to Statute of Limitations*

Unenforceability due to the statute of limitations shall be effective after the expiration of the last day of the period specified by statute.

Article 363. *Including into Account of Predecessor's Time*

The time of unenforceability due to the statute of limitations shall also include the time which has run in favour of the debtor's predecessors.

Article 364. *No Alteration of Time Limit of Unenforceability due to Statute of Limitations*

(1) A longer or shorter period of unenforceability due to the statute of limitations than the one set forth by statute, shall not be specified by way of legal transaction.

(2) A temporary suspension of running of the unenforceability period shall not be specified by way of legal transaction.

Article 365. *Renouncing Unenforceability due to Statute of Limitations*

A debtor shall not renounce unenforceability prior to the expiration of time set forth for such unenforceability.

Article 366. *Written Acknowledgment and Guarantee of an Obligation Expired due to Statute of Limitations*

(1) Written acknowledgment of an obligation expired due to statute of limitations shall be construed as the renouncing of unenforceability.

(2) Providing security or other kind of guarantee to cover a claim expired due to statute of limitations shall have the same effect.

Article 367. *Effect of Fulfilment of an Obligation Expired due to Statute of Limitations*

After fulfilling an expired obligation, a debtor shall not be entitled to claim restitution, even if he is ignorant of the expiry of the obligation due to the statute of limitations.

Article 368. *Creditor with a Guaranteed Claim*

(1) After the expiration of time provided by the statute of limitations, a creditor with a claim guaranteed by security or mortgage may effect settlement only out of the mortgaged property if in his possession, or when his right has been entered in the books of title.

(2) However, claims expired due to statute of limitations relating to interest and other periodical dues, shall not be settled even out of the mortgaged property.

Article 369. *Accessory Claims*

After the expiration of a principal claim due to the statute of limitations, the accessory claims shall also expire, such as claims relating to interest, yields, expenses, and liquidated damages.

Article 370. *When Rules of Expiration due to Statute of Limitations Shall not Apply*

Rules of expiration due to the statute of limitations shall not apply should a statute specify time limits for issuing court proceedings, or for performing specific act on pain of losing a right.

Subsection 2.

TIME NECESSARY FOR
UNENFORCEABILITY DUE TO
STATUTE OF LIMITATIONS

Article 371. *General Time Limit for Unenforceability due to Statute of Limitations*

Claims shall become unenforceable after a ten year period, unless some other unenforceability time limit be provided by statute.

Article 372. Periodical Claims

(1) Claims relating to periodical levies becoming due once a year or in specified shorter periods (periodical claims), including even accessory periodical claims, such as claiming interest, or the ones by which a corresponding right itself is consumed, such as an alimony claim, shall expire after a three year period by statute of limitations, counting from the date each levy becomes due.

(2) The same shall apply to annuities effected in the form of equal advance installment payments of principal debt and interest, the exception being deferred installment payments and other part payments.

Article 373. Unenforceability of a Right itself due to Statute of Limitations

(1) A right itself being a ground for periodical claims shall expire after a five year period, counting from the date of maturity of the oldest non-fulfilled claim, after which the debtor failed to effect the levy.

(2) If a right being a ground for periodical claims has expired due to the statute of limitations, the creditor shall lose not only his right to claim future periodical levies, but also those becoming due prior to such expiration.

(3) A right to alimony specified by statute shall not expire due to statute of limitations.

Article 374. Mutual Contractual Claims in the Sphere of Sale of Goods and Services

(1) Mutual contractual claims of legal persons (corporate bodies) in the sphere of sale of goods and services, as well as claims relating to reimbursement of expenses made in connection to such contracts, shall expire due to the statute of limitations after a three year period.

(2) The period of such unenforceability shall run separately for each supply of goods and work or service effected.

Article 375. Claiming Rent

A claim for rent, either to be paid periodically or in a lump sum, shall expire due to the statute of limitations after a three year period.

Article 376. Claiming Damages for Loss

(1) A claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor.

(2) In any event, such claim shall expire five years after the occurrence of injury or loss.

(3) A claim for damages for loss caused by violation of a contractual obligation shall expire within the time specified for unenforceability due to the statute of limitations of such obligation.

Article 377. *Claiming Damages for Injury or Loss Caused by a Criminal Offence*

(1) Should loss be caused by a criminal offence, and a longer unenforceability time limit be prescribed for the criminal prosecution, the claim for compensation against the person liable shall expire upon the expiration of the limitation period set forth in the statute of limitations of the criminal prosecution.

(2) A discontinuance of unenforceability of criminal prosecution due to the statute of limitations shall also involve the discontinuance of the limitation period relating to the claim for damages.

(3) The same shall apply when the unenforceability period ceases.

Article 378. *One-Year Limitation Period due to the Statute of Limitations*

(1) The following claims shall expire due to the statute of limitations after one year:

(i) charges for the supply of electricity and heating energy, those for gas, water supply, chimney sweeping services and garbage collection – all effected for households;

(ii) radio and television station charges for the use of radios and television sets;

(iii) post-office, telegraph and telephone office charges for the use of telephones and mail compartments, as well as other claims by these offices collected quarterly or in shorter periods;

(iv) subscriptions to periodicals, counting from the expiration of the period they are ordered for.

(2) The limitation period shall continue to run although supply or services have continued.

Article 379. *Claims Determined by Court or Other Competent Agencies*

(1) All claims determined by a final court decision or decision of other competent agency, or by settlement at court, or at some other competent body, shall expire after a ten year period, including ones which are subjected by statute to a shorter limitation period due to the statute of limitations.

(2) However, all periodical claims resulting from such decisions or settlements, and becoming due in the future, shall expire within the time limit otherwise provided for the expiration of periodical claims due to the statute of limitations.

Article 380. *Time Limits in Case of Insurance Contracts*

(1) Claims of an insurance contractor, or of a third party specified in a life insurance contract, shall expire after five years, while those from remaining insurance contracts – after three years, counting from the first day following the calendar year of the origination of the claim.

(2) Should the interested person be successful in proving that until the day specified in the preceding paragraph he was not aware of the occurrence of the insured event, the expiration period shall begin to run from the day of his becoming aware, while in any event the claim shall expire in case of life insurance after ten years, and in case of the remaining insurance contracts after five years, beginning with the day specified in the preceding paragraph.

(3) Claims of an insurer on the ground of an insurance contract shall expire due to the statute of limitations after three years.

(4) Should in the event of third party liability insurance a person sustaining damage demand compensation from the insured, or should he obtain it from him, the expiration period for the insured person's claim against the insurer shall begin to run on the day the person sustaining damage requested compensation through the court from the insured, or on the day of his being compensated by the insured.

(5) A direct demand by a third party sustaining injury or loss from the insurer shall expire due to the statute of limitations after a period otherwise applicable to such expiration of his claim against the insured person liable for damage.

(6) The limitation period of the insurer's claim against the third party liable for the occurrence of the insured event, shall begin to run at the time otherwise applicable to the limitation period for the claims of the insured against such person, and shall be completed within the same time limit.

Subsection 3.

CEASING OF
UNENFORCEABILITY
PERIOD

Article 381. *Claims between Particular Persons*

The period of unenforceability due to statute of limitations shall not run:

- (i) between spouses;
- (ii) between parents and children during the validity of parental right;
- (iii) between a ward and his guardian, and/or a guardianship organisation in the course of the guardianship relationship, and until relevant accounts are settled;
- (iv) between two cohabitantes during the course of such cohabitation.

Article 382. *Claims of Particular Persons*

The limitation period due to statute of limitations shall not run:

- (i) during mobilization, in case of imminent danger of war, or war – relating to claims of persons engaged in the military;
- (ii) concerning claims of persons employed in another person's household, against the employer or members of his family living with him in the same household – in the course of such employment.

Article 383. *Insurmountable Obstacles*

The limitation period shall not run for the entire time of creditor's inability to institute legal proceedings demanding the fulfilment of obligation due to insurmountable obstacles.

Article 384. *Effect of the Cause of Ceasing of Unenforceability Period*

(1) Should the limitation period be blocked due to a cause specified by statute, it shall begin to run after such cause has come to an end.

(2) Should the limitation period begin to run before the occurrence of cause blocking its further course, it shall begin to run again after such cause has come to an end, while the time expiring prior to ceasing shall be accounted for in the expiration period provided by statute.

Article 385. *Claims against Persons without Business Capacity and Their Claims*

(1) The limitation period shall also run against a minor and other person without business capacity, regardless of whether they have a legal representative.

(2) However, time barred claims of minors having no representative and other unrepresented persons without business capacity, shall not take place until the expiration of a two year period from their regaining business capacity or obtaining a representative.

(3) Should a period of time shorter than two years for the expiration of a claim be specified, while the creditor is a minor without a representative or other person without business capacity and without a representative, the limitation period relating to such claims shall begin to run after the creditor has gained capacity to engage in business, or after obtaining a representative.

Article 386. *Claim against a Person Serving his Military Term*

Unenforceability due to statute of limitations of a claim against a person serving his military term, or being on manoeuvres, shall not take place until the expiration of a three month period after completing the military term or after the end of manoeuvres.

Subsection 4.

INTERRUPTION OF
LIMITATION PERIOD

Article 387. *Acknowledging a Debt*

(1) Running of the limitation period shall be interrupted when a debtor acknowledges the debt.

(2) The acknowledgment of debt may be effected not only by a declaration to the creditor, but also in an indirect way, such as by an installment payment, payment of interest due, or providing security.

Article 388. *Instituting Legal Proceedings*

The limitation period shall be interrupted by instituting legal proceedings and by other motion of a creditor against a debtor at court or other competent agency, with the aim of confirming, guaranteeing or realizing the claim.

Article 389. *Desisting, Renouncing or Rejecting Legal Proceedings*

(1) Should a creditor desist from legal proceedings or other motion undertaken by him, it shall be held that there was no interruption of the limitation period by instituting legal proceedings or undertaking other motion against the debtor at the court or other competent agency, with the aim of confirming, guaranteeing or realizing the claim.

(2) It shall also be held that there was no interruption should the creditor's action or claim be rejected or renounced, or should an obtained or undertaken measure of execution or guarantee be cancelled.

Article 390. *Renouncing an Action on the Ground of Lack of Jurisdiction*

(1) Should an action against a debtor be renounced on the ground of lack of jurisdiction of the court, or by some other reason not related to the substance of the matter, if the creditor files another action within a three month period after the final decision renouncing the action, it shall be held that the limitation period was interrupted by the first action.

(2) The same shall also apply to invoking protection and claiming offset of amounts due in a dispute, as well as in the event of the court or other agency directing the debtor to effect his claim in the litigation proceedings.

Article 391. *Giving Notice to a Debtor*

The limitation period shall not be interrupted should the creditor merely give the debtor notice in written or oral form to fulfill the obligation.

Article 392. *Time Limit of Unenforceability due to Statute of Limitations in Case of Interruption*

(1) After the interruption the limitation period shall start to run anew, while the time expired prior to interruption shall not be accounted for into the statutory limitation period.

(2) If the limitation period is interrupted by debtor's acknowledgment, it shall start to run anew from the date of such acknowledgment.

(3) Should the limitation period be interrupted by instituting legal proceedings or invoking protection, or claiming setoff of claims in litigation, or by filing the claim within some other proceedings, the limitation period shall begin to run anew from the day of closing the litigation in a regular or some other way.

(4) Should the limitation period be interrupted by filing a claim in bankruptcy proceedings, the expiration period

shall begin to run anew from the day of closing of such proceedings.

(5) The same shall also apply should the limitation period be interrupted by a request for compulsory execution or for obtaining a guarantee.

(6) The limitation period beginning to run anew after the interruption shall be completed on the expiration of the limitation period which was interrupted.

Article 393. *Unenforceability due to Statute of Limitations in Case of Substitution (Innovation)*

Should the interruption take place by the debtor's acknowledgment of the debt and the creditor and the debtor agree to alter the ground or the subject of obligation, a new claim shall expire within the statutory limitation period.

Chapter V.

VARIOUS KINDS OF OBLIGATIONS

Section 1.

MONETARY OBLIGATIONS

Subsection 1.

GENERAL PROVISIONS

Article 394. *Principle of Monetary Nominalism*

Should the subject of obligation be an amount of money, the debtor shall be obliged to pay out the number of monetary units indicated on the face of the obligation, unless otherwise provided by statute.

Article 395. *Currency of Obligation*

Should monetary obligation be made out in a foreign currency or in gold, its fulfilment may be demanded in domestic currency, according to the rate of exchange valid at the moment of fulfilment of the obligation.

Article 396.

Repealed by the 1993 Amendments to the present Law.

Article 397. *Sliding Scale*

In contracts by which one party assumes an obligation to manufacture and deliver specific goods, it may be stipulated that the price will depend on the cost of material and labour, as well as on other elements influencing the production costs at a definite time and in a specific market.

Article 398. *Payment Ahead of Time*

(1) A debtor of a monetary obligation may fulfil it ahead of time.

(2) A contractual clause by which a debtor has waived such right shall be null and void.

(3) Should a monetary obligation be fulfilled ahead of time, the debtor shall be entitled to deduct from the amount of debt interest covering a period between the day of payment and the day of maturity of obligation, only after being authorized accordingly by the contract or on the ground of business usage.

Subsection 2.

STIPULATED INTEREST

Article 399. *Rate of Stipulated Interest*

(1) The rate of interest stipulated between individuals shall not be higher than the standard deposit savings interest rate in the place of fulfilment.

(2) Provisions of a particular law shall apply to the highest interest rates stipulated between corporate bodies.

(3) Should interest be stipulated but without determining either its rate or maturity time, the interest rate as between individuals shall be the standard deposit savings rate in the place of fulfilment, while in the case of corporate bodies, the rate shall be the one otherwise applied in payments by a bank or other banking organisation or stipulated for such or similar kind of transactions, and it shall become due after the expiration of one year, unless otherwise provided in a particular case.

(4) Should a higher interest than permitted be stipulated, the highest permitted interest rate shall apply.

Article 400. *Compound Interest*

(1) A clause in a contract shall be null and void if it stipulates that, should interest be not paid when due, compound interest shall be charged.

(2) However, it may be possible to stipulate in advance that the interest rate shall increase should the debtor fail to pay the interest on time.

(3) The provisions of the preceding paragraphs shall not apply to credit transactions of banks and other banking organisations.

Article 401.

Repealed by the 1989 Amendments to the present Law.

Article 402. *Interest in Non-Monetary Obligations*

The provisions of the present Law relating to interest stipulated shall apply accordingly to other obligations covering property specified in kind.

Section 2.

MULTI-SUBJECT OBLIGATIONS

Subsection 1.

ALTERNATIVE OBLIGATIONS

Article 403. *Right of Option*

In an obligation with two or several subjects, where a debtor is obliged to deliver only one of them in order to free himself of it, the right of option, unless something else be stipulated, shall pertain to the debtor, so that the obligation shall be terminated when he delivers the subject he has chosen.

Article 404. *Irrevocability and Effect of the Option Exercised*

(1) An option shall be considered exercised if a party entitled to an option notifies the other party of his choice, so that from that moment on the choice may not be altered.

(2) After an option is exercised it shall be considered that the obligation was a simple one from the very beginning, and that its subject was the object elected from the beginning.

Article 405. *Option Period*

(1) A debtor shall be entitled to an option until, in the compulsory execution proceedings, one of the objects owed has been completely or partially delivered to the creditor to his own choice.

(2) Should the option pertain to the creditor and he fails to state his choice within the time limit determined for fulfillment, the debtor may give him notice to make his choice, leaving him an adequate time limit, after whose expiration the right of option shall be transferred to the debtor.

Article 406. *Option Entrusted to Third Party*

Should choice be left to a third party, and such party failed to act accordingly, each party may demand that the choice be made by the court.

Article 407. *Restriction to the Remaining Subject*

Should one of the subjects of obligation become impossible to realize due to an event not to be blamed on the parties, the obligation shall be restricted to the remaining subject.

Article 408. *Restriction in Case of Liability of One Party*

(1) Should one of the subjects of obligation become impossible to realize due to an event for which the debtor is to blame, the obligation shall be restricted to the remaining subject should the right of option pertain to him, and should the right of option pertain to the creditor, he may demand, at his option, the remaining subject or damages.

(2) Should one of the subjects of obligation become impossible to realized due to an event for which the creditor is to blame, the debtor's obligation shall be terminated; but should he be entitled to an option, he may demand damages and may fulfill his obligation through the remaining subject, while should the right of option belong to the creditor, he may provide compensation and request the remaining subject.

Subsection 2.

OPTIONAL OBLIGATION AND
OPTIONAL CLAIMS

I. OPTIONAL OBLIGATIONS

Article 409. *Authority of Debtor in an Optional Obligation*

A debtor having an obligation containing a single subject, but free to fulfill his obligation by supplying some other specific subject, may exercise this right only until the creditor, in proceedings for specific performance, acquire completely or partially the subject of obligation.

Article 410. Authority of Creditor in an Optional Obligation

(1) A creditor in an optional obligation may claim from the debtor only the subject of obligation, and not any other subject by which the debtor may, should he so wish, also fulfill his obligation.

(2) Should the subject of obligation become impossible to realize due to an event for which the debtor is not to blame, the creditor may claim only damages, but the debtor may free himself from his obligation by supplying the subject he is otherwise authorized to supply instead of the subject owed.

II. OPTIONAL CLAIMS

Article 411.

(1) Should a contract or a statute provide that the creditor may, instead of the subject owed, claim from the debtor some other specific subject, the debtor shall deliver to him such subject should the creditor so require.

(2) In remaining matters, such optional claims shall be subjected to corresponding rules on optional and alternative obligations, coordinated with the intent of contracting parties and the circumstances of the specific transaction.

Section 3.

OBLIGATIONS WITH SEVERAL DEBTORS OR CREDITORS

Subsection 1.

DIVISIBLE OBLIGATIONS

Article 412. Dividing an Obligation and a Claim

(1) An obligation shall be divisible if that what is owed can be divided and fulfilled into parts having the same features as the entire subject, and should what is divided lose nothing in value; otherwise, the obligation shall be indivisible.

(2) Should several debtors exist in a divisible obligation, such obligation shall be divided between them in equal shares, unless a different kind of division is determined, and each shall be liable for his share of the obligation.

(3) Should several creditors exist in a divisible obligation, the claim shall be divided between them in equal shares, unless something else is determined, and every creditor may request only his share of the claim.

Article 413. *Presumption of Joint and Several Liability*

Should several debtors exist in a divisible obligation ensuing out of economic contract, they shall be jointly and severally liable to the creditor, unless the contracting parties have explicitly eliminated joint and several liability.

Subsection 2.

JOINT AND SEVERAL
OBLIGATIONS

I. JOINT AND SEVERAL DEBTORS

Article 414. *Substance of the Joint and Several Liability*

(1) Each debtor of a joint and several obligation shall be liable to the creditor for the entire obligation and the creditor may claim its fulfilment from any of them until its complete fulfilment; but should one of the debtors fulfill the obligation, it shall cease to exist and all debtors shall be exempted.

(2) Out of several jointly and severally liable debtors, each may owe under a different time limit for fulfilment, or under different terms or general exceptions.

Article 415. *Debt Setoff*

(1) Each joint and several debtor may invoke debt set-off effected by his joint debtor.

(2) A joint and several debtor may effect debt setoff relating to a claim of his joint debtor against the creditor's claim, but only of an amount equal to the share of debt of such joint debtor within the joint and several obligation.

Article 416. *Dismissing a Debt*

(1) Dismissing a debt made in agreement with one of the debtors shall also exempt the other debtors from liability.

(2) However, should the dismissal be intended to exempt from liability only the debtor participating in the matter, the joint and several obligation shall be reduced for the shared amount according to mutual relations between debtors, to such

debtor, while the remaining debtors shall be jointly and severally liable for the rest of the obligation.

Article 417. *Substitution (Innovation)*

(1) Substitution effected with one of the joint and several debtors shall also exempt the remaining debtors.

(2) However, should the creditor and the debtor restrict the substitution to the share of obligation of such debtor, the obligation of the others shall not be terminated and shall only be reduced by the value of such share.

Article 418. *Settlement*²⁴

Settlement agreed upon by one of the joint and several debtors with the creditor shall have no effect for the remaining debtors, but they shall be entitled to accept such settlement, provided that it be not limited to the debtor it has been agreed with.

Article 419. *Integration*²⁵

Should the capacity of a creditor and that of a debtor of the same joint and several obligation merge into one person, the obligation of the remaining debtors shall be reduced by the amount of his share.

Article 420. *Creditor's Delay*

Should a creditor be late regarding one of the joint and several debtors, he shall also be late as to the remaining solidary debtors.

Article 421. *Delay of One Debtor and Acknowledging a Debt*

(1) Delay by one joint and several debtor shall have no effect on the remaining debtors.

(2) The same shall apply to acknowledging a debt declared by one of the joint and several debtors.

Article 422. *Ceasing and Interruption of Unenforceability due to Statute of Limitations and Renouncing*

(1) Should a limitation period stop running or should it be interrupted regarding one debtor, it shall continue to run as to the remaining joint and several debtors, and it may be completed; however, a debtor for whom the obligation has not ex-

²⁴ Compounding with creditors.

²⁵ Merger.

pired and who has to fulfil it, shall be entitled to claim from the rest of the debtors to whom the obligation became time barred, the recovery of value of their respective shares in the obligation.

(2) Renouncing a completed limitation period shall have no effect on the rest of the debtors.

Article 423. *Right to Recovery of a Person Fulfilling the Obligation*

(1) A debtor fulfilling his obligation shall be entitled to claim against each joint debtor recovery of the part of obligation being at his charge.

(2) The fact that the creditor has exempted one of the debtors, or that he has reduced his debt, shall have no effect on the matter.

(3) A share being at the charge of a debtor unable to provide recovery, shall be distributed commensurately to all the debtors.

Article 424. *Division in Equal Shares and Exception*

(1) Unless something else be stipulated, or otherwise result from legal relations between participants in a transaction, the shares of all debtors shall be equal.

(2) However, should a joint and several obligation be stipulated solely in the interest of one debtor, he shall be bound to recover the entire amount of obligation for a joint debtor who has satisfied the creditor.

II. JOINT AND SEVERAL CREDITORS

Article 425. *No Presumption of Joint and Several Liability*

Should there be several persons on the creditor's side, they shall be jointly and severally liable only if this has been stipulated (by contract) or specified by law.

Article 426. *Substance of Joint and Several Liability*

(1) Each joint and several creditor shall be entitled to claim from a debtor fulfilment of the entire obligation, and if one of them is satisfied, the obligation shall be terminated regarding the rest of the creditors as well.

(2) A debtor may fulfill an obligation to a creditor of his own choice, but only when a creditor has requested fulfilment.

Article 427. Debt Setoff

(1) A debtor may set off his obligation debt against his claim against a creditor who demands from him fulfilment of the obligation.

(2) Debt setoff of his claim against another creditor may be effected by the debtor only up to the amount of his share of the joint and several claim belonging to that creditor.

Article 428. Dismissing a Debt and Substitution (Innovation)

By dismissing a debt and by substitution between a debtor and one of the creditors, the joint and several obligation shall be reduced by the amount of that share of the claim of the creditor.

Article 429. Settlement

Settlement stipulated by one of the joint and several creditors with a debtor shall have no effect on the rest of the creditors, but they shall be entitled to accept such settlement, unless it relates only to a share of the creditor it has been agreed with.

Article 430. Integration

Should the capacity of a joint and several creditor merge in one person with the capacity of debtor, each of the remaining joint creditors shall be entitled to demand from him only his part of the claim.

Article 431. Delay

(1) Should a debtor be late to one joint and several creditor, he shall be late to the rest of the creditors as well.

(2) Delay of one joint and several creditor shall also affect the rest of the creditors.

Article 432. Acknowledgment of Debt

Acknowledgment of a debt effected to one of the creditors shall be of use to all creditors.

Article 433. Unenforceability due to Statute of Limitations

(1) Should one of the creditors interrupt the limitation period, or should such period fail to run against him, this fact shall not be of use to the rest of the creditors, so that the limitation period shall continue to run against them.

(2) Renouncing unenforceability due to limitation to one creditor shall be of use to the rest of the creditors as well.

Article 434. *Relations between Creditors after Fulfilment*

(1) Each joint and several creditor shall be entitled to demand the delivery of his own share from a creditor accepting fulfilment from the debtor.

(2) Unless something else result from the relations between the creditors, each joint creditor's share shall be equal.

Subsection 3.

INDIVISIBLE OBLIGATIONS

Article 435.

(1) Regulations concerning joint obligations shall apply accordingly to indivisible obligations where there are several debtors.

(2) Should there be several creditors in an indivisible obligation, while no stipulated or statutory joint and several liability exists between them, one of the creditors may demand that the debtor fulfils the obligation to him, only after being empowered by the rest of the creditors to accept the fulfilment; otherwise, each creditor may demand that the debtor fulfils the obligation to all creditors taken together, or to make a corresponding deposit at the court.

Chapter VI.

SUBSTITUTION OF CREDITOR OR DEBTOR

Section 1.

**YIELDING OF CLAIMS BY CONTRACT
(ASSIGNMENT OR CESSION)**

Subsection 1.

GENERAL PROVISIONS

Article 436. *Which Claims May Be Ceded by Contract*

(1) A creditor may assign (cede) his claim by a contract entered into with a third person, except a claim whose transfer is not permitted by statute, or which is restricted to creditor's person, or whose very nature is incompatible with transferring to another.

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

Article 437. Accessory Rights

(1) Accessory rights shall pass with the claim to the recipient, such as the right of preferential payment, mortgage, security, rights on the ground of contract with a guarantor, rights to interest, to liquidate damages, and the like.

(2) However, an assignor (a person effecting cession) may deliver the object pledged to the recipient only should the pledger agree; otherwise, it shall remain with the person effecting assignment, to be kept by him for the account of the recipient.

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

Article 438. Notifying a Debtor

(1) Consent of debtor shall not be necessary for the assignment of a claim, but the assignor (person effecting cession) shall be bound to notify the debtor of the assignment (cession) effected.

(2) Fulfilment effected to the assignor (person effecting cession) before notification about the assignment (cession) shall be valid and shall exempt the debtor from obligation, but only if he was not aware of the assignment (cession); otherwise, the obligation shall remain valid and he shall be bound to fulfil it to the recipient.

Article 439. Multiple Assignment (Cession)

Should a creditor assign one and the same claim to various persons, the claim shall attach to the recipient being the first notified as such to the debtor by the assignor (person effecting cession) or to the assignee (recipient) who was the first to contact the debtor.

Subsection 2.

RELATIONSHIP BETWEEN A
RECIPIENT AND A DEBTOR

Article 440.

(1) An assignee (recipient) shall have the same rights against a debtor otherwise pertaining to the assignor (person effecting cession) against the debtor before the assignment (cession).

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

Subsection 3.

RELATIONSHIP BETWEEN AN ASSIGNOR (PERSON EFFECTING CESSION) AND AN ASSIGNEE (RECIPIENT)

Article 441. *Presenting a Document on Debt*

(1) An assignor (person effecting cession) shall be bound to present to the assignee (recipient) a debenture bond or some other document on debt, should such be in his possession, as well as other proof on the assigned claim and on accessory rights.

(2) Should the assignor (person effecting cession) transfer to an assignee (recipient) only a part of the claim, he shall be bound to present to him a certified copy of the debenture bond or of some other document proving the existence of the assigned claim.

(3) He shall be bound, on his request, to issue to him a certified acknowledgment of the assignment.

Article 442. *Guaranteeing the Existence of a Claim*

After an assignment is effected by a contract with consideration, the assignor (person effecting cession) shall guarantee the existence of a claim at the moment of effecting the assignment.

Article 443. *Guaranteeing Collectibility*

(1) An assignor (person effecting cession) shall guarantee the collectibility of an assigned claim, should this be stipulated, but only to the amount received from the recipient, as well as the collectibility of the interest, expenses relating to assignment and expenses of proceedings against the debtor.

(2) It shall not be possible to stipulate a higher liability of a person effecting assignment (cession) being in good faith.

Subsection 4.

PARTICULAR CASES OF
ASSIGNMENT (CESSION)
OF CLAIMS

Article 444. *Assignment (Cession) Instead of Fulfillment for Collection*

(1) Should a debtor, instead of fulfilling his obligation, assign to a creditor his claim or a part of it, the debtor's obligation shall be terminated up to the amount of the assigned claim by the fact of entering into contract on assignment.

(2) However, should a debtor assign his claim to his creditor only in order to effect payment, his obligation shall be terminated, or reduced, only after the creditor has collected the assigned claim.

(3) In both cases the recipient shall be bound to hand over to the assignor (person effecting cession) everything collected by him over the amount of his claim to the latter.

(4) In case of assignment for the purpose of collection, the debtor of the assigned claim may fulfill his obligation also to the assignor (person effecting cession), even after he has been notified of the assignment.

Article 445. *Assignment (Cession) for the Purpose of Guarantee*

Should assignment (cession) be effected for the purpose of guaranteeing the assignee's claim against the assignor, the assignee shall be bound to proceed as a good businessman or good head of household, in seeing to the collection of the assigned claim; after the collection and after deducting the amount necessary for settling his own claim against the assignor (person effecting cession), he shall hand over the difference to him.

Section 2.

SUBSTITUTION OF DEBTOR

Subsection 1.

ASSUMPTION OF DEBT

I. GENERAL PROVISIONS

Article 446. *Contract of Assumption of Debt*

(1) An assumption of debt shall be effected if the creditor consents by a contract between a debtor and a person assuming the debt.

(2) Any of the two may notify the creditor on the contract concluded, and the creditor may extend his consent to either of them on the assumption of debt.

(3) It shall be presumed that the creditor has extended his consent after accepting without reservations some kind of fulfilment effected by the person assuming the debt in his own name.

(4) Negotiating partners, as well as each one of them separately, may demand from the creditor to decide, within a specified time limit, about his consent to the assumption of debt, and should the creditor fail to decide, it shall be considered that his consent has not been extended.

(5) A contract of assumption of debt shall have the effect of a contract of assumption of fulfilment for the time of creditor's deciding about his consent to the contract of assumption of debt, as well as should he refuse his consent.

Article 447. *A Case of a Debt Guaranteed by Mortgage*

(1) In the case of real property being under mortgage, should the transferee and the transferor stipulate that the transferee shall assume a debt owed to the mortgage creditor, the mortgage creditor shall be considered to have extended consent to the contract of assumption of debt after not refusing it at the written request by the transferor, within a three month time limit from the day of accepting such request.

(2) The written request specified in the preceding paragraph shall contain notification relating to this consequence, otherwise the request shall not be considered as being sent.

II. EFFECTS OF CONTRACT OF ASSUMPTION OF DEBT

Article 448. *Substitution of Debtor*

(1) A person assuming a debt shall substitute the previous debtor, while such debtor shall be exempted from the obligation.

(2) However, if at the time of creditor's consent to the contract of assumption of debt the person assuming the debt was charged with debts, and the creditor was not aware of it, or had no duty to be aware, the previous debtor shall not be exempted from obligation, while the contract of assumption of debt shall have the effect of a contract of joining a debt.

(3) The same obligation which existed until then between the previous debtor and the creditor shall exist as between a person assuming debt and the creditor.

Article 449. *Accessory Rights*

(1) Accessory rights which existed with the claim until then shall continue, but the guarantees, as well as security, supplied by third parties, shall be terminated should the guarantors and pledgers fail to consent to liability for the new debtor as well.

(2) Unless otherwise stipulated, the person assuming a debt shall not be liable for uncollected interest due until the assumption of debt.

Article 450. *Objections*

(1) A person assuming a debt may raise against a creditor all objections arising from the legal relationship between the previous debtor and the creditor serving as a ground of the debt assumed, as well as objections pertaining to the person assuming debt against the creditor.

(2) A person assuming a debt shall not raise against the creditor objections originating from his legal relationship with the previous debtor, which relationship was the ground for the assumption of debt.

Subsection 2.

JOINING A DEBT

Article 451. *Contract of Joining a Debt*

A contract between a creditor and a third party by which the latter assumes the obligation to the creditor to fulfil his claim against the debtor, shall mean that the third party has joined in the obligation alongside the debtor.

Article 452. *Joining a Debt in Case of Accepting a Totality of Property*

(1) A person to whom the whole or a part of some property of an individual or corporate body is transferred on the ground of contract, shall be liable for debts relating to such property or its part, alongside the former owner, and jointly with him, but only up to the value of its assets.

(2) A contractual clause by which liability specified in the preceding paragraph would be limited or excluded shall have no legal effect as to the creditors.

Subsection 3.

ASSUMPTION
OF FULFILMENT

Article 453.

(1) An assumption of fulfilment shall be effected by a contract between a debtor and a third person, in terms of which the latter assumes the obligation to such debtor to fulfil his obligation to his creditor.

(2) He shall be liable to the debtor after failing in due time to fulfil the obligation to the creditor, so that the latter has requested fulfilment from the debtor.

(3) But he shall not assume the debt in such a way, or shall not join it, so that the creditor shall have no rights whatsoever against him.

PART TWO

CONTRACTS

Chapter VII.

SALE

Section 1.

GENERAL PROVISIONS

Article 454. *Notion*

(1) By a contract of sale a seller shall assume the obligation to transfer to a buyer the right of ownership of the goods sold and to deliver them to him for that purpose, while the buyer shall assume the obligation to pay the price in money and to take over the goods.

(2) A seller of some other right shall assume the obligation to provide a buyer with the right sold, and should effecting of such right require possession, also to deliver it to him.

Article 455. *Form of Sale of Real Property*

A contract of sale of real property must be in written form, otherwise it shall be null and void.

Article 456. *Risk*

(1) The risk of accidental loss or damage to goods until delivery to the buyer shall be born by the seller, and on delivery of the goods the risk shall pass to the buyer.

(2) The risk shall not pass to the buyer if he has repudiated the contract due to a defect in the goods delivered, or if he has requested replacement of the goods.

Article 457. *Passing of Risk in Case of Buyer's Delay*

(1) Should delivery of goods be not effected due to the buyer's delay, risk shall pass to the buyer at the moment he delays performance.

(2) Should goods specified in kind be the subject of contract, the risk shall pass to the buyer who delays performance when the seller has singled out objects obviously intended for delivery, and when he has notified the buyer accordingly.

(3) But should goods specified in kind be of such a nature that the seller can not single out one part of them, it shall suffice that the seller has done everything necessary to enable the buyer to take over the goods and that he has notified the buyer accordingly.

Section 2.

CONSTITUTIVE ELEMENTS OF THE CONTRACT OF SALE

Subsection 1.

O B J E C T

Article 458. General Rule

(1) The subject of a contract must be tradeable (in trade), so that a contract of sale of an object not in trade shall be null and void.

(2) For the sale of objects whose trade is restricted, particular regulations shall apply.

(3) A sale may also relate to a future object.

Article 459. If an Object Be Lost before the Contract

(1) A contract of sale shall have no legal effect should at the moment of its conclusion its object be lost.

