

**MOZAMBIQUE  
COMMERCIAL CODE  
DECREE 2/2005  
OF 27 DECEMBER**

**Free Translation**

**BOOK ONE  
PURSUIT OF COMMERCIAL ENTERPRISE**

**TITLE I  
GENERAL PROVISIONS**

Article 1  
**(Object of the commercial code)**

The commercial code regulates the activity of commercial entrepreneurs, as well as acts that are considered acts of commerce.

Article 2  
**(Commercial entrepreneurs)**

Commercial entrepreneurs are:

- a) individuals or corporate persons who, in their own name, directly or through third parties, pursue a commercial enterprise;
- b) commercial companies.

Article 3  
**(Commercial enterprise)**

1. A commercial enterprise is any organization of production factors for the pursuit of an economic activity aimed at production with a view to systematic and lucrative exchange, namely:
  - a) industrial activity aimed at the production of goods or services;
  - b) intermediary activity in the circulation of goods;
  - c) agriculture and fishing;
  - d) banking and insurances;
  - e) activities that support the preceding ones.
2. Excluded from the provisions of the previous number is the organization of production factors for the pursuit of an economic activity that is inseparable from the person pursuing it.

Article 4  
**(Acts of commerce)**

1. The following are considered acts of commerce:
  - a) acts especially regulated by law in order to meet the requirements of commercial enterprises, i.e. those provided for in this Code, and acts of an analogous nature;
  - b) acts carried out in the pursuit of a commercial enterprise.

2. acts carried out by a commercial entrepreneur are considered as being carried out in the pursuit of the enterprise in question, provided such acts or the circumstances surrounding them do not suggest otherwise.

#### Article 5

##### **(Rules governing unilateral acts of commerce)**

Although these acts are commercial only with respect to one of the parties, they shall be governed by the provisions of the commercial code that apply to all contracting parties, with the exception of those provisions that only apply to the party or parties with respect to whom these acts are commercial. However, all parties shall be subject to commercial jurisdiction.

#### Article 6

##### **(Applicable law)**

1. Acts of commerce shall be governed:

- a) with respect to their substance and the effects of obligations, by the law of the place where they are entered into, unless there is an agreement to the contrary;
- b) with respect to the mode of compliance, by the law of the place where compliance is due;
- c) with respect to its external form, by the law of the place where they are entered into, unless the law explicitly provides otherwise;

2. The provisions of paragraph (a) of the previous number are not applicable when their implementation would result in a violation of Mozambican public law or of the principles of public order.

#### Article 7

##### **(Subsidiary law)**

Cases not provided for in this Code shall be governed by the rules of this law that apply to analogous cases and where these are absent by Civil Law rules that do not contradict the principles of Commercial Law.

#### Article 8

##### **(Law governing commercial relations with foreigners)**

All provisions of this Code apply to commercial relations with foreigners, except insofar as the law explicitly provides otherwise, or if there is a special Treaty or Convention that rules and governs these relations differently.

### **TITLE II**

## **COMMERCIAL CAPACITY, ENTREPRENEURS AND THEIR OBLIGATIONS**

### **Chapter I**

#### **Commercial capacity**

#### Article 9

##### **(Capacity to pursue a commercial enterprise)**

Without prejudice to special provisions, a commercial entrepreneur can be any resident or non-resident individual or any corporate body with or without registered office in Mozambique, endowed with civil capacity.

#### Article 10

##### **(Authorization to pursue a commercial enterprise)**

1. Minors who have reached eighteen years of age may pursue a commercial enterprise provided they have been duly authorized.
2. Authorization to pursue a commercial enterprise may be granted:
  - a) by parents, provided they have custody of the minor;
  - b) by a guardian;
  - c) by a judge, in the absence of parents or guardian or when deemed convenient and appropriate for the interests of the minor.
3. The authorization to pursue a commercial enterprise shall be granted in writing and the act of authorization may limit powers or impose conditions on the exercise thereof, indicate the branch of enterprise to be pursued by the minor, set a time limit on the validity of the authorization and even when being granted for a limited period of time authorization may be revoked at any time, without prejudice to the vested rights of third parties.
4. If no time limit is set and powers are not limited, it is assumed that authorization has been granted for an indefinite period of time, in which case the minor shall be able to undertake all acts proper to a commercial enterprise.
5. In order to be effective in relation to third parties the act of authorization and its revocation must be registered with the competent commercial registration entity.

#### Article 11

##### **(Pursuit of a commercial enterprise by a spouse)**

1. Either spouse may pursue a commercial enterprise irrespective of authorization by the other spouse.
2. Neither spouse may stand surety for bonds or offer any other guarantee without the express approval of the other spouse on pain of nullity of the act in question, except with regard to personal assets.
3. The spouse who considers him or herself prejudiced by an act that may compromise matrimonial property may assert his or her opposition according to law.