(2) Should at the moment of concluding a contract the object be only partially ruined, the buyer may repudiate the contract or he may keep it after reducing the price proportionately.

(3) However, the contract shall remain valid and the buyer shall only be entitled to reduce the price, should the partial ruin of the object fail to hinder the purpose of the contract, or should such usage exist in relation to a particular object.

Article 460. Sale of Somebody Else's Goods

A sale of somebody else's goods shall be binding for a contracting party, but if buyer was not aware or had no duty to be aware of the fact that the goods belonged to another, he may repudiate the contract and demand damages should, due to the above, the purpose of the contract be impossible to be realized.

Article 461. *Sale of a Contested Right*

(1) A contested right may be a subject of a contract of sale.

(2) But a contract shall be null and void by which a practicing lawyer or any other recipient of instructions buys a contested right whose realisation was entrusted to him, or if he negotiates for himself a share in the amount awarded to his principal.

Subsection 2.

P R I C E

Article 462. *If the Price is not Determined*

(1) If the price is not determined by a contract of sale, and if the contract itself lack sufficient elements by which the price could be determined, the contract shall have no legal effect.

(2) If the price is not determined by a commercial contract of sale and should it lack sufficient elements by which the price could be determined, the buyer shall be bound to pay the price otherwise regularly charged by the seller at the time of entering into contract, and should there be no such price, he shall pay a reasonable price.

(3) A price shall be considered reasonable if it is a current price at the time of entering into contract, and should it be impossible to determine, the court shall determine the price in conformity to the circumstances of the case.

Article 463. *Prescribed Price*

Should a higher price be determined than the one prescribed by a competent agency for specific kind of goods, the buyer shall owe only the amount of the prescribed prices, and when he has already paid the price stipulated, he shall become entitled to demand a refund of the difference.

Article 464. *Should Current Price Be Stipulated*

(1) Should current price be stipulated, the buyer shall owe the price as determined by official records in the market at the seller's place of business and at the time of fulfilment being due.

(2) Should no such records exist, the current price shall be determined on the ground of factors by which prices are usually determined according to trade practices.

Article 465. *If the Determination of Price Be Left to Third Person*

Should a third person being entrusted with determining the price refuse of be unable to determine it, and the negotiating partners fail to come to agreement subsequently on determination of price or to repudiate the contract, a reasonable price will be considered to have been stipulated.

Article 466. *If the Determination of Price Be Left to One Negotiating Partner*

A contractual clause by which the determination of price is left entirely to one negotiating partner shall be considered as not agreed at all, so that the buyer in such a case shall owe a price as if no price has been determined.

Section 3.

OBLIGATIONS OF A SELLER

Subsection 1.

DELIVERY OF GOODS

I. GENERALLY ON DELIVERY

Article 467. *Time and Place of Delivery*

(1) A seller shall be bound to deliver the goods to a buyer at a time and in the place as specified by contract.

(2) As a rule, a seller has performed the duty of delivery to the buyer after handing over the goods to him or after delivering a certificate to him by which the goods may be taken over.

Article 468. *Subject of Delivery*

(1) Unless something else be stipulated or unless something else result from the nature of the transaction, the seller shall be bound to deliver the goods to the buyer in working condition, together with corresponding accessories.

(2) Fruits (incomes in kind) and other benefits stemming out of objects shall belong to the buyer from the day of seller's obligation to deliver them to him.

Article 469. *Delivery Being Stipulated within a Certain Period*

Should it be stipulated that delivery of an object shall be effected within a certain period, and if not determined which party shall be entitled to determine the delivery date within the limits of such period, such right shall belong to the seller, unless circumstances of the case indicate that the determination of delivery date has been left to the buyer.

Article 470. *Delivery Date not Determined*

Should the date of delivery of goods to the buyer be not determined, the seller shall be bound to effect delivery within a reasonable time limit after the conclusion of contract, in conformity with the nature of the goods and other circumstances.

Article 471. *Place of Delivery not Determined by Contract*

(1) Should the place of delivery not be determined by the contract, the delivery of the object shall be effected at the place of the seller's domicile at the moment of entering into contract or, should there be no such domicile, at the place of seller's residence, and in case the seller has entered into contract while performing his regular business activity, the delivery place shall be his business address.

(2) However, if negotiating partners were aware at the moment of entering into contract of the location of the goods or of where they had to be manufactured – the delivery shall be effected at such place.

Article 472. *Delivery to a Carrier*

Should it be necessary according to contract to transport the object, and there be no indication in the contract as to the place of fulfilment, the delivery shall be considered effected by handing the object over to the carrier or to a person organizing the forwarding.

Article 473. *Organizing of Transport*

Should the seller be bound to forward the object to the buyer, he must conclude, in a usual way and under usual terms and conditions, contracts necessary for effecting the transport to the designated place.

Article 474. *Expenses*

Sale expenses, as well as those preceding the sale shall be born by the seller, while expenses of carrying away the object and all other expenses after the delivery, shall be born by the buyer, unless something else be stipulated.

II. SIMULTANEOUS DELIVERY OF OBJECT AND PAYMENT OF PRICE

Article 475. *Postponing Delivery until the Payment of Price*

Unless otherwise stipulated or customary, the seller shall not be bound to deliver the object should the buyer fail to pay him the price simultaneously, or should he not be ready to do that simultaneously, but the buyer shall not be obliged to pay the price before being able to inspect the object.

Article 476. *Postponing Delivery in the Case of Transporting the Goods*

(1) Should delivery of the goods be effected by handing them over to a carrier, the seller may postpone the forwarding of the goods until payment of the price, or he may forward them in such a way so as to reserve the right to control them in course of carriage.

(2) After reserving the right to control the goods in the course of carriage, the seller may demand that the goods not be delivered to the buyer at the place of destination until he has not paid the price, while the buyer shall not be bound to pay the price before being able to inspect the goods.

(3) However, should it be provided by contract that payment be effected against corresponding documents, the buyer shall not be entitled to refuse payment of the price after being unable to inspect the object.

Article 477. *Preventing Delivery of the Forwarded Goods*

(1) Should it turn out when the goods are forwarded to the buyer that his material situation raises reasonable doubt as to his ability to pay off the price, the seller may prevent delivery of the goods to the buyer even after the latter is already in possession of the document authorizing him to demand delivery of the goods.

(2) However, the seller shall not prevent delivery should it be demanded by a third person regularly in possession of the document authorizing him to demand delivery of the goods, unless the document contains reservations as to the effect of transfer, or unless the seller is successful in proving that a person in possession of the document, at the time of acquiring it, had acted wilfully to the detriment of the seller.

Subsection 2.

LIABILITY FOR SUBSTANTIVE
DEFECTS

**I. GENERALLY ON SUBSTANTIVE
DEFECTS**

Article 478. *Substantive Defects Being the Responsibility of Seller*

(1) A seller shall be responsible for substantive defects in the goods existing at the moment of transfer of risk to the buyer, regardless of whether he was aware of the fact.

(2) A seller shall also be responsible for those substantive defects which arose after the transfer of risk to the buyer, should they be due to a cause which existed before that.

(3) An insignificant substantive defect shall not be taken into consideration.

Article 479. *When Do Substantive Defects Exist*

A defect shall exist:

(i) should the goods fail to have necessary properties for their regular use or for being marketable;

(ii) should the goods fail to have properties necessary for their specific use being the buyer's reason for acquiring them, which use was known, or should have been known, to the seller;

(iii) should the goods fail to have the properties and characteristics which are explicitly or implicitly stipulated, or prescribed;

(iv) if a seller has delivered goods which are not in conformity with a sample or model, unless the sample or model was presented to him only for information.

Article 480. *Defects outside Seller's Responsibility*

(1) A seller shall not be responsible for defects specified in subparagraphs (i) and (iii) of the preceding article, if they were known to the buyer at the moment of entering into contract or if it was impossible for them to remain unknown to him.

(2) Defects shall be considered not to have remained unknown to a buyer if they could have been easily noticed by usual inspection of the goods by a diligent person as a buyer, having average knowledge and experience characteristic for a person of the same professional and trade line.

(3) However, a seller shall be responsible for defects, which could have been noticed easily by the buyer, if the former declared that the goods were free of all defects or that they had specific properties or characteristics.

Article 481. *Inspection of Goods and Visible Defects*

(1) A buyer shall be bound to inspect goods he accepts in the usual way, or to have them inspected as soon as this is possible according to regular course of events, and to notify the seller of visible defects, within an eight day time limit, while in the case of commercial contracts, without delay, since otherwise he shall lose the right pertaining to him on that ground.

(2) After an inspection is effected in the presence of both parties, the buyer shall be bound to report immediately to the seller his remarks regarding visible defects, since otherwise he shall lose the right pertaining to him on that ground.

(3) Should the buyer forward the goods further without transshipment, and if the seller at the moment of entering into contract was aware, or could have been aware, of a possibility of such further forwarding, the inspection of goods may be postponed until their arrival at the new place of destination, and the buyer in such a case shall be obliged to notify the seller of defects as soon as he becomes aware of them through his clients in the regular course of events.

Article 482. *Concealed Defects*

(1) Should it turn out after the buyer accepts the goods that the goods have a defect which was impossible to discover by usual inspection when taking the goods over (concealed defect), the buyer shall be obliged, under threat of forfeiting the right, to notify the seller of such defect within eight days, counting from the day of his discovering the defect, while in case of commercial contracts without delay.

(2) A seller shall not be responsible for defects appearing six months after delivery of the goods, unless a longer time limit has been stipulated.

Article 483. *Time Limits in Case of Repair, Replacement, and the Like*

Should, due to a defect, goods be repaired, other goods be delivered, parts replaced, and the like, the time limit specified in the two preceding articles shall begin to run from the moment of delivery of the repaired goods, of delivery of other goods, of replacement of spare parts, and the like.

Article 484. *Notifying of Defects*

(1) A buyer's notification about a defect in goods shall include a detailed description of the defect and an invitation addressed to the seller to inspect the object.

(2) Should notification about the defect, otherwise sent to the seller by the buyer on time by registered mail, telegram or in some other reliable way, be late or should it entirely fail

to reach the seller, the buyer shall be considered to have fulfilled his duty to notify the seller.

Article 485. *Significance of the Fact that Seller Was Aware of Defect*

A buyer shall not forfeit the right to claim a defect even after failing to meet his duty to inspect the goods immediately, or a duty to notify the seller within a determined time limit, of the existence of a defect, as well as after such defect has appeared six months after delivery of the goods, if such defect was known to the seller or if it could not have remained unknown to him.

Article 486. *Contractual Limitation or Exclusion of Seller's Responsibility for Substantive Defects*

(1) Negotiating parties may limit or entirely exclude the seller's responsibility for substantive defects of the object.

(2) A contractual clause limiting or excluding responsibility for defects in goods shall be null and void if a defect was known to the seller, if he failed to notify the buyer thereof, or if the seller imposed such clause by using his particular monopoly position.

(3) A buyer forfeiting his right to repudiate the contract due to a defect in the goods shall keep the remaining rights on the ground of such defect.

Article 487. *Compulsory Sale*

An owner whose goods are sold at a compulsory sale shall not be liable for defects in the object.

II. RIGHTS OF A BUYER

Article 488. *Fulfilment, Price Reduction, Repudiation of Contract, Redress of Damage*

(1) A buyer duly notifying a seller on time of a defect may:

(i) demand that the seller eliminates the defect or delivers him other goods free of defects (fulfilment of contract);

(ii) demand a reduction of the price;

(iii) declare that he repudiates the contract.

(2) In all the above cases the buyer shall be entitled to damages as well.

(3) In addition, and independently of the above, a seller shall also be liable to the buyer for compensating him for loss sustained by him because of a defect in the goods which

caused damage to other property of his, in which case general rules of tort liability shall apply.

Article 489. *Failing to Fulfil a Contract in a Reasonable Time Limit*

Should a buyer fail to obtain the demanded fulfilment of contract within a reasonable time limit, he shall keep the right to repudiate the contract or to reduce the price.

Article 490. *When a Buyer May Repudiate the Contract*

(1) A buyer may repudiate the contract only after leaving the seller prior to that a subsequent reasonable time limit to fulfil the contract.

(2) A buyer may repudiate the contract even without leaving a subsequent time limit should the seller, after notifying him about defects, inform him that he is not going to fulfil the contract, or should circumstances of the specific case indicate without doubt that the seller will not be able to fulfil the contract even in the subsequent time limit.

Article 491. *Failing to Fulfil the Contract in the Subsequent Time Limit*

Should a seller fail to fulfil the contract in the subsequent time limit, the contract shall be rescinded on the ground of law, but the buyer may keep it valid after immediately declaring to the seller his intention to keep the contract valid.

Article 492. *Partial Defects*

(1) If only a part of the delivered goods has defects, or if only a part of the goods is delivered, or a lesser quantity than stipulated, the buyer may repudiate the contract in terms of the preceding articles only relating to the defective part, or only relating to the part or quantity missing.

(2) The buyer may repudiate the entire contract only should the stipulated quantity or the goods delivered make an entirety, or should otherwise the buyer have a justified interest in accepting the goods or quantity stipulated in their entirety.

Article 493. *Seller Delivering a Larger Quantity to a Buyer*

(1) Should in the case of a commercial contract of sale a seller of objects specified by kind deliver to a buyer a quantity larger than stipulated, and should the buyer fail, within a reasonable time limit, to declare his refusal of the surplus, he shall be considered to have accepted such surplus as well, so that he shall be bound to pay the same price for it.

(2) Should the buyer refuse to accept the surplus, the seller shall be bound to redress to the buyer the corresponding loss.

Article 494. *One Price Determined for Several Objects*

(1) Should several goods or a collection of goods be sold by one contract and at one price, and only some of them are defective, the buyer may repudiate the contract only relating to such goods and not to the rest.

(2) However, should they make an entirety so that their separation would be damaging, the buyer may repudiate the entire contract, but if, however, he declares his intention to repudiate the contract only relating to defective goods, the seller, on his part, may repudiate the contract relating to the rest of the goods.

Article 495. *Forfeiting the Right to Repudiate a Contract due to a Defect*

(1) A buyer shall forfeit the right to repudiate the contract due to defective goods should it be impossible for him to restate the goods or to restore them to the state they were in when delivered to him.

(2) However, the buyer may repudiate the contract due to defects in the goods should the goods be entirely or partially lost or damaged due to a defect justifying the repudiation of contract, or due to an event not ensuing from him or from a person under his responsibility.

(3) The same shall apply should the goods be entirely or partially lost or damaged in connection with the duty of the buyer to inspect the goods, or should the buyer, before the defect was discovered, consume or alter part of the goods in course of their regular use, or should damage or alteration be without significance.

Article 496. *Keeping the Remaining Rights*

A buyer who has forfeited the right to repudiate the contract after becoming unable to restate the goods or restore them to the state they were in when delivered to him, shall keep the remaining rights on the ground of law because of existing of a defect.

Article 497. *Effects of Repudiation due to a Defect*

(1) Repudiation of contract due to a defect in goods shall have the effect of repudiating bilateral contracts due to breach of obligation.

(2) A buyer shall owe to a seller compensation for benefits from the goods even if the seller is unable to restore the entire goods or the part of them, while the contract was, however, repudiated.

Article 498. *Price Reduction*

Price reduction shall be effected according to a ratio between the value of goods without defects, and the value of the goods with defects, at the time of entering into contract.

Article 499. *Gradual Discovery of Defects*

A buyer obtaining a reduced price due to the existence of a defect may repudiate the contract or demand a new reduction in the price should another defect be discovered subsequently.

Article 500. *Forfeiting a Right*

(1) Rights of a buyer notifying a seller in due time of the existence of a defect shall be forfeited after the expiration of a year, counting from the day of communicating the notification to the seller, unless the buyer was prevented from using them because of seller's deceit.

(2) However, a buyer notifying the seller in due time of the existence of a defect may, after the expiration of that time limit, and if he has not yet paid the price, demand that the price be reduced or loss sustained by him compensated – in the form of an objection against seller's demand that the price be paid to him.

**III. WARRANTY FOR CORRECT
FUNCTIONNING OF THE OBJECT SOLD**

Article 501. *Responsibility of a Seller and a Manufacturer*

(1) Should a seller of a machine, engine, apparatus of any kind, or of similar objects of a category of so-called technical goods, hand to a buyer a written warranty from the manufacturer covering proper functioning of the object within a specified period, counting from the moment of its delivery to the buyer, the buyer may, should the object fail to function properly, demand both from the seller and the manufacturer that the object be repaired within a reasonable time limit or, short of this, that it be replaced with one functioning properly.

(2) These rules shall not affect the rules of liability of seller for deficiencies of the object.

Article 502. *Demanding Repair or Replacement*

(1) Because of improper functioning a buyer may demand from the seller or manufacturer, repair or replacement of the object during the warranty period, regardless of the moment the defective functioning appears.

(2) He shall be entitled to compensation for loss sustained by his being prevented from using the object from the moment of demanding repair or replacement to their effecting.

Article 503. *Extending Warranty Period*

(1) In the case of minor repairs the warranty period shall be extended for the time the buyer was prevented from using the object.

(2) However, should due to improper functioning the object be replaced or thoroughly repaired, the warranty period shall begin to run anew from the day of replacement, or restoring the repaired object.

(3) Should only a part of the object be replaced or thoroughly repaired, the warranty period shall begin to run anew only regarding such part.

Article 504. *Repudiation of Contract and Reduction of Price*

Should a seller fail to repair or replace the object within a reasonable time limit, the buyer may repudiate the contract or reduce the price and demand damages.

Article 505. *Expenses and Risk*

(1) A seller, or manufacturer, shall be bound to transport at his expense the object to the place of repair, or replacement, as well as deliver the repaired or replaced object to the buyer.

(2) A seller or manufacturer shall bear the risk of loss or damage of the object during the above mentioned time.

Article 506. *Liability of Subcontractors*

Should several independent manufacturers participate in manufacturing some parts of the object or in executing individual processes, their liability to the finishing stage manufacturer for the improper functioning of the object, caused by these parts or these actions, shall be terminated after the termination of liability of the finishing stage manufacturer to the buyer of the object.

Article 507. *Forfeiture of Right*

Buyer's rights in relation to manufacturer on the ground of a written warranty shall be forfeited one year after the day of his demand that the seller effect repair or replacement of the object.

Subsection 3.

LIABILITY FOR LEGAL
DEFICIENCIES
(PROTECTION AGAINST FORFEITURE)

Article 508. *Legal Deficiencies*

(1) A seller shall be liable should the object sold be subjected to a third party's right (infringements) excluding, reducing or restricting a buyer's right, whose existence was not communicated to the buyer, and the buyer did not accept the object subjected to such right.

(2) A seller of some other right shall guarantee its existence and lack of legal obstacles for its realisation.

Article 509. *Notifying a Seller*

Should it turn out that a third party claims a right to an object, the buyer shall be bound to notify the seller accordingly, unless the fact be already known to the seller, and he shall demand that he release, in a reasonable time limit, the object from third party's right or claim, or, should the subject of contract be objects specified by kind, that he deliver to him another object free of legal deficiency.

Article 510. *Sanctions Relating to Legal Deficiencies*

(1) Should a seller fail to proceed according to buyer's demand and the buyer be deprived of the object, the contract shall be rescinded on the ground of law, and in case of reducing or restricting buyer's right, he may either repudiate the contract or request a proportionate price reduction.

(2) Should a seller fail to meet buyer's request to release, in a reasonable time limit, the object from a third party's claim or right, the buyer may repudiate the contract, should, because of that, its purpose be impossible to achieve.

(3) The buyer shall in any case be entitled to compensation for loss sustained.

(4) However, should the buyer, at the moment of entering into contract, be aware of the possibility of being deprived of the object, or of restricting his right, he shall have no right to damages after such possibility has been realized, but shall still be entitled to demand restoration, or reduction of the price.

Article 511. *Failure of a Buyer to Notify a Seller*

A buyer who, while failing to notify a seller, engages in unsuccessful litigation against a third party, may still invoke seller's liability for legal deficiencies, unless the seller is able to prove that he was in possession of means by which third party's demand could have been refuted.

Article 512. *When Right of a Third Party is Obviously Justified*

(1) A buyer shall be entitled to invoke seller's liability for legal deficiencies even after, without notifying the seller and without litigation, acknowledging an obviously justified right of a third party.

(2) Should a buyer pay to the third party an amount of money to renounce his obvious right, the seller may be exempted from his liability after compensating the buyer the amount paid and the loss sustained.

Article 513. *Contractual Limiting or Excluding Seller's Liability*

(1) Liability of a seller for legal deficiencies may be limited or entirely excluded by contract.

(2) However, if the seller was aware of a deficiency in his right, or if it could not have remained unknown to him at the time of entering into contract, the clause in the contract on limiting or excluding liability for legal deficiencies shall be null and void.

Article 514. *Restrictions of Public Law Nature*

A seller shall be liable for particular restrictions of public law nature unknown to the buyer, if aware of them, or aware that they can be expected, and after failing to notify the buyer accordingly.

Article 515. *Forfeiture of Right*

(1) A right of a buyer on the ground of legal deficiencies shall expire one year after he becomes aware of the existence of a third party's right.

(2) However, if the third party, prior to expiration of such time limit, has instituted legal proceedings and the buyer has called the seller to take part in them, the right of the buyer shall be terminated only after a six month period following a final court decision.

Section 4.
OBLIGATIONS OF A BUYER

Subsection 1.

PAYMENT OF PRICE

Article 516. *Time and Place of Payment*

(1) A buyer shall be bound to pay the price at the time and in the place specified in the contract.

(2) Should there be no such clause in the contract or no other usages in the matter, the payment shall be done at the moment and in the place of delivery of the object.

(3) If the price does not have to be paid at the moment of delivery, the payment shall be made at the domicile, or at the business address of the seller.

Article 517. *Interest in Case of a Credit Sale*

Should goods sold on credit yield fruits (accretion) or other benefits, the buyer shall owe the interest from the day of delivery of the goods, regardless of whether his obligation to pay the price has become due.

Article 518. *Payment of Price in Case of Consecutive Deliveries*

(1) In case of consecutive deliveries a buyer shall be bound to pay the price for each delivery at the moment of taking it, unless something else be stipulated or result from circumstances of the transaction.

(2) When in case of a contract providing for consecutive deliveries the buyer has made an advance payment to the seller, first deliveries, unless something else be stipulated, shall be charged against such advance payment.

Subsection 2.

TAKING DELIVERY
OF GOODS

Article 519.

(1) Taking delivery of goods shall consist of undertaking necessary action in order to make possible the handing over, including the carrying away of the goods.

(2) Should a buyer refuse without justified ground to take delivery of the goods whose delivery is offered to him in due time and as stipulated, or to be done in a usual way, the seller may, after having a justified ground to doubt that the buyer will pay the price, declare his intention to repudiate the contract.

Section 5.

DUTY TO TAKE CARE OF GOODS FOR THE ACCOUNT OF A NEGOTIATING PARTY

Article 520. *Cases of Duty of Taking Care*

(1) Should, due to a buyer's delay, the risk pass to the buyer prior to delivery of the goods, the seller shall be bound to take care of the goods as a good businessman, or good head of household, and to take necessary measures to that purpose.

(2) The same shall apply to a buyer after the goods have been delivered to him, if he wants to restore them back to the seller either because he has repudiated the contract or demands other instead of the delivered goods.

(3) In both cases the negotiating party being bound to take measures of taking care of the goods, shall be entitled to be reimbursed for the expenses needed for preserving the goods.

Article 521. *A Buyer Unwilling to Accept Goods Forwarded to Him*

A buyer unwilling to accept goods forwarded to him at the destination place and placed at his disposal at such place, shall be bound to take them for the account of the seller, should the latter be not present at the destination place or fail to have someone else at the place to take them for him, provided that this is possible without paying the price and without too much inconvenience of excessive costs.

Article 522. *Rights of a Party Obligated to Take Care of the Goods*

A contracting party obliged under the preceding provisions to take measures to care for the goods may, in conformity with the conditions and the consequences specified in the provisions of the present Law relating to depositing at the court and to sale of goods owed, deposit them at the court, or hand them over to somebody else for custody, or sell them for the account of the other party.

Section 6.

REDRESSING LOSS IN CASE OF SEVERANCE OF SALE

Article 523. *General Rule*

Should a sale be severed due to breach of contract by one of the negotiating parties, the other party shall be entitled to damages according to the general rules of compensation for loss due to breach of contract.

Article 524. *Goods with a Current Price*

(1) After a sale is severed due to breach of contract by one of the negotiating parties, if the goods have a current price, the other party may demand the difference between the price determined by contract and the current price, on the day of severance of contract, in the market of the place of effecting the transaction.

(2) Should there be no current price in the market of the place of effecting the transaction, a current price shall be taken into account, in order to come to the amount of redress, existing in a market which could replace it in the given case, but increased by the difference in transportation costs.

Article 525. *A Case of Sale or Purchase for Cover (Expenses)*

(1) Should the subject of sale be a certain quantity of objects specified in kind, and should one party fail to meet the obligation on time, the other party may sell for cover (expenses), or purchase with the same purpose, and may demand the difference between the price agreed by contract and the selling price, or purchasing price obtained in the transaction for cover.

(2) The sale or purchase for cover must be done within a reasonable time and in a reasonable way.

(3) A creditor shall be bound to notify a debtor of the sale or purchase intended.

Article 526. *Compensation of Remaining Damage*

In addition to the right to damages according to the rules specified in the preceding articles, a party faithful to the contract shall also be entitled to compensation of higher damage eventually sustained by such party.

Section 7.
CASES OF PARTICULAR DEAL SALE

Subsection 1.

SALE WITH A RIGHT
OF PRE-EMPTION

Article 527.

On the ground of a contractual clause giving the right of pre-emption, a buyer shall be bound to notify a seller of his intention to sell the object to a specific person, as well as on the terms of such sale, and to offer him to purchase the object at the same price.

Article 528. *Time Limits for Effecting a Right and for Payment of Price*

(1) A seller shall be bound to notify a buyer in a reliable way on his decision to use the right of pre-emption within a month, counting from the day of buyer's notification of intended sale to a third party.

(2) Simultaneously with stating that he is buying the object, the seller shall be obliged to pay off the price agreed upon with the third party, or deposit it at the court.

(3) Should a time limit for paying the price be stipulated, the seller may make use of such time limit only after providing a sufficient guarantee.

Article 529. *Possibility of Inheriting and Transferring to Another*

A right to pre-emption regarding movable property cannot be transferred to another or inherited, unless otherwise provided by law.

Article 530. *A Case of Compulsory Sale*

(1) In case of compulsory sale a seller shall not invoke his right of pre-emption.

(2) But a seller having his right of pre-emption registered in the book of titles may demand annulment of a compulsory sale if not being explicitly invited to be present.

Article 531. *Duration of the Right of Pre-Emption*

(1) The right of pre-emption shall be terminated five years after entering into contract, unless its earlier termination be stipulated.

(2) A longer time limit stipulated, shall be reduced to the five year time limit.

Article 532. *Effecting Transfer of Ownership without Notifying a Seller*

(1) If a buyer has sold the object and transferred the ownership to a third person without notifying a seller, and if the third person was aware or could not have been unaware of the fact that the seller had the right of pre-emption, the seller may demand, within a six month time limit counting from the day of his becoming aware of such transfer, that the transfer be annulled and the object handed over to him under the same conditions.

(2) If the buyer has incorrectly notified the seller on terms and conditions of sale, and if the third party was aware of that or could not have been unaware, such six month time limit shall begin to run from the day of the seller's becoming aware of the correct terms and conditions of the contract.

(3) The right of pre-emption shall be terminated in any case after the expiration of a five year period counting from the transfer of ownership to the third person.

Article 533. *Statutory Right of Pre-Emption*

(1) The right of pre-emption may be established for particular persons by statute.

(2) The duration of statutory right of pre-emption shall not be limited.

(3) Persons entitled on the ground of statute itself to the right of pre-emption must be notified in writing of the sale intended and its relevant terms and conditions; otherwise, they shall be entitled to request annulment of the sale.

(4) The rules of sale with the right of pre-emption shall accordingly apply to statutory right of pre-emption.

Subsection 2.

TRIAL PURCHASE

Article 534. *Notion*

(1) Should it be stipulated that a buyer is taking the object on condition that it be tested as to being suitable to his needs, he shall be bound to notify the seller as to his honouring the contract within the time limit specified by contract or usage, and should there be no such designation or usage – within a reasonable time left to him by the seller; otherwise, the contract shall be considered renounced.

(2) If an object is handed over to the buyer to be tested by him until a designated time limit, and if he fails to restore it immediately after the expiration of such time limit, or fails to state to the seller his renouncing of the contract, he shall be considered to have honoured the contract.

Article 535. *An Impartial Testing*

Should trial be stipulated in order to find out whether the object has a specific feature or whether it is suitable for particular use, the existence of a contract shall not be made dependent on the buyer's mind, but on the fact whether the object really has such features or whether it is suitable for particular use.

Article 536. *Risk*

The risk of accidental loss or damage (i.e. casualty to goods) of the object handed over to a buyer for testing shall be born by the seller until the buyer states that he honours the contract, or until the expiration of the time limit for the buyer to restore the object to the seller.

Article 537. *Purchase after Inspection or with a Reservation of Testing*

Provisions on trial purchase shall apply accordingly to a purchase after inspection and to purchase with a reservation of testing.

Subsection 3.

**SALE BY SAMPLE
OR MODEL**

Article 538.

(1) In case of sale by sample or model effected by a commercial contract if the object delivered by the seller to the buyer fails to conform to a sample or model, the seller shall be liable on the ground of regulations covering seller's liability for substantive defects in goods, while in other cases – on the ground of regulations covering liability for breach of obligation.

(2) There shall be no liability of a seller for lack of conformity if the sample or model was submitted to the buyer only to obtain information and to determine approximately the features of object, without promising conformity.

Subsection 4.

SALE WITH SPECIFICATION

Article 539.

(1) Should a right be reserved for the buyer in the contract to determine subsequently the form, measurement or other details concerning the object of sale, and he fails to make this specification by the date agreed upon, or until the expiration of a reasonable time limit, counting from the day of a corresponding demand by the seller, the seller may declare repudiation of contract or make a specification according to what was known to him concerning the buyer's needs.

(2) Should the seller alone make the specification, he shall be bound to notify the buyer of its details and determine for him a reasonable time limit to make a different specification.

(3) Should the buyer fail to take this opportunity, the specification made by the seller shall be binding.

Subsection 5.

SALE WITH RESERVING
THE RIGHT OF OWNERSHIP

Article 540. Conditions

(1) A seller of a specific article of movable property may, through special clause in the contract, reserve the right of ownership even after delivering the object to the buyer – until the latter pays the price completely.

(2) Reserving the right of ownership shall affect buyer's creditors only after being made in the form of a certified document, prior to buyer's insolvency or prior to the seizure of his property.

(3) The right of ownership of articles of movable property which are filed in special public records may be reserved only if so provided by regulations covering the system of filing of such records.

Article 541. Risk

The risk of accidental loss or damage of the object shall be born by the buyer from the moment the object has been handed over to him.

Subsection 6.

SALE BY PAYMENT
BY INSTALLMENTS

Article 542. *Notion*

(1) By a contract of sale of an article of movable property by payment by installments, a seller shall assume the obligation to deliver to a buyer the particular article of movable property before the price is completely paid to him, while the buyer shall assume the obligation to pay its price in installments, i.e. in designated time intervals.

(2) The provisions of the present subsection concerning the sale against payment by installments shall apply only to an individual buyer.

Article 543. *Form of Contract*

A contract covering a sale by payment by installments has to be made out in writing.

Article 544. *Essential Constitutive Elements of Contract*

(1) In addition to the indication of object and its price in a cash sale, the following has to be noted down in the document witnessing the contract, under threat of nullity, namely: the total amount of all installments, including the first payment made at the moment of entering into contract,²⁶ amounts of particular installments, their number and corresponding time limits.

(2) The document witnessing the contract, under threat of nullity, must include a clause authorizing the buyer to repudiate the contract if he notifies the seller accordingly in writing, within a three day time limit from the day of signing the document, and that the buyer cannot renounce such right in advance.

Article 545. *Right of a Buyer to Pay the Price in Full at Once*

(1) A buyer may always pay the rest of the price due.

(2) Such balance shall be paid in net amount, without interest stipulated and without cost.

(3) A clause contrary to the above shall be null and void.

²⁶ Down payment.

Article 546. Repudiation of Contract and Demand for Full Payment of the Price

(1) A seller may repudiate the contract should the buyer be late with the initial installment payment.

(2) After the initial installment payment is effected, the seller may repudiate the contract should the buyer become late with at least two consecutive installment payments, which amounts to at least one eighth of the price.

(3) As an exception, the seller may repudiate the contract should the buyer be late with the payment of only one installment, if no more than four installments have been provided for paying the price.

(4) In the cases specified in paragraphs 2 and 3 of the present article, the seller may, instead of repudiation of contract, demand from the buyer the payment in full of the rest of the price, but prior to such demand he shall be obliged to extend to the buyer a subsequent fifteen day time limit.

Article 547. Extending Payment Time Limits by the Court

At the buyer's request the court may, where circumstances of the case so justify, extend the time limit for payment of installments overdue – if the buyer supplies a guarantee for performing his obligations, and if the seller is not exposed to damage because of that.

Article 548. Nullity of Stipulated Liquidated Damages

A clause in the contract on liquidated damages shall be null and void in case of repudiation of contract, or if the buyer is late in paying some of the installment amounts.

Article 549. Repudiation of Contract

(1) Should a contract be repudiated a seller shall be bound to restore to the buyer accepted installment amounts, together with the statutory interest, from the day of their acceptance, and to reimburse the necessary expenses of the buyer relating to the goods.

(2) The buyer, on his part, shall be obliged to restitute the goods to the seller in the state they were in at the moment of delivery to him, and to pay for their use until the repudiation of contract.

Article 550. Application of Rules of Sale against Payment by Installments²⁷

(1) The rules of sale against payment by installments shall apply accordingly in case of other deals with similar es-

²⁷ Consumer credit and consumer hire contracts.

sential contents, such as, the contract of hire with a clause according to which ownership of the object hired shall pass to the hirer after his completing payment of the rental fee for a definite period.

(2) These rules shall apply also in case of a loan extended to the buyer and intended for purchasing specific goods, should the lender and the seller come to an agreement that the buyer effects installment payments for the goods sold to him by the seller, to the lender, according to a contract entered into between the buyer and the seller.

Article 551. Nullity of Clauses not Favourable to Buyer

Clauses of contract shall be null and void concerning a sale against payment by installments which would be more negative for a buyer than the provisions of the present Chapter, except provisions on reserving the right of ownership.

Chapter VIII.

EXCHANGE ²⁸

Article 552. Notion

(1) By a contract of exchange each contracting party shall assume a duty to the other negotiating party to transfer the ownership of an object and to deliver it to him for that purpose.

(2) The subject of exchange may also be transferrable rights.

Article 553. Effects of Contract of Exchange

A contract of exchange shall create for each contracting party the obligations and the rights otherwise created for a seller by the contract of sale.

Chapter IX.

ORDER TO SELL

Article 554. Notion

(1) By a contract of an order to sell a party accepting the order shall assume the obligation to sell specific goods

²⁸ Barter.

delivered to him by the orderer (principal) at a designated price and within a specified time limit, or to reconstitute the goods to the orderer within such time limit.

(2) An order to sell may not be revoked.

Article 555. *Risk of Loss and Damage of the Object*

Goods delivered to a person accepting an order shall remain the orderer's property, and he shall bear the risk of their accidental loss or damage, but shall not be able to dispose of them until they are restored to him.

Article 556. *When Shall it Be Considered that a Person Accepting an Order Has Purchased the Goods*

(1) Should a person accepting an order fail to sell the goods and to remit the specified price to the orderer within a designated time limit, or to reconstitute the goods within that time limit, he shall be considered to have purchased the goods.

(2) However, his creditors shall not be able to seize the goods until he has paid off the price to the orderer.

Chapter X.

LOAN

Section 1.

GENERAL PROVISIONS

Article 557. *Notion*

By a loan contract the lender shall assume the obligation to transfer ownership to the borrower of a specific amount of money or other interchangeable objects, while the borrower shall assume the obligation to reconstitute after a certain time to him the same amount of money, or same quantity of objects of the same kind and quality.

Article 558. *Interest*

(1) A borrower may assume an obligation to owe, in addition to the principal amount, interest as well.

(2) In the case of commercial contracts, a borrower shall owe interest even if it has not been stipulated.

Section 2.

OBLIGATIONS OF A LENDER

Article 559. *Delivery of Objects Promised*

(1) A lender shall be bound to deliver the designated objects at the time stipulated, and should delivery time limit be not specified – at the time indicated in the demand of the borrower.

(2) The right of a borrower to demand delivery of the designated objects shall be time-barred three months after the lender's being late with his duty and, in any event, one year after entering into contract.

Article 560. *Poor Material Situation of a Borrower*

(1) Should it turn out that the material situation of a borrower indicates his incapacity to pay the loan, the lender may refuse to perform his obligation of delivering the objects promised, in he was not aware of the fact at the time of entering into contract, or if the deterioration of borrower's material situation took place after entering into contract.

(2) But he shall be bound to perform his obligation should the borrower or someone else on his behalf provide him with a sufficient guarantee.

Article 561. *Damage Due to Defects of the Objects Loaned*

(1) A lender shall be obliged to compensate a borrower for loss which would be sustained by him due to substantive defects in the objects loaned.

(2) But should a loan be without consideration, he shall be obliged to pay damages only after defects are known to him, or if they could not be unknown to him, if he has failed to notify the borrower accordingly.

Section 3.

OBLIGATIONS OF A BORROWER

Article 562. *Time Limit for Restituting a Loan*

(1) A borrower shall be obliged to restitute, within a stipulated time limit, the same quantity of objects of the same kind and quality.

(2) Should negotiating parties fail to determine the time limit for restituting the loan, or should it be impossible to determine it according to circumstances of the loan, the borrower shall be bound to retribute the loan after the expiration of a reasonable time limit, not being shorter than two months, counting from the lender's demand that the loan be restituted to him.

Article 563. *Option at Restituting a Loan*

(1) Should the subject of loan be not money, and should it be stipulated that the borrower shall retribute the loan by payment in money, the lender shall still be authorized to make his choice as to whether to retribute the objects loaned or to pay an amount of money corresponding to the value of such objects at the time and in the place as specified by contract for the restitution.

(2) The same shall apply should it be impossible to retribute the same quantity of objects of the same kind and same quality.

Article 564. *Desisting from Contract*

A borrower may desist from a contract prior to the delivery of objects to him by the lender, but should loss follow from that, he shall be obliged to redress it.

Article 565. *Restituting a Loan before the Time Limit*

A borrower may retribute a loan even before the time limit determined for restituting, but shall be bound to accordingly notify the lender in advance, and to redress loss suffered by him.

Section 4.

SPECIAL PURPOSE LOAN

Article 566.

Should a purpose be determined by contract for which the borrower may use the money lent, if he uses it for some other purpose, the lender may declare his intention to repudiate the contract.

Chapter XI.

LEASE ²⁹

Section 1.

GENERAL PROVISIONS

Article 567. *Notion*

(1) By a contract of lease (or hire agreement) a lessor (or owner) shall assume the obligation to deliver a specific object to a lease-holder (or hirer) for use, while the latter shall assume the obligation to pay him in return a specified rent.

(2) The use shall also include enjoying objects (collecting yields), unless otherwise provided by contract or by trade usage.

Article 568. *Implementation of Particular Regulations*

The provisions of the present Chapter shall not apply to leases otherwise regulated by particular regulations.

Section 2.

OBLIGATIONS OF A LESSOR

Article 569. *Delivery of Object*

(1) A lessor shall be obliged to deliver to the leaseholder the object rented which shall be suitable for proper use together with its accessories.

(2) An object shall be considered as suitable for proper use if it is in the form determined by contract, and should there be no contract, in a condition suitable to serve the purpose for entering into the relevant contract.

Article 570. *Maintenance of the Object*

(1) A lessor shall be bound to maintain the object in proper condition for use in course of the lease, which shall include a duty to make necessary repairs.

(2) He shall be bound to reimburse the lease-holder for expenses incurred by him for maintenance of the object, which would otherwise be at his own charge.

²⁹ I.e. agreements for hire.

(3) Expenses for minor repairs incurred by regular use of the object, as well as those involved in the actual use, shall be born by the lease-holder.

(4) The lease-holder shall be obliged to notify the lessor of necessary repairs.

Article 571. *Repudiation of Contract and Reducing Rent Because of Repair*

(1) Should necessary repairs of the object rented hinder its use to a considerable degree and for an extended time, the lease-holder may repudiate the contract.

(2) He shall be entitled to a reduced rent in proportion to the restriction of use of the object because of such repairs.

Article 572. *Alterations of Rented Object*

(1) A lessor shall not make alterations of the rented object in course of the lease without the lessor's consent, should this hinder the use of the object.

(2) Should, through alterations of the object, its use by the lease-holder be reduced to a certain degree, the rent shall be reduced accordingly.

Article 573. *Liability for Substantive Defects*

(1) A lessor shall be liable to the lease-holder for all defects in the object rented which hinder its stipulated or regular use, regardless of whether he was aware of them or not, and for defects in the features or characteristics specified expressly or implicitly by contract.

(2) Defects of minor importance shall not be taken in consideration.

Article 574. *Defects not Included in Lessor's Liability*

(1) A lessor shall not be liable for those defects in the object rented which were known to the lease-holder at the moment of entering into contract, or which could not have been unknown to him.

(2) However, the lessor shall be liable for defects in the object rented which remain unknown to the lease-holder due to his gross negligence, if he was aware of such defects and wilfully failed to notify the lease-holder thereof.

Article 575. *Extending Liability for Substantive Defects*

A lessor shall be liable for all defects in the object leased if he purported that it had no defects at all.

Article 576. *Exemption or Limitation of Liability by Contract*

(1) Liability for substantive defects in the object leased may be excluded or limited by contract.

(2) A contractual clause excluding or limiting such liability shall be null and void if the lessor was aware of defects and wilfully failed to notify the lease-holder thereof, or if a defect was of such a nature as to prevent the use of the object leased, or if the lessor has imposed such a clause while taking advantage of his monopoly position.

Article 577. *Notifying a Lessor of Defects and Dangers*

(1) A lease-holder shall be bound to notify a lessor without unnecessary delay on any defects in the object leased which appear during the lease, unless the lessor was aware of the defects.

(2) He shall also be obliged to notify the lessor of any unexpected danger which threatens the object leased in the course of the lease, so that he can take necessary measures.

(3) A lease-holder failing to notify a lessor on the occurring of a defect or danger otherwise unknown to him, shall forfeit his right to compensation for loss eventually sustained by him due to the existence of the defect or the danger for the object leased, but he shall be liable to compensate the loss sustained by the lessor due to the above.

Article 578. *Rights of Lease-Holder in Case of a Defective Object*

(1) If at the moment of delivery the object leased have a defect impossible to eliminate, the lease-holder may, at his own choice, repudiate the contract or demand reduction of rent.

(2) Should the object have a defect which may be eliminated without too much inconvenience for the lease-holder, if delivery within a specific time limit be not an essential element of the contract, the lease-holder may demand that the lessor either eliminate the defect within a reasonable time limit or lower the rent.

(3) Should the lessor fail to eliminate the defect within a reasonable time limit determined subsequently by the lease-holder, the lease-holder may repudiate the contract or demand reduction of the rent.

(4) The lease-holder shall in any case be entitled to damages.

Article 579. Occurrence of a Defect in Course of Lease and in the Case of an Object without a Stipulated or Usual Feature

(1) The provisions of the preceding article shall also apply in the case of a defect occurring in the course of a lease of the object.

(2) They shall also apply in cases of an object leased having no feature it should have according to contract or usage, or in the case of such feature being lost in course of the lease.

Article 580. Liability of a Lessor for Legal Defects

(1) Should a third party claim to have a right regarding the object leased, or a part of such right, and if such party addresses the lease-holder accordingly, or if he arbitrarily deprive the lease-holder of the object, the latter shall be obliged to notify the lessor thereof, unless he was already aware of the fact; otherwise, the lease-holder shall be liable for loss.

(2) Should it be established that a third party has a right which entirely excludes the lease-holder's right to use the object, the lease contract shall be rescinded on the ground of law, while the lessor shall be bound to redress the loss to the lease-holder.

(3) Should the third party's right only restrict the lease-holder's right, the latter may, at his own choice, repudiate the contract or demand reduction of the rent and, in any case, request damages.

Section 3.

OBLIGATIONS OF A LEASE-HOLDER

Article 581. Use of Object According to Contract

(1) A lease-holder shall be bound to use the object as a good businessman, or as a good head of household.

(2) He may use it only in the way stipulated in the contract or in accordance with the purpose of the object.

(3) He shall be liable for damage occurring in course of the use of the object contrary to contract or contrary to its purpose, regardless of who has been using the object, whether himself or a person acting under his order, a subleasee or another person being put in a position to use the object by him.

Article 582. Notice due to Use Contrary to Contract

Should a lease-holder, even after the lessor's warning, continue to use the object contrary to contract or to its purpose, or neglect its maintenance, causing danger of considerable loss

to the lessor, the latter may cancel the contract without a period of notice.

Article 583. *Payment of Rent*

(1) A lease-holder shall be bound to pay the rent within time limits specified by contract or by law, and should there be no contract or law, in the way practiced in the place of delivery of the object to the lease-holder.

(2) Unless otherwise stipulated or practiced in the place of delivering the object, the rent shall be paid every six months in case of an object leased for one or several years, and should it be leased for a shorter period – after the expiration of that period.

Article 584. *Notice Because of an Unpaid Rent*

(1) A lessor may cancel the contract of lease if a lease-holder fails to pay the rent even in the fifteen day time limit after lessor's demanding the payment from him.

(2) But the contract shall remain valid should the lease-holder pay off the amount of the rent owed before being notified on the notice.

Article 585. *Restoring a Leased Object*

(1) A lease-holder shall be obliged to take care of the object leased and shall restore it undamaged after the termination of the lease.

(2) The object shall be restored in the place of its delivery to the lease-holder.

(3) A lease-holder shall not be liable for wear and tear of the object resulting from its regular use, or for damage due to wear and tear.

(4) After effecting alterations to the object in course of the lease, the lease-holder shall be liable to reconstitute it to the state it was in when delivered to him for lease.

(5) He may take away additions to the object realized by him, should it be possible to detach them from the object without damaging it, but the lessor may keep them after reimbursing the lease-holder for their value at the time of restitution.

Section 4.

SUBLEASE

Article 586. *When Object May Be Subleased*

(1) Unless otherwise stipulated, a lease-holder may lease the object leased to another (sublease), or he may give it

to the use of another on some other ground, but only after making sure that this shall cause no loss to the lessor.

(2) The lease-holder shall guarantee to the lessor that the sublessee shall use the object according to the lease contract.

Article 587. *When Lessor May Decline Permission*

Should permission by the lessor be necessary to sublease a leased object, the latter may decline it only on justified grounds.

Article 588. *Notice Due to Prohibited Sublease*

A lessor may cancel the lease contract should the object leased be subleased without his permission, if such permission was required according to law or the contract.

Article 589. *Direct Demand by a Lessor*

In order to effect payment of his claims from the leaseholder on the ground of a lease, a lessor may directly demand from the sublessee the payment of the amount due by the latter to the lease-holder by the sublease.

Article 590. *Termination of Sublease on the Ground of Law*

A sublease shall be terminated in any event after the termination of the head-lease.

Section 5.

**ALIENATION OF
THE OBJECT LEASED**

Article 591. *Alienation after Delivering for Lease*

(1) In case of alienation of an object previously leased to another, an acquirer of the object shall take the place of the lessor, so that subsequently the rights and duties out of the lease shall take place between him and the lease-holder.

(2) The acquirer shall demand that the lease-holder deliver to him the object prior to the expiration of the leasing time, and should that time be not determined by contract or by law, then, prior to the expiration of the period of notice.

(3) The person effecting transfer shall be liable as a joint guarantor for the acquirer's obligations to the lease-holder under the lease.

Article 592. *Right to Rent*

(1) Unless otherwise stipulated, an acquirer of the object leased shall be entitled to the rent beginning from the first following time limit after the acquisition of object, and the person effecting transfer receiving such rent in advance shall be bound to assign it to him.

(2) From the moment of notification of alienation of the object leased, the lease-holder may pay the rent only to the acquirer.

Article 593. *Alienation of the Object Leased Prior to Delivery to the Lease-Holder*

(1) Should an object in relation to which a lease contract was concluded be delivered to an acquirer and not to a lease-holder, the acquirer shall take the place of the lessor, assuming his obligations to the lease-holder, if he was aware, at the moment of entering into contract of alienation of the existence of the lease contract.

(2) An acquirer not being aware at the moment of entering into contract of alienation of the existence of the lease contract shall not be bound to deliver the object to the lease-holder, while the lease-holder may only demand damages from the lessor.

(3) The person effecting transfer shall be liable as a joint guarantor for the acquirer's obligations to the lease-holder under the lease.

Article 594. *Cancellation of Contract Because of Alienation of Object*

Should because of alienation of the object leased, rights and duties of the lease-holder be transferred to the acquirer, the lease-holder may in any case cancel the contract, while adhering to statutory periods of notice.

Section 6.

TERMINATION OF LEASE

Article 595. *Expiration of Designated Time*

(1) A lease contract entered into for a definite period shall be terminated by the expiration of the time covered by the contract.

(2) The same shall apply to cases in which, in the lack of intent of negotiating parties, the lease period is specified by law.

Article 596. *Implicit Renewal of Lease*

(1) Should after the expiration of time covered by contract of lease, the lease-holder continue to use the object without the lessor's objection, a new lease contract shall be considered to have been concluded for an indefinite period, and under the same terms and conditions as the previous one.

(2) Performance pledges of third persons for the first lease shall be terminated after the expiration of that lease period.

Article 597. *Notice*

(1) A lease contract whose duration period is not determined or which can not be determined on the ground of circumstances of the case or of local trade practice, shall be terminated by notice, which may be given by each party, while honouring an agreed period of notice.

(2) Should the extent of the period of notice not be determined either by contract or by law, or by local trade practice, it shall amount to eight days, provided the notice shall not be given at a bad time.

(3) Should the leased object be dangerous to health, the lease-holder may cancel the contract without extending the period of notice, even if he was aware of the fact at the moment of entering into contract.

(4) The lease-holder shall not renounce his right specified in paragraph 3 of the present article.

Article 598. *Loss of Object due to an Act of God (Force Majeure)*

(1) The lease shall be terminated should the object leased be lost accidentally by an Act of God.

(2) Should the object leased be partially destroyed or only damaged, the lease-holder may either repudiate the contract or uphold the lease and demand an adequate reduction of rent.

Article 599. *Death*

In the case of death of a lease-holder or a lessor the lease shall be continued by their successors, unless otherwise provided by contract.

Chapter XII.
**CONTRACT FOR THE SUPPLY OF
SERVICES**³⁰

**Section 1.
GENERAL PROVISIONS**

Article 600. *Notion*

By a contract for the supply of services the person working (supplier) shall assume the obligation to perform a particular job, such as to manufacture or repair an object, or execute some physical or intellectual work, and the like, while the purchaser of the services shall assume the obligation to pay him monetary consideration in return.

Article 601. *Relationship to a Contract of Sale*

(1) A contract by which one party assumes an obligation to manufacture a specific object from his own material shall be considered, if in doubt, as a contract of sale.

(2) But it shall remain a contract for services if the purchaser has assumed the obligation to provide a major part of the material needed for the manufacture of the object.

(3) Such a contract shall in any case be considered as a contract for services if the contracting parties had the supplier's work particularly in mind.

Article 602. *Quality of Supplier's Material*

(1) Should it be stipulated that the supplier manufacture the object from his own material, and the quality is not determined, the supplier shall be bound to provide material of an average quality.

(2) He shall be liable to the purchaser for the quality of the material used in the way the seller is.

**Section 2.
SUPERVISION**

Article 603.

A purchaser shall be entitled to effect supervision over the performance of the job and to give instructions when ap-

³⁰ Performing a particular job or an individual piece of work.

appropriate as to the nature of the job, while the supplier shall be obliged to make that possible to him.

Section 3.

MAKING A CONTRACT BY BIDDING (AUCTION CONTRACTS)

Article 604. *Invitation to Bid for the Price of Works*³¹

(1) An invitation addressed to a specified or unspecified number of persons to submit tenders for the performance of specific works, under specified terms and conditions, and with specific guarantees, shall bind the inviter to make a contract for such works with the one offering the lowest price, unless obligation was excluded in the invitation to tender.

(2) In the case of excluding the obligation to make a contract, the invitation to tender shall be considered as an invitation to interested parties to submit their own offers of contract under terms and conditions published.

Article 605. *Invitation to Tender for Artistic or Technical Proposals of Works Intended*

An invitation addressed to a specified or unspecified number of persons to tender for an artistic or technical proposal of intended works shall bind the inviter to make, under the terms in the invitation to tender, a contract with the participant in the tender whose proposal is accepted by a commission, the composition of which was disclosed in advance, unless such obligation was excluded in the invitation to tender.

Section 4.

OBLIGATIONS OF A SUPPLIER

Article 606. *Defective Material*

(1) A supplier shall be bound to draw the purchaser's attention to defects in the material delivered to him by the purchaser which were noticed or should have been noticed by him; otherwise, he shall be liable for damages.

³¹ I.e. invitation to tender.

(2) Should the purchaser demand that the object be manufactured from the material whose defects were indicated to him by the supplier, the supplier shall be bound to act according to his demand, unless it becomes obvious that the material is not suitable for the creation ordered, or that manufacturing from the requested material would harm the reputation of the supplier, in which case he may repudiate the contract.

(3) The supplier shall be obliged to warn the purchaser about defects in his order, and about other circumstances he is aware of, or should have been aware of, which may be of importance for the creation ordered, or for its performance on time; otherwise he shall be liable for damages.

Article 607. *Obligation to Execute the Work*

(1) A supplier shall be obliged to carry out the work as stipulated and under the rules of the corresponding line of business.

(2) He shall be bound to execute it in the time specified and should such time be not specified, in the time reasonably necessary for such kind of work.

(3) He shall not be liable for delay caused by the purchaser's failure to deliver the material to him on time, the purchaser's demand for alterations, or by the purchaser's failure to pay to him the advance due and, in general, for delay caused by the conduct of the purchaser.

Article 608. *Repudiating a Contract due to Breach of Terms Stipulated*

(1) Should it turn out in the course of performing the job that the supplier fails to adhere to the terms of contract and, in general, is not working properly, so that the creation, when completed, will be defective, the purchaser may warn the supplier accordingly and determine for him an adequate time limit for conforming his work to his obligations.

(2) Should the supplier fail to act according to the purchaser's demand within the above time limit, the purchaser may repudiate the contract and claim damages.

Article 609. *Repudiation of Contract prior to Expiration of the Time Limit*

(1) Should the time limit be an essential constituent element of the contract, and supplier's delay in commencing or completing the job indicates without doubt that he will not complete it within the time limit, the purchaser may repudiate the contract and claim damages.

(2) He shall also have such right should the time limit not be an essential constituent element of contract, if due to

such delay the purchaser would obviously have no interest in fulfilling the contract.

Article 610. *Entrusting Performance of Job to a Third Party*

(1) Unless something else results from the contract or the nature of the job, the supplier shall not be bound to perform the job personally.

(2) The supplier shall still be responsible to the purchaser for the execution of the work, even without performing it personally.

Article 611. *Liability for Associates*

A supplier shall be liable for persons taking part in the performance of work under his order, as if he himself had performed the job assumed.

Article 612. *Direct Claim by Supplier's Associates against the Purchaser*

The supplier's associates may address the purchaser directly for payment of their claims against the former, and demand from the latter such payment at the charge of the amount due at the moment to the supplier, should such claims be recognized.

Article 613. *Delivery of a Manufactured Object to the Purchaser*

(1) A supplier shall be bound to deliver to the purchaser the object manufactured or repaired.

(2) The supplier shall be discharged from this obligation should the object manufactured be lost for reasons for which he is not to blame.

Section 5.

LIABILITY FOR DEFECTS

Article 614. *Inspection of the Work Executed and Notifying the Supplier*

(1) A purchaser shall inspect the work done, as soon as this became possible in the regular course of events, and to notify the supplier without delay about defects found.

(2) Should the purchaser, after being invited by the operator to inspect and accept the work executed, fail to act ac-

cordingly without justified ground, the work shall be considered as accepted.

(3) After the inspection and acceptance of the work performed, the supplier shall not be liable for defects which could have been noticed by usual inspection, unless he was aware of them, and did not notify the purchaser.

Article 615. *Latent Defects*

(1) Should a defect arise later on which could not have been discovered by usual inspection, the purchaser shall still be entitled to claim it, but only if he immediately notifies the supplier thereof, or within one month after such discovery at the latest.

(2) The purchaser shall not be entitled to claim further defects two years after accepting the work performed.

Article 616. *Termination of Rights*

(1) A purchaser notifying the supplier of defects in the work performed on time shall not enforce his right at court after the expiration of one year from the notification.

(2) But even after the expiration of that time limit, the purchaser may, after notifying the supplier of defects in due time, through an objection against the supplier's claim for payment, proceed with his own counter-claim for reduction of compensation and for damages.

Article 617. *In the Case of a Supplier Forfeiting his Right to Invoke the Preceding Articles*

A supplier shall not refer to a provision of the preceding articles should a defect relate to facts which were known, or could have been known, to him, and which were not communicated by him to the purchaser.

Article 618. *Right to Demand Elimination of Defects*

(1) Purchaser who duly informs the supplier that the work performed is in some respect defective, shall be entitled to demand the elimination of the defect, and to determine corresponding and reasonable time limit.

(2) He shall also be entitled to recover for loss sustained due to the above.

(3) Should elimination of the deficiency involve excessive expenses, the supplier may refuse to carry it out, but in such a case the purchaser shall be entitled to choose between reducing the payment due or repudiating the contract, which shall include damages as well.

Article 619. *Repudiation of Contract in a Particular Case*

Should a job executed be so defective as to become useless, or should it be executed contrary to express terms and conditions of the contract, the purchaser may, without demanding preliminary elimination of the deficiency, repudiate the contract and claim damages.

Article 620. *Right of Purchaser in Case of Other Defects of the Work Executed*

(1) Should the work executed have a defect not making the creation useless, or if the work was not performed contrary to the express terms and conditions of the contract, the purchaser shall permit the supplier to eliminate the defect.

(2) The purchaser may give the supplier a reasonable time limit for the elimination of the defect.

(3) Should the supplier fail to eliminate the defect by the expiration of such time limit, the purchaser may, at his own choice, eliminate the deficiency at the expense of the supplier, or reduce the payment due for the work done, or repudiate the contract.

(4) In case of a minor defect, the purchaser shall not make use of his right to repudiate the contract.

(5) He shall in any case be entitled to claim damages.

Article 621. *Reducing Payment for the Work Done*

Reducing the payment for the work done shall be effected proportionally to the value of the work done without a defect at the time of entering into contract, and the value which the work had with the defect at the time.

Section 6.

OBLIGATIONS OF A PURCHASER

Article 622. *Obligation to Accept the Job Done*

A purchaser shall be obliged to accept the work done according to the terms and conditions of the contract and to the rules of the line of corresponding business.

Article 623. *Agreement and Payment for the Work Done*

(1) The payment for the work done shall be agreed by contract, unless it is determined by a binding tariff or some other mandatory act.

(2) In case of payment not being agreed, it shall be specified by the court according to the time normally needed for such kind of work, and according to usual payment for such kind of work.

(3) The purchaser shall not be bound to pay the consideration prior to inspecting and approving the work executed, unless otherwise stipulated.

(4) The same shall apply if the supply of goods and services has to be effected, according to contract, in parts.

Article 624. *Estimate with an Express Guarantee*

(1) Should remuneration be stipulated on the ground of an estimate backed by an express guarantee of the supplier regarding its accuracy, he shall not claim increased remuneration even after investing more labor in the job and after performing it with expenses higher than foreseen.

(2) This shall not exclude the application of rules on repudiation and alteration of contract due to changed circumstances (hardship).

(3) Should remuneration be stipulated on the ground of an estimate without express guarantee by the supplier regarding its accuracy, and should it turn out that, in the course of work, an overstepping of the estimate becomes inevitable, the operator shall be bound to notify the purchaser immediately thereof, otherwise he shall lose every claim concerning the increased expenses.

Section 7.

RISK

Article 625. *In the Case of Supplier Supplying Material*

(1) Should a supplier supply the material for manufacturing the goods, and the goods became damaged or lost, regardless of cause, prior to being delivered to the purchaser, the risk shall be born by the supplier, so that he shall not be entitled to remuneration for the material supplied, in addition to remuneration for his work.

(2) After the purchaser has inspected the work performed and has approved it, the goods shall be considered as delivered to him, and that they remain with the supplier to be looked after by him.

(3) Should the purchaser be late in accepting the goods offered to him, the risk of accidental loss of the goods or of their damage shall pass to him.

Article 626. *In the Case of a Purchaser Supplying Material*

(1) The risk of accidental loss of goods or of their damaging shall be born by the purchaser should he supply the material for the manufacture.

(2) In such a case the supplier shall be entitled to remuneration for the job only if the goods be lost or damaged after the purchaser delayed his obligation, or if the purchaser fail to answer his invitation to inspect the goods.

Article 627. *Risk in Case of Delivery in Parts*

Should it be stipulated that the purchaser inspect and accept the delivery of individual parts in the course of their manufacture, the supplier shall be entitled to remuneration covering the manufacture of those parts inspected and approved by the purchaser, even if they subsequently perish at the supplier's place without his fault.

Section 8.

RIGHT OF SECURITY

Article 628.

In order to secure payment on the ground of claims for remuneration for work done and cost of the material used, as well as for other contractual claims over the goods he has manufactured or repaired, as well as over other goods delivered to him by the purchaser in connection with his work, which security shall continue to be effective while he willingly keeps them in his possession.

Section 9.

TERMINATION OF CONTRACT

Article 629. *Breach of Contract by Purchaser's Intent*

Before the work ordered is completed, the purchaser may repudiate the contract whenever he wants, but in such a case he shall be bound to pay to the supplier the remuneration stipulated, reduced by the amount of costs not incurred by the latter which would otherwise be at his charge were the contract valid, together with the amount of earnings realized by the latter doing other jobs, or which are intentionally missed by him.

Chapter XIII.
CONTRACT OF CONSTRUCTION

Section 1.
GENERAL PROVISIONS

Article 630. *Notion*

(1) A contract of construction shall be a contract for services by which a contractor assumes the obligation to construct, according to a specific plan and within a stipulated time limit, a specific building on an agreed building site, or to perform on such building site, or on an already existing facility, some other civil engineering works, while the purchaser assumes the obligation to pay in return an agreed price.

(2) A contract of construction must be concluded in written form.

Article 631. *Building*

In this Chapter, the term "building" shall include buildings, dams, bridges, tunnels, water supply installations, sewerage systems, roads, railroad tracks, wells and other civil engineering facilities the manufacture of which requires large and more complex works.

Article 632. *Supervision over the Works and Material Quality Control*

A contractor shall be bound to enable the purchaser to effect permanent supervision over the works and the control of quantity and quality of the material used.

Article 633. *Departure from a Construction Plan*

(1) Every departure from a construction plan, or works stipulated, effected by the supplier shall need written approval from the purchaser.

(2) He shall not be entitled to demand increase of price stipulated for works done by him without such approval.

Article 634. *Urgent and Unforeseen Works*

(1) Unforeseen works may be done by a contractor even without previous approval by the purchaser if, due to their urgency, he was not able to obtain such approval.

(2) Unforeseen works shall be works the undertaking of which is necessary in order to ensure stability of a facility, or to prevent damage, and which were caused by an unexpectedly

less favourable quality of soil, unexpected occurrence of water or other extraordinary and unexpected events.

(3) The contractor shall be bound to notify the purchaser without delay about such phenomena and of measures taken.

(4) The contractor shall be entitled to fair remuneration for the unforeseen works which had to be done.

(5) The purchaser may repudiate the contract if, due to such works, the price stipulated would have to be considerably raised, while being obliged to notify the contractor accordingly and without delay.

(6) In case of repudiation of contract, the purchaser shall be bound to pay to the contractor a corresponding part of the price for works already carried out, as well as fair remuneration covering his necessary expenses.

Article 635. *Price of Works*

The price of works may be determined according to a measurement unit (unit price) or as a total amount for the entire facility (stipulated aggregate price).

Article 636. *Change of Price*

(1) Unless otherwise provided by contract concerning a change of price, a contractor fulfilling his obligation within a specified time limit may demand an increased price for the works done, if in the period between entering into contract and its fulfilment prices have been raised of elements on the ground of which the price of works was agreed, so that it would be necessary that such price be more than two percent higher.

(2) Should a contractor through his fault fail to perform stipulated works on time he may demand a price increase of works if, in the period between entering into contract and the day on which works had to be completed according to contract, the prices of elements on the ground of which the price of works was determined have been raised, so that it would be necessary that the price, as compared to new prices, be higher by more than five percent.

(3) In cases specified in the preceding paragraphs the contractor may request only the difference in price of works exceeding two, or five percent.

(4) A contractor shall not refer to the increased prices of elements on the ground of which the price of works was determined if such price increase took place after his delayed fulfilling his obligations.

Article 637. *A Provision on Unchangeability of Prices*

(1) Should it be stipulated that the price of works shall not be changed if after entering into contract prices of elements on the ground of which it was agreed be raised, the contractor may, in spite of such contractual clause, demand a change of price of the works, if prices of the elements be raised to such a degree that it would be necessary for the price of works to be higher by more than five percent.

(2) However, in that case the contractor may demand only a difference in price exceeding ten percent, unless the increase in prices took place after he became late in fulfilling his obligations.

Article 638. *Repudiation of Contract due to an Increase of Prices*

(1) In cases specified in the preceding paragraphs the price stipulated had to be raised considerably, the purchaser may repudiate the contract.

(2) In case of repudiation of contract, the purchaser shall be obliged to pay to the contractor a corresponding part of the price stipulated for the works completed up to that time, as well as fair remuneration covering necessary expenses incurred by him.

Article 639. *Right of a Purchaser to Demand Reduction of Stipulated Price*

(1) If in the period between entering into contract and fulfilling of the contractor's obligation, the prices of elements serving as a ground for determining the price of works have been reduced by more than two percent, and if the works were completed within the time limit specified by contract, the purchaser shall be entitled to demand a corresponding reduction of price of the works stipulated above such percentage.

(2) If it was stipulated that the price of works shall not be changed, if the works were completed within the time specified by contract, the purchaser shall be entitled to a reduction of the price stipulated, if the prices of elements serving as a ground for determining the price were lowered to such a degree that the price would have been more than ten percent lower, which reduction shall amount to the difference in price over ten percent.

(3) In case of a contractor being late with the works, the purchaser shall be entitled to a proportionate reduction of the price of works for every reduction of price of elements serving as a ground for determining the price of works.

Section 2.

CONTRACT OF CONSTRUCTION WITH A PARTICULAR CLAUSE

Article 640.

(1) Should a "turn-key contract" clause, or a similar clause be included in a contract of construction, the contractor shall assume an independent obligation to perform all works necessary for the construction and use of a specific complete facility.

(2) In such a case the price stipulated shall also include the value of all unforeseen works and surplus works, while smaller volume of works shall not influence the price stipulated.

(3) Should several contractors participate as the contracting party in a turn-key contract, their liability to the purchaser shall be joint.

Section 3.

LIABILITY FOR DEFECTS

Article 641. *Application of Rules Covering Contract for Services*

Unless otherwise specified in the present Chapter, the corresponding rules covering the contract for services shall apply to liability for defects in a building.

Article 642. *Transfer of a Right Arising from Liability for Defects*

Rights of purchaser against a contractor acquired on the ground of defects in a building shall pass to all subsequent acquirers of the building or its part, but subsequent acquirers shall have no new time limits for notification and instituting legal proceedings, so that the time limit of the predecessors shall be accounted to them.

Article 643. *Particular Rights of a Holder of Tenancy Right*

A holder of a tenancy right in an apartment in social ownership shall be entitled to demand that the contractor eliminate defects within the limits of his liability for defects of the building regarding the purchaser.

Section 4.

RESPONSIBILITY OF CONTRACTOR AND PROJECT ENGINEER FOR THE SOUNDNESS OF BUILDING

Article 644.

(1) A contractor shall be liable for defects in the construction process of the building relating to its soundness, should such defects appear within a ten year period from the delivery and acceptance of the works.

(2) The contractor shall also be liable for defects in the building site which appear within a ten year period from the delivery and acceptance of the works, unless a specialized organisation has supplied an expert opinion as to the suitability of the building site, and in the building process itself there were no visible defects which would raise doubt as to the reliability of the expert opinion.

(3) The same shall apply to a project engineer should a defect in the building be caused by a defect in the construction plan.

(4) They shall be liable according to the provisions of the preceding paragraphs not only to the purchaser but also to every other acquirer of the building.

(5) Liability of the above-mentioned parties shall not be excluded or limited by contract.

Article 645. *Duty of Notification and Forfeit of Right*

(1) A purchaser or other acquirer shall be bound to notify the contractor and the project engineer of defects within a six month time limit after discovering a defect; otherwise they shall lose the right to claim the defect.