#### Article 12

##### **(Liability for commercial obligations of a separated spouse)**

Liable for the commercial obligations contracted by a spouse who is separated from bed and board or only separated of patrimony shall be all non-matrimonial assets of that spouse and these may be pledged, sold, mortgaged or alienated in any way whatsoever for the purpose of commercial acts, without authorization from the other spouse.

#### Article 13

##### **(International rules on commercial capacity)**

The commercial capacity of Mozambicans who contract commercial obligations abroad and that of foreigners who do so on Mozambican territory shall be governed by the law of the country of each such person, save insofar as with regard to the latter it would contradict Mozambican public law.

Article 14  
**(Impediments)**

Barred from pursuing a commercial enterprise are:

- a) corporate bodies that do not have material interests as their objective;
- b) those that are barred by a special law.

Article 15  
**(Condition of the State and the Municipality)**

1. When pursuing a commercial enterprise the state and municipalities does not acquire the status of commercial entrepreneur; however, with respect to the pursuit of such enterprise they shall be subject to the provisions of this Code.
2. The provision in the previous number applies to corporate bodies that do not have material interests as their objective.

**Chapter II**  
**Obligations of commercial entrepreneurs**

**Section I**  
**Special obligations of commercial entrepreneurs**

Article 16  
**(Special obligations of commercial entrepreneurs)**

The special obligations of commercial entrepreneurs consist in:

- a) adopting a business name;
- b) keeping uniform ordered accounts of operations related to the pursuit of their enterprise;
- c) having all acts subject to commercial registration registered with the relevant entity;
- d) rendering accounts

Article 17  
**(Small entrepreneurs)**

1. Small entrepreneurs may be exempt in whole or in part of the obligations referred to in the previous article.
2. The status of small entrepreneur shall be determined on the basis of criteria established by decree.

**Section II**  
**Business Name**

Article 18  
**(Obligatory nature of the business name)**

The commercial entrepreneur shall pursue his enterprise under a commercial name, which constitutes his business name and which shall be used to sign all documents related to the enterprise.

Article 19  
**(Principle of truth)**

1. The elements used in the composition of the business name shall be truthful and shall not be misleading as to the identity, nature, size or activities of its holder.
2. Not permitted in the composition of the business name are:
  - a) characteristic elements, even if made up of imaginary names, abbreviations or compositions, which suggest activities different from those that the holder pursues or intends to pursue;
  - b) expressions that may be misleading as to the legal nature of the entrepreneur, in particular, the use by individuals of designations that suggest the existence of a corporate body, or the use by for-profit corporate bodies of expressions normally used to designate public bodies or non-profit associations.

Article 20  
**(Principle of novelty)**

1. The business name shall be distinctive and not susceptible to confusion or being mistaken for any other name already registered.
2. In assessing its distinctiveness and insusceptibility to confusion or being mistaken, the type of entrepreneur, his domicile or registered office as well as the resemblance or proximity of the activities carried out or to be carried out shall be considered.
3. Expressions in normal use and place names as well as any indication of geographical origin, shall not be considered being for exclusive use.
4. The incorporation in the business name of registered distinctive signs is subject to proof of their legitimate use.
5. In the assessment referred to in number 2, the existence of names of establishments and of signs or trademarks whose similarity is such that they may be misleading as to the property of these signs shall also be taken into consideration.

Article 21  
**(Obligation to use the official language)**

1. The business name must be expressed in the official language.
2. The use of words that are not part of the official language constitutes an exception to the provision in the previous number when these words:
  - a) are part of the composition of business names that have been registered already;
  - b) are common expressions that have no adequate translation in the official language or are in general use;

- c) correspond wholly or in part to names or business names of associates;
  - d) are trademarks whose use is legitimate in terms of the relevant legal provisions;
  - e) result from the merging of words or parts of words that belong to the official language in terms of this article, are directly related to the activities carried out or to be carried out, or have been taken from the other elements of the business name or from the names of partners;
  - f) aim at facilitating penetration of the market at which the activities carried out or to be carried out are directed.
3. With the exception of the stipulations in the previous number, the use of business names in other languages shall only be allowed when accompanied by an official translation.

Article 22  
**(Other requirements)**

1. Business names shall not offend public decency or good manners.
2. Business names shall not be disrespectful of national symbols, personalities, epochs or institutions whose name or meaning ought to be safeguarded for historical, scientific, institutional, cultural or other worthy reasons.
3. Business names shall not include expressions that refer to qualities or attributes to the detriment of others.

Article 23  
**(Business names registered abroad)**

The admissibility of business names registered abroad is subject to evidence of such registration in the place of origin and to the insusceptibility of being mistaken for business names already registered in Mozambique.

Article 24  
**(Exclusive use of the business name)**

1. The right to the exclusive use of a business name only arises after registration with the competent entity by the respective holder.
2. The provision in the previous number does not affect the possibility of declaring a business name null, annulled or obsolete in terms of this Code.

Article 25  
**(Unlawful use of the business name)**

The unlawful use of a business name entitles interested parties to demand a prohibition and to claim compensation for resulting damages, without prejudice to corresponding criminal proceedings where applicable.