(2) The right of the purchaser or other acquirer against the contractor, or a project engineer, on the ground of their liability for defect shall be terminated after a year, counting from the day of the purchaser's, or acquirer's notifying the project engineer, or contractor, of the defect.

Article 646. *Reduction and Exclusion of Liability*

(1) A contractor shall not be exempted from liability if damage was caused through his proceeding with specific works according to the purchaser's request.

(2) However, if he warned the purchaser, prior to executing requested specific works, that there was a danger of damage, his liability shall be reduced and, according to circumstances of the case, may even be excluded.

Article 647. Recourses

(1) Should a contractor or a project engineer be liable for damage, the liability of each one of them shall be determined commensurately to the scope of their respective fault.

(2) A project engineer designing the plans of a building and being entrusted with supervision over the carrying out of planned works, shall also be liable for defects in the completed works which were caused through the fault of the contractor, provided the project engineer could have noticed them by normal and reasonable supervision of works, but he shall be entitled to claim corresponding recovery against the contractor.

(3) If contractor compensates loss due to defects in the works completed, he shall be entitled to claim recovery from the project engineer to the degree in which the defects of the completed works originated because of defects in the construction plans of the building.

(4) Should a responsible person entrusted by the contractor to carry out part of the works be liable for defects, the contractor, while intending to claim damages from him, must notify him of the existence of the defect within a two month time limit, counting from the day of his own obtaining information from the purchaser concerning the same defect.

Chapter XIV.

CARRIAGE

Section 1.

GENERAL PROVISIONS

Article 648. Notion

(1) By a contract of carriage a carrier shall assume the obligation to transport to a determined place a person or an object, while the passenger, or sender, shall assume the obligation to pay him an adequate carriage charge in return.

(2) In terms of the present Law the carrier shall mean both a person dealing with carriage as his regular business activity, and any other person assuming an obligation by contract to perform transport for remuneration.

Article 649. *Obligations of a Line Carriage Carrier*

(1) A carrier performing transport along a specified line (line carriage) shall have a duty to maintain a scheduled line service regularly and orderly.

(2) He shall be bound to accept for transport any person and any object meeting requirements determined in the announced general terms and conditions.

(3) Should a number of regular transportation vehicles of a carrier be insufficient to meet all requests for transport, the priority shall be extended to persons and objects, as prescribed by particular regulations, and further priority shall be determined according to the order of requests, while priority between simultaneous requests shall be determined according to longer distance of transport.

Article 650. *Desisting from Contract*

(1) A sender, or a passenger, may desist from contract prior to commencement of its performance, but he shall be liable to compensate loss eventually sustained by the carrier due to that.

(2) Should a carrier delay commencement of the transport to a degree that the other party becomes no longer interested for the stipulated transport, or if the carrier is unwilling or unable to perform such transport, the other party may desist from the contract and demand restitution of the carriage charge paid.

Article 651. *Amount of Carriage Charge*

(1) Should the amount of carriage charge be determined by a tariff or other announced compulsory act, a higher carriage charge shall not be stipulated.

(2) Should the amount of carriage charge not be determined either by tariff or other announced compulsory act, or by contract, the carrier shall be entitled to a usual carriage charge otherwise practiced in such line of transportation.

(3) In other cases, the provisions covering charges in the Chapter of the present Law relating to contract for services shall apply accordingly.

Article 652. *Restrictive Application of Provisions of the Present Chapter*

The provisions of the present Chapter shall apply to all kinds of transport, unless otherwise determined by law for particular kinds of transport.

Section 2.
**CONTRACT OF CARRIAGE
OF OBJECTS**

Subsection 1.

GENERAL PROVISIONS

Article 653. *Delivery of Object*

A carrier shall be obliged to deliver the object accepted for transport, at a designated place to a sender or to a designated person (consignee).

Article 654. *Contents of Notification of a Sender to a Carrier*

(1) A sender shall be bound to notify a carrier of the kind of shipment and of its contents and quantity, and to inform him about the place of destination of shipment, the name and address of the consignee, his own name and address, as well as anything else necessary for the carrier to fulfil his obligation without delay and difficulties.

(2) Should the shipment contain valuables, securities or other expensive objects, the sender shall be bound to notify the carrier accordingly at the moment of their delivery for transport, including information as to their value.

(3) In case of transporting a dangerous object or an object requiring particular treatment in transport, the sender shall be obliged to notify the carrier thereof on time, so that the latter will be able to take corresponding special measures.

(4) Should the sender fail to supply the carrier with data specified in paragraphs 1 and 3 of the present article, or should he relate to him erroneous information, he shall be liable for ensuing loss.

Article 655. *Bills of Lading*

1) Contracting parties may agree that a bill of lading be issued concerning the shipment delivered for transport.

(2) A bill of lading should contain the following indications: name and address of sender and of carrier, kind, contents and quantity of shipment, as well as the value of valuables and other expensive items, place of destination, the amount of carriage charge, or a note that such charge is paid in advance, the provision about the amount being the charge of the shipment, and place and day of issuing the bill of lading.

(3) Other clauses of the contract of carriage may also be introduced into the bill of lading.

(4) A bill of lading must be signed by both contracting parties.

(5) A bill of lading may contain a clause "by order" or it may be made out to bearer.

Article 656. *Contract of Carriage and Bill of Lading*

The existence and validity of a contract of carriage shall be independent of the existence of a bill of lading and of its accuracy.

Article 657. *Carriage Receiving Note*

Should a bill of lading not be issued, a sender may demand that a carrier issue to him a receiving note for the shipment delivered to him for transport, containing data which should otherwise make a bill of lading.

Subsection 2.

RELATIONSHIP BETWEEN A
SENDER AND A CARRIER

Article 658. *Packaging*

(1) A sender shall be bound to pack the object in a prescribed or usual way in order to prevent eventual damage or danger for safety of people and property.

(2) A carrier shall be bound to draw the sender's attention to noticeable deficiencies in packaging, otherwise he shall be liable for resulting damage in shipment.

(3) However, the carrier shall not be liable for damage in shipment should the sender, after being notified of deficiencies in packaging, request the carrier to accept the shipment for transport with these deficiencies.

(4) A carrier shall be bound to refuse the shipment if deficiencies are of such a nature as to potentially endanger the safety of people and property, or be prone to cause damage.

(5) A carrier shall be liable for damage sustained by third parties due to deficiencies in packaging while the goods are still in his possession, and he shall be entitled to claim recovery from the sender.

Article 659. *Carriage Charge and Expenses Connected with Transport*

(1) A sender shall be bound to pay to the carrier a carriage charge and to cover expenses connected with the transport.

(2) Should there be no indication in the bill of lading that the sender is to pay the carriage charge and to cover other expenses relating to transport, it shall be presumed that the sender has directed the carrier to collect them from the consignee.

Article 660. *Disposing of Shipment*

(1) A sender may dispose of the shipment and change the orders indicated in the contract, and order the carrier to suspend further transportation of the shipment, to return the shipment to him, to deliver it to another consignee, or to forward it to another destination.

(2) The right of a sender to change the orders shall expire when the shipment arrives at the point of destination and the carrier hands over the bill of lading to the consignee, or when the carrier has invited the consignee to accept the shipment, or if the consignee himself has demanded its delivery to him.

(3) Should the bill of lading be issued with a clause "by order", or "to bearer", the rights of a sender specified in the preceding paragraph shall belong exclusively to the party in possession of the bill of lading.

(4) An authorized person using the right to give new orders to a carrier shall be bound to redress ensuing loss and damage and cover relevant expenses incurred by him, as well as to supply him, at his request, with a guarantee to cover the payment of damages and expenses.

Article 661. *Direction of Transport*

(1) A carrier shall be bound to perform the transportation by a stipulated route.

(2) Should there be no stipulation as to the transport route, the carrier shall be obliged to perform it by the route which best suits the sender's interests.

Article 662. *Hindrances in Performing Transport*

(1) A carrier shall be bound to notify a sender regularly of all circumstances relevant for the performance of transport, and he shall act according to instructions he has received from him.

(2) A carrier shall not be obliged to act according to instructions of the sender should following them endanger the safety of people and property.

(3) In a case not permitting any delay in waiting for sender's instruction, the carrier shall be bound to proceed as a good businessman or a good head of household would in the same situation; he shall accordingly notify the sender while requesting further instructions.

(4) The carrier shall be entitled to reimbursement of expenses incurred by him due to hindrances occurring without his fault.

Article 663. *Carriage Charge in Case of Interruption of Transport*

(1) Should transport be interrupted for a reason not within the responsibility of the carrier, he shall be entitled to a proportionate part of carriage charge for the effected transport, but shall also be liable for loss caused to the other party due to interruption of transport.

(2) Should transport be interrupted for a reason not within the responsibility of any person interested in the matter, the carrier shall be entitled to the difference between the carriage charge stipulated and carriage expenses from the place of interruption of transport to the destination place.

(3) A carrier shall not be entitled to even part of the carriage charge should the shipment be lost in course of transport due to an Act of God.

Article 664. *Impossibility of Delivery*

(1) Should it be impossible to notify a consignee of the arrival of a shipment, or should he refuse to accept it and should it generally be impossible to deliver the shipment, or should the consignee fail to pay to the carrier the carriage charge due and the remaining shipment charges, the carrier shall be bound to notify the sender thereof, to request instructions from him and to take measures necessary for preserving the goods on his behalf.

(2) Should an authorized person fail, within reasonable time, to take any measures relating to shipment, the carrier shall be entitled to sell it according to rules of the sale of goods owed in case of a creditor's delay, to collect his claim from the proceeds of sale, and to deposit the rest at the court for the authorized person.

Article 665. *Liability of Carrier to a Sender*

If a carrier delivers the shipment to a consignee, but does not collect from him the shipment charges, he shall be bound to pay such amount to the sender, but shall be entitled to claim redress against the consignee.

Subsection 3.

RELATIONSHIP BETWEEN A
CARRIER AND A CONSIGNEE

Article 666. *Notifying a Consignee on Arrival of Shipment*

(1) A carrier shall be bound to notify a consignee without delay that the shipment has arrived, to place it at his disposal as stipulated, and to submit to him the bill of lading, if issued.

(2) Should the bill of lading contain the clauses "by order" or "to bearer", he shall be obliged to proceed according to the preceding paragraph only if there is an indication in the bill as to a person at the point of destination who must be notified of the arrival of shipment.

Article 667. *Delivery of Shipment after Issuing a Duplicate of a Waybill*

A carrier may refuse delivery of a shipment if he is not simultaneously presented with a duplicate of the bill of lading, containing an indication that the shipment has been accepted by the consignee.

Article 668. *Right of Consignee to Request Delivery of Shipment*

(1) A consignee may realize rights out of the contract of carriage against a carrier, and request to be presented with the bill of lading and the shipment, only when the shipment has arrived at its destination point.

(2) At the consignee's request the carrier shall be obliged to deliver to him the shipment prior to its arrival to the destination point only if authorized accordingly by the sender.

(3) The consignee may realize the rights out of the contract of carriage, and request from the carrier delivery of the shipment only if he meets terms and conditions specified in the contract of carriage.

Article 669. *Establishing Identity and Condition of Shipment*

(1) An authorized person shall be entitled to demand that the identity of a shipment be established and recorded, and should the shipment be damaged, that the fact of damage be entered.

(2) After establishing that a shipment is not the one delivered to the carrier, or that damage is more serious than stated by the carrier, the expenses of establishing the condition of the shipment shall be born by the carrier.

Article 670. *Duty of a Consignee to Pay the Carriage Charge*

(1) By accepting delivery of shipment and the bill of lading if issued, a consignee shall assume a duty to pay to a carrier the carriage charge, unless otherwise stipulated in the contract of carriage or bill, and to pay to him the shipment charges.

(2) Should the consignee consider that he is not obliged to pay to the carrier the amount required by him, he may realize the rights out of contract only after depositing at the court the contested amount.

Subsection 4.

**LIABILITY OF CARRIER
FOR LOSS, DAMAGE
AND DELAY IN SHIPMENT**

Article 671. *Loss or Damage of Shipment*

(1) A carrier shall be liable for loss or damage of the shipment which occurs from the moment of its being accepted for transportation until its delivery, unless caused by an act of the authorized person, by the properties of the shipment, or by external causes which could not have been foreseen, prevented or eliminated.

(2) Clauses in the contract of carriage, general terms and conditions of carriage, in tariffs or any other general act, shall be null and void if they seek to reduce liability.

(3) But a clause by which highest amount of compensation of damage is determined in advance shall be valid, on condition that it not be in obvious disproportion to the damage.

(4) Such limit of the amount of compensation for damage shall not apply should the damage be caused by the carrier through his wilful misconduct or gross negligence.

(5) Unless otherwise specified by contract, the amount of compensation for damage shall be determined according to the market price of the shipment at the time and in the place of its delivery for transport.

Article 672. *Loss or Damage of Shipment of Valuable Objects*

(1) In the case of loss or damage of a shipment of valuables, securities, or other expensive items, the carrier shall be obliged to redress the corresponding loss only if notified, at the moment of delivering the objects for transport, of the nature of such objects and of their value, or if he causes the loss through wilful misconduct or gross negligence.

(2) Should other goods be placed together in the shipment with the above mentioned objects, liability for their loss or damage shall be the carrier's according to the general rules of carrier's liability.

Article 673. *Restitution of Carriage Charge Paid*

In the case of total loss of the shipment, the carrier shall be bound, in addition to redressing the loss, to restitute to the sender the carriage charge eventually paid.

Article 674. *A Case of a Consignee Accepting the Shipment without Objections*

(1) If a consignee accepts a shipment without objections and pays the carrier the amount of his claim, the liability of the carrier shall be terminated, unless the damage has been established by way of record prior to accepting the shipment (by the consignee).

(2) The carrier shall remain liable for damage to the shipment which could not have been noticed at the moment of delivery, if the consignee notifies him of such damage immediately after discovering it, but not later than eight days after delivery.

(3) The carrier shall not invoke the provisions of the preceding paragraphs if he has caused the damage through wilful misconduct or gross negligence.

Article 675. *Liability of Carrier for Delay*

A carrier shall be liable for loss or damage caused by delay, unless the delay was caused by a fact which excluded his liability for loss or damage of the object.

Article 676. *Liability for Assistants*

A carrier shall be liable for persons being engaged at his order in performing the transportation.

Subsection 5.

PARTICIPATION OF SEVERAL
CARRIERS IN TRANSPORTING
A SHIPMENT

Article 677. *Cases of Their Joint Liability*

(1) A carrier entrusting complete or partial performance of the transport of shipment he has accepted for transportation to another carrier, shall still remain liable for its transportation

from the moment of its acceptance until its delivery, but shall be entitled to be paid the carriage charge by the carrier to whom he has entrusted the shipment.

(2) Should the second carrier take over the bill of lading from the first carrier together with the shipment, he shall become a contracting party in the contract of carriage, with rights and duties of a joint debtor and joint creditor, proportionate to his participation in the transport.

(3) The same shall apply in the case of a contract for transportation of a shipment by several carriers performing the transportation one after another.

(4) Each of the several carriers shall be entitled to request that condition of shipment be established at the moment of his accepting it for transport in order to perform his part of the transportation.

(5) Joint carriers shall participate in covering loss in proportion to their shares in the transportation, except one being successful in proving that the damage did not occur while he was transporting the shipment.

(6) Objections raised against a subsequent carrier shall also be effective against all previous ones.

Article 678. *Divided Liability of Carriers*

Should performance of transportation of the same shipment be effected by several carriers one after the other, as designated by the sender, each one shall be liable only for his part of the transportation.

Subsection 6.

RIGHT OF LIEN

Article 679. *Right of Pledge Pertaining to Carrier*

(1) In order to secure payment of carriage charge and of necessary expenses incurred by him in connection with transport, the carrier shall have the right of lien over the objects delivered to him for transport, and in relation to the transport, the lien shall be effective while these objects are in his possession or while he holds the document enabling him to dispose of them.

(2) After several consecutive carriers have participated in performing the transport, their claims in relation to such transport shall be also secured by such lien, and the last of the carriers, unless the bill of lading states otherwise, shall be bound to effect collection of all claims on the grounds of the bill of lading.

(3) The claims of an earlier carrier, as well as the right of lien, shall be transferred, by law, to the subsequent carrier who pays to him such claims.

(4) The same shall apply if the carrier has paid the forwarder's claims.

Article 680. *Colliding Rights of Lien*

(1) Should, besides the right of lien of a carrier, the same object be charged with simultaneous rights of lien of a commission agent, forwarder and storekeeper, the priority in payment shall be with the claims of any of these creditors arising from forwarding or transport, and in the order opposite to their origination.

(2) The remaining claims of the commission agent and the storekeeper, as well as claims of the forwarder and the carrier, created by advance payments, shall be collected only after paying the claims specified in the preceding paragraph, and in the order of their origination.

Section 3.

**CONTRACT OF TRANSPORTATION
OF PASSENGERS**

Article 681. *General Provisions*

A carrier shall be obliged to perform the transportation of passengers safely in a transportation vehicle designated by the contract of transportation, and to provide such conditions of comfort and hygiene which are considered necessary according to the kind of the relevant vehicle and the length of the journey.

Article 682. *Right of Passenger to Specific Seat*

A carrier shall be liable to provide the passenger with such seat and in such transportation vehicle as stipulated.

Article 683. *Liability of Carrier for Delay*

(1) A carrier shall be liable to transport the passenger to the specified place on time.

(2) He shall be liable for losses sustained by the passenger due to delay, unless delay was due to a cause impossible to be eliminated by him even after applying expert care.

Article 684. *Responsibility of Carrier for Safety of Passengers*

(1) A carrier shall be responsible for the safety of passengers from the commencement of transportation to its end, both in case of paid transportation and of free transportation, so that he shall be obliged to compensate loss occurring through harm to health, injury or death of a passenger, unless these are caused by the action of the passenger or by an unforeseeable external cause which can not be avoided or eliminated.

(2) Clauses of a contract as well as those of general terms and conditions of transport, tariffs or other general act, by which such liability is reduced shall be null and void.

Article 685. *Responsibility for Luggage Handed over for Transportation and for other Objects*

(1) A carrier shall be bound to transport the luggage handed over to him and at the same time as the passenger, and he shall present it to him when the transportation is over.

(2) A carrier shall be liable for loss or damage to luggage handed over by a passenger to him according to the provisions relating to the carriage of objects.

(3) A carrier shall be liable for damage to objects carried by a passenger according to the general rules of liability.

Chapter XV.

LICENSING AGREEMENT ³²

Section 1.

GENERAL PROVISIONS

Article 686. *Notion*

By a licensing agreement a licensor shall assume the obligation to assign to a licensee, entirely or partially, the right of use (franchise) of an invention, technical know-how and experience, trade-mark, sample or model, while the licensee shall assume the obligation to pay a specified fee in return.

Article 687. *Form*

A licensing agreement must be concluded in written form.

³² Franchise.

Article 688. License Period

A license for the use of a patented invention, sample or model, shall not be concluded for a period longer than the one covered by statutory protection of such rights.

Article 689. Exclusive License

(1) A licensee shall acquire by licensing agreement an exclusive right of use of the subject of license only after this has been expressly stipulated (exclusive license).

(2) Other means of using the subject of license shall be reserved by the licensor.

(3) Should there be no indication in the licensing agreement as to the kind of license, it shall be considered that a non-exclusive license has been granted to him.

Article 690. Area Limit of the Right of Use

(1) A right to use the subject of license may be limited to certain area only if this is not contrary to regulations relating to the unified Yugoslav market.

(2) Should there be no area limit in the licensing agreement of the right to use the subject of license, license shall be considered as not restricted in terms of area.

Section 2.

OBLIGATIONS OF LICENSOR

Article 691. Delivery of the Subject of License

(1) A licensor shall be obliged to deliver to a licensee the subject of the license within the designated time limit.

(2) A licensor shall also be obliged to deliver to a licensee the technical documentation necessary for practical implementation of the subject of license.

Article 692. Providing Instructions and Information

A licensor shall be obliged to provide a licensee with all instructions and information necessary for the successful use of the subject of license.

Article 693. Duty of Guarantee

A licensor shall guarantee to the licensee the technical feasibility and technical fitness of the subject of license.

Article 694. *Guarantee*

(1) A licensor shall guarantee that the right of use which is the subject of the agreement belongs to him, that there is no lien on it and that it is not restricted in favour of a third person.

(2) Should the subject of agreement be an exclusive license, the licensor shall guarantee that he has not assigned the right of use to another, either entirely or partially.

(3) A licensor shall be bound to protect and defend the right which he has assigned to the licensee against all third parties' requests.

Article 695. *Duty of a Licensor of an Exclusive License*

Should an exclusive license be stipulated, the licensor shall not in any way use the subject of license alone, or some of its parts, nor shall he entrust that to another within the limits of territorial validity of license.

Section 3.

OBLIGATIONS OF THE LICENSEE

Article 696. *Use of the Subject of License*

A licensee shall be bound to use the subject of license in the way, within the scope, and in the limits stipulated.

Article 697. *Use of Subsequent Advancements*

Unless otherwise determined by law or by contract, a licensee shall not be authorized to use subsequent improvements in the subject of license.

Article 698. *Keeping Secret the Subject of License*

Should the subject of license be a non-patented invention or secret technical know-how, the licensee shall be bound to keep it confidential.

Article 699. *Quality*

(1) Should a manufacturing license be assigned together with a license concerning the use of a trade-mark, the licensee shall be entitled to put goods with such trademark on the market only if its quality is the same as the quality of goods otherwise manufactured by the licensor.

(2) A contrary agreement shall have no effect.

Article 700. Labelling

A licensee shall be obliged to put an indication on the goods that they are manufactured according to license.

Article 701. Compensation

A licensee shall be bound to pay to a licensor the fee stipulated, at the time and in the way provided for by the agreement.

Article 702. Submitting a Report

Should a fee be agreed in relation to the scope of use of the subject of license, the licensee shall be obliged to submit to the licensor a report on the scope of use and to make an annual fee account, unless a shorter time limit be stipulated in the matter.

Article 703. Changing a Stipulated Fee

Should the stipulated fee be obviously inadequate in relation to the revenue realized by the licensee through the use of the subject of license, the interested party may request a change in the stipulated fee.

Section 4.

SUBLICENSE

Article 704. When Can it Be Granted

(1) A licensee of an exclusive license may issue to another the right of use of the subject of license (sublicense).

(2) A contract can provide that a licensee be precluded from granting a sublicense to another, or from granting it without the licensor's permission.

Article 705. When a Licensor May Refuse Permission

Should permission by licensor be needed for granting a sublicense, he may only refuse it to the licensee of an exclusive license for serious reasons.

Article 706. Cancellation due to a Prohibited Sublicense

A licensor may cancel the licensing agreement without extending a period of notice if a sublicense has been granted without his permission, should permission be necessary on the ground of law or contract.

Article 707. *Direct Request by a Licensor*

(1) A sublicensing agreement shall create no particular legal relationship as between the sublicensee and the licensor, even if the licensor granted the necessary permission to make the sublicensing agreement possible.

(2) But in order to collect his claims against the licensee on the ground of license, the licensor may request the payment of the amount owed to the sublicensor on the ground of sublicense directly from the sublicensee.

Section 5.

TERMINATION OF AGREEMENT

Article 708. *Expiration of Time Specified*

A licensing agreement for a definite period shall be terminated on expiration of the period stipulated, so that there shall be no need for cancellation.

Article 709. *Implicit Renewal of a License*

(1) Should after the expiration of a definite period specified in the licensing agreement the licensee continue to use the subject of license, but the licensor fail to object, a new agreement shall be considered to have been made for the license covering an indefinite period, and under the same terms and conditions as the previous one.

(2) Securities supplied by third parties regarding the first license shall be terminated with the expiration of the validity period of that license.

Article 710. *Notice*

(1) A licensing agreement whose validity period is not determined shall be terminated by notice which may be given by either party, after honouring a determined period of notice.

(2) Should the period of notice not be stipulated by agreement, it shall be six months, provided the licensor does not cancel the agreement during the first year of its validity.

Article 711. *Death, Bankruptcy and Regular Liquidation*

(1) In the case of death of a licensor, the license shall continue to be effective for his successors, unless otherwise stipulated by the agreement.

(2) In the case of death of a licensee, the license shall continue to be effective for his successors continuing his activity.

(3) In the case of a bankruptcy or liquidation of a licensee, a licensor may repudiate the agreement.

Chapter XVI. DEPOSIT (OF OBJECTS OF PROPERTY)

Section 1. GENERALLY ON DEPOSIT

Subsection 1. GENERAL PROVISIONS

Article 712. *Notion*

(1) By a contract of deposit (of objects of property) the depositary shall assume the obligation to accept an object from the depositor, to store it and to restore it at his request.

(2) Only movables may be the subject of deposit of objects.

Article 713. *Deposit of Another Person's Object*

(1) A contract of deposit of objects may be validly entered into also by a person, in his own behalf, who is not the owner of the object, and the depositary shall be bound to restore the object to him, unless he discovers that the object was stolen.

(2) Should a third party claim at the court the object from the depositary as an owner, the depositary shall be obliged to inform the court of the name of person from whom the object was accepted, and at the same time notify the depositor on the action filed with the court.

Subsection 2. OBLIGATIONS OF A DEPOSITARY

Article 714. *Duty of Storing and Informing*

(1) A depositary shall be bound to store the object as his own, and should the deposit be for a fee – as a good businessman, or good head of household.

(2) Should the place or manner of storing the object be stipulated, the depositary may change them only if this is required by changed circumstances; he shall otherwise be liable for accidental loss or accidental damage to the object.

(3) A depositary shall be obliged to notify a depositor about all changes noticed in the object, and about dangers threatening damage of any kind to it.

Article 715. *Delivering an Object to Another for Storing*

A depositary may not, without the depositor's consent or without necessity, deliver the object to another for storing; he shall otherwise be liable for its accidental loss or damage.

Article 716. *Using the Object*

(1) A depositary shall not be entitled to use the object entrusted to him for storage.

(2) In case of unpermitted use of the object, the depositary shall owe to the depositor corresponding compensation, and shall be liable for accidental loss or damage of the object which occurs.

(3) Should an essential object be deposited with the depositary, coupled with his right to use it, the relations between the contracting parties shall be governed by the rules of contract of making use of an object, while only the questions of time and place of restoring the object shall be regulated by the rules of contract of deposit, unless contracting parties have agreed otherwise.

Article 717. *Using and Delivering the Object to Another*

A depositary who, without the depositor's consent and without necessity, contrary to contract, use the object, changes the place or manner of storage, or delivers the object to another for storage, shall not be liable for accidental loss or damage of the object which would ensue anyway in spite of his proceeding according to the contract.

Article 718. *Restoring the Object*

(1) A depositary shall be bound to restore the object immediately upon a corresponding request by the depositor, including all yields and other benefits arising from the object.

(2) Should a time limit be determined for restoring the object, the depositor may request that the object be restored to him even prior to the expiration of such time limit, unless the time limit was stipulated entirely in the interest of the depositor.

(3) The restoration shall be effected at the place of delivery of the object to the depositary, unless another place be stipulated for the purpose, and in such case the depositary shall be entitled to reimbursement of expenses of transporting the object.

Subsection 3.

RIGHTS OF A DEPOSITARY

Article 719. *Reimbursement of Expenses and Compensation of Loss*

A depositary shall be entitled to request reimbursement from the depositor for expenses incurred justifiably by him in order to store the object, and to redress loss sustained due to such storing.

Article 720. *Compensation for Storing*

A depositary shall not be entitled to compensation for his efforts, unless compensation is agreed, and if the depositary is engaged in the business of storing, or if compensation was expected due to circumstances of the transaction.

Article 721. *Restoring the Object in Case of Depositing Free of Charge*

(1) A depositary assuming an obligation to store the object free of charge for a definite period, may restore it to the depositor prior to the expiration of the stipulated time limit, if the object would be exposed to danger of loss or damage, or if further storing would cause damage to him.

(2) Should a time limit not be stipulated, the depositary specified in the preceding paragraph may repudiate the contract at any time, but shall be obliged to the depositor to determine a reasonable time limit for taking the object over.

Subsection 4.

PARTICULAR CASES
OF DEPOSIT

Article 722. *A Non Genuine Deposit*

Should replaceable objects be entrusted for deposit with the right of the depositary to consume them and with a duty to restore the same quantity of objects of the same kind, his relations with the depositor shall be regulated by the rules of the

loan agreements and only the questions of time and place of restoring the object shall be governed by rules of deposit, unless the contracting parties have stipulated otherwise in that respect.

Article 723.

The one to whom an object is entrusted in case of an emergency, such as fire, earthquake or flood, shall be bound to keep it with increased care.

Section 2.

INNKEEPER'S DEPOSIT

Article 724. *Innkeeper as a Depositary*

(1) An innkeeper shall be considered as a depositary regarding objects brought in by guests, and shall be liable for their disappearance or damage up to a maximum amount to be determined by particular regulations.

(2) There shall be no such liability if the objects have perished due to circumstances which were impossible to avoid or eliminate, due to a cause inherent to the object itself, if they were lost or damaged due to the conduct of the guest himself, or due to the conduct of persons accompanying him, or of those visiting him as guests.

(3) The innkeeper shall be liable for total loss if the guest entrusted the object to him for storing, or if damage occurred through his fault or the fault of persons under his responsibility.

Article 725. *Obligations of Innkeeper to Accept Objects for Storing*

(1) An innkeeper shall be bound to accept for storing the objects brought in by the guests for such purpose, unless he has no adequate space for keeping them, or if such storage exceeds his resources in some other way.

(2) An innkeeper unjustifiedly refusing to accept an object for storing, shall be liable for the entire loss sustained by a guest.

Article 726. *Duty of Guest to Report Damage*

A guest shall be obliged to report loss or damage of the object as soon as he becomes aware of it; he shall otherwise be entitled to damages only after proving that the damage was

caused by the innkeeper's fault or by the fault of persons under his responsibility.

Article 727. *Notices on Excluding Liability*

Notices displayed in the premises of the innkeeper by which his liability is excluded, limited or made dependent on some conditions concerning objects brought in by the guests, shall have no legal effect.

Article 728. *Right of Retention (Lien)*

An innkeeper accepting guests overnight shall be entitled to keep the objects brought in by the guests until complete payment of the claim covering the lodging and other services.

Article 729. *Extending the Application of Provisions on Innkeeper's Deposit*

The provisions on innkeeper's deposit shall apply accordingly to hospitals, garages, railway sleeping-cars, organized camping sites, and the like.

Chapter XVII.

WAREHOUSING

Section 1.

GENERAL PROVISIONS

Article 730. *Notion*

(1) By a contract of warehousing the warehouse keeper shall assume the obligation to accept and store specified merchandise and to take necessary or stipulated measures in order to preserve it in the agreed condition, as well as to deliver it at the depositor's request, or at the request of other authorized person, while the depositor shall assume the obligation to pay to him in return an agreed fee.

(2) In delivering the merchandise the depositor shall be obliged to provide all necessary information on the merchandise, and to state its value.

Article 731. *Exclusion of Liability and some Obligations of a Warehouse Keeper*

(1) A warehouse keeper shall be liable for damage to the merchandise, unless he proves that the damage was caused by

circumstances which could not have been avoided or eliminated, or that it was caused by fault of the depositor, by shortcomings or natural properties of the merchandise, or by inadequate packaging.

(2) A warehouse keeper shall be obliged to warn the depositor about the shortcomings or natural properties of the merchandise, or about the inadequate packaging, due to which damage to merchandise may ensue, and he shall do that as soon as he becomes aware of such deficiencies, or as soon as he should have become aware of them.

(3) Should the merchandise be exposed to such irremediable changes so as to cause danger of perishing or loss, the warehouse keeper shall be bound, if the depositor is unable although being invited by him, to sell the merchandise immediately and in the most convenient way.

(4) A warehouse keeper shall be bound to take action in order to preserve the rights of the depositor in relation to the carrier delivering the merchandise to him for the account of the depositor, if the merchandise is damaged or is defective.

Article 732. *When Is there a Duty to Insure*

(1) A warehouse keeper shall be obliged to insure the merchandise accepted for storage only should this be stipulated.

(2) Should there be no stipulation regarding the kind of risk to be covered by insurance, the warehouse keeper shall be obliged to insure the merchandise against usual risks.

Article 733. *Limitation of Damages*

Damages which must be paid by a warehouse keeper due to loss, partial loss or damage to the merchandise in the period between its acceptance and delivery, shall not exceed the real value of the merchandise, unless damage was caused by him wilfully or through gross negligence.

Article 734. *Mixing of Replaceable Objects*

(1) A warehouse keeper shall not mix the accepted replaceable objects with objects of the same kind and same quality, unless a depositor has agreed accordingly, or unless it becomes obvious that objects are of such a nature that there would be no danger to the depositor from mixing them.

(2) Should the objects be mixed, the warehouse keeper may, at the request of an authorized person and without the participation of other authorized persons, set apart from the mixture of replaceable objects the part belonging to him.

Article 735. *Inspection of Merchandise and Taking of Samples*

A warehouse keeper shall permit an authorized person to inspect the merchandise and take corresponding samples.

Article 736. *Warehouse Keeper's Claim and the Right of Lien*

(1) In addition to the storage fee, the warehouse keeper shall be entitled to reimbursement of expenses which were necessary for storing the merchandise.

(2) A warehouse keeper shall have the right of lien over the merchandise, to cover his contractual claims of warehousing, and for other claims relating to the storage of merchandise.

Article 737. *Collecting of Merchandise and Sale of Uncollected Merchandise*

(1) A depositor shall be entitled to collect the merchandise even prior to the stipulated time limit.

(2) Should a depositor of merchandise fail to collect the merchandise after the expiration of the stipulated time limit, or one year after – should a time limit for storage be not stipulated – the warehouse keeper may sell the merchandise for his account at a public sale, but shall be obliged to notify him beforehand of his intention, and shall leave to him a subsequent minimum eight day time limit to collect merchandise.

Article 738. *Defects at the Acceptance of Merchandise*

(1) A consignee shall be obliged to inspect the merchandise at the moment of taking the delivery.

(2) After noticing defects on taking delivery, the consignee shall be bound to warn the warehouse keeper thereof immediately, otherwise the merchandise shall be considered to have been accepted in a regular way.

(3) The consignee shall be obliged to notify the warehouse keeper in a reliable way, within a seven day time limit, counting from the day of taking delivery, of defects in the merchandise which could not be established at the moment of taking delivery, otherwise merchandise shall be considered as having been accepted in a regular way.

Article 739. *Application of the Rules of Deposit*

The rules of deposit shall apply accordingly to the contract of warehousing, unless otherwise regulated by the rules of warehousing.

Section 2.

WAREHOUSE WARRANT

Article 740. *Duty of Issuing a Warehouse Warrant*

A warehouse keeper being authorized by law to issue a warehouse warrant covering the merchandise accepted for storage, shall issue such warrant to the depositor at his request.

Article 741. *Elements and Contents of Warehouse Warrant*

(1) A warehouse warrant shall consist of a receipt and a mortgage-deed.