Article 26  
**(Composition of the business name of commercial entrepreneurs)**

1. The business name of the commercial entrepreneur may be composed of:

- a) his civil name in full or abbreviated, as needed to correctly identify the person, to which a nickname may be added;
  - b) the name or business name of one, some or all of the partners or associates;
  - c) fancy designations;
  - d) expressions alluding to the commercial activity pursued or to be pursued;
  - e) a combination of the elements referred to in the previous paragraphs.
2. If the business name of an individual commercial entrepreneur is exclusively composed in terms of paragraph a) of the previous number and the business name to be registered is identical to another one already registered, the entrepreneur wishing to register the new business name shall, either alternatively or in addition:
- a) use his abbreviated name if the business name corresponds to his full name;
  - b) add or remove one of his names or surnames if the business name corresponds to his abbreviated name;
  - c) add a fancy designation or an expression alluding to the commercial activity pursued or to be pursued.

#### Article 27

#### **(Business name of the small entrepreneur)**

In addition to the rules on the composition of business names listed in this Code, to the business name of the small entrepreneur shall be added the expression “*Pequeno Empresário*” or the abbreviation “PE”.

#### Article 28

#### **(Business name of the individual commercial entrepreneur)**

To the business name of the individual commercial entrepreneur may be added the expression “*Empresário Individual*” or the abbreviation “EI”.

#### Article 29

#### **(Business name of general partnerships)**

1. The business name of a general partnership shall have the addition “*Sociedade em Nome Colectivo*” or the abbreviation “SNC”.
2. He who allows his name or business name to appear in the business name of a general partnership while not being a partner shall be jointly liable with the partners for the obligations of the partnership.

#### Article 30

#### **(Business name of secret partnerships)**

1. The business name of a secret partnership shall have the addition “*Sociedade em Comandita*” or the abbreviation “SC”; the business name of a partnership association shall have the addition “*Sociedade em Comandita por Acções*” or the abbreviation “SCA”.

2. He who allows his name or business name to be used in the firm name of a secret partnership while not being a secret partner shall be jointly liable with the secret partners for the obligations of the partnership.

Article 31

**(Business name of business and services corporations)**

The business name of a business and services corporation shall have the addition “*Sociedade de Capital e Indústria*” or the abbreviation “SCI”.

Article 32

**(Business name of limited companies)**

The business name of a limited company shall have the addition “*Limitada*” or the abbreviation “Lda.”

Article 33

**(Business name of single shareholder limited companies)**

The business name of a single shareholder private company shall have the addition “*Sociedade Unipessoal Limitada*” or the abbreviation “*Sociedade Unipessoal Lda.*”

Article 34

**(Business name of joint stock companies)**

1. The business name of a joint stock company shall have the addition “*Sociedade Anónima*” or the abbreviation “SA”.
2. The name of the founder, controlling shareholder or other person who has contributed to the success of the company may be included in the business name.

Article 35

**(Business name of other commercial entrepreneurs constituting corporate bodies)**

The business name of a commercial entrepreneur who constitutes a corporate body, other than companies or economic interest groups, shall have an addition identifying the type of corporate body in question.

Article 36

**(Transfer of the business name)**

1. If authorized to do so the person who either *inter vivos* or *in mortis causa* acquires a commercial enterprise may continue to manage the enterprise under the same business name with or without the addition of a statement that he is the successor thereof.
2. The authorization referred to in the previous number is incumbent on the person transferring the enterprise in the case of a transfer due to death and if the deceased has not made a provision

in writing on the matter the authorization shall be granted by the majority of the heirs, irrespective of whether the transfer is to a third party or to an heir.

3. If the business name of a commercial entrepreneur who constitutes a corporate body includes the name or business name of a partner or associate, his consent to transfer the business name is not required, unless the memorandum of association provides otherwise.

4. In the case referred to in the previous number, the partner or associate shall cease to be liable for obligations contracted in the exploitation of the transferred enterprise, as of the registration and publication of the act of transfer.

5. The person who acquires the right to temporarily operate the commercial enterprise of some other person may use the business name of the proprietor irrespective of whether authorization has been given.

6. The transfer of the business name is only possible together with the commercial enterprise to which it is attached and it is subject to registration.

#### Article 37

##### **(Withdrawal or decease of partner or associate)**

1. The withdrawal or decease of a partner or associate whose name or business name is part of the business name of a corporate body constituted by a commercial entrepreneur does not require the change of that name unless the memorandum of association provides otherwise.

2. Number 4 of the previous article applies to the situation provided for in the previous number.

#### Article 38

##### **(Annulment of the business name)**

1. The business name may be annulled if its composition violates the rights of third parties.

2. The business name is to be annulled through legal proceedings instituted by an interested party within a period of four years from the date of its publication.

3. The right to request the annulment of a business name registered in bad faith shall not expire by statute of limitation.