(2) The receipt and the mortgage-deed shall include the following: title or name and profession of the depositor, his business address or domicile, title and business address of the warehouse keeper, date and number of the warehouse warrant, location of the warehouse, kind, nature and quantity of merchandise, information concerning the amount of insurance for the merchandise, as well as other data necessary to identify the merchandise and to determine its value.

(3) The receipt and mortgage-deed shall refer to each other.

Article 742. *A Warehouse Warrant for Parts of the Merchandise*

(1) A depositor may demand that the warehouse keeper separates the merchandise into specific parts and issue to him a separate warehouse warrant for each such part.

(2) After he has already obtained a warehouse warrant covering the entire quantity of merchandise, he may demand that the warehouse keeper separates the merchandise into specific parts and issues him, while replacing the already obtained warehouse warrant, the separate warehouse warrants covering each part of the merchandise.

(3) A depositor may demand the warehouse keeper to issue him the warehouse warrant for only one part of the replaceable merchandise left by him at the warehouse keeper.

Article 743. *Right of a Holder of the Warehouse Warrant*

(1) A holder of a warehouse warrant may demand that the merchandise indicated therein be delivered to him.

(2) He may dispose of the merchandise indicated in the warehouse warrant by transferring the warehouse warrant.

Article 744. *Transferring the Receipt and the Mortgage-Deed*

(1) A receipt and a mortgage-deed may be transferred by endorsement, together or separately.

(2) In effecting such transfer a date must be indicated for each transfer.

(3) At the request of the recipient of the receipt or the mortgage-deed, the transfer effected to his benefit shall be recorded in the warehouse ledger, where also his business address or his domicile, shall be noted.

Article 745. *Right of a Holder of the Receipt*

(1) A transfer of a receipt without a mortgage-deed shall entitle the recipient to claim delivery of merchandise only after paying the holder of the mortgage-deed, or depositing the amount which should be paid to him on the day of maturity of the claim to the warehouse keeper for the holder of the mortgage-deed.

(2) A holder of the receipt without the mortgage-deed may request that the merchandise be sold, if the price to be achieved covers the amount to which the holder of the mortgage-deed is entitled, on condition that the surplus realized be remitted to him.

(3) In case of replaceable objects, the holder of the receipt without the mortgage-deed may request that the warehouse keeper deliver to him one part of the merchandise, on condition that he deposits a corresponding amount of money to the warehouse keeper for the account of the holder of mortgage-deed.

Article 746. *Rights of a Holder of the Mortgage-Deed*

(1) A transfer of the mortgage-deed without the receipt shall entitle the recipient to a lien over the merchandise.

(2) On the occasion of the first transfer the mortgage-deed shall include the title or name and profession of the creditor, his business address or domicile, the amount of his claim, including the interest, and the maturity date.

(3) The first recipient of the mortgage-deed shall be obliged to notify without delay the warehouse keeper that the mortgage-deed is transferred to him, while the warehouse shall be obliged to record such transfer into the warehouse ledger, indicating on the face of the mortgage-deed the fact of making such transcription.

(4) Without the actions specified in the preceding paragraph, it shall not be possible to transfer further the mortgage-deed by endorsement.

(5) A mortgage-deed without the indication as to the amount of claim of the pledgee, shall be binding in favour of the pledgee up to the entire value of the objects indicated therein.

Article 747. *Complaint for Failing to Pay and Selling of Merchandise*

(1) A holder of the mortgage-deed without the receipt, whose claim secured by the mortgage-deed is not paid in the specified time, shall be bound, under threat of forfeiting his right to demand payment from the transferrers, to file a complaint in conformity with the Law on the Bills of Exchange.

(2) A holder of the mortgage-deed who has filed the protest shall be entitled, after the expiration of the eight day time limit from the maturity of the claim, to demand the sale of the mortgaged merchandise, while the same right shall also pertain to a transferrer who has paid to the mortgage-deed holder the claim secured by the mortgage-deed.

(3) The amount achieved by the sale shall serve to cover the sale expenses, the warehouse keeper's claim under the contract of warehousing, and other claims of the warehouse keeper connected to the stored merchandise, as well as for covering payment of the secured claim of the mortgage-deed holder, while the remainder shall belong to the holder of the receipt.

Article 748. *Requesting Payment from Transferrers of the Mortgage-Deed*

(1) A holder of the mortgage-deed may demand payment from a transferrer only if not successful in the total settlement by selling the mortgaged merchandise.

(2) Such request must be filed within the time limit determined by the Law on the Bills of Exchange in case of request against the endorsers, and that time limit shall begin to run from the day of selling the merchandise.

(3) The mortgage-deed holder shall forfeit the right to demand payment from the transferrers after failing to request the sale of merchandise at the latest within a month from the day of protest.

Chapter XVIII.

ORDER

Section 1.

GENERAL PROVISIONS

Article 749. *Notion*

(1) By a contract of order the person accepting the order shall assume the obligation to the orderer to undertake specific transactions for his account.

(2) At the same time the person accepting an order shall be authorized to undertake such transactions.

(3) The person accepting an order shall be entitled to remuneration for his effort, unless otherwise provided by the contract or resulting from the nature of the mutual relations of the parties.

Article 750. *Persons Obligated to Respond to Offering an Order*

One professionally engaged in performing other persons' transactions, or in making public offers to perform such transactions, shall be bound, if unwilling to accept an offered order relating to such transactions, to notify without delay the other party thereof, otherwise he shall be liable for loss sustained by such party.

Section 2.

OBLIGATIONS OF THE PERSON RECEIVING AN ORDER

Article 751. *Performing an Order as It Stands*

(1) A person accepting an order shall be obliged to perform the order in conformity with instructions received, and with the care of a good businessman, or head of household, while remaining within the limits of the order and, generally, taking care of the orderer's interests which shall serve as his guidelines.

(2) Should the person accepting the order consider that following the order according to instructions received would

be harmful to the orderer, he shall draw his attention accordingly and request new instructions.

(3) Should the orderer fail to supply specific instructions concerning the job to be done, the person accepting the order shall, while being guided by the interests of the orderer, proceed as a good businessman or head of household, and should the order be without remuneration (free of charge), he shall proceed as he would with his own matters under the same circumstances.

Article 752. *Departures from Order and from Instructions*

(1) A person accepting an order may depart from the order and instructions accepted only in agreement with the orderer, and should it be impossible, due to shortage of time or some other reason, to demand the orderer's consent, he may depart from the order and instructions only if, assessing all the circumstances, he is able to reasonably conclude that this is required in the interests of the orderer.

(2) Should the person accepting the order exceed the limits of the order or depart from the instructions received, he shall not be considered as a person accepting an order, but as a manager without order, unless the orderer subsequently approve what was done by him.

Article 753. *Substitution*

(1) A person accepting an order shall perform the order personally.

(2) He may entrust the performance of the order to another only after obtaining permission from the orderer, or if compelled by circumstances to do what he did.

(3) In such cases he shall be liable only for the choice of person substituting him and for the instructions communicated to such person.

(4) In remaining cases he shall be liable for the work of his substitute, and for accidental loss or damage to the object, which occurs with the person substituting him.

(5) The orderer in each case may demand, directly from the substitute, the carrying out of the obligation in the order.

Article 754. *Rendering Account*

A person accepting an order shall be obliged to render account of the transaction performed, while handing over to the orderer without delay everything he received on the ground of the affairs performed, regardless of whether what was received by him for the orderer was owed to the latter or not.

Article 755. *Submitting Reports*

A person accepting an order shall be obliged, at the orderer's request, to submit a report concerning the state of affairs, and render account even prior to the designated time.

Article 756. *Liability for Use of Orderer's Money*

If a person accepting an order uses for his own needs the money received for the orderer, he shall be bound to pay interest at the highest permitted contractual rate, counting from the day of use, and regarding other money owed and not handed over on time, he shall pay default interest, counting from the day he was obliged to hand the money over.

Article 757. *Joint Liability of Persons Accepting an Order*

Should performing a transaction be entrusted by the same order to several persons to perform it jointly, they shall be jointly and severally liable for obligations in such order, unless otherwise stipulated.

Section 3.

OBLIGATIONS OF ORDERER

Article 758. *Advance Money*

At the request by person accepting an order, the orderer shall be bound to pay to him a sum of money to cover anticipated expenses.

Article 759. *Reimbursement of Expenses and Assuming Obligations*

(1) An orderer shall reimburse a person accepting the order, even if his effort is not successful without his fault, all necessary expenses incurred by him in performing the order, together with interest from the day of expenditure.

(2) He shall be bound to assume the obligations of the person accepting the order while engaging on his own behalf in affairs entrusted to him, or shall disengage him from obligations in some other way.

Article 760. *Compensating Loss*

An orderer shall compensate loss suffered by the person performing the order through no fault of his own.

Article 761. *Level of Compensation*

Unless otherwise stipulated, the orderer shall owe a usual amount of compensation and should there be no trade usage in this respect, he shall owe equitable amount.

Article 762. *Payment of Compensation*

(1) Unless otherwise stipulated, the orderer shall be obliged to pay remuneration to the person accepting the order when his job is done.

(2) Should the person accepting the order, without fault on his part, complete the order only partially, he shall be entitled to a proportionate part of the remuneration.

(3) Should remuneration stipulated in advance be in obvious disproportion to services rendered, the orderer may request its reduction.

Article 763. *Right of Lien*

In order to secure remuneration and recovery of expenses, the person accepting the order shall be entitled to acquire a lien over the orderer's movables received under order, and over the sums of money he has collected for the account of orderer.

Article 764. *Joint Liability of the Orderers*

Should several persons entrust the performance of an order to a person accepting the order, they shall be jointly and severally liable to him.

Section 4.

TERMINATION OF ORDER

Article 765. *Withdrawing from Contract*

(1) An orderer may withdraw from a contract.

(2) In case of withdrawing from a contract providing for compensation to the benefit of the person accepting the order, the orderer shall be obliged to pay to the latter a corresponding part of compensation, as well as redress loss sustained by him due to withdrawing from the contract – should there be no well-grounded reasons.

Article 766. *Cancellation*

(1) A person accepting an order may cancel it by his own choice, but not at a bad time.

(2) He shall be obliged to redress the loss to the orderer, if sustained by him because of cancellation of the order at a bad time, unless well-grounded reasons existed for cancellation.

(3) The person accepting the order shall be obliged to continue, after the cancellation, with performance of the transactions not permitting postponement, until the orderer becomes able to take care of them.

Article 767. *Death, Termination of a Corporate Body*

(1) An order shall be terminated by the death of a person accepting it.

(2) Successors of the person accepting the order shall be obliged to notify the orderer of his death without delay, and to take measures necessary for protection of orderer's interests, until he becomes able to take care of them himself.

(3) An order shall be terminated by death of the orderer only if so provided in the contract, or if the person accepting the order accepted it because of his personal relations with the orderer.

(4) In such case the person accepting the order shall be obliged to continue with the entrusted transactions, to prevent eventual loss for the successors, until they become able to take care of them.

(5) If either the orderer or the person accepting the order is a corporate body, the order shall come to an end on the termination of such corporate body.

Article 768. *Bankruptcy, Loss of Business Capacity*

An order shall be terminated on the bankruptcy of the orderer or person accepting the order, or if either of them loses business capacity.

Article 769. *Moment of Termination of Order*

(1) If the orderer repudiates the contract, or in the case of his death or bankruptcy, or if he completely or partially loses business capacity, the order shall come to an end at the moment the person accepting the order becomes aware of the event causing the termination of order.

(2) Should written authorisation be issued to the person accepting the order, he shall be bound to return it after the termination of the order.

Article 770. *Exceptions*

Should an order be given to enable the person accepting it to achieve fulfilment of some of its claims against the orderer, the orderer shall not be entitled to withdraw from the contract, and the order shall not come to an end by death or bankruptcy

of either the orderer or the person accepting the order; nor shall it come to an end should one of them be deprived, entirely or partially, of business capacity.

Chapter XIX. COMMISSION BUSINESS

Section 1. GENERAL PROVISIONS

Article 771. *Notion*

(1) By a contract of commission business the commission agent shall assume the obligation to perform, for a fee, on his own behalf and for the account of the client, one or several transactions entrusted to him by the client.

(2) A commission agent shall be entitled to commission fee even if it has not been stipulated.

Article 772. *Application of Rules of the Contract of Order*

The rules relating to orders shall apply to the contract of commission business, unless the rules of commission business provide otherwise.

Article 773. *Transacting under Terms Different from an Order*

(1) Should a commission agent transact a deal under terms less favourable than the ones determined by the order, when not allowed to do so, he shall be bound to reimburse the difference to the client and redress the loss caused.

(2) In the case specified in the preceding paragraph, the client may refuse to accept the deal, but shall notify the commission agent thereof without delay.

(3) However, the client shall forfeit that right if the commission agent is ready to pay the difference immediately and redress the loss caused.

(4) Should a deal be transacted under more favourable terms than determined by the order, all gains resulting thereof shall belong to the client.

Article 774. *Sale of Merchandise to a Person Burdened with Debts*

A commission agent shall be liable to a client for losses if he sells the merchandise to a person heavily in debt, provided he is aware of the fact or should have been aware of it.

Article 775. *A Case of Commission Agent himself Purchasing Client's Merchandise or Selling him His Own Merchandise*

(1) A commission agent entrusted to sell or buy merchandise being quoted at the stock exchange or in the market, may with the client's permission, keep the merchandise for himself as a purchaser or deliver it as a seller, at the price effective at the time of executing the transaction entrusted.

(2) In such case the relations stemming out of contract of sale shall ensue between the commission agent and the client.

(3) Should the stock exchange price or market price, and the price determined by the client fail to coincide, the commission agent-seller shall be entitled to the lower of the two prices, while the commission agent-buyer shall be obliged to pay the price which is higher.

Section 2.

OBLIGATIONS OF COMMISSION AGENT

Article 776. *Preserving and Insuring*

(1) A commission agent shall be bound to preserve the merchandise entrusted to him with the care of a good businessman.

(2) He shall also be liable for accidental loss or damage of the merchandise, if he does not insure it although obliged to do that in terms of the order.

Article 777. *Notification about Condition of the Merchandise Accepted*

(1) On the occasion of taking delivery of merchandise from a carrier, forwarded to him by the client, a commission agent shall be obliged to establish its condition, and shall notify the client without delay on the date of arrival of the merchandise, as well as on visible defects or shortage, otherwise he shall be liable for loss caused to the client due to such omission.

(2) He shall be obliged to take all necessary measures to preserve the rights of the client against the liable person.

Article 778. Notification about Changes of Merchandise

A commission agent shall be bound to notify the client about all changes to the merchandise by which it could lose in its value, and if there is no time to wait for instructions, or if the client is late in sending the instructions – where there is danger of considerable damage to the merchandise – the commission agent shall be obliged to sell it in the most adequate way.

Article 779. Notifying the Client on Names of the Contracting Partners

(1) A commission agent shall be bound to notify the client on the name of person with whom he has effected the transaction entrusted to him by the client.

(2) This rule shall not apply in the case of sale of chattels in the commission shops, unless otherwise provided by the contract.

Article 780. Rendering Account

(1) A commission agent shall be obliged to render account of the transaction performed, without unnecessary delay.

(2) He shall be bound to hand over to the client everything he has received under the transaction effected for his account.

(3) A commission agent shall be bound to transfer to the client the claims and other rights acquired by him against a third party to the transaction effected in his own behalf and for his account.

Article 781. Del Credere³³

(1) A commission agent shall only be liable to fulfil the obligations of his contracting partner if he specifically guarantees that he shall do so (*del credere*), in which case he shall be jointly liable.

(2) A commission agent guaranteeing the fulfilment of obligations of his contracting partner shall be entitled to a special fee (*del credere* commission fee).

³³ Guarantee.

Section 3.

OBLIGATIONS OF CLIENT

Article 782. *Commission Fee*

(1) The client shall be bound to pay to the commission agent a fee when the transaction entrusted to him has been performed, and if performance of the transaction be prevented due to a cause within the scope of client's responsibility.

(2) In case of gradual performance, the commission agent may demand a proportionate part of the fee after each partial fulfilment.

(3) Should the concluded transaction not be performed due to a cause outside the responsibility of both the client and the commission agent, the commission agent shall be entitled to a corresponding fee for his effort.

(4) A commission agent disloyal towards his client shall not be entitled to a fee.

Article 783. *Amount of Commission Fee*

(1) Should the amount of commission fee be not determined by contract or a tariff, the commission agent shall be entitled to a commission fee in conformity with the transaction effected and the result achieved.

(2) Should in a specific case the commission fee be out of proportion to the transaction effected and the result achieved, the court may, at the client's request, reduce it to an equitable amount.

Article 784. *Reimbursement of Expenses*

(1) A client shall be bound to reimburse to the commission agent the expenses necessary for performing the order, including interest from the day of expenditure.

(2) A client shall be obliged to pay to a commission agent special compensation to cover the use of his storehouses and transportation facilities, should this be not included in the fee provided for performance of the transaction.

Article 785. *Advance Payment to the Commission Agent*

Unless otherwise provided by the contract of commission, the client shall not be bound to make advance payments to the commission agent relating to means necessary for performing the transaction stipulated by contract.

Section 4.
RIGHT OF LIEN

Article 786.

(1) A commission agent shall acquire the right of lien relating to merchandise covered by the commission contract while in his possession, or in the possession of someone holding them on his behalf, or while he remains the holder of a document enabling him to handle them.

(2) A commission agent shall be entitled to collect, from the value of the merchandise, before other creditors of the client, his claims on the ground of all commission transactions dealt with the client, as well as under loans and advance payments granted to the client, regardless of whether they were created in connection with it or some other goods.

(3) The right of precedence in collecting shall pertain to the commission agent out of claims acquired by him for the account of client while carrying out his order.

Section 5.
RELATIONS WITH THIRD PARTIES

Article 787. *Client's Right to Claims Originating from a Transaction with a Third Party*

(1) A client may demand fulfilment of claims from the transaction entered into by a commission agent with a third party and for his account, only if the commission agent has assigned them to him.

(2) However, in terms of the relation between a client and a commission agent and his creditors, such claims shall be treated from their inception as the client's claims.

Article 788. *Limitation of Rights of Commission Agent's Creditors*

Commission agent's creditors shall not, in order to collect their claims, even in case of his bankruptcy, take measures of execution against rights and objects of property acquired by the commission agent in performing the order on his own behalf but for the account of the client, except in the case of claims in relation to acquiring these rights and objects of property.

Article 789. *Bankruptcy of a Commission Agent*

(1) In case of a commission agent's bankruptcy, the client may request separation of goods handed over by him to the commission agent to be sold on his account out of the bankrupt's assets, as well as of goods acquired by the commission agent on his account.

(2) In such case the client may request from a third party to whom the commission agent has delivered the objects, their price or any unpaid part.

Chapter XX.

**THE CONTRACT OF COMMERCIAL
AGENCY**

Section 1.

GENERAL PROVISIONS

Article 790. *Notion*

(1) By a contract of commercial agency the agent shall assume the obligation to take permanent care that third persons enter into contracts with his principal, and to mediate in that respect between them and the principal, as well as to enter into contracts, after obtaining authorisation, with third persons on behalf and for the account of the principal, while the principal shall assume the obligation to pay to him, for each contract concluded, an agreed fee (brokerage).

(2) A principal may have several agents in the same area for the same kind of business.

(3) One agent shall not, without his principal's consent, assume the obligation to work for another principal regarding the same kind of business in the same area.

Article 791. *Form*

A contract of commercial agency must be concluded in written form.

Article 792. *Concluding Contracts on Behalf of a Principal*

An agent may conclude contracts on behalf and for the account of his principal only after obtaining from him a corresponding particular or general authorisation.

Article 793. *Accepting Fulfilment*

An agent shall not demand nor accept fulfilment of a claim of his principal, unless particularly authorized.

Article 794. *Statements to Agent for the Principal*

Should a contract be concluded by mediation of the agent, then a contracting partner of the principal may validly make statements to the agent concerning defects in the subject of contract, as well as other statements relating to such contract – with the purpose of preserving or realizing rights from the contract.

Article 795. *Statements on Behalf of the Principal*

In order to preserve the rights of his principal, an agent shall be authorized to make necessary statements to his contracting partner.

Article 796. *Security Measures*

In order to protect the interest of the principal, an agent may demand necessary security measures.

Section 2.

OBLIGATIONS OF AN AGENT

Article 797. *Taking Care of the Interests of the Principal*

(1) An agent shall be obliged to take care of the interests of the principal and shall proceed in all transactions undertaken by him with the care of a good businessman.

(2) In doing that, he shall conform to the instructions given by the principal.

(3) He shall be bound to supply the principal with all necessary information concerning the market situation, and particularly those significant for each particular transaction.

Article 798. *Participation in Concluding Transactions*

An agent shall be bound to participate, according to the instructions of the principal, both in concluding transactions and in their complete execution.

Article 799. *Confidentiality*

(1) An agent shall keep those business secrets of his principal which become known to him in connection with the transaction entrusted.

(2) He shall be liable if he uses them or discloses them to another even after the termination of the contract of commercial agency.

Article 800. *Restitution of Objects Given to Be Used*

After termination of the commercial agency contract, the agent shall be bound to restitute to the principal all objects handed over by him for use in the course of the contract.

Article 801. *Particular Case of Liability*

(1) An agent shall be liable to the principal for fulfilment of obligations arising from the contract concluded through his mediation, or concluded by his authorisation on behalf of the principal, only if he gives a particular written guarantee in that respect.

(2) In such case he shall be entitled to a special fee (*del credere* fee).

Section 3.

OBLIGATIONS OF THE PRINCIPAL

Article 802. *Material and Documentation*

Should specific material or specific documentation be necessary for the agent to do his business, the principal shall be obliged to provide them to him.

Article 803. *Duty of Informing*

(1) A principal may accept or reject as he pleases the conclusion of a contract transacted by the agent, but shall be obliged to inform the agent about his decision without delay.

(2) A principal shall be bound to inform the agent without delay on the need to reduce the scope of transactions concluded through his mediation, the scope being reasonably expected by the agent, so that the latter can reduce his own business efforts to an adequate degree on time; the principal shall otherwise be liable for loss sustained by the agent in this respect.

Article 804. *Remuneration (Brokerage)*

(1) A principal shall be bound to pay to the agent remuneration (brokerage) for contracts concluded through his mediation, as well as for contracts concluded by the agent himself, if authorized accordingly.

(2) An agent shall also be entitled to brokerage for contracts concluded directly by the principal with clients found by the agent.

Article 805. *Acquiring the Right to Compensation*

Unless otherwise stipulated between the contracting parties, the right to remuneration shall accrue to the agent after the contract has been performed, but such right shall belong to him even if the contract remains unfulfilled, if this is due to a reason for which the principal is to blame.

Article 806. *Level of Remuneration*

(1) Should the amount of remuneration be not agreed either by contract or a tariff, the agent shall be entitled to usual remuneration.

(2) Should remuneration in a specific case be excessively high in comparison to the service rendered, the court may, at the principal's request, reduce it to an equitable amount.

Article 807. *Particular Remuneration*

An agent successful in collecting the principal's claims after being authorized accordingly, shall be entitled to particular remuneration from the amount collected.

Article 808. *Expenses*

(1) An agent shall not be entitled, unless otherwise stipulated, to reimbursement of expenses originating from regular performance of broker's transactions.

(2) He shall, however, be entitled to remuneration for special expenses incurred by him to the benefit of the principal or at his order.

Section 4.

THE RIGHT OF LIEN

Article 809.

In order to secure collection of his due claims originated in connection with the contract, an agent shall have a right of lien against the amounts collected for the principal after his authorisation, as well as well as regarding all objects of the principal received from him, or from another person, in connection with the contract while these objects remain in his possession, or in possession of another holding them for him, or while he remains in possession of a document enabling him to dispose of them.

Section 5.

TERMINATION OF CONTRACT

Article 810. *Repudiation of Contract Concluded for an Indefinite Period of Time*

(1) Should the period of validity of a contract of commercial agency be not determined by contract, or if it cannot be determined by circumstances of the transaction, each party may repudiate the contract at the end of each calendar quarter.

(2) Notice shall be communicated to the other party at least one month prior to expiration of the calendar quarter, and if the contract has lasted for three years, the other party must be given notice two months prior to expiration of the calendar quarter.

(3) Contracting parties may provide for different time limits of notice and of repudiation of contract, but a minimum one month time limit must be left between the notice and the termination of contract.

Article 811. *Repudiation of Contract without Time Limit for Notice*

(1) Each party may repudiate the contract without a period of notice on the ground of serious causes, which must be stated.

(2) Should the statement of repudiation of contract be made with no serious reasons, it shall be considered as a notice with the regular period of notice.

(3) An agent whose activity is interrupted due to an unfounded notice shall be entitled to compensation to cover his lost commission, and should he cancel the contract without grounds, the right to redress shall belong to the principal.

(4) An unfounded notice shall entitle the other party to repudiate the contract without notice.

Article 812. *Termination of Contract Concluded for a Definite Period of Time*

(1) Should a contract of commercial agency be agreed for a definite period of time, it shall be terminated by the expiration of the time specified.

(2) Should such contract be implicitly extended, it shall be treated as a contract agreed for an indefinite period.

Chapter XXI.

MEDIATION

Section 1.

GENERAL PROVISIONS

Article 813. *Notion*

By a contract of mediation the mediator shall assume an obligation to try to find and connect his principal with a person who will negotiate with him to enter into a specific contract, while the principal shall assume the obligation to pay to him a particular fee should such contract be concluded.

Article 814. *Applying Provisions of Law of Contract for Services*

Should it be stipulated that the mediator shall be entitled to particular remuneration even should his effort remain without result, such contract shall be treated according to the provisions applicable to contracts for services.

Article 815. *Accepting the Fulfilment*

(1) A mediation order shall not imply authorisation for the mediator to accept the fulfilment of a contractual obligation for his principal concluded through his mediation.

(2) A written authorisation shall be needed for the above.

Article 816. *Revocation of a Mediation Order*

A principal shall be entitled to revoke a mediation order whenever he pleases, if he does not renounce such right and on condition that the revocation not be contrary to good faith.

Article 817. *Absence of Duty of Principal to Conclude a Contract*

A principal shall not be obliged to engage himself in negotiations for concluding a contract with a person found by the mediator, neither shall he be obliged to conclude a contract with him under terms related to the mediator, but he shall be liable for damages if he does not act in good faith.

Section 2.

OBLIGATIONS OF THE MEDIATOR

Article 818. *A Duty to Look for an Opportunity*

(1) A mediator shall look for an opportunity to conclude a particular contract and to direct the principal to it with the care of a good businessman.

(2) A mediator shall mediate in negotiations and endeavour to enter into contract, if he has assumed a specific obligation in that respect.

(3) He shall not be liable if, in spite of necessary care applied, he was not successful in his endeavour.

Article 819. *Duty to Inform*

A mediator shall notify his principal of all circumstances relevant to the intended transaction which are known to him or which should be known to him.

Article 820. *Liability of Mediator*

(1) A mediator shall be liable for loss eventually sustained by one or the other party involved in his mediation, which occurs because of his mediation on behalf of a person without business capacity, whose incapacity was known, or should have been known to him, or on behalf of a person of whose incapacity to meet the contractual obligations he was aware, or should have been aware, and shall generally be liable for all loss caused through his fault.

(2) A mediator shall be liable for loss sustained by his principal if he informs a third party of the substance of the order, on negotiations going on, or on terms and conditions of a contract concluded, without his principal's permission.

Article 821. *Mediator's Day Book and Sheet*

A commercial mediator shall note down in a particular book (mediator's day book) essential data about a contract entered into by his mediation, and shall issue an excerpt from such book signed by him (mediator's sheet).

Section 3.

OBLIGATIONS OF THE PRINCIPAL

Article 822. *Remuneration*

(1) A mediator shall be entitled to compensation even if it is not stipulated.

(2) Should the amount of remuneration be not determined either by a tariff or other general enactment, or by contract or trade practice, it shall be determined by the court according to the mediator's effort and the service rendered.

(3) The stipulated mediator's remuneration may be reduced by the court at the principal's request, if it finds that it is excessively high in relation to the mediator's effort and the service rendered.

(4) Reduction of the stipulated remuneration shall not be requested if paid to the mediator after entering into a contract mediated by him.

Article 823. *When a Mediator Is Entitled to Remuneration*

(1) A mediator shall acquire the right to remuneration at the moment of entering into contract he has mediated, unless otherwise stipulated.

(2) However, should a contract be concluded with a postponing condition, the realisation of such condition shall be a prerequisite to the mediator's acquiring the right to remuneration.

(3) Should a contract be concluded with a rescinding condition, the realisation of the condition shall not affect the mediator's remuneration.

(4) In case of a void contract, the mediator shall be entitled to remuneration if the cause of invalidity be unknown to him.

Article 824. *Reimbursement of Expenses*

(1) A mediator shall not be entitled, unless stipulated to the contrary, to reimbursement of expenses incurred in carrying out the order.

(2) But should his right to reimbursement of expenses be recognized by contract, he shall be entitled to such reimbursement even if the contract has not been concluded.

Article 825. *Mediation for both Parties*

(1) Unless otherwise stipulated, a mediator who receives an order for mediation by both parties, may request from each only half of the mediator's remuneration, and reimbursement of half of his expenses, should reimbursement of expenses be stipulated.

(2) A mediator shall be obliged to care for the interests of both parties he is mediating between as a good businessman.

Article 826. *Forfeiture of the Right to Compensation*

A mediator working for the other party contrary to the contract or contrary to the interests of his principal shall forfeit his right to remuneration and to the reimbursement of expenses.

Chapter XXII.
FORWARDING (SHIPPING)

Section 1.

GENERAL PROVISIONS

Article 827. *Notion*

(1) By a contract of forwarding a forwarding agent shall assume the obligation to conclude, in order to effect the transport of a specific object, on his own behalf and on behalf of his principal, a contract of carriage and other contracts necessary for effecting transport, as well as to perform other usual transactions and actions, while the orderer shall assume the obligation to pay particular remuneration to him.

(2) Should it be stipulated, the forwarding agent may enter into contracts of carriage and take other legal actions on behalf of his principal.

Article 828. *Withdrawing from Contract*

A principal may withdraw from a contract if he wishes, but in such case he shall reimburse to the forwarder all expenses incurred by him until that moment, and to pay to him a corresponding part of remuneration for the work done.

Article 829. *Application of the Rules of Commission Business or of Commercial Agency*

The rules of commission business or commercial agency shall apply accordingly to relations between a principal and a forwarding agent not regulated in the present Chapter.

Section 2.

**OBLIGATIONS OF THE
FORWARDING AGENT**

Article 830. *Warning about Defects in the Order*

A forwarding agent shall warn his principal about defects in his order, and more particularly about those exposing him to higher expenses or loss.

Article 831. *Warning about Deficiencies in Packaging*

If an object is not packed or otherwise not sufficiently ready for transport, the forwarding agent shall warn the principal about such deficiencies, but if waiting for the principal to eliminate them would be damaging to him, the forwarding agent shall be bound to eliminate them at the expense of his principal.

Article 832. *Preserving the Interests of the Principal*

(1) A forwarding agent shall be obliged to proceed according to the interests of the principal, and to act with the care of a good businessman.

(2) He shall be obliged to notify the principal without delay of damage to his goods, as well as about all events relevant to him, and to take all necessary measures in order to preserve his rights against a liable person.

Article 833. *Proceeding According to the Principal's Instructions*

(1) A forwarding agent shall be obliged to follow instructions relating to itinerary, means and manner of transportation, as well as other instructions received from the principal.

(2) Should it be impossible to proceed according to instructions in the order, the forwarding agent shall be bound to request new instructions, and should there be no time or possibility to wait for them, the forwarding agent shall proceed as required in the interest of the principal.

(3) A forwarding agent shall be bound to notify his principal without delay of every departure from the order.

(4) Should the principal fail to determine either the itinerary or the means, or the manner of transportation, the forwarding agent shall determine them according to his interests.

(5) Should a forwarding agent depart from instructions received, he shall also be liable for damage caused by Act of God, unless successful in proving that the damage would have occurred even if he had followed instructions.

Article 834. *Liability of Forwarding Agent for Other Persons*

(1) A forwarding agent shall be liable for the choice of carrier, and other persons he has entered into contract with, while performing the order (such as storage of goods), but shall not be liable for their work unless he has assumed that responsibility by contract.

(2) A forwarding agent entrusting the performance of order to another agent, instead of doing it himself, shall be liable for his work.

(3) Should the order include, either expressly or impliedly, an authorisation to the forwarding agent to entrust the performance of the order to another agent, or if this was obviously in the interest of the principal, he shall be liable only for the choice thereof, unless having assumed the responsibility for his work.

(4) Liabilities specified in the preceding paragraphs of the present article shall not be excluded or limited by contract.

Article 835. *Customs Clearance Procedures and Payment of Customs Duty*

Unless otherwise specified by contract, an order to forward goods over a state border shall include the forwarding agent's duty to follow necessary customs clearance procedure and pay customs duty for the account of the orderer.

Article 836. *A Case of a Forwarding Agent Performing Transport or other Matters Himself*

(1) Unless otherwise stipulated, a forwarding agent may also perform, entirely or partially, the transport of objects whose forwarding is entrusted to him, himself.

(2) Should the forwarding agent perform the transport himself or part of the transport, he shall obtain the rights and duties of a carrier, and in such case shall be entitled to a corresponding carriage charge (fee), in addition to remuneration for forwarding, and to reimbursement of expenses incurred in relation to forwarding.

(3) The same shall apply in respect to other matters included in the order, encompassed by trade practices, or by general terms and conditions.

Article 837. *Insurance of Shipment*

(1) A forwarding agent shall be obliged to insure the shipment only if this is stipulated in the contract.

(2) Should the kind of risk to be covered by insurance not be specified in the contract, the forwarding agent shall insure the goods against usual risks.

Article 838. *Rendering Account*

(1) A forwarding agent shall render an account to the principal after the transaction has been completed.

(2) If so requested by the principal, the forwarding agent shall also render account in the course of carrying out the order.

Section 3.
**OBLIGATIONS OF
THE PRINCIPAL**

Article 839. Remuneration

A principal shall pay to the forwarding agent remuneration according to the contract, but if remuneration is not included in the contract, according to tariff or other general provisions, and if there are no such provisions, remuneration shall be determined by the court.

Article 840. When a Forwarding Agent May Request Remuneration

A forwarding agent may request remuneration after fulfilling his obligations from the forwarding contract.

Article 841. Expenses and Advance Payment

(1) A principal shall reimburse the forwarding agent necessary expenses incurred in order to carry out the order of forwarding the objects.

(2) A forwarding agent may demand reimbursement of expenses immediately after effecting them.

(3) At the forwarding agent's demand, the principal shall make an advance payment to him to cover expenses necessary to carry out the order for forwarding the objects.