4. The declaration of nullity of a business name must be registered and published.

#### Article 39

##### **(Forfeiture of the business name)**

1. The right to a business name shall forfeit:

a) on expiry of the contractual term;

b) on dissolution of the corporate person;

c) if the enterprise is discontinued for more than four years.

2. In the first quarter of each year the commercial entrepreneur must provide proof of the continuity of the enterprise to the competent entity for the registration of business names.

#### Article 40

##### **(Statement of forfeiture of the business name)**

1. The competent entity for the registration of business names shall declare the forfeiture of a business name upon request of interested parties.
2. The holder of a registered business name shall be notified of the request for a statement of forfeiture, and shall have one month within which to reply.
3. After expiration of this period the competent entity for the registration of business names shall decide within a period of fifteen days.
4. An appeal can be lodged in court against the statement of forfeiture.
5. The statement of forfeiture of the right to a business name is registered *ex officio* and must be published.

Article 41  
**(Waiver of the business name)**

1. The proprietor may renounce the business name, provided he explicitly notifies the competent entity for the registration of business names.
2. The waiver shall be in writing, and the signature of the holder shall be certified in the presence of the signatory.
3. The waiver of the business name shall be registered by the competent entity for commercial registration and published in a widely circulated newspaper in the locality of the registered office or, in the absence of such a newspaper, by some other public means.

**Section III**  
**Commercial bookkeeping**

**Subsection I**  
**General provisions**

Article 42  
**(Obligation of commercial bookkeeping)**

Every commercial entrepreneur is obliged to maintain organized bookkeeping suitable to his commercial enterprise that allows for chronological information on all his operations as well as for the periodic elaboration of balance sheets and inventories.

Article 43  
**(Mandatory books)**

1. The commercial entrepreneur is obliged to keep a daily record, an inventory and balance sheet record, as well as other books determined by law.
2. In addition to the books mentioned in the previous number commercial entrepreneurs constituting corporate bodies shall keep other books for the recording of proceedings.
3. Mandatory books may be substituted by filing cards, accounting or other procedures that allow for the use of new bookkeeping techniques, in accordance with legally established rules.
4. The commercial entrepreneur may use other books, records and accounting procedures in order to assist the bookkeeping of his operations.
5. Some of the books referred to in this article may be dispensed with for small entrepreneurs.

Article 44  
**(Legalization of books)**

1. Mandatory books, filing cards and instruments used for bookkeeping must be submitted to the competent commercial registration entity for legalization.
2. Legalization consists of the signature of the opening and closing statements and of the indication on the first page of each book of the number of pages of the book and of the respective page number and initials on all pages of each book.
3. Pages may be initialed using a signature stamp.
4. The signatures and initials referred to in the previous numbers may be placed by officials authorized to sign certificates.
5. The competent registration entity shall keep a record of legalizations.

Article 45  
**(Function and arrangement of the daily record)**

1. All acts related to the commercial enterprise are recorded in the daily record on an individual and daily basis.
2. Joint entries of all operations for periods not exceeding one month are valid, provided that these are described in other books or auxiliary records, in accordance with the nature of the activity in question.

Article 46  
**(Function and arrangement of inventory and balance sheets record)**

The inventory and balance sheets record opens with the initial and detailed balance sheet of the enterprise, and it contains the balance sheets that the commercial entrepreneur is obliged to keep by law.

Article 47  
**(Minute books of corporate bodies constituted by commercial entrepreneurs)**

Minute books of corporate bodies constituted by commercial entrepreneurs shall be used to record the minutes of meetings with partners or associates, directors and the supervisory body and each of the minutes shall specify without prejudice to special provisions:

- a) the date on which they were drawn up;
- b) the names of participants or a reference to an attendance list certified by the board;
- c) the votes cast;
- d) the decisions made and all other matters that may provide information about and justifications for them;
- e) the signature by the board, if there is one or by the participants if there is not.

**Subsection II**  
**Form of bookkeeping**

Article 48  
**(Practice of bookkeeping)**

1. Commercial bookkeeping is done by the entrepreneur or by any other person duly authorized by him.
2. If the commercial entrepreneur does not do his bookkeeping himself, it shall be presumed that he has granted the authorization referred to in the previous number to a third party.

Article 49  
**(Formal requirements)**

1. Commercial bookkeeping uses the official language and currency, in the prescribed form, with individualized and clear entries in chronological order, without blank spaces, entries between lines, erasures, amendments or sums carried over into the margins.
2. The use of special codes in the form of numbers or some other abbreviation technique is permitted, provided that these have been previously specified in a prescribed document duly certified by the competent registration entity.
3. If an error is made in bookkeeping it shall be corrected by means of a cancellation in the accounts.
4. The books, correspondence and other documentation referred to in number 1 of article 52 may be kept in electronic form, provided that this form of commercial bookkeeping including the procedures used complies with the principles of an organized accounting system.
5. In order for books and other documentation kept in electronic form to be admissible, it is necessary to ensure that the information stored is accessible during the compulsory retention period referred to in number 1 of article 52 and that it may be read or reproduced at all times using means made available by the entrepreneur.