Article 842. Stipulation that Remuneration Be Paid by the Consignee

Should it be stipulated that the forwarding agent shall collect his claims from the consignee, the forwarding agent shall keep the right to demand remuneration from the principal should the consignee refuse to pay it to him.

Article 843. Dangerous Objects and Valuables

(1) A principal shall notify the forwarding agent of properties of objects creating a potential danger to the safety of people and property, or danger of damage.

(2) Should a shipment contain valuables, securities, or other expensive items, the principal shall notify the forwarding agent accordingly, and inform him of their value at the moment of delivery for forwarding.

Section 4.

PARTICULAR CASES OF FORWARDING

Article 844. *Forwarding with Fixed Fee*

(1) Should a lump sum be determined by forwarding contract for carrying out the forwarding order, such sum shall include, unless otherwise stipulated, the remuneration for forwarding and payment for the transport, as well as reimbursement of all other expenses.

(2) In such case, the forwarding agent shall also be responsible for the work of the carrier and other persons engaged by him by corresponding authorisation in the contract.

Article 845. *Collective Forwarding*

(1) While carrying out orders received, a forwarding agent may organize collective forwarding, unless this be excluded by contract.

(2) After achieving a difference in the freightage to the benefit of the principal by collective forwarding, the forwarding agent shall be entitled to special additional remuneration.

(3) In the case of collective forwarding the forwarding agent shall be liable for loss or damage of the object in transport which otherwise would not take place if it were not for the collective forwarding.

Section 5.

FORWARDING AGENT'S RIGHT OF LIEN

Article 846.

(1) In order to secure the collection of his claims originated in relation to the forwarding contract, the forwarding agent shall have the right of lien regarding the objects handed over for forwarding and in relation to forwarding, while he keeps them in his possession or while he is in possession of the document entitling him to dispose of them.

(2) Should yet another agent participate in effecting the forwarding, he shall be obliged to take care of collecting the claims and realizing the right of lien of the previous forwarding agents.

(3) Should another agent pay off the forwarding agent's claims against the principal such claims and the forwarder's right of lien shall be transferred to him by law.

(4) The same shall apply, should the other forwarding agent pay off the carrier's claims.

Chapter XXIII.

CONTRACT OF CONTROL OF MERCHANDISE AND SERVICES

Article 847. *Notion*

(1) By a contract of control of merchandise one contracting party (controller) shall assume the obligation to perform, professionally and impartially, the stipulated control of merchandise, and issue a certificate thereof, while the other party (principal) shall assume the obligation to pay for the control effected a stipulated fee.

(2) The control of merchandise may consist of determining the identity, quality, quantity and other characteristics of the merchandise.

Article 848. *Scope of Control*

A controller shall be obliged to effect control within the scope, and in the manner, specified in the contract, and should nothing be specified in the contract in that respect, within the scope and in the manner corresponding to the nature of the object.

Article 849. *Nullity of some Clauses of Contract*

(1) Clauses of a contract by which duties are imposed on the controller which could affect the impartiality of control or authenticity of the certificate on the control effected shall be void.

(2) The control shall be considered carried out only after issuing the certificate.

Article 850. *Keeping of Merchandise or Samples*

(1) A controller shall be obliged to keep the merchandise handed over to him by the principal in order to carry out the control provided by contract, and shall take care to prevent substitution.

(2) Unless otherwise stipulated, the controller shall be obliged to keep samples handed over to him for at least six months.

Article 851. *Duty of Notifying the Principal*

A controller shall be obliged to notify the principal of all significant circumstances in course of control and of keeping the merchandise on time, and, more particularly, about necessary and useful expenses effected for his account.

Article 852. *Remuneration*

(1) For the performed control and keeping of merchandise, the controller shall be entitled to a stipulated or usual fee.

(2) A controller shall also be entitled to reimbursement of all necessary and useful expenses incurred for the account of the orderer of control.

Article 853. *The Right of Lien*

In order to secure the stipulated or customary fee and the reimbursement of necessary and useful expenses, the controller shall have the right of lien over the merchandise entrusted to him for control.

Article 854. *Entrusting Control of Merchandise to Another Controller*

(1) A controller may entrust performing of control to another, unless the principal has expressly forbidden it.

(2) A controller shall be responsible to his principal for the work of the other controllers.

Article 855. *Control of Merchandise with Undertaking Legal Work*

(1) On the ground of an express order by the principal the controller shall be entitled, in addition to carrying out the control of merchandise as stipulated by contract, to undertake some legal work on behalf and for the account of the principal.

(2) A controller shall be entitled to special customary or stipulated remuneration for performing certain legal matters on behalf and for the account of the principal.

Article 856. *Control of Merchandise with a Guarantee*

(1) A controller may guarantee unchangeability of properties of controlled merchandise within the terms provided by contract.

(2) For the guarantee assumed in relation to properties of merchandise, the controller shall be entitled to special stipulated or customary remuneration.

Article 857. *Control of Services and Goods not Intended for Trade*

Should performance of control relate to services or objects not intended for trade, the controller and the principal shall have same rights and duties as in the case of control of merchandise.

Article 858. *Repudiation of Contract*

A principal may state that he repudiates the contract until the control ordered has been carried out, but in such case he shall be obliged to pay to the controller a proportionate part fee and to reimburse necessary and useful expenses incurred, as well as redress the loss sustained by him.

Chapter XXIV.

**CONTRACT OF ORGANISATION
OF TRAVEL**

Section 1.

GENERAL PROVISIONS

Article 859. *Notion*

By a contract of organisation of travel a travel organizer shall assume the obligation to procure to a traveller a set of services consisting of transportation, stay and other services relating to them, while a passenger shall assume the obligation to pay to the organizer a total sum (flat sum) as a price.

Article 860. *Issuing a Travel Certificate*

(1) A travel organizer shall issue a travel certificate to a traveller on entering into contract.

(2) The travel certificate should include the following: place and date of issue, address of the travel organizer, name of the traveller; place and date of departure and of the end of journey, dates of stay, necessary details concerning transportation and stay as well as other services included in the flat price; the minimum number of travellers (needed for the travel); the fixed prices for the set of services provided for by the contract; terms and conditions to be met for the repudiation of contract by the traveller, as well as other figures and data deemed necessary to be included in the certificate.

(3) If prior to issuing a travel certificate to the traveller he was served with a travel program containing data specified in the preceding paragraph, the travel certificate may include only reference to that program.

Article 861. *Relationship between Contract and a Travel Certificate*

(1) The existence and validity of a contract of organisation of travel shall be independent of the existence of the travel certificate and its contents.

(2) However, the travel organizer shall be liable for all losses sustained by the other party due to his failing to issue the travel certificate or because of its incorrectness.

Article 862. *Presumption of Correctness of the Certificate*

Everything indicated in the certificate shall be considered correct as long as the contrary is not proved.

Section 2.

OBLIGATIONS OF THE TRAVEL ORGANIZER

Article 863. *Protection of Traveller's Rights and Interests*

A travel organizer shall be obliged to provide the traveller with services encompassing the substance and features otherwise specified by contract, by certificate, or program of travel, and shall take care of the passenger's rights and interests in accordance with fair trade practices in this line of business.

Article 864. *Duty of Notification*

A travel organizer shall be obliged to provide the traveller with necessary information concerning prices and terms of transportation, stay and particular services, as well as with information relating to quality of the means of transportation and lodging, time-table, state borders and customs formalities, and to sanitary, monetary and other administrative regulations.

Article 865. *Duty of Confidentiality*

Information received about the passenger, his luggage and his whereabouts may be related to third parties by the

travel organizer only after obtaining permission from the traveller, or at the request of a competent agency.

Article 866. *Liability for Organizing Travel*

A travel organizer shall be liable for loss caused by him to a traveller by total or partial failure to fulfil the obligations relating to the organisation of travel provided for by the contract and the present Law.

Article 867. *Liability of Travel Organizer Performing himself Particular Services*

Should he himself supply services of transportation, lodging and other services relating to carrying out organized travel, the organizer shall be liable for loss caused to the passenger, on the ground of regulations covering such services.

Article 868. *Liability of Travel Organizer Entrusting the Performance of some Services to Third Parties*

(1) A travel organizer entrusting the performance of transportation services, lodging and other services relating to realisation of travel to third parties shall be liable to the traveller for loss occurring due to total or partial failure to fulfil such services, in accordance with regulations relating to them.

(2) But even if the services are performed in concordance with the contract and regulations relating to them, the organizer shall be liable for loss sustained by the traveller in relation to their performance, unless successful in proving that he acted as a careful travel organizer in making his choice of persons performing such services.

(3) The traveller shall be entitled to demand directly from the third party liable for damage, the entire or additional compensation for loss he has suffered.

(4) To the degree of his redressing the loss sustained by the traveller, the travel organizer shall acquire all rights which would otherwise pertain to the traveller against the third party liable for such loss (the right of redress).

Article 869. *Price Reduction*

(1) Should services arising from a contract of travel organisation be incomplete or of low quality, the traveller may demand a proportionate price reduction, on condition that he raises the objection against the travel organizer within eight days from the day of termination of travel.

(2) The demand for a price reduction shall not affect the traveller's right to request damages.

Article 870. *Exclusion and Limitation of Travel Organizer's Liability*

(1) Clauses of a contract of travel organisation by which liability of the travel organizer is excluded or limited shall be void.

(2) However, a written clause in the contract shall be valid by which the highest amount of compensation is determined in advance, on condition that it be not in obvious disproportion to the loss.

(3) Such limitation of amount of compensation shall not be applicable if the organizer caused damage by wilful misconduct or gross negligence.

Section 3.

OBLIGATIONS OF THE TRAVELLER

Article 871. *Payment of Price*

A traveller shall be obliged to pay to the travel organizer the stipulated price of the travel, at the time as stipulated or as customary.

Article 872. *Duty of Supplying Information*

At the organizer's request a traveller shall be obliged to supply on time all information necessary for the organisation of travel, and more particularly that necessary for obtaining tickets for transport, lodging reservations, as well as documents needed for crossing state borders.

Article 873. *Meeting Requirements Set Forth by Regulations*

A traveller shall be obliged to take care that he personally, his identity documents, and his luggage meet the state borders and customs requirements, sanitary, monetary and other administrative regulations.

Article 874. *Traveller's Liability for Damage*

A traveller shall be liable for loss caused to the travel organizer by his failure to perform his contractual obligations and under the provisions of the present Law.

Section 4.

PARTICULAR RIGHTS AND OBLIGATIONS OF CONTRACTING PARTIES

Article 875. *Replacing a Traveller with Another Person*

Unless otherwise stipulated, a traveller may determine another person to use the services instead of him, on condition that such person meets particular requirements for the specific travel, and that such passenger reimburse to the travel organizer the expenses incurred by the replacement.

Article 876. *Raising a Stipulated Price*

(1) A travel organizer may demand an increase of the stipulated price only if, after entering into contract, the foreign currency exchange rate or carrier's tariffs affecting the price of travel have been changed.

(2) The right to increase the stipulated price as specified in the preceding paragraph, may be effected by the travel organizer only after being provided for in the certificate of travel.

(3) Should the increase of stipulated price exceed ten percent, the traveller may repudiate the contract without being obliged to redress the loss.

(4) In such case the traveller shall be entitled to restitution of the amount paid to the travel organizer.

Article 877. *Traveller's Right to Withdraw from Contract*

(1) A traveller may at any time withdraw from contract, entirely or partially.

(2) Should the traveller withdraw from the contract prior to the commencement of the travel within a reasonable time limit, which shall be determined with regard to the kind of package deal (withdrawing on time), the travel organizer shall be entitled only to reimbursement of current office expenses.

(3) In case of an untimely withdrawal from contract, the travel organizer may request from the traveller compensation in a percentage of the stipulated price, which shall be determined in proportion to the time left over before commencement of the travel, and which must be justified economically.

(4) The travel organizer shall be entitled only to reimbursement of expenses incurred, if the passenger withdraws from contract due to circumstances impossible to avoid or

eliminate by him, and which – had they existed at the time of entering into contract – would have amounted to a justified ground for him not to enter into contract, or if the traveller has provided a corresponding replacement for him, or the replacement has been found by the organizer himself.

(5) Should the traveller withdraw from contract after the travel has commenced, and the relevant grounds were not the circumstances specified in the preceding paragraph of the present article, the organizer shall be entitled to the full amount of the stipulated price of the travel.

Article 878. *Right of Travel Organizer to Withdraw from Contract*

(1) A travel organizer may withdraw from contract, entirely or partially, without being obliged to redress losses, should prior or in course of performing the contract extraordinary circumstances take place which could not have been foreseen, avoided or eliminated, and which – had they existed at the time of entering into contract – would have amounted to a justified ground for the travel organizer not to enter into contract.

(2) The travel organizer may also withdraw from contract without being obliged to redress the loss should there be no minimum number of travellers as anticipated in the certificate of travel, on condition that the organizer notifies the traveller accordingly and in due time, which time shall not be shorter than five days prior to the scheduled date of travel.

(3) In case of withdrawing from contract prior to its being performed, the organizer shall retribute to the traveller the entire amount received by him.

(4) Should the organizer withdraw from contract in course of its performance, he shall be entitled to equitable compensation to cover the services realized and provided by contract, while being obliged to take all necessary measures to protect the interests of the traveller.

Article 879. *Change of Travel Program*

(1) Changes in the travel program may be effected only if caused by extraordinary circumstances which could not have been foreseen, avoided or eliminated by the travel organizer.

(2) Expenses caused due to changes in the program shall be at the charge of the travel organizer, while reduction of expenses shall be to the credit of the traveller.

(3) Changing the stipulated lodging may be effected only by using a facility of the same category, or by using the premises of a higher category in the place as stipulated by contract – at the charge of the organizer.

(4) Should essential changes be made to the travel program without justified ground, the travel organizer shall be obliged to retribute to the traveller the entire amount paid to him if the traveller withdraws from travel due to the above.

(5) Should essential changes in the program be made in course of performing the contract, the traveller – if he withdraws from the contract – shall bear only actual expenses of the services realized until then.

Chapter XXV.

INTERMEDIARY CONTRACT OF TRAVEL

Article 880. *Notion*

By an intermediary contract of travel, the intermediary shall assume the obligation to conclude, on behalf and for the account of a passenger, a contract of organizing a travel or a contract of performing one or a particular service making possible travel or stay, while the passenger shall assume the obligation to pay in return a corresponding fee.

Article 881. *Duty of Issuing an Acknowledgment*

(1) Should an obligation be assumed by the intermediate contract of travel to conclude a contract of travel organisation, the intermediary shall be obliged, at the conclusion of contract, to issue an acknowledgment of travel which, in addition to data relating to the travel and an indication of the travel organizer and his address, must include the address of the intermediary, as well as information that he is acting as an intermediary.

(2) Should he fail to indicate in the acknowledgment of travel his capacity as intermediary, the intermediary in the organisation of travel shall be considered as the travel organizer.

(3) Should the intermediate contract of travel be related to concluding a contract of a specific service, the intermediary shall be obliged to issue an acknowledgment relating to such service, indicating the amount paid for the services.

Article 882. *Proceeding According to Instructions of the Traveller*

(1) The intermediary shall be obliged to proceed according to instructions given to him on time by the traveller, if such instructions are in accordance with the contract, with the

usual business activity of an intermediary, and with the interests of the traveller.

(2) Should a traveller fail to supply necessary instructions, the intermediary shall be obliged to act for the traveller in the way most appropriate in the given circumstances.

Article 883. *Choice of Third Parties*

An intermediary shall be obliged to choose in good faith third parties who must perform services provided by the contract, and shall be responsible to the passenger for such choice.

Article 884. *Corresponding Application of Terms of the Contract of Travel Organisation*

The provisions of the present Law relating to the contract of travel organisation shall apply accordingly to the intermediate contract of travel, unless otherwise specified by provisions of the present Chapter.

C h a p t e r XXVI.

**THE CONTRACT
OF ENGAGING CATERING CAPACITIES
(CONTRACT OF ALLOTMENT)**

Section 1.

GENERAL PROVISIONS

Article 885. *Notion*

(1) By a contract of allotment, the caterer shall assume the obligation to place at the disposal of a tourist agency, in course of a specified period of time, a number of beds in a designated facility, to provide catering services for persons sent by the agency, and to pay to it a specified fee, while the agency shall assume the obligation to endeavour to fill that capacities or to inform, within the determined time limit, that this is not possible, and to pay the price for catering services supplied, if using the engaged hotel capacities.

(2) Unless otherwise provided by the contract, the lodging capacities shall be considered placed at disposal in the course of one year.

Article 886. Form of Contract

The contract of allotment must be concluded in written form.

Section 2.

OBLIGATIONS OF A TOURIST AGENCY

Article 887. Duty of Notification

(1) A tourist agency shall be obliged to notify the caterer in the course of filling up of accommodation capacities.

(2) If not able to fill up all engaged accommodation capacities, a tourist agency shall be obliged to notify, within stipulated or customary time limits, the caterer of the fact, and to send him the list of guests, as well as to determine in such notification the time limit up to which the caterer may freely dispose of the capacities engaged.

(3) The catering capacities which are not designated in the guest list as filled up, shall be considered vacant from the day of acknowledging of such list by the hotel, for the period covered by the list.

(4) After the expiration of such time limit, the tourist agency shall again acquire the right to fill up the engaged capacities.

Articl 888. Duty of Complying with Prices Provided for in the Contract

A tourist agency shall not charge higher prices for catering services to persons sent by it to a catering facility, than the ones provided by the contract of allotment or by caterer's price list.

Article 889. Duty of Payment for Catering Services

(1) Unless otherwise provided by contract, the price of the effected catering services shall be paid by the tourist agency to the caterer after the services have been provided.

(2) The caterer shall be entitled to demand an adequate advance payment.

Article 890. Duty of Issuing a Particular Certificate

(1) A tourist agency shall be obliged to issue to a person sent by it, on the ground of an allotment contract, a particular certificate.

(2) The particular certificate shall be made out to name or to a specific group of persons; it shall not be transferrable and shall contain an order to the caterer to supply services indicated therein.

(3) The particular certificate shall serve as proof that the person indicated is a client of the tourist agency which concluded the contract of allotment with the caterer.

(4) The particular certificate shall serve as a ground for settling mutual claims between the tourist agency and the caterer.

Section 3.

OBLIGATIONS OF A CATERER

Article 891. *Duty of Making Available the Stipulated Accommodation Capacities*

(1) A caterer shall assume a final and irrevocable obligation to make available, during a specified period of time, the stipulated number of beds and to supply the persons sent by the tourist agency with services indicated in the particular certificate.

(2) The caterer shall not make an agreement with another tourist agency for engaging capacities which have been already reserved on the ground of an allotment contract.

Article 892. *Duty of Non-discrimination*

A caterer shall be obliged to supply persons sent by the tourist agency with services of the same quality as the ones extended to persons with whom he has entered into a direct agreement on catering services.

Article 893. *Duty of a Caterer not to Change Prices of the Services*

(1) A caterer shall not change stipulated prices unless he notifies the tourist agency accordingly at least six months in advance, except in case of change in the foreign currency exchange rate affecting the price stipulated.

(2) New prices may be applied only after the expiration of one month from the day of their referral to the attention of the tourist agency.

(3) The new prices shall not apply to services covered by the guest list already delivered to the caterer.

(4) In any case the changed prices shall not affect the reservations (bookings) confirmed by the caterer.

Article 894. *Duty of Payment of Fee*

(1) A caterer shall be obliged to pay to a tourist agency a fee against turnover effected on the ground of the contract of allotment.

(2) The fee shall be determined as a percentage of the price of the catering services which are effected.

(3) Should the percentage fee not be determined by contract, the tourist agency shall be entitled to a fee as specified by general terms and conditions of tourist trade, or, in the absence of such terms and conditions, by corresponding trade practices.

Section 4.

**A RIGHT OF TOURIST AGENCY TO
REPUDIATE THE CONTRACT**

Article 895. *A Right to Withdraw from Engaged Lodging Capacities*

(1) A tourist agency may temporarily withdraw from the use of engaged lodging capacities, and still not repudiate the contract of allotment, and not create its own obligation to redress loss to the caterer, if it notifies the caterer on the withdrawal from use within the stipulated time limit.

(2) Should the time limit for notification on withdrawal be not specified by contract, it shall be determined on the ground of catering business trade practices.

(3) Should the notification of withdrawal not be communicated within the specified time limit, the caterer shall be entitled to damages.

(4) A tourist agency may repudiate the contract in its entirety, without being bound to redress loss, if it communicates notification of repudiation within the stipulated time limit.

Article 896. *Duty of a Tourist Agency to Fill in the Engaged Capacities*

(1) An allotment contract may include a special clause binding the tourist agency to fill in the engaged catering capacities.

(2) Should it fail in such case to fill in the engaged catering capacities, the tourist agency shall be obliged to pay to the caterer compensation against unused beds per day.

(3) The tourist agency in such case shall have no right to repudiate the contract by notification on time either entirely or partially.

Chapter XXVII.

INSURANCE

Section 1.

JOINT PROVISIONS FOR PROPERTY AND LIFE INSURANCE

Subsection 1.

GENERAL PROVISIONS

Article 897. *Notion*

By a contract of insurance a negotiator of insurance shall assume the obligation to pay a specific amount to an insurance organisation (insurer), while the organisation shall assume the obligation, should an event take place which represents the case covered by insurance, to pay to the insured person, or to a third party, compensation, the stipulated amount, or to do something else.

Article 898. *Case Covered by Insurance*

(1) An event serving as a ground for concluding insurance (an insurance case) must be a future event, uncertain and entirely independent of the contracting party's will.

(2) A contract of insurance shall be void if, at the moment of its conclusion, the insurance case has already materialized, or is at the point of occurring or if it is certain that it is going to occur, or if, even at that time, there was no possibility of its occurring.

(3) However, after stipulating that the insurance shall encompass a specified period of time preceding the conclusion of contract, the contract shall be null only if, at the moment of its conclusion, the interested party was aware that the case covered by insurance had already taken place, or that even then the possibility of its taking place had ceased to exist.

Article 899. *Exclusion of some Kinds of Insurance*

(1) Provisions of the present Chapter shall not apply to navigation insurance, or to other kinds of insurance subject to the rules of navigation insurance.

(2) Mentioned provisions shall not apply to the insurance of claims either, or to relations arising from re-insurance.

Article 900. *Departure from Provisions of the Present Chapter*

(1) It may be possible to depart in a contract from provisions of the present Chapter, if such departure is expressly provided by such provisions, or from provisions leaving contracting parties the option to proceed as they wish.

(2) Departure from the remaining provisions, if not prohibited by the present Law or other laws, shall be permitted only if it is to the obvious interest of the person insured.

Subsection 2.

CONCLUDING A CONTRACT

Article 901. *When a Contract is Concluded*

(1) A contract of insurance shall be concluded after the contracting parties have signed the insurance policy or the list of coverage.

(2) A written offer made to an insurer to enter into a contract of insurance shall be binding on the offeror – unless he has determined a shorter time limit, for eight days after the offer has reached the insurer, and should medical examination be necessary, then in course of thirty days.

(3) Should the insurer fail, within that time limit, to decline the offer which does not differ from terms and conditions of his usual provision of the proposed insurance, he shall be considered as having accepted the offer and that the contract has been concluded.

(4) In such case the contract shall be considered as concluded at the moment of the offer reaching the insurer.

Article 902. *Policy and the List of Cover*

1) The following must be indicated in the policy: contracting parties, the insured object, or insured person, risk covered by insurance, duration of insurance and period of cover, amount of insurance or an indication that the insurance is unlimited, insurance premium or allowance, date of issuing the policy, and signatures of contracting parties.

(2) The insurance policy may be temporarily substituted by a list of cover, which shall include the essential constituent elements of contract.

(3) The insurer shall be obliged to warn the person concluding a contract of insurance that general and particular terms and conditions of insurance make a component part of the contract, and to hand over to him the relevant text, should

such terms and conditions not be printed on the insurance policy itself.

(4) The performance of obligation specified in the preceding paragraph must be expressly indicated as done in the insurance policy.

(5) In the case of discrepancy between a provision of the general or particular terms and conditions, and an insurance policy clause, the clause of the policy shall apply, while in the case of discrepancy between an insurance policy printed clause and a clause which is handwritten, the latter shall apply.

(6) The contracting parties may agree that a policy be made out either to specific person, by order or to bearer.

Article 903. *Unauthorized Conclusion of Contract on Behalf of Another*

(1) A person concluding a contract of insurance on behalf of another without his authorization, shall be liable to the insurer for obligations stemming out of such contract, until the person on whose behalf the contract is concluded has accepted it.

(2) The party interested may approve of the contract even after the case covered has taken place.

(3) Should approval be declined, the person concluding the insurance shall owe the insurance premium for the period of insurance within which the insurer was notified of declining the approval.

(4) But a manager without instructions shall not be liable for obligations stemming out of the insurance if he notifies the insurer of his acting without authorization and on behalf of and for the account of another.

Article 905. *Insurance for Another Person's Account or for the Account of the Party Interested*

(1) In case of insurance on another person's account or for the account of the party interested, the duties of payment of insurance premium and other contractual obligations shall be met by the person concluding the insurance, but he shall not be entitled to effect rights on the ground of insurance, even after being in possession of the policy, without the consent of the person whose interest is insured and who is the holder of these rights.

(2) The person concluding the insurance shall not be obliged to hand over the policy to the interested party, unless he is reimbursed for the amount paid for the insurance premium to the insurer, together with the expenses of the contract.

(3) The person concluding the insurance shall have the right of priority in collecting these claims out of compensation

due, and the right to demand their discharge directly from the insurer.

(4) An insurer may raise all objections otherwise pertaining to him on the ground of the contract against the negotiator of insurance against every user of the insurance for another person's account.

Article 906. *Insurance Agents*

(1) Should an insurer authorize someone to represent him, while not specifying the scope of his powers, such agent shall be entitled to conclude, on behalf and for the account of the insurer, the contract of insurance, to negotiate and conclude alterations of contracts or extend their validity, to issue insurance policies, to collect premium payments, and to accept statements communicated to the insurer.

(2) Should the insurer limit his agent while this fact is not known to the negotiator of insurance, such limitations shall be considered as nonexistent.

Subsection 3.

OBLIGATIONS OF
AN INSURED, OR OF A
NEGOTIATOR OF INSURANCE

**I. REPORTING THE CIRCUMSTANCES
MATERIAL IN ASSESSING THE RISK**

Article 907. *Duty of Reporting*

A person concluding the insurance shall be obliged to report to the insurer, at the conclusion of the contract, all circumstances which are material in assessing the risk, and which were known, or could not have been unknown, to him.

Article 908. *Deliberately Incorrect Reporting or Suppressing Facts*

(1) Should a person concluding the insurance deliberately file an incorrect application, or intentionally suppress circumstances being of a nature which would induce the insurer, if he knew the real situation, not to enter into contract, the insurer shall be entitled to seek nullity of contract.

(2) In the case of nullity of contract on the ground of reasons specified in the preceding paragraph, the insurer shall

keep the collected insurance premiums, and shall be entitled to request payment of the premium for the insurance period within which he has requested the nullity of contract.

(3) The insurer's right to request nullity of contract of insurance shall be terminated if within a three month period from the day of his becoming aware of the incorrectness of the application or of suppressing the facts, he fails to notify the person concluding the insurance of his intention to use such a right.

Article 909. *Unintentional Incorrectness or Incompleteness of Application*

(1) Should a negotiator of insurance make an incorrect application or omit to supply necessary information unintentionally, the insurer may, at his own choice, within one month after becoming aware of the incorrectness or incompleteness of the application, state that he is repudiating the contract, or propose an increase of the insurance premium, proportionally to the higher risk involved.

(2) In such a case the contract shall be terminated on the expiration of fourteen days from the day of the insurer's notifying the negotiator of insurance of cancellation, while in the case of the insurer's proposal for insurance premium increase, the rescission shall take effect on the ground of law, should the negotiator of insurance fail to accept the proposal within the fourteen day period after being notified about it.

(3) In case of rescission, the insurer shall be obliged to restitute the part of insurance premium relating to the remaining share of the insurance period.

(4) Should the case covered by insurance take place prior to finding the incorrectness or incompleteness of the application, or after that but prior to the rescission, or prior to reaching an agreement on the premium increase, the compensation shall be reduced proportionally between the rate of the paid insurance premiums and the rate of insurance premiums which would have to be paid according to the real risk.

Article 910. *Extending the Application of the Preceding Articles*

The provisions of the preceding articles concerning the consequences of incorrect application or of suppressing circumstances relevant for assessing the risk, shall also apply in cases of insurance concluded on behalf and for the account of another, or to the benefit of a third party, should such persons be aware of incorrectness of the application or of suppressing the circumstances relevant for the assessment of risk.

Article 911. *Cases Where the Insurer is Unable to Invoke Incorrectness or Incompleteness of Application*

(1) An insurer who, at the moment of entering into contract, was aware, or could not have been unaware, of circumstances relevant for assessing the risk, which were incorrectly notified or suppressed by the negotiator of insurance, shall not invoke incorrectness of the application or the fact of suppression.

(2) The same shall apply if the insurer becomes aware of these circumstances in course of the insurance period, but fails to use his legal rights.

**II. PAYMENT OF INSURANCE
PREMIUM**

Article 912. *Duty of Paying and Accepting the Insurance Premium*

(1) A negotiator of insurance shall be obliged to accept payment of the insurance premium from any person with a legal interest that it is paid.

(2) The premium shall be paid within the stipulated time limits, and should it be paid as a lump sum, it shall be paid on entering into contract.

(3) The place of payment of the insurance premium shall be the office address of the negotiator of insurance, or his domicile, unless another place be designated by contract.

Article 913. *Consequences of Failing to Pay the Insurance Premium*

(1) Should it be stipulated that the insurance premium be paid on entering into contract, the duty of the insurer to pay compensation or the amount specified by contract, shall commence on the day following the day of payment of insurance premium.

(3) Should it be stipulated that the insurance premium be paid after entering into contract, the duty of insurer to pay the compensation or the amount specified by contract shall commence from the day determined in the contract as a day of commencement of insurance.

(3) But should the negotiator of insurance fail to pay the premium due after entering into contract until its maturity, or should this not be done by another interested person, the contract of insurance shall be terminated on the ground of law

after the expiration of thirty days from the day the negotiator of insurance receives a registered letter of the insurer, notifying him of the maturity of the premium; however, such time limit shall run out prior to the expiration of a thirty day period from the day of maturity of the insurance premium.

(4) In any event, the insurance contract shall be terminated on the ground of law if the premium is not paid within one year time counting from the maturity.

(5) The provisions of the present article shall not apply to life insurance.

III. NOTIFYING THE INSURER ON CHANGES OF RISK

Article 914. *Increase in Risk*

(1) A negotiator of insurance shall be obliged, in case of property insurance, to notify the insurer of every change in circumstances which may be relevant for assessing the risk, and in case of life insurance, only if the risk has increased because the insured person has changed his occupation.

(2) He shall be obliged to notify the insurer without delay of the increase in risk should the risk be increased by an act on his part, and should the increase of risk take place without his participation, he shall be obliged to notify the insurer accordingly within fourteen days after becoming aware of the fact.

(3) Should the increase in risk be of such scope that the insurer would not have concluded the contract if such situation had existed at the time of its conclusion, he shall be entitled to repudiate the contract.

(4) But if the increase in risk is of such scope that the insurer would have concluded the contract but only with an increased premium, if such situation existed at the time of entering into contract, he shall be entitled to propose a new rate for the insurance premium.

(5) Should the negotiator of insurance decline the new rate of premium within a fourteen day time limit after being notified about the proposal of the new rate, the contract shall be terminated on the ground of law.

(6) But the contract shall remain valid and the insurer shall no longer avail himself of the right to propose a new rate of insurance premium to the negotiator of insurance or to repudiate the contract, if such rights fail to materialize within a one month time limit from the day of his becoming aware, by whatever means, of

the increase in risk or if, even prior to the expiration of such time limit, he shows in some way his consent to the continuation of contract (by accepting payment of the premium, by paying the compensation for a case covered by insurance, which case has taken place after the increase of risk, and the like).

Article 915. *Should a Case Covered by Insurance Take Place in the Meantime*

Should a case covered by insurance take place prior to notifying the insurer of the increase in risk, or if he was notified of the increase in risk, but prior to the repudiation of contract by him or reaching agreement with the negotiator of insurance regarding the increase of insurance premium, the compensation shall be reduced proportionately to the premiums already paid and those which would have to be paid according to the increased risk.

Article 916. *Reduction of Risk*

(1) Should after entering into contract of insurance, a reduction of risk take place, the negotiator of insurance shall be entitled to demand a corresponding reduction of insurance premium, counting from the day of his notifying the insurer of such reduction of risk.

(2) Should the insurer fail to accept the reduction of insurance premium, the negotiator of insurance may repudiate the contract.

Article 917. *Duty to Notify of the Occurrence of an Event Covered by Insurance*

(1) Except in the case of life insurance, the insured person shall be obliged to notify the insurer about occurrence of the event covered by insurance, within three days at the latest, counting from the day of his becoming aware of it.

(2) Should he fail to fulfil this obligation within the designated time, he shall be obliged to compensate the insurer for loss sustained due to the above.

Article 918. *Nullity of Clauses of Forfeiture of Right*

Clauses of a contract which provide for the forfeiture of the right to compensation or to the amount insured, should the insured person, after the occurrence of the event covered by insurance, fail to execute some of the prescribed or stipulated obligations shall be void.

Subsection 4.

OBLIGATIONS OF
THE INSURER

Article 919. *Payment of Compensation or of the Amount Stipulated*

(1) When the event covered by insurance takes place, the insurer shall be bound to pay the compensation or the amount specified by contract within the stipulated time limit which shall not exceed fourteen days, counting from the notification received by the insurer of the occurrence of the insured event.

(2) But should some time be needed to establish the existence of the insurer's obligation or its amount, such time limit shall begin to run from the day of establishing the existence of his obligation and its amount.

(3) Should the amount of insurer's obligation not be established within the time limit specified in paragraph one of the present article, the insurer shall be obliged, at the request by an authorized person, to pay the undisputed part of his obligation as an advance payment.

Article 920. *Exclusion of Liability of the Insurer in Case of Wilful Misconduct or Fraud*

If the negotiator of insurance, the insured person or the beneficiary of insurance provoked the event covered by insurance by their wilful misconduct or fraud, the insurer shall have no obligation whatsoever, while a contractual clause contrary to that shall have no legal effect.

Article 921. *Objections of the Insurer*

(1) The insurer shall be entitled, against the request by the bearer of the policy, as well as request of any other person referring to it, to raise all objections otherwise at his disposal on the ground of contract towards the person with whom he has concluded the contract of insurance.

(2) As an exception, the insurer may raise only those objections which originated prior to the occurrence of the insured event, against a request by the third party in case of voluntary liability insurance, and request by holders of specific rights to the insured object, whose right has been passed by law from the destroyed or damaged object to the insurance compensation.