Article 50  
**(Microfilms of commercial bookkeeping)**

1. Commercial entrepreneurs may make microfilms of commercial bookkeeping support documents.
2. These microfilms replace the originals for all intents and purposes.
3. Microfilming shall be done with the technical rigour necessary to guarantee the faithful reproduction of the microfilmed documents.
4. Regulations governing the operations referred to in the previous number shall be issued by decree.

Article 51  
**(Probative value of microfilm)**

Photocopies and enlargements obtained from microfilm have the probative value of the original, both in and out of court, provided they contain the duly certified signature of the person in charge of microfilming.

Article 52

**(Obligation to retain books, correspondence and documents)**

1. Commercial entrepreneurs shall keep in their custody and under their responsibility properly organized accounting records and other documentation relating to the commercial enterprise for a period of ten years counting from the last entry made in the books, unless determined otherwise in special provisions.
2. The cessation of the commercial enterprise shall not exonerate the entrepreneur from the obligation referred to in the previous number and in the event of his death the obligation shall accrue to his heirs; in case a company or another corporate body constituted by a commercial enterprise is dissolved it is incumbent upon the liquidators to comply with the provision of the previous number.

Article 53

**(Probatory value of bookkeeping records)**

1. Between commercial entrepreneurs entries made in commercial bookkeeping records are evidence of facts related to their enterprises in the following terms:
  - a) entries made in commercial bookkeeping records, even if these are not properly organized, serve as evidence against the commercial entrepreneur to whom they belong; but he who seeks to avail himself of such entries must likewise accept entries that are unfavourable to him;
  - b) entries made in properly organized commercial bookkeeping records serve as evidence in favour of the entrepreneur to whom they belong, if the other party does not submit opposing entries in books organized in a like manner or evidence to the contrary;
  - c) if there is a discrepancy between the entries in the books of different entrepreneurs and the books of one are properly organized while the books of the other are not, then the books that are properly organized shall serve as evidence, without prejudice to evidence to the contrary;
2. If a commercial entrepreneur has no bookkeeping records despite being under an obligation to keep them or if he refuses to present them, then the properly organized books of the other entrepreneur shall serve as evidence except where the lack of books is due to *force majeure*, and always subject to the possibility of legally admissible evidence contradicting the exhibited entries.

Article 54

**(Confidentiality of commercial bookkeeping)**

1. Commercial bookkeeping of entrepreneurs is confidential, without prejudice to what is provided in the following numbers and in special provisions.
2. An exposition or general examination of the books, correspondence and other documents of entrepreneurs can only be ordained *ex officio* or at the request of a party in case of universal succession, suspension of payments, bankruptcy, liquidation of the company or of other corporate bodies constituted by commercial entrepreneurs, and when the partners have the right of direct examination.
3. In addition to the cases mentioned in the previous number, the exposition of commercial bookkeeping records can be ordained at the request of a party or *ex officio*, when the entrepreneur to whom they belong has an interest or is liable in the matter that justifies the

exposition; the examination is exclusively confined to those aspects that have a direct bearing on the matter in question.

Article 55  
**(The examination of bookkeeping records)**

1. The examination referred to in the previous article, be it general or particular, shall be carried out at the premises of the entrepreneur in his presence or in the presence of his nominee, and adequate measures shall be adopted for the proper conservation and safekeeping of the books and documents.

2. In any case, the person at whose request the examination has been ordered may make use of technical assistants in such a way and number as the court deems necessary.

Article 56  
**(Other expositions)**

Independently from the provisions in the preceding articles, a court may, *ex officio* or in non-litigious proceedings, order the exposition of books and other bookkeeping records when requested to do so by an inspection body or other competent authority, provided that there are grounds to suspect a fraudulent act has been committed.

Article 57  
**(Consequences of the refusal to present records)**

In the event of a total or partial refusal to present books and other bookkeeping records, it shall be presumed that the facts intended to be proven are true when a court-ordered search and seizure is not possible.

**Section IV**  
**Commercial registration**

Article 58  
**(Purposes of registration)**

The purpose of the commercial register is to give public notice of the legal situation of entrepreneurs and commercial enterprises, with a view to ensuring the security of legal commerce.

Article 59  
**(Acts subject to registration)**

Acts relating to entrepreneurs and commercial enterprises are subject to registration and publication in accordance with the law.

**Section V**  
**Balance sheets and rendering of accounts**

Article 60  
**(Obligation to keep balance sheets)**

Every commercial entrepreneur is obliged to prepare an annual balance sheet of assets and liabilities during the first three months of the immediately following year, to enter it into the inventory and balance sheets records and to duly sign it.

Article 61  
**(Rendering of accounts. Term)**

Commercial entrepreneurs are obliged to render accounts:

- a) after each transaction;
- b) of continuous commercial transactions, at the end of each year;
- c) of running account contracts, at the time of closure.

**Chapter III**  
**Assistants of the entrepreneur**

Article 62  
**(Powers of assistants)**

1. The assistants of an entrepreneur can carry out all acts normally included in the type of operations of which they are in charge, subject to limitations derived of usage.
2. However, they cannot claim payment of merchandise that they have not sold, nor grant deferments of payment or discounts that are not in accordance with trade usage, unless they have been explicitly authorized to do so.

Article 63  
**(Powers of revocation of general contractual clauses)**

Even where assistants have been authorized to enter into contracts on behalf of an entrepreneur, they do not have the power to revoke general contractual clauses of the enterprise, unless they have special written authorization to do so.

Article 64  
**(Powers of assistants with respect to transactions concluded)**

1. With respect to transactions concluded assistants are authorized to receive on behalf of the entrepreneur statements regarding the execution of the contract and claims related to contractual non-compliance.
2. They shall also have legal standing to request provisional measures in the interests of the entrepreneur.

Article 65  
**(Other powers of assistants)**

1. Assistants who are appointed to carry out sales at the premises where the enterprise is active may claim the payment of the merchandise they sell, except if there is a special cashier for collection.
2. Assistants cannot claim the payment of merchandise sold outside the premises of the enterprise if they have not been authorized to do so or if they do not submit a receipt signed by the entrepreneur.

### **TITLE III PLACES MEANT FOR COMMERCE**

#### **Article 66 (Markets and fairs)**

Markets and fairs are established locally for the duration and in the manner prescribed by legislation and regulations.

#### **Article 67 (General commercial warehouses)**

General commercial warehouses are those that have been authorized by the government to receive in store goods and merchandise against a guarantee, for the price established in the respective tariffs.

#### **Article 68 (Retail stores or shops)**

For the purposes of this Code, retail stores or shops selling to the public are:

- a) those established by registered commercial entrepreneurs;
- b) those established by unregistered commercial entrepreneurs, when such establishments are kept open to the public for eight consecutive days, or have been advertised by means of single advertisements or in newspapers, or display the customary signboards.

### **TITLE IV COMMERCIAL ESTABLISHMENT**

#### **Article 69 (Protection of the commercial establishment)**

The commercial code protects the commercial establishment as the whole of elements represented by capital and labour that constitute a commercial business, and that are valued by being organized with a view to enabling the commercial entrepreneur to pursue his enterprise efficiently.

#### **Article 70 (Main establishment, branches and subsidiaries)**

The commercial entrepreneur may have more than one centre of commerce. The main establishment is where productive activity and secondary establishments, that is, those with less administrative autonomy and represented by subsidiaries, branches and agencies that jointly comprise the basis of the entrepreneur's commerce, are managed and effectively controlled.

#### Article 71

##### **(Disposal of the commercial establishment)**

1. The proprietor of a commercial establishment may dispose of the establishment by:
  - a) lease contract;
  - b) usufruct;
  - c) transfer.
2. An establishment may only be transferred when it comprises sufficient assets to guarantee compliance with its obligations or when the transaction has previously been authorized by its creditors.

#### Article 72

##### **(Determining the value of a commercial establishment)**

1. The value of a commercial establishment is represented by the sum of all material and immaterial assets registered in the accounting records of the commercial entrepreneur, together with its goodwill value, that is, the capacity of the establishment to generate operating profits as a result of its good organization.
2. For the purposes of the provisions in this article, goodwill value must correspond to the value increase represented by the difference between the book value of the entrepreneur's movable and immovable assets and their sale value on the date when the value is determined.

#### Article 73

##### **(Form)**

1. The act whose subject is the transaction of a commercial establishment must be formalized in writing.
2. A contract involving the transfer of a commercial establishment comprising immovable property shall be null and void if it is not executed by public deed.
3. The contracting parties are obliged to specify in the contract the subject matter of the transaction and the constitutive elements that make up the commercial establishment.

#### Article 74

##### **(Duration of lease)**

The duration of the lease of a commercial establishment shall be five years, unless the parties agree to a different term.

#### Article 75

##### **(Compulsory renewal)**

1. With a view to protecting the business location where the commercial entrepreneur is established, the entrepreneur shall have the right to compulsory renewal of the lease, provided that:

a) the lease contract is in writing and for a duration not less than five years;

b) the commercial entrepreneur who is lessee has been pursuing a commercial enterprise in the same branch of commerce for a continuous period of at least three years.

2. The lease of the establishment shall not be subject to compulsory renewal more than once.

#### Article 76

##### **(Diversion of customers)**

1. In order to avoid the diversion of customers, the commercial entrepreneur who cedes his establishment by lease, usufruct or transfer is not allowed during a period of five years after the date of the transfer to establish a commercial enterprise in the same area of influence and in the same field of activity he was engaged in at the time of the transaction, except with explicit consent of the other party.

2. Consent shall be in the form of a contract.

3. Non-compliance with the provision in the previous number shall render the transferee liable for the damages sustained by the other contracting party.