Subsection 5.

DURATION
OF INSURANCE

Article 922. *Commencement of Effect of the Insurance*

(1) Unless otherwise stipulated, the contract of insurance shall begin to take effect twenty four hours from the day designated in the insurance policy as the day of commencement of insurance, and shall continue to be effective until the end of the last day of the time limit stipulated for the insurance.

(2) Should an insurance time limit be not provided by contract, each party shall be entitled to repudiate the contract on the day of maturity of the insurance premium, after notifying the other party accordingly in writing, three months before the maturity of the premium, at the latest.

(3) Should insurance be stipulated for a period exceeding five years, each party shall be entitled, after the expiration of that time limit, to notify the other party by letter of its intent to rescind the contract, honouring the six month period of notice.

(4) It shall not be possible to exclude by contract the right of each party to repudiate the contract as specified above.

(5) The provisions of the present article shall not apply to life insurance.

Article 923. *Effect of Bankruptcy on Insurance*

(1) In the case of bankruptcy of the negotiator of insurance, the insurance shall continue, but each party shall be entitled to rescind the contract of insurance within a three month time limit from the institution of bankruptcy proceedings, in which case the negotiator's insolvent assets shall be increased by the part of the paid insurance premium corresponding to the remaining time of insurance.

(2) In the case of bankruptcy of the insurer, the insurance contract shall be terminated thirty days after the institution of bankruptcy proceedings.

Section 2.

PROPERTY INSURANCE

Subsection 1.

GENERAL PROVISIONS

Article 924. *The Interest in Insurance*

(1) Property insurance may be contracted by any person having an interest that the insured event does not take place, since otherwise such person would suffer a material loss.

(2) The insurance rights may pertain only to persons having material interest that the insured event does not take place at the moment of occurrence of damage.

(3) In the case of crop insurance, or insurance of other agricultural products, the amount of damage shall be determined in relation to the value such crop would have at the time of harvest, unless otherwise provided by contract.

(4) Clauses of a contract by which the amount of compensation is limited to a sum which is lower than the amount of damage shall be valid.

(5) In assessing the amount of damage, the profit lost shall be taken in consideration only if so provided by contract.

(6) Should in course of the same period of insurance several insured events take place one after the other, the insurance compensation for each one of them shall be determined and paid off entirely by taking in consideration the total amount insured, without reducing it by the amount of compensation previously paid within such period.

(7) Should the value of the insured object be determined by agreement, the compensation shall be determined according to such value, unless the insurer is successful in proving that the value stipulated is excessively higher than the real value, and that there is no justified ground for such difference (for instance, insuring a used object at the value of a new one, or insuring a subjective, personal, value).

Article 926. *Preventing the Insured Event, and Salvage*

(1) An insured person shall be obliged to take regulated, stipulated and all other necessary measures to prevent the occurrence of the insured event, and if such event does take place, he shall be obliged to take every possible measure to limit consequential damage.

(2) The insurer shall be obliged to compensate expenses, losses, and other losses caused by reasonable attempts to eliminate the direct danger of occurrence of the insured event, including that caused by attempt to limit its damaging consequences, even if such attempts are not successful.

(3) The insurer shall be obliged to pay such compensation even if, taken together with compensation of damage from the insured event, it exceeds the amount of insurance.

(4) Should the insured person fail to fulfil his obligation to prevent the occurrence of the insured event, or the obligation of salvage, while having no justified reason, the obligation of the insurer shall be reduced by an amount equal to the increase of damage due to such omission.

Article 927. *Leaving the Insured Object after Damage*

Unless otherwise provided by contract, the insured person shall not be entitled to leave the insured object after damage to the insurer, after the insured event has occurred, and to request from him the payment of the full amount of insurance.

Article 928. *Loss of Object due to an Event not Provided for in the Insurance Policy*

(1) Should an insured object or object whose use is the ground of concluding a liability insurance is lost in course of the insurance period, due to an event not provided for in the insurance policy, the contract shall cease to be valid for the future, while the insurer shall be obliged to restitute to the negotiator of insurance part of the insurance premium, proportionate to the remaining time period.

(2) Should one of several objects encompassed by one contract be lost due to an event not provided for in the insurance policy, the insurance shall remain valid regarding the remaining objects, but necessary amendments shall be introduced because of the reduction of the subject of insurance.

Subsection 2.

LIMITATION OF
INSURED RISK

Article 929. *Damage Covered by Insurance*

(1) The insurer shall be bound to compensate loss which occurred accidentally, or through fault of the negotiator of insurance or the beneficiary of the insurance, unless regarding specific damage such obligation of the insurer be expressly excluded by the contract of insurance.

(2) He shall not be liable for damage caused by such persons through wilful misconduct, so that an insurance policy clause which would specify such liability of the insurer shall be void.

(3) But if the insured event has taken place, the insurer shall be obliged to compensate every loss caused by a person under the responsibility, on any ground whatsoever, of the insured person, regardless of whether the loss was caused by wilful misconduct or negligence.

Article 930. *Damage Caused by Defects in the Insured Object*

The insurer shall not be liable for damage to the insured object due to its defects, unless otherwise provided by contract.

Article 931. *Damage Caused by War Operations and Rebellions*

(1) An insurer shall not be obliged to redress a damage caused by war operations or rebellions, unless otherwise provided by contract.

(2) The insurer shall be bound to prove that the damage is caused by some of these events.

Subsection 3.

OVERINSURANCE AND A
CONTRACT WITH SEVERAL
INSURERS

Article 932. *Overinsurance*

(1) Should at conclusion of the contract one party deceive the other, stipulating an amount of insurance which is higher than the real value of the insured object, the other party shall be entitled to request nullity of contract.

(2) Should the stipulated amount of insurance be higher than the value of the insured object, and if both parties are in good faith, the contract shall remain valid and the amount of insurance shall be reduced to the real value of the insured object, while the premium shall be reduced proportionally.

(3) In both cases an insurer in good faith shall keep the insurance premiums received, and shall be entitled to a non-reduced premium for the current insurance period.

Article 933. *Subsequent Reduction of Value*

Should the insured amount be reduced in course of insurance period, each contracting party shall be entitled to a

corresponding reduction of insurance amount and of premium, beginning from the day the first party submits to the other his request for reduction.

Article 934. Multiple and Double Insurance

(1) Should an object be insured with two or more insurers against the same risk, for the same interest and for the same period of time, so that the sum of the insured amounts does not exceed the value of such objects (multiple insurance), each insurer shall be responsible for complete performance of obligations created out of the contract he has entered into.

(2) Should, however, the sum of the insurance amounts exceed the value of the insured object (double insurance), and the negotiator of insurance did not act contrary to good faith, all such insurances shall be full and valid, and each insurer shall be entitled to the stipulated insurance premium for the current insurance period, while the insured person shall be entitled to demand from each insurer the compensation according to the contract entered into with him, but no more, in total, than the amount of damage.

(3) After the occurrence of the insured event, the negotiator of insurance shall be bound to notify each insurer of the same risk accordingly and to communicate to him the names and addresses of the remaining insurers, together with information on the amounts of insurance provided in particular contracts concluded with them.

(4) After paying compensation to the insured person, each insurer shall bear the part of compensation in proportion between the insurance amount he is obliged to pay and the sum of insurance amounts, so that the insurer paying more shall be entitled to demand from other insurers reimbursement of the surplus paid.

(5) Should a contract be concluded without indicating the insurance amount or with an unlimited coverage, it shall be considered as a contract concluded with the highest amount of insurance.

(6) The remaining insurers shall be liable for the part to the charge of an insurer unable to pay, proportionally to their respective parts.

(7) A negotiator of insurance concluding a contract of insurance by which double insurance has taken place, while not knowing about a previously concluded insurance, may request – regardless of whether the previous insurance was concluded by himself or by another – within one month from his becoming aware of such insurance, a corresponding reduction of the insured amount and of the premiums of the subsequent insurance, but the insurer shall keep the already received premiums and shall be entitled to the insurance premium for the current insurance period.

(8) If the double insurance has taken place due to the reduction of value of the insured object in the course of the insurance period, the negotiator of insurance shall be entitled to a corresponding reduction in the insurance amount and of the premiums, from the day his request for reduction reaches the insurer.

(9) If in the event of double insurance the negotiator of insurance fails to act in good faith, each insurer may request nullity of contract, keep the premiums received and demand the non-reduced premium for the current insurance period.

Article 935. Co-insurance

Should a contract of insurance be concluded with several insurers who agree on joint bearing and distribution of risk, each insurer designated in the insurance policy shall be liable to the insured person for the entire compensation.

Subsection 4.

SUB - INSURANCE

Article 936.

(1) Should it be established that at the beginning of a relevant period of insurance, the value of the insured object was higher than the amount of insurance, the amount of compensation owed by the insurer shall be proportionally reduced, unless otherwise provided by contract.

(2) The insurer shall be liable to pay the entire compensation up to the amount of insurance, if it is stipulated that the relationship between the value of the object and the amount of insurance shall have no relevance in determining the amount of compensation.

Subsection 5.

TRANSFER OF CONTRACT AND
THE PAYMENT OF INSURANCE
COMPENSATION TO ANOTHER

**Article 937. Transfer of Contract to the Acquirer of
an Insured Object**

(1) In the case of transferring the insured object to another, or the subject being a ground for concluding liability insurance, the rights and duties of the negotiator of insurance shall pass by law to the acquirer, unless otherwise provided by contract.

(2) But should only one part of the insured objects be transferred which, in terms of insurance, do not make an entirety, the contract of insurance regarding the transferred objects shall come to an end by law.

(3) Should, due to the transfer of objects, the probability of occurrence of the insured event be increased or reduced, the general provisions on increasing or reducing of risk shall apply.

(4) A negotiator of insurance failing to notify the insurer that the insured object has been transferred to another, shall remain obliged to pay insurance premiums becoming due even after the day of transfer.

(5) The insurer and the acquirer of the insured object may withdraw from the insurance, honouring a fifteen day period of notice, on condition that their notice is submitted within thirty days of becoming aware of the transfer.

(6) The contract of insurance shall not be rescinded should the insurance policy be issued to bearer or on order.

Article 938. *Granting of Compensation to Holders of Security and Other Rights*

(1) After the occurrence of an insured event, a right of security and other rights existing previously in relation to the insured object shall have as their subject the compensation owed, both in the case of insuring one's own objects, and in the case of insuring other person's objects because of a duty to keep and restitute them, so that the insurer shall not be able to pay compensation to the insured person without the consent of the holder of such rights.

(2) These persons may directly demand that the insurer pay to them their claims within the limits of the amount of insurance, and according to the statutory order of payment.

(3) However, if the insurer at the moment of payment was not aware, or could not have been aware, of such rights, the payment of compensation to the insured person shall remain valid.

Subsection 6.

TRANSFER OF INSURED PERSON'S RIGHTS AGAINST THE LIABLE PERSON TO THE INSURER (SUBROGATION)

Article 939.

(1) On payment of compensation from insurance, the insurer shall acquire, by law, all rights of the insured person against the person liable for damage on whatever ground, up to the total amount of compensation.

(2) Should such transfer be made entirely or partially impossible through the fault of the insured person, the insurer shall be released correspondingly from his obligation towards the insured person.

(3) The transfer of right from the insured person to the insurer shall not be to the detriment of the insured person, so that should compensation received by the insured person from the insurer be, on whatever ground, lower than the damage sustained by him, the insured person shall be entitled to reimbursement from liable party's means for the remaining part of compensation, prior to the payment of insurer's claim on the ground of rights which have been transferred him.

(4) As an exception to the rules of transfer of an insured person's rights to the insurer, these rights shall not pass to the insurer if damage was caused by a person in direct relationship with the insured person or person under the care and responsibility of the insured person, or a person living with him in the same household, or a person who is an employee of the insured person, unless such persons caused the damage by wilful misconduct.

(5) However, should some of the persons specified in the preceding paragraph be insured against liability, the insurer may demand the redress of the amount paid to the insured person from his insurer.

Subsection 7.

LIABILITY INSURANCE

Article 940. *Liability of the Insurer*

(1) In case of liability insurance, the insurer shall be liable for damage caused by the insured event only if the third party sustaining damage request compensation.

(2) The insurer shall bear, within the limits of the amount of insurance, the expenses of litigation over the liability of the insured person.

Article 941. *Personal Right of the Person Sustaining Damage and Direct Action*

(1) In case of liability insurance the person sustaining damage may request the compensation for loss sustained due to an event falling within the sphere of liability of the insured person directly from the insurer, but only up to the amount of the insurer's obligation.

(2) The person sustaining damage shall have, from the day of occurrence of the insured event, his own right to compensation from the insurance, so that any subsequent change in the insured person's rights against the insurer shall have no effect on the right of a person sustaining damage to compensation.

Section 3.

INSURANCE OF PERSONS

Subsection 1.

GENERAL PROVISIONS

Article 942. *Determination of the Insured Amount*

In contracts of insurance of persons (life insurance and accident insurance), the amount of insurance to be paid by the insurer on the occurrence of the insured event, shall be determined in the insurance policy by agreement between the contracting parties.

Article 943. *Life Insurance Policy*

(1) In addition to elements which are constituent for every insurance policy, the life insurance policy shall include indications of the name and last name of a person whose life is insured, his date of birth and event or time limit being a prerequisite for requesting payment of the amount insured.

(2) The life insurance policy may be made out to a specific person or to order, but it shall not be made out to bearer.

(3) For an endorsement of the insurance policy made out to order to be full and valid, it must contain an indication of the name of the beneficiary, the date of endorsing and the signature of the endorser.

Article 944. *Incorrect Reporting of Age of the Insured Person*

As an exception to the general provisions of the present Chapter concerning consequences of incorrect applications or of suppressing the circumstances relevant for the assessment of risk, the following rules shall apply regarding incorrect reporting of age in life insurance contracts:

(i) a life insurance contract shall be void and the insurer shall be obliged in any case to repay all received premiums, should at the moment of its conclusion the age of the insured person has been incorrectly stated, while his real age exceeded the limit up to which the insurer, by his terms and tariffs, normally enters into life insurance transactions.

(ii) should it be incorrectly reported that the insured person is of a lower age, but his real age does not exceed the limit up to which the insurer normally enters into life insurance transactions, the contract shall be valid, but the insured amount shall be reduced in proportion to the stipulated insurance premium and the insurance premium provided for the life insurance of a person of the age of the insured person.

(iii) Should the insured person be of lower age than reported in the application to enter into contract, the insurance premium shall be reduced by a corresponding amount, while the insurer shall be obliged to repay the difference between the insurance premiums received and the premiums he is entitled to.

Article 945. *Consequences of Failing to Pay Insurance Premium and Reduction of the Insured Amount*

(1) Should a negotiator of life insurance fail to pay some of the insurance premiums when due, the insurer shall not be entitled to demand payment by instituting legal proceedings.

(2) Should a negotiator of insurance, invited by the insurer by means of registered mail, fail to pay an insurance premium due within the time limit indicated in insurer's letter – such time limit being shorter than one month, counting from the day of delivery of the letter – or should such payment not be made by another interested party, the insurer shall be entitled, if at least three annual insurance premiums have been paid by then, only to state to the negotiator of insurance that he is going to reduce the amount of insurance to the level of the re-purchase value of insurance, or that, in a contrary case, he shall repudiate the contract.

(3) Should the insured event occur prior to repudiation of contract or of reduction of the insured amount, the insured amount shall be considered reduced, or as if the contract is repudiated – depending on whether insurance premiums were paid for at least three years or not.

Article 946. *Insuring a Third Party*

(1) Life insurance may relate to the life of the negotiator of insurance, and it may relate to the life of a third party.

(2) The same shall apply to the accident insurance.

(3) Should insurance relate to the death of a third party, the validity of contract shall depend on his written consent, indicated on the face of the insurance policy, or in a separate letter at the moment of signing the insurance policy, with an indication of the insured amount.

Article 947. *Insurance in Case of Death of a Minor and of Persons Deprived of Business Capacity*

(1) An insurance shall be void relating to the death of a third party younger than fourteen, or to a person completely deprived of business capacity, so that the insurer shall be bound to repay to the negotiator of insurance all insurance premiums received under such contract.

(2) The validity of insurance in case of death of a third party older than fourteen shall depend on the written consent by his legal representative, and the written consent of the insured person himself.

Article 948. *Cumulating Compensation and the Insured Amount*

(1) In the case of life insurance, an insurer paying the insured amount shall have no right whatsoever to compensation against a third party liable for the occurrence of the insured event.

(2) The right to compensation against a third party liable for the occurrence of the insured event shall belong to the insured person, or beneficiary, independently of his right to the insured amount.

(3) Provisions of the preceding paragraphs shall not apply to insurance covering the consequences of accident stipulated as liability insurance.

Subsection 2.

EXCLUDED RISKS

Article 949. *Suicide of the Insured Person*

(1) The contract of insurance covering the case of death shall not include the risk of suicide of the insured person, if it happened in the first year of the insurance period.

(2) If the suicide happens within a three year period from the day of entering into contract, the insurer shall not be obliged to pay to the beneficiary the insured amount, but only the mathematical reserve of the contract.

Article 950. *Premeditated Murder of the Insured Person*

An insurer shall be released from obligation to pay to the beneficiary the insured amount if he wilfully caused the death of the insured person, but if until then at least three annual insurance premiums have been paid, he shall be obliged to pay the mathematical reserve to the negotiator of insurance, and should he be the insured person, the payment shall be made to his successors.

Article 951. *Wilful Causing of Accident*

An insurer shall be released from obligation in the insurance contract covering an accident, if the insured person wilfully caused the accident.

Article 952. *War Operations*

(1) Should death of the insured person be caused by war operations, the insurer – unless otherwise provided by contract – shall not be bound to pay to the beneficiary the insured amount, but shall be obliged to pay to him the mathematical reserve from the contract.

(2) Unless otherwise provided by contract, the insurer shall be released from obligation from the accident insurance contract, if the accident was caused by war operations.

Article 953. *Contractual Exclusion of Risk*

Other risks may also be excluded by contract covering cases of death or accident.

Subsection 3.

RIGHTS OF THE
NEGOTIATOR OF INSURANCE
PRIOR TO OCCURRENCE OF
THE INSURED EVENT

Article 954. *Repurchase*

(1) Upon demand by the negotiator of a life insurance, concluded for the lifetime of the insured person, the insurer shall be obliged to pay to him the repurchasing value of the insurance policy, if at least three annual insurance premiums have been paid.

(2) The insurance policy shall include terms and conditions by which the insurance negotiator may request payment of its repurchase value, as well as an indication of the method

of calculation of that value, in accordance to the insurance terms and conditions.

(3) The rights to request repurchase shall not be realized by the creditors of the negotiator of insurance, or by the beneficiary of insurance, but the repurchase value shall be paid to the beneficiary at his request, if the designation of the beneficiary is irrevocable.

(4) As an exception to the preceding paragraph, the repurchase of the insurance policy may be demanded by a creditor receiving the policy as security, if the claim supported by security has not been settled at maturity.

Article 955. Advance Payment

(1) On request by a negotiator of life insurance which is concluded for the lifetime of the insured person, the insurer may pay to him in advance a part of the amount insured, up to the repurchase value of the insurance policy, which part may be subsequently repaid by the negotiator of insurance.

(2) The negotiator of insurance shall be obliged to pay interest to be determined against the advance payment received.

(3) Should the insurance negotiator be late with payment of the interest due, it shall be proceeded as if he requested repurchase.

(4) The terms of granting the advance payment must be indicated in the insurance policy, together with the possibility of paying back the amount accepted as advance payment to the insurer, the amount of interest rate, the consequences of failure to pay the interest due – as provided for by insurance terms and conditions.

Article 956. Insurance Policy as Security

(1) A life insurance policy may be given as security.

(2) Giving the insurance policy as security shall affect the insurer only if he has been notified in writing that the policy has been given as security to the specific creditor.

(3) Should a policy be made out to order, the security shall be effected by endorsement.

Subsection 4.

LIFE INSURANCE FOR THE BENEFIT OF A THIRD PARTY

Article 957.

(1) A negotiator of life insurance may designate in the contract, as well as in other subsequent legal transaction, in-

cluding a will, a person who shall acquire the rights out of contract.

(2) Should the insurance relate to the life of another person, the designation of the beneficiary shall also need his written consent.

(3) A beneficiary need not be designated by name, since it shall suffice that the deed contain data necessary for designation.

(4) Should children or descendants be designated as beneficiaries, the benefit shall also accrue to those who are born later, while the benefit intended for a spouse shall accrue to the person married to the insured person at the moment of his death.

Article 958. *Sharing the Benefit Among Several Beneficiaries*

If children, descendants and, in general, successors are designated as beneficiaries, and the negotiator of insurance has not determined the way of distribution of benefit among them, such distribution shall be done proportionally to their inheritance shares, and if beneficiaries are not successors on the ground of inheritance, the amount insured shall be distributed in equal shares.

Article 959. *Revoking a Clause Designating a Beneficiary*

(1) A clause by which the insurance benefit is granted to a specific person may be revoked only by the negotiator of insurance, and such right shall not be effected either by his creditors or his legal successors.

(2) The negotiator of insurance may revoke the clause on benefit only until the beneficiary comes to acknowledge it by stating, in any way whatsoever, his intention to accept the benefit – after which the clause shall become irrevocable.

(3) However, the negotiator may revoke the benefit clause even after beneficiary's statement of acceptance, if the beneficiary has attempted to murder the insured person, and if the benefit is granted without consideration, the revocation shall be subjected to provisions regulating the revoking of a gift.

(4) The beneficiary shall be considered as having refused the benefit intended for him, if he fails, after the death of the negotiator of insurance, on the invitation of his successors, to acknowledge its acceptance within one month.

Article 960. *Personal and Direct Right of the Beneficiary*

(1) The insured amount to be paid to the beneficiary shall not enter into the total estate of the insurance negotiator, even if the beneficiaries are his own successors.

(2) The right to the insured amount shall pertain to the beneficiary, from the moment of entering into contract, and regardless of the way and time of his being designated for beneficiary, and regardless of whether he has stated his acceptance prior to or after the death of the insured person, so that he shall be entitled to request payment of the insured amount directly from the insurer.

(3) After the insurance negotiator has designated his children, his descendants and, generally, his successors as beneficiaries, each one of these beneficiaries shall be entitled to a corresponding part of the insured amount, even if they have renounced the inheritance.

Article 961. *Creditors of a Negotiator of Insurance and of the Insured Person*

(1) Creditors of a negotiator of insurance and of an insured person shall have no right whatsoever to the insured amount contracted for the beneficiary.

(2) However, if insurance premiums paid by the negotiator of insurance are disproportionately high, compared to his possibilities at the moment of payment, his creditors may request for them a part of such payments of the premium, exceeding his possibilities – if requirements are met by which the creditors are entitled to oppose the debtor's legal actions.

Article 962. *Assignment of the Insured Amount*

A beneficiary may transfer his right to the insured amount to another, even prior to the occurrence of the insured event, but shall need for that a consent in writing from the negotiator of insurance, where the name of the proposed assignee must be indicated, and should the insurance relate to life of another person, the same consent shall be necessary from that person as well.

Article 963. *Death of Designated Beneficiary Prior to Maturity*

If a person designated without consideration as a beneficiary dies prior to the maturity of the insured principal or annuity, the insurance benefit shall not belong to his successors, but to the next beneficiary, and should one be not designated, then to the estate of the negotiator of insurance.

Article 964. *Life Insurance without a Designated Beneficiary*

Should a negotiator of life insurance fail to designate a beneficiary, or should the clause on determining the beneficiary remain ineffective due to revocation, or to refusal by

the designated person, or due to some other reason, and the negotiator of insurance fail to determine another beneficiary, the insured amount shall belong to the estate of the negotiator of insurance, and its part shall pass, together with his remaining rights, to his successors.

Article 965. *Bona fide Payment of the Insured Amount to an Unauthorized Person*

(1) Should the insurer pay the insured amount to a person who would be entitled to it if the negotiator of insurance fail to designate the beneficiary, he shall be released from his obligation from the contract of insurance if, at the moment of payment, he was not aware, or could not have been aware, that the beneficiary was designated by will, or by some other act not related to his knowledge, but the beneficiary shall be entitled to request repayment from the person who has accepted the amount insured.

(2) The same shall apply in case of replacement of the beneficiary.

Chapter XXVIII.

SECURITY (UPON PERSONAL PROPERTY)

Section 1.

GENERAL PROVISIONS

Article 966. *Notion*

By a contract of security³⁴ a debtor or a third party (pledger) shall assume the obligation to a creditor (pledgee) to deliver to him a movable object in relation to which there exists the right of ownership, so that he can, before other creditors, effect collection out of its value, should his claim not be paid when due, while the creditor shall assume the obligation to keep the accepted object and return it to the pledger undamaged after the termination of his claim.

Article 967.

Repealed by the 1993 Amendments to the present Law.

³⁴ "Security" here may be by way of mortgage or by pledge or pawn.

Article 968. *Acquiring the Right of Security*

A pledgee shall acquire the right of security if the object referred to by the contract is delivered to him.

Article 969. *Capacity*

To conclude a valid contract of security it shall be necessary for the pledger to be able to dispose of objects he is giving as security.

Article 970. *Security of an Object Already Pledged to Another*

(1) A contract of security may be concluded regarding an object already granted as security to another.

(2) In such case the right of security shall occur if the pledger notifies the creditor holding the object of the conclusion of contract of security with another creditor, and if he has ordered him to deliver the object to that creditor after settling his own claim.

Article 971. *Security Given for a Future Obligation or One under Condition*

A security may be given for a future and for a conditional obligation.

Article 972. *Extending Security over other Obligations of the Pledger*

Security by which fulfilment of an obligation is secured shall be extended also to contractual obligations which would ensue between the pledgee and the pledger after concluding the contract of security and which becomes due for payment prior to settling the claim covered by the security.

Article 973. *Prohibited Clauses*

(1) A clause of a contract of security shall be void by which an object given as security is transferred to the creditor, if his claim is not settled at maturity, or a clause by which the creditor in such a case sells the object given in security at a price fixed in advance, or keeps it for himself.

(2) However, should the price of the object given in security be prescribed by law, the contracting parties may agree that the creditor sells the object at a price which is prescribed, or that he keeps it for himself at that price.

Section 2.
GIVING AN OBJECT AS SECURITY

Subsection 1.

**OBLIGATIONS OF
THE PLEDGER**

Article 974.

(1) A pledger shall be obliged to deliver to the pledgee, or to a third party designated by them by mutual consent, the object treated by contract, or deliver a document entitling in an undisputable way its holder to dispose of the object.

(2) Contracting parties may agree that the object or the document be kept jointly by them.

Subsection 2.

**OBLIGATIONS OF
THE PLEDGEE**

Article 975. *Keeping the Secured Object*

(1) A pledgee shall be obliged to look after the object, applying the care of a good businessman, or good head of household.

(2) He shall be obliged to restitute it as soon as the debt has been paid.

Article 976. *Using a Security Object*

(1) A pledgee shall not be entitled to use the security object or to hand it over to another for use, or give it in security unless permitted to do so by the pledger.

(2) A pledgee using the object without the pledger's permission, or handing it over to another, or handing it over in security, shall also be liable for ensuing accidental loss or damage of the object.

Article 977. *Accruals to the Security*

(1) Should an object given in security produce accruals, and if not provided by contract whom they will belong to after being detached from the object, the creditor may keep them for himself if he so wishes.

(2) In such case the net income from the accruals shall be deducted from the expenses the creditor is entitled to, then from the interest due and, finally, from the principal amount.

(3) The same shall apply to benefits resulting from the use of the object given in security.

Article 978. *Taking away the Security from the Pledgee*

At the pledger's request the court shall order that the object given in security be taken away from the pledgee and handed over to a third party to be kept by him for the pledgee, if the latter failed to keep the object properly, then if he uses it without the pledger's permission, or if he has given it to another to use it, or fails to use it in conformity with the obtained consent and, in general, if he treats it contrary to the contract or the law.

Subsection 3.

RIGHTS OF THE PLEDGEE

Article 979. *If an Object Given in Security Has a Defect*

Should it turn out that object given in security has a material or legal defect, so that it fails to make a sufficient guarantee for settling the claim, the pledgee shall be entitled to demand from the pledger other corresponding security.

Article 980. *Selling a Security*

(1) If creditor's claim is not settled when due, the creditor may request a court order that the object be sold at public sale, or at the current price if the object has a stock-exchange or market price.

(2) Should public sale expenses turn out to be disproportionately high compared to the value of the object, the court may decide that the creditor sell the object at a price determined by expert's assessment, or that he keeps it for himself at such price, if he so wishes.

Article 981. *Selling an Object Given in Security against a Claim from a Commercial Contract*

(1) Should a debtor fail to settle a claim originating from a commercial contract, the creditor shall not be obliged to go to court; instead, he shall be entitled to sell the security at a public sale, after the expiration of an eight day time limit, counting from the warning to that respect communicated to the debtor, and to the pledger – if they are not the same person.

(2) The creditor shall be obliged to notify both persons about the date and the place of sale on time.

(3) Should the objects given in security have a market or stock-exchange price, the creditor may sell them at such price, eight days after a warning in that respect communicated to the debtor and the pledger.

Article 982. *Selling a Security before Time because of Perishing or Losing Value, and its Replacement*

(1) If the object given in security begins to perish or otherwise loses its value, so that there is a danger of its becoming inadequate to cover the creditor's claim, the court may decide, at the request of the pledgee or the pledger, and after hearing the other party, to permit the sale of the object at a public sale, or at stock-exchange or at a market price, if any, and further decide that the price or a sufficient part of the price be deposited with the court in order to secure the pledgee's claim.

(2) The court shall decline pledgee's request if the pledger offers to deliver to the pledgee, instead of the security, another object of the same value, whose keeping does not require more effort and care than keeping the previous security.

(3) At the request by the pledger, the court shall also permit the substitution of the security if the pledgee fails to request its sale.

Article 983. *Selling the Object Given in Security before Time at Pledger's Request*

(1) At the request by the pledger, the court may permit the pledged object to be sold to a specific person at the specified price, if it finds that the price is satisfactory and that the justified interests of the pledgee shall thus be preserved.

(2) The price obtained, or a sufficient part of the price to be determined by the court while permitting the sale, shall substitute the security and shall be deposited with the court to secure collection of the creditor's claim.

Article 984. *Right to Priority Payment*

A pledgee shall be entitled to collect his claim prior to other creditors, from the price obtained by selling the security, together with interest due, the amount of expenses incurred in keeping the security and the amount of expenses relating to the process of collection.

Article 985. *The Order of the Rights of Security*

Should one object be given as security to several creditors, the order of paying their claims from the value of the pledged

object shall be determined according to the date of origination of their respective rights of security.

Subsection 4.

TERMINATION OF
THE RIGHT OF SECURITY

Article 986. *Termination of the Right of Security after Losing Possession*

(1) A creditor's right to priority collection from the value of the security shall cease on termination of his possession thereof.

(2) That right shall be re-established if the creditor repossess the object.

Article 987. *Termination of the Right of Pledge upon Termination of the Claim*

If the claim whose fulfilment was guaranteed by the security ceases, the creditor shall be obliged to reconstitute the security to the pledger.

Article 988. *Expiration due to Statute of Limitations in Mutual Claims*

Claims of a pledger against a pledgee for damages due to deterioration of the security, as well as claims of the pledgee against the pledger for reimbursing expenses incurred in improving the security, shall expire due to statute of limitations one year after the day the object is restituted.

Section 3.

SECURING CLAIMS AND OTHER RIGHTS

Subsection 1.

SECURING CLAIMS

Article 989. *Notifying a Debtor and Handing over a Certificate*

(1) In order to acquire the right of security over a claim, the debtor must be notified in writing on conclusion of contract of security.

(2) The pledger shall be bound to hand over to the pledgee the certificate indicating the security claim.

Article 990. *Claim Based on Securities*

(1) A creditor shall acquire the right of security over a claim inscribed on the face of securities made out to bearer, if such securities are handed to him.

(2) A claim on the ground of securities made out to order shall be done by endorsement, with an indication that they are given in security.

Article 991. *Duty of Keeping the Claim Safe*

A pledgee shall be obliged to take measures necessary to preserve the secured claim.

Article 992. *Collecting a Bill and Including Interest in the Bill*

(1) Should a secured claim entitle to the interest or other periodical dues, the pledgee shall be bound to collect them.

(2) The amounts collected in such a way shall be cleared against the expenses recognized to the pledgee, then against the interest owed to him and, finally, against the principal amount.

Article 993. *Collecting the Secured Claim*

(1) After the secured claim becomes due for payment, the pledgee shall incur the obligation to collect it.

(2) By fulfilment of the secured claim, the right of security shall pass to the object by which the claim is fulfilled.

(3) Should the subject of the secured claim be money, the pledgee shall be obliged, at the pledger's request, to deposit the amount collected at court, but should the subject of his claim also be money, and if such claim has become due for payment, the pledgee may keep for himself the amount owed, while being obliged to hand over the rest to the pledger.

Article 994. *Objections of the Debtor of the Secured Claim*

A debtor of the secured claim may lodge objections against a pledgee which otherwise may be lodged in case of the assignment of the claim by the debtor of the claim against the recipient.

Subsection 2.

GIVING OTHER RIGHTS AS
SECURITY

Article 995. *Manner of Giving Security*

(1) In addition to claims, other rights may also be given in security.

(2) Giving such rights as security shall be effected in the way otherwise provided for their transfer to another, unless otherwise prescribed by law for a specific case.

Subsection 3.

APPLICATION OF
PROVISIONS ON GIVING
OBJECTS AS SECURITY

Article 996.

The provisions on giving objects as security shall apply also to giving claims and other rights as security, unless otherwise provided by law for such cases.

Chapter XXIX.

WARRANTY (GUARANTEE)

Section 1.

GENERAL PROVISIONS

Article 997. *Notion*

By a contract of warranty (guarantee) warrantor (guarantor) shall assume an obligation to a creditor to fulfil a valid and due obligation of a debtor, should the latter fail to do so.

Article 998. *Form*

A contract of warranty shall produce an obligation for the warrantor only after his statement on warranty is made in writing.

Article 999. Capacity for Warranty

Only a person with full business capacity may assume an obligation by contract of warranty.

Article 1000. Warranty for a Person without Business Capacity

Whoever assumes an obligation as a warrantor for a person without business capacity shall be liable to the creditor in the same way as a warrantor of a person with business capacity.

Article 1001. The Subject of Warranty

(1) A warranty may be given for every valid obligation, regardless of its substance.

(2) It shall also be possible to warrant a conditional obligation and a specific future obligation.

(3) A warranty for a future obligation may be revoked prior to occurrence of such obligation, if a time limit was not provided.

(4) A warranty may also be given for an obligation of another warrantor (warrantor's warrantor).