#### Article 77

##### **(Liabilities of the acquirer, usufructuary and lessee of the commercial establishment)**

1. Unless expressly provided otherwise in the contract, the acquirer, the usufructuary and the lessee of a commercial establishment are liable in their capacity as successors for the obligations of the proprietor of the establishment entered into before the date of the transaction.

2. Even in the case of a contractual clause exonerating their liability, the acquirer, usufructuary and lessee of a commercial establishment continue to be liable to third parties in good faith if a fraudulent or fictitious act has been found in the transaction; and substance shall prevail over contractual form.

#### Article 78

##### **(Usufruct or lease of a commercial establishment)**

1. In contractual relations involving the usufruct or lease of a commercial establishment, the usufructuary and the lessee shall administer the establishment in such a way as to preserve the unity of its constitutive elements without modifying the purpose for which it is intended so as to maintain the efficiency of the organisation,.

2. In the contractual relations mentioned above, the usufructuary and the lessee are obliged to look after the assets that are part of the commercial establishment, assuming the responsibilities of trustee administering the assets of third parties including their safekeeping, and in case of their unduly alienation they may incur liability as fraudulent depositaries.

#### Article 79

##### **(Risk of default)**

If there is a risk of default, the court may, at the request of the proprietor of the commercial establishment order the usufructuary or lessee to provide a bond to guarantee compliance with the contract and creditors shall have the right to intervene in the process to defend their interests.

Article 80

**(Grounds of just cause to rescind the contract)**

Grounds of just cause to rescind usufruct and lease contracts, in addition to other grounds established in this Code or in special legislation, are:

- a) non-compliance with the obligations assumed under the lease or usufruct contract, particularly default on the payment of operations agreed upon in the contract;
- b) unfair competition;
- c) breach of the duty to preserve the unity of the constitutive elements of the commercial establishment;
- d) failure to fulfill the duty to preserve and safeguard the assets that are the subject matter of the contract;
- e) commission of abusive acts incompatible with the conditions of the transaction entered into;
- f) alienation of assets that are part of the commercial establishment without prior authorization from the proprietor of these assets.

Article 81

**(Lien and execution)**

1. The commercial establishment may be subject to lien in execution proceedings brought against the commercial entrepreneur.
2. Lien having been effected, the court shall appoint a director who in the capacity of depositary shall administer the establishment in accordance with the terms of article 78 of this Code.
3. In execution proceedings it shall be lawful for the parties to adjust the way the commercial establishment is administered and the choice of the director, and provided the interests of third parties are not harmed the judge shall ratify the agreement.
4. The provisions of the preceding article having been observed, the judge in execution proceedings may grant the creditor judicial usufruct of the commercial establishment, when this is considered less onerous for the debtor and shown to be an efficient means for the creditor to recover the debt.
5. Judicial usufruct being proclaimed, the debtor loses his right to operate and enjoy the commercial establishment for as long as is necessary to pay the debt and the costs of the execution.

**BOOK TWO  
COMMERCIAL COMPANIES**

**TITLE I  
GENERAL PART**

**Chapter I  
General principles**

**Section I  
Types of commercial companies**

Article 82  
**(Types of commercial companies)**

1. Regardless of their purpose general partnerships, business and services corporations, secret partnerships, limited companies and joint stock companies are commercial companies
2. Companies whose objective is the exercise of a commercial enterprise can only be established as one of the types of companies mentioned in this article

Article 83  
**(Essential requirements for commercial companies)**

Essential conditions for a commercial company are that:

- a) its objective is the pursuit of one or more commercial acts;
- b) it is established in accordance with the precepts of this Code.

Article 84  
**(Personal statute)**

Companies that have their statutory head office or their main administration on national territory are subject to the regulations of this Code and are governed by the law of the state of Mozambique.

Article 85  
**(Foreign enterprises permanently operating on national territory)**

1. The company that does not have its head office or its effective administration on national territory but intends to pursue its business during more than one year here shall establish a permanent representation and comply with the provisions of the Mozambican law on business registration.
2. The company that violates the provisions of the previous number is nonetheless bound by the acts or operations undertaken on its behalf on national territory and jointly with the company in question are liable the persons who have undertaken these acts or operations as well as the managers or directors of the company.

3. Without prejudice to the provision in the previous number the court, upon request of any interested party or of the public prosecutor, may order the company that does not comply with the provisions of the numbers 1 and 2 to cease its operations in the country and determine the liquidation of the assets located in Mozambique.

4. The companies referred to in this article shall always appoint a representative who is a permanent resident in Mozambique and entrust capital to their business in Mozambique, and they are obliged to register their deliberations.

5. This representative always has the authority to receive any communications, summons and notifications addressed to the company.

#### Article 86 **(Personality)**

Commercial enterprises acquire legal personality from the date of the respective memorandum of association.