Article 1002. Scope of Warrantor's Liability

(1) A warrantor's obligation shall not exceed the obligation of the principal debtor, and if it is stipulated that it will exceed this, it shall be reduced to the scope of debtor's obligation.

(2) A warrantor shall be liable to fulfill the entire obligation he has warranted, if his liability is not limited to a part of it, or is not subjected in some other way to less strict conditions.

(3) He shall be liable to reimburse the necessary expenses incurred by the creditor in order to collect the debt from the principal debtor.

(4) The warrantor shall also be liable for every increase in obligation ensuing from the debtor's delay or fault, unless otherwise provided by contract.

(5) He shall be liable only for interest stipulated, which becomes due after entering into the contract of warranty.

Article 1003. Transfer of Creditor's Rights to the Warrantor (Subrogation)

A creditor's claim, settled by a warrantor, shall pass to him along with all secondary rights and guarantees for its fulfillment.

Section 2.

RELATIONSHIP BETWEEN A CREDITOR AND A WARRANTOR

Article 1004. *Forms of Warranty*

(1) Fulfilment of an obligation may be demanded from a warrantor only after the principal debtor fails to fulfil it within the time limit specified in written notice (subsidiary warranty).

(2) A creditor may demand fulfilment from a warrantor although he has not previously notified the principal debtor to fulfil the obligation, should it be obvious that its fulfilment cannot be effected out of the principal debtor's means, or if the principal debtor has gone bankrupt.

(3) Should a warrantor assume an obligation as a warrantor-payer, he shall be liable to the creditor as a principal debtor for the entire obligation, so that the creditor may demand its fulfilment either from the principal debtor or the warrantor, or from both of them at the same time (joint warranty).

(4) Unless otherwise stipulated, a warrantor for an obligation created on the ground of a commercial contract shall be liable as a warrantor-payer.

Article 1005. *Joint Warrantors*

Several warrantors for a debt shall be jointly liable, regardless of whether they have warranted together, or each one of them has assumed an individual obligation to the creditor, unless their liability be regulated differently by contract.

Article 1006. *Loss of the Right to Time Limit*

Unless otherwise stipulated, if a debtor has lost the right to a time limit determined for the fulfilment of his obligation, a creditor shall still not be entitled to demand fulfilment from the warrantor prior to expiration of that time limit.

Article 1007. *Principal Debtor's Bankruptcy*

(1) In case of bankruptcy of a principal debtor, the creditor shall file his claim in the bankruptcy proceedings, and shall inform the warrantor thereof; otherwise he shall be liable to the warrantor for the ensuing loss sustained by him.

(2) Reducing the obligation of the principal debtor in bankruptcy proceedings or in proceedings of compulsory settlement of accounts, shall not result in a corresponding decrease in

the warrantor's obligation, so that the warrantor shall still be liable to the creditor for the entire amount of his obligation.

Article 1008. *In the Case of Reduced Liability of Debtor's Successor*

A warrantor shall also be liable for the entire amount of obligation he has warranted should a debtor's successor be liable only to pay that part of obligation which corresponds to the value of inherited property.

Article 1009. *Warrantor's Objections*

(1) A warrantor may raise against creditor's request all objections otherwise pertaining to the principal debtor, including the objection of setoff, but not purely personal objections belonging to the debtor.

(2) If the debtor renounces an objection or recognizes a creditor's claim, this shall have no effect on a warrantor.

(3) A warrantor may also raise his personal objections against a creditor, such as nullity of warranty contract, unenforceability due to statute of limitations of the creditor's claim against him, or the setoff of mutual claims.

Article 1010. *Duty of Notifying a Warrantor on Debtor's Omission*

Should a debtor fail to fulfil his obligation on time, a creditor shall be obliged to notify the warrantor thereof, otherwise he shall be liable to him for the ensuing loss sustained by the warrantor.

Article 1011. *Releasing a Warrantor due to Creditor's Delay*

(1) A warrantor shall be released from liability should a creditor, if notified by him after the maturity of the claim, fail to demand fulfilment from the principal debtor within a month after such notice.

(2) Should the time limit for fulfilment be not determined, the warrantor shall be released from liability if the creditor, on notice after the expiration of a year since entering into contract of warranty, fail to make a statement necessary for determining the date of fulfilment, within a one month time limit from such notice.

Article 1012. *Releasing a Warrantor due to Abandoning Guarantees*

(1) Should a creditor abandon a security or any other right by which fulfilment of his claim is guaranteed, or should he lose it by his negligence, thus preventing the passing of

such right to the warrantor, the latter shall be released from his obligation to the creditor for the amount he could earn by effecting such right.

(2) The rule specified in the preceding paragraph shall apply both in case of the right ensuing prior to entering into contract of warranty, and in the case of its ensuing after.

Section 3.

RELATIONSHIP BETWEEN A WARRANTOR AND A DEBTOR

Article 1013. *The Right to Demand Compensation from a Debtor*

(1) A warrantor who has paid a creditor may demand from the debtor compensation for everything paid by him on his account, including interest from the day of payment.

(2) He shall be entitled to reimbursement of expenses in litigation against the creditor from the moment of his notifying the debtor about such litigation, and for compensation for losses, if any.

Article 1014. *The Right of a Warrantor of a Joint Debtor*

A warrantor for one of several joint debtors may demand compensation of the amount he has paid to the creditor from any of them as well as reimbursement of expenses.

Article 1015. *The Right of a Warrantor to Preliminary Guarantee*

Even prior to meeting his duty toward a creditor, a warrantor assuming an obligation after corresponding knowledge or permission of the debtor, shall be entitled to demand that the debtor supply him with any necessary guarantee to secure his eventual requests in the following cases: if the debtor has failed to fulfil his obligation when due, if the creditor has demanded from the court the collection from the warrantor, or if the financial situation of debtor has considerably deteriorated since entering into the contract of warranty.

Article 1016. *Loss of the Right to Compensation*

(1) A debtor may use all legal means which were at his disposal at the moment of such payment as instruments for

denying creditor's request against a warrantor who has paid out creditor's claim without his knowledge.

(2) A warrantor who has paid out a creditor's claim, while failing to notify the debtor thereof, so that the latter, not knowing of such payment, paid the claim, shall not be able to demand compensation from the debtor, but shall be entitled to request from the creditor the repayment of sum paid to him.

Article 1017. *The Right to Repayment*

A warrantor who, without the knowledge of a debtor, has paid a creditor's claim which was subsequently cancelled at the debtor's request, or settled by setoff, shall be entitled only to demand the corresponding repayment from the creditor.

Section 4.

**REDRESS OF THE PAYER AGAINST THE
REMAINING WARRANTORS**

Article 1018.

Should there be several warrantors, the one paying the claim due shall be entitled to demand that each of the remaining warrantors compensate the part corresponding to him.

Section 5.

**UNENFORCEABILITY DUE TO
STATUTE OF LIMITATIONS**

Article 1019.

(1) After an obligation of the principal debtor becomes unenforceable due to statute of limitations, the obligation of the warrantor shall also be time-barred.

(2) If the limitation period of the principal debtor due to statute of limitations is longer than two years, the warrantor's obligation shall expire on the above ground two years after the maturity of the obligation of the principal debtor, except if the warrantor is jointly liable with the debtor.

(3) The interruption of the limitation period of the claim toward the principal debtor shall affect the warrantor as well, only if the interruption took place due to a motion of the creditor in court against the principal debtor.

(4) The stoppage of the limitation period of principal debtor's obligation shall have no effect for the warrantor.

Chapter XXX.
DIRECTING (ASSIGNMENT) ³⁵

Section 1.
CONCEPT OF THE CONTRACT

Article 1020.

By directing (an assignment) one party – the director (assignor), shall authorize another party – the directee (assignee), to perform something on his account for the benefit of a third party – the recipient of the direction (recipient), while authorizing him to accept such performance in his own name.

Section 2.
**RELATIONS BETWEEN A RECIPIENT
AND AN ASSIGNEE**

Article 1021. *Acceptance by the Assignee*

(1) A recipient of the assignment shall acquire the right to demand performance from the assignee only after notifying him of his acceptance of the assignment.

(2) Acceptance of the assignment may not be revoked.

Article 1022. *Objections of the Assignee*

(1) By accepting the assignment a debt relationship shall arise between the recipient and the assignee, independent of the relationship between the assignor and the assignee, and the relationship between the assignor and the recipient of the assignment.

(2) An assignee accepting the assignment may raise against the recipient of the assignment only those objections which relate to validity of acceptance, objections based on the

³⁵ This is not the common law institute of transferring a right or title.

contents of acceptance or on the contents of assignment itself, as well as personal objections he has against him.

Article 1023. *Transferring the Assignment*

(1) A recipient of the assignment can transfer the assignment to another prior to acceptance by the assignee, and the transferee can transfer it further, except when the assignment itself, or specific circumstances indicate that it is non-transferable.

(2) Should an assignee notify a recipient of the assignment that he accepts the assignment, such acceptance shall be effective with respect to all persons to whom the assignment might subsequently be transferred.

(3) Should the assignee notify the transferee to whom the recipient of the assignment has transferred the assignment, that he accepts it, he shall not raise against the transferee personal objections that he has against the recipient of the assignment.

Article 1024. *Unenforceability due to Statute of Limitations*

(1) The right of a recipient of the assignment to demand performance from the assignee shall be time barred after one year.

(2) Should the time limit for performance be not provided, the unenforceability period shall commence to run when the assignee accepts the assignment and if he accepted it before it was delivered to the recipient of the assignment, then when it is delivered to him.

Section 3.

**RELATIONSHIP BETWEEN
A RECIPIENT AND AN ASSIGNOR**

Article 1025. *If a Recipient of the Assignment is the Creditor of the Assignor*

(1) A creditor shall not be obliged to consent to an assignment made for him by a debtor as full satisfaction of his obligation, but he shall have a duty to notify the debtor of his refusal without delay; otherwise, he shall be liable to him for loss.

(2) A creditor who has consented to the assignment shall be obliged to call upon the assignee to perform it.

Article 1026. *An Assignment is not Performance*

(1) After a creditor has consented to an assignment made by his debtor in full satisfaction of an obligation, that obligation shall not be terminated, unless otherwise agreed, either by his consent to the assignment or by its acceptance by the assignee, but only by performance on the part of the assignee.

(2) A creditor who has consented to the assignment made by his debtor can demand from the assignor that he perform what is owed for him only if he has not received performance from the assignee within the time provided in the assignment.

Article 1027. *Duty of a Recipient to Notify the Assignor*

Should an assignee decline his consent to the assignment, or refuse the performance demanded from him by the recipient of the assignment, or state in advance that he will not perform it, the recipient of the assignment shall be obliged to immediately notify the assignor of it; otherwise, he shall be liable to him for loss.

Article 1028. *Renouncing an Accepted Assignment*

A recipient of the assignment who is not a creditor of the assignor and who does not want the benefit of the assignment, may renounce it even if he has already stated that he accepted it, but he has a duty to notify the assignor without delay.

Article 1029. *Revocation of Authorization Given to the Recipient of the Assignment*

An assignor may revoke the authorization given to a recipient by means of an assignment, unless the assignment was given in full satisfaction of his own debt to him, and generally, if the assignment was given in the interest of the recipient.

Section 4.

**RELATIONSHIP BETWEEN AN
ASSIGNOR AND AN ASSIGNEE**

Article 1030. *If an Assignee is a Debtor of an Assignor*

(1) An assignee shall have no duty to accept the assignment even if he is a debtor of the assignor, unless he promised it to him.

(2) However, should the assignment be made on the basis of the assignee's debt to the assignor, the assignee shall be bound to perform it in the amount of the debt, provided it is not more difficult for him than performance of his obligation to the assignor, for any reason.

(3) By performing the assignment made on the basis of the assignee's debt to the assignor, the assignee shall be released in the same measure from his debt to the assignor.

Article 1031. *Revocation of Authorization Given to an Assignee*

(1) An assignor may revoke the authorization given to an assignee in an assignment until the assignee notifies the recipient of the assignment that he accepts the assignment, or until he performs it.

(2) He may revoke it even if the assignment provides it is irrevocable, or if by revocation some obligations of his to the recipient of the assignment would be violated.

(3) Instituting bankruptcy proceedings against the assignor's property shall bring with it revocation of the assignment by law, except if the assignee had already accepted the assignment prior to instituting the bankruptcy proceedings, or if, at the moment of acceptance, he did not know or should not have known of the bankruptcy.

Section 5.

**DEATH AND LOSS OF
BUSINESS CAPACITY**

Article 1032.

Death of the assignor, the recipient of the assignment, or the assignee, and loss of business capacity by any of them, shall have no effect on the assignment.

Section 6.

**AN ASSIGNMENT IN THE FORM
OF BEARER PAPER**

Article 1033.

(1) A written assignment can be made out to bearer.

(2) In that event, every holder of the paper shall have the position of a recipient of the assignment with respect to the assignee.

(3) The relations created in an assignment between the recipient of the assignment and the assignor shall arise in this case only between each holder of the paper and the person who assigned the paper to him.

Section 7.
**THE ASSIGNMENT IN FORM OF
A PAPER MADE OUT TO ORDER**

Article 1034.

A written assignment that relates to money, to securities, or to negotiable property can be issued with the provision "to order", if the assignee is a person engaged in economic activity, and if what should be performed enters within the scope of that activity.

C h a p t e r X X X I .

BANK MONEY DEPOSITS

Section 1.

MONEY DEPOSIT

Article 1035. *Notion*

(1) A contract of money deposit shall be concluded if a bank assume the obligation to accept, and the depositor assume the obligation to deposit at the bank, a specific amount of money.

(2) The bank shall acquire by such a contract the right to dispose of the deposited money and shall be bound to repay it under the terms provided for by contract.

Article 1036. *Opening an Account*

(1) On the ground of a contract of money deposit, the bank shall open an account to the benefit and to the charge of which it shall enter all claims and debts from transactions with the depositor, or on his account with third parties.

(2) The claims or debts which are agreed by the contracting parties to be excluded shall not be entered in the account.

Article 1037. *Eliminating the Debit Balance*

(1) The bank shall be obliged to effect payments from the account within the limits of available means.

(2) Should the bank effect one or more in and out payments within the scope of the contract of deposit, which make the balance passive, it shall notify the depositor thereof without delay, and the latter shall be bound to take immediate measures to eliminate the debit balance.

Article 1038. *Kinds of Money Deposits*

(1) A money deposit may be a sight deposit or a fixed-term deposit, with or without period of notice, with special purpose or without purpose.

(2) Unless the contrary be provided by contract, a money deposit account shall be considered as a sight deposit, so that the depositor of the account shall be entitled to dispose at any moment of the part or of the entire amount of balance.

Article 1039. *Statement of Account*

(1) A bank shall be obliged to notify the depositor on every change in the position of his account.

(2) By the end of every year the bank shall be obliged to send a statement of the account (amount of balance) and, if provided by contract or custom, it shall do this more frequently.

Article 1040. *The Place of Paying in and Paying out*

Unless otherwise agreed between the contracting parties, orders for paying in and out of depositor's account shall be directed to the registered address of the bank in which the account was opened.

Article 1041. *Existence of Several Accounts*

Should the same person have several accounts with one bank, or with several of its branches, each of these accounts shall be independent.

Article 1042. *Payment of Interest*

(1) The bank shall pay the interest on assets deposited with it, unless otherwise provided by law.

(2) The amount of interest shall be determined by the contract of deposit of assets, and if there is no indication in the contract to that respect, statutory interest shall be paid.

Section 2.

SAVINGS DEPOSIT

Article 1043. *Savings Book*

(1) Should a money deposit be accepted as savings deposit, the bank or the savings and credit institution, shall issue a savings book to the depositor.

(2) A savings book may be issued only in the name of the specific person or to bearer.

Article 1044. *Entry in the Book*

(1) All payments and withdrawals of money shall be entered into the savings book.

(2) Entries in the book confirmed by the bank's seal and signature of the authorized person shall serve as proof of payments or withdrawals, and of the relations between the bank and the depositor.

(3) A contrary agreement shall be void.

Article 1045. *Payment of Interest*

Interest shall be paid on savings deposits.

Article 1046. *Kinds of Savings Deposits*

Savings deposits may be sight deposits or fixed-term deposits, with or without a period of notice.

Chapter XXXII.

LODGING OF SECURITIES

Article 1047. *Notion*

By a contract of lodging of securities a bank shall assume the obligation to take over against compensation the securities, for the purpose of keeping them and of effecting the rights and duties required in relation to that.

Article 1048. *Effecting of Rights*

Unless otherwise stipulated, the bank may effect rights out of the securities lodged only for the account of the depositor.

Article 1049. *Duties of the Bank*

(1) The bank shall be obliged to ensure the keeping of securities with care required from a depository against compensation, and to take all actions for the account of the depositor necessary for preserving and realizing his rights out of the securities.

(2) Unless otherwise stipulated by the contracting parties, the bank shall be obliged to collect the interest due, the principal amount and, generally, all amounts which lodged securities entitle the holder to, as soon as they become due for payment.

(3) The bank shall be obliged to place at the disposal of the depositor the amounts collected, and if the latter has opened an account with the bank to make money deposits, to enter them to the credit of such account.

Article 1050. *Restitution of Securities*

(1) At depositor's request the bank shall be bound to restate the securities at any time.

(2) The restitution shall be effected, as a rule, at the place of making the lodging.

(3) The subject of restitution shall be the securities as such, unless the contracting parties have agreed that it can be effected by paying a corresponding amount.

(4) The restitution may be effected only to the depositor or his legal successors, or to persons designated by them, even if it is obvious from the securities themselves that they belong to a third party.

Article 1051. *Third Parties' Requests*

Every request by a third party regarding the securities lodged shall be communicated by the bank to the depositor.

Chapter XXXIII.

BANK CURRENT ACCOUNT

Article 1052. *Notion*

By a contract of bank current account the bank shall assume the obligation to open a particular account to a person, and to accept through it all payments within the limits of his assets and credit granted.

Article 1053. *Form of Contract*

A contract of opening a current account shall be concluded in writing.

Article 1054. *Assets in the Current Account*

(1) Money assets in a current account shall be effected by depositor's payments and by collecting money amounts for his account.

(2) The bank shall be obliged to make payments from the current account for the depositor, even if it is without

funds, within the scope provided for by contract of opening the current account, or by special agreement.

(3) Such obligation of the bank may be excluded by the contract of opening the current account.

Article 1055. *Balance Settlement of Several Accounts*

If a depositor has several current accounts with the same bank, the plus and minus balances of these accounts shall be mutually offset, unless otherwise provided by contract.

Article 1056. *Disposing of Balance*

The beneficiary of a current account can at any moment dispose of the balance figuring on the account to his credit, unless a period of notice be provided by contract.

Article 1057. *Applying the Rules of the Contract of Order*

(1) A bank shall be liable for carrying out orders of the depositor according to the rules of the contract of order.

(2) If an order should be carried out at a place where the bank has no branch, it may effect the transaction through another bank.

Article 1058. *Duration of Account*

If period of duration of a current account is not determined by contract, each party shall be entitled to close it, while honouring a fifteen day period of notice.

Article 1059. *Bank Commission and Compensation of Expenses*

(1) A bank shall be entitled to charge commission for services rendered, included in the contract of the current account, as well as to repayment of particular expenses incurred in relation to these services.

(2) These claims of the bank shall be entered by the bank to its credit in the current account, unless otherwise stipulated by the contracting parties.

Article 1060. *Delivering Statements of Account*

(1) At every change of the current account the bank shall be obliged to issue a statement of the account, with an indication of balance, and to deliver it to the client in the way agreed upon.

(2) The statement of account shall be considered as approved if not contested within the agreed time limit or, in the absence of the relevant agreement, within a fifteen day period.

(3) Even after approval, the statement of account may be contested because of a mistake in writing or in accounting, or omission or duplication, but such contesting must be effected within one year, at the latest, from the day of accepting the account on settling the balance after the closing of the current account; otherwise, such right shall be forfeited.

Chapter XXXIV.

THE CONTRACT OF SAFE-DEPOSIT BOX

Article 1061. *Notion*

(1) By a contract of safe-deposit box, a bank shall assume the obligation to provide a beneficiary with a safe-deposit box for a definite period of time, while the beneficiary shall assume the obligation to pay in return the specified fee.

(2) The bank shall be obliged to take all necessary measures to ensure the good condition of the safe-deposit box and to provide supervision over it.

Article 1062. *Admittance to Safe-Deposit Box*

(1) Admittance to a safe-deposit box shall be permitted only to the beneficiary or to his representative.

(2) The bank shall not be allowed to keep a duplicate of key or keys handed over to the beneficiary.

Article 1063. *Objects which Shall not Be Placed in the Safe-Deposit Box*

(1) A beneficiary shall not be allowed to place in his safe-deposit box an object or a product which could imperil the safety of the bank or other safe-deposit boxes.

(2) Should the beneficiary fail to adhere to that obligation, the bank may declare its intention to rescind the contract of safe-deposit box.

Article 1064.

(1) Should a beneficiary fail to pay to the bank a single installment of the charge due, the bank may rescind the contract within a month after warning the beneficiary, by registered mail, about the payment due.

(2) After rescinding the contract, the bank may invite the beneficiary to empty the safe-deposit box and hand the key

over, and should the beneficiary fail to act accordingly, the bank may demand that the safe-deposit box be opened by the court, that its contents be established officially, and that objects found be placed at the court or be trusted to the bank for keeping.

(3) The bank shall be entitled to the priority payment of the fee due, which is stipulated in the contract of the safe-deposit box – from the money found in the safe-deposit box, or from the proceeds obtained through the sale of other valuables found in the safe-deposit box.

Chapter XXXV.

THE CONTRACT OF CREDIT

Article 1065. *Notion*

By a contract of credit the bank shall assume the obligation to place at the disposal of a beneficiary of the credit a specific amount of money, for a definite or indefinite period of time, and for specific purpose or without such purpose, while the beneficiary shall assume an obligation to pay to the bank the stipulated interest and repay the received amount of money, at the time and in the way determined by contract.

Article 1066. *The Form and the Substance*

(1) A contract of credit must be concluded in written form.

(2) The following shall be specified by a contract of credit: the amount, terms and conditions of opening, using and repayment of credit.

Article 1067. *Cancellation by the Creditor*

(1) A bank may cancel the contract of credit prior to the expiration of the stipulated time limit, if the credit is used contrary to its purpose.

(2) The bank may also cancel the contract of credit prior to the expiration of the stipulated time limit in the event of insolvency of the beneficiary, even if it has not been established by court decision, or in the event of termination of a corporate body, or death of the beneficiary, if in such events the bank granting the credit would be placed into a substantially more difficult position.

Article 1068. *Withdrawing from Contract and Repayment of Credit Ahead of Schedule*

(1) A beneficiary of a credit may withdraw from the contract before beginning to use the credit.

(2) The beneficiary of the credit may repay the credit also ahead of schedule determined by contract, but shall be obliged to notify the bank thereof, in advance.

(3) In both cases the beneficiary of the credit shall be obliged to compensate loss eventually sustained by the creditor.

(4) In the case of repayment of the credit ahead of schedule, the bank shall not charge the interest for the period from the day of repaying the credit until the day specified by contract as the day of repayment.

Chapter XXXVI.

**THE CONTRACT OF CREDIT
ON THE GROUND OF CHARGING
THE SECURITIES**

Article 1069. *Notion*

By a contract of credit on the ground of a legal charge of securities, a bank shall grant credit in a specified amount, backed by the charge in the form of securities belonging to the beneficiary of the credit or to a third person giving his consent to the matter.

Article 1070. *The Form and the Substance*

The contract of credit on the ground of charging the securities must be concluded in written form, and shall contain the specification of securities charged, an indication of the title or the firm and office address, or of domicile of the possessor of the securities, of the amount and terms of the credit granted, as well as of the amount and value of the securities taken in consideration in granting the credit.

Article 1071. *When a Bank May Sell the Charged Securities*

Should a beneficiary fail to repay the credit due for payment, the bank may sell the charged securities.

Chapter XXXVII.

LETTERS OF CREDIT

Article 1072. *Duties of a Bank Opening a Letter of Credit and Form of the Letter of Credit*

(1) By accepting the request of the orderer for opening a letter of credit, the bank opening it shall assume the obligation to pay to the beneficiary of the letter of credit the specified amount of money upon compliance, within the time specified, with the terms and conditions specified in the order for opening the letter of credit.

(2) A letter of credit must be made in written form.

Article 1073. *The Time of Creation of the Obligation to the Beneficiary*

(1) A bank shall be obliged to the beneficiary from the day of notifying him on the opening of the letter of credit.

(2) The orderer shall be obliged by the issued order from the moment of arrival of the order to the bank.

Article 1074. *Independence of Letter of Credit from another Legal Transaction*

A letter of credit shall be independent from the contract of sale or any other legal transaction in relation to which the letter of credit has been opened.

Article 1075. *Documentary Credit*

A documentary credit shall exist if a bank is under a duty to pay out to the beneficiary of the letter of credit the specific amount of money, on condition of being presented with documents specified by the terms of the letter of credit.

Article 1076. *Duty of a Bank Opening the Letter of Credit*

A bank opening documentary credit shall be obliged to execute the clauses of payment under the conditions specified in the letter of credit.

Article 1077. *Kinds of Documentary Credit*

(1) Documentary credit may be revocable or irrevocable.

(2) Unless otherwise expressly stipulated, the letter of credit shall always be revocable, even if opened for a specified period of time.

Article 1078. *Revocable Letter of Credit*

A revocable letter of credit shall not obligate the bank to the beneficiary, so that it may alter or revoke it at the request of the orderer, or at its own initiative, should this be in the interest of the orderer.

Article 1079. *Irrevocable Documentary Credit*

(1) Irrevocable documentary credit shall contain an independent and direct obligation of the bank to the beneficiary.

(2) Such obligation may be cancelled or altered only by agreement between all interested parties.

(3) Irrevocable documentary credit may be confirmed by another bank which, through that, shall assume an independent and direct obligation to the beneficiary, in addition to the bank which opened the documentary credit.

(4) A notification of the documentary credit of a beneficiary by another bank shall not, in itself, confirm such documentary credit.

Article 1080. *Duty of the Bank Regarding the Documents*

(1) The bank shall be obliged to inquire whether the documents entirely conform to the requirements of the orderer.

(2) After accepting the documents, the bank shall immediately notify the orderer thereof, while pointing out to him eventual irregularities and deficiencies.

Article 1081. *Limits of Bank's Liability*

(1) The bank shall assume no liability should submitted documents appear to be in conformity with instructions of the orderer.

(2) It shall assume no obligation regarding merchandise being the subject of the opened letter of credit.

Article 1082. *Transferability and Divisibility of a Documentary Credit*

(1) Documentary credit shall be transferrable and divisible only if the bank opening the credit for the beneficiary designated by the orderer, is authorized in the instructions of the first beneficiary to pay entirely or partially one or several third persons.

(2) Documentary credit may be transferred, on the ground of express instructions, only by the bank opening it and, unless the contrary has been stipulated, it may do this only once.

Chapter XXXVIII.

BANK GUARANTEE

Article 1083. *Notion*

(1) By a bank guarantee a bank shall assume the obligation to a recipient of the guarantee (beneficiary) to settle his obligation, should a third person fail to fulfil on maturity the obligation due to him, if the terms specified in the guarantee are met accordingly.

(2) A guarantee must be issued in writing.

Article 1084. *Settling an Obligation from a Guarantee in Money*

A bank shall settle an obligation from a guarantee in money, even in the event of a guarantee covering a non-pecuniary obligation.

Article 1085. *Confirmation of a Guarantee (Super-guarantee)*

Should another bank confirm an obligation from a guarantee, the beneficiary may submit his requests on the ground of guarantee either to the bank issuing the guarantee or the one confirming it.

Article 1086. *Assignment of Right from the Guarantee*

A beneficiary may assign his right from the bank guarantee to a third person only together with the assignment of the claim covered by the guarantee and the transfer of his obligation relating to the secured claim.

Article 1087. *Guarantee "Without Objection"*

(1) Should a bank guarantee be with the clauses "without objection" and "at the first call", or contain words of the same meaning, the bank shall not raise against the beneficiary objections pertaining to the orderer as a debtor against the beneficiary relating to the secured obligation.

(2) The orderer shall be obliged to pay to the bank every amount paid by the bank on the ground of guarantee issued with the clauses specified in the preceding paragraph.

(3) The beneficiary of the guarantee shall owe to the orderer the amount accepted on the ground of guarantee which he otherwise would not be entitled to due to justified objections by the orderer.

Chapter XXXIX.

APPLICATION OF PROVISIONS OF BANKING BUSINESS

Article 1088.

The provisions of articles 1035 to 1087 of the present Law shall also apply accordingly to other corporate bodies, authorized in conformity to the law to engage in specific banking transactions.

Chapter XL.

SETTLEMENT OF CLAIMS

Article 1089. *Notion*

(1) By a contract of settlement, persons having mutual dispute or being uncertain about a legal relationship, by applying mutual compromise, discontinue the dispute or eliminate the uncertainty, and determine their mutual rights and obligations.

(2) An uncertainty shall exist should realisation of a specific right be not certain.

Article 1090. *The Contents of Mutual Compromise (Settlement)*

(1) A compromise (settlement) may consist, among other things, of partial or total honouring other party's request or renouncing one's own request; of assuming a new obligation for oneself; of reducing the interest rate; of extending a time limit; of consenting to partial installment payments; of granting a right to a rescinding fee.

(2) The compromise may be conditional.

(3) If only one party gives in to the other, recognizing, for instance, a right of the other party – this is not a settlement, so that the rules of coming to settlement shall not apply.

Article 1091. *Capacity*

For concluding a contract of settlement capacity shall be necessary of disposing of the right being the subject of settlement.

Article 1092. Subject

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

(2) Settlement over the consequences of the property nature of a criminal offence shall be full and valid.

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

Article 1093. Applying the Provisions on Bilateral Contracts

(1) A contract of settlement shall be governed by general provisions on bilateral contracts, unless something else be provided in a specific case.

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

Article 1094. Excessive Damage

It shall not be possible to request revocation of the settlement on the ground of excessive damage.

Article 1095. Effect of Settlement on Warrantors and Securities

(1) Should innovation of an obligation be effected by the settlement, the warrantor shall be released from liability for its fulfilment, while the security given by a third person shall be terminated, too.

(2) Otherwise, the warrantor and the third party who has given his goods as security shall remain obligated, while their liability may be reduced by the settlement, but not raised, unless they have consented to the settlement.

(3) Should a debtor admit the contested claim by settlement, the warrantor and the security shall retain the right to raise against the creditor objections renounced by the debtor.

Article 1096. Settlement about a Transaction which May Be Annulled

(1) A settlement about a legal transaction which could have been nullified by one of the parties shall be full and valid if such party was aware of such possibility at the moment of settlement.

(2) But the settlement shall be void if it relates to a void legal transaction even if the contracting parties were aware of the nullity and wanted to eliminate it by settlement.

Article 1097. Nullity of the Settlement

(1) A settlement shall be void if based on erroneous belief by 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 should the erroneous belief of the contracting parties relate to common facts.

(3) Renouncing such nullity shall have no legal effect, and what is given with the purpose of fulfilling the obligations on the ground of such settlement may be demanded back.

Article 1098. Nullity of One Clause of the Settlement

The clauses of settlement shall form an entirety, so that if one clause is void, the entire settlement shall be void, unless the settlement itself indicates that it consists of independent parts.

PART THREE

**THE LAW APPLICABLE IN
THE EVENT OF CONFLICT
BETWEEN THE REPUBLIC LAWS**

Article 1099. *Application of the Present Part of the Law*

The provisions of the present part of the Law shall apply to the obligation relations regulated by the laws of the republics.

Article 1100. *The Law Applicable to Real Property*

The rights and duties relating to real property shall be governed by law of the republic, in whose territory the real property is situated.

Article 1101. *The Law Applicable to Contractual Relations*

(1) The rights and duties arising from contract shall be governed by law of the republic which is chosen by the contracting parties.

(2) If contracting parties have not chosen the applicable law, the law of the republic in whose territory the contract has been concluded shall apply.

Article 1102. *The Law Applicable to Torts*

(1) The rights and duties arising by tort, outside a contractual relationship, shall be governed by the law of the republic in whose territory the damaging action was committed, or where harmful consequences have ensued.

(2) The rights and duties arising by tort, outside a contractual relationship, committed by successive actions, or characterized by multiple consequences, shall be governed by the law of the republic in whose territory the action was at least partially undertaken, or the consequences at least partially ensued.

(3) Should a person sustaining damage due to a criminal offence be a minor or person with essentially reduced work or life capacity, or one to whom the harmful action provoked such consequences, the obligation of the liable person to compensate the loss and injury may also be governed by the law of the republic in whose territory the domicile of the person sustaining damage is located or whose citizen such person happens to be.

(4) The agency competent to decide on damages, while making choice between several applicable laws, shall apply that law which is the most convenient for the person sustaining damage.

Article 1103. *The Law Applicable to the Remaining Obligation Relations*

The rights and duties arising from a unilateral contract, acquiring without ground (conversion), managing business without an order (agency), and from other legal facts, shall be governed by law of the republic in whose territory such transactions were undertaken or in whose territory such facts are taking place.

Article 1104. *The Law Applicable to Unenforceability due to Statute of Limitations*

The unenforceability due to statute of limitations of the rights and duties shall be governed by the law which is applicable to the substance of these rights and duties.

Article 1105. *Obligation Relations Arising outside the FR of Yugoslavia*

The rights and duties which did not arise in the territory of the Federal Republic of Yugoslavia, if the participants in the obligation relations did not choose the applicable law, shall be governed by law of the republic in whose territory such rights and duties were realized, and if the rights and duties were realized in the territory of more than one republic, or if they were realized outside the Federal Republic of Yugoslavia, the law of the republic which was in the closest relation with the contract, or with other obligation relation shall be applicable.

PART FOUR

TRANSITIONAL AND CONCLUDING PROVISIONS

Article 1106. *Application of the Present Law*

The provisions of the present Law shall not apply to obligation relations which arose prior to coming into force of the present Law.

Article 1107. *Application of Usage*

(1) A provision of the general or special usage by which the presumption is determined that the contracting parties have agreed to apply the usage, unless excluding them by contract, shall not apply after coming into force of the present Law.

(2) The General Usage of Trade ("Official Gazette of the FPRY", no. 15/1954) shall not apply after coming into force of the present Law concerning the matters regulated by it.

(3) If general or special usage or other trade practices and customs are contrary to the dispositional³⁶ norms of the present Law, the provisions of the present Law shall apply, unless the parties have expressly stipulated the application of usage, or other trade practices and customs.

Article 1108. *Termination of Validity of other Regulations*

On the day of coming into force of the present Law, the Law on Unenforceability due to Lapse of Time ("Official Gazette of the FPRY", nos. 40/1953 and 57/1954) shall no more be valid.

Article 1109. *Coming into Force of the Present Law*

The present Law shall come into force on October 1, 1978.

³⁶ Non-obligatory.