#### Article 87 **(Disregard of legal personality)**

The legal personality of the company shall be disregarded and the partners will be responsible when they act wrongly or deliberately in the following cases:

- a) the company is used as an instrument for fraud and abuse of economic power;
- b) violation of the basic rights of consumers and the environment;
- c) in any case where the legal personality is used in order to harm the interests of the partner, the employee of the company, the third party, the state and the community where the company is operating;
- d) in the case of bankruptcy of the company of the same group of companies when defined in special legislation. [I do not understand the original]

#### Article 88 **(Capacity)**

1. The capacity of the company is understood as the rights and obligations necessary, useful or convenient to the pursuit of its objective, with the exception of those prohibited by law.
2. Gratuitous acts that might be considered usual under the circumstances of the time and the conditions of the company itself are not considered to be contrary to the company's objective.
3. Companies shall be prohibited to offer personal or real guarantees for the obligations of others, unless it is in the interest of the company itself, justified in writing by the direction or if it concerns the parent company or the group.

#### Article 89 **(Civil liability)**

The company has civil liability for the acts or omissions of the person who legally represents or obliges it, in the terms in which the committer is liable for the acts or omissions of the commissaries. [I do not understand the latter part of the original]

**Section II**  
**Articles of incorporation**

Article 90  
**(Form of articles of incorporation)**

1. Articles of incorporation consist of a written document signed by all partners, with the signature being certified while the person is present, and must they be entered into by public deed when real estate is involved.
2. The establishment of the company by merger, division or transformation of another company is governed by the relevant provisions of this Code.

Article 91  
**(Minimum number of partners)**

1. The minimum number of partners in a commercial company is two, unless the law requires a greater number or allows the company to be made up of one partner only.
2. Counting as one partner only are individuals or corporate bodies whose participation is acquired under joint ownership.

Article 92  
**(Contents of the articles of incorporation)**

1. It is obligatory for the articles of incorporation to contain:
  - a) the identification of the partners and of those who as representatives act in their stead;
  - b) the kind of company;
  - c) the business name of the company;
  - d) the objective of the company;
  - e) the head office;
  - f) the duration;
  - g) the capital of the company with an indication of the method and term of its payment;
  - h) the share capital subscribed by each partner, the nature of each partner's entry, as well as the payments made by each party;
  - i) the composition of direction and supervision of the company, in case the latter is required;
  - j) if the entry wholly or partly is in kind, the description of these assets and an indication of their respective values;
  - l) the date the articles of incorporation are signed.
2. Stipulations of the articles of incorporation concerning capital entries in kind that do not meet the requirements in paragraphs h) and j) of the previous number are considered ineffective.

Article 93  
**(Objective)**

1. The objective must be indicated in such a way that it conveys the activities the company proposes to undertake and constitute its objective.

2. In mentioning the objective of the company it is prohibited to use expressions that may make third parties believe it to be engaged in activities that it is not allowed to pursue, in particular in the case of activities that may only be pursued by companies governed by special regulations or that are subject to administrative authorization.

Article 94  
**(Registered office)**

1. The company's registered office must be established in a precisely defined locality.
2. The articles of incorporation may authorize the direction, with or without the consent of others, to move registered office within the national territory.
3. Without prejudice to the provisions in previous numbers the company may establish particular offices for certain businesses.

Article 95  
**(Forms of representation)**

1. The company may establish branches, agencies, delegations or other forms of local representation on national territory or abroad.
2. In the absence of provisions in the articles of incorporation, the establishment of branches, agencies, delegations or other forms of local representation depends on the decisions of the partners.
3. The creation, modification and closure of permanent representations of companies as well as the designation, the powers and the cessation of function of its representatives are subject to registration.

Article 96  
**(Duration)**

1. The duration of the company is in principle indefinitely.
2. If the duration has been fixed in the articles of incorporation then it can only be extended by decisions made before this period is finished, afterwards the extension can only be agreed by unanimity, unless otherwise provided by law.

Article 97  
**(Currency of capital stock)**

The amount of capital stock is always to be expressed in the national currency.

Article 98  
**(Shareholder Agreements)**

1. Shareholder agreements entered into between all or some partners by which these in their quality as partner oblige themselves to conduct not prohibited by law, shall have effect between the stakeholders but based on these agreements acts of the company or of the partners with the company may not be contested.

2. Shareholder agreements may relate to the exercise of voting rights, but not to the conduct of stakeholders or other persons acting in an administrative or supervisory role.
3. Agreements are null and void by which a partner commits to vote:
  - a) always in favour of the instructions of the company or any of its organs;
  - b) always to approve the proposals made by them;
  - c) by exercising the right to vote or refrain from exercising it in return for special benefits, in particular the sale of the vote.

#### Article 99

#### **(Nullity of the articles of incorporation)**

1. The articles of incorporation can only be declared null and void after the registration has been completed, on the grounds of any of the following defects:
  - a) non-compliance with the legal minimum number of founding partners, except where the law allows for the establishment of a company by one person only;
  - b) the absence of the following in the articles of incorporation: business name, location of registered office, objective or capital stock;
  - c) lack of the value of the entry of a partner or of services provided on his behalf;
  - d) mention is made of an objective that is unlawful or contrary to public policy or good manners;
  - e) non-compliance with the rules of law that determine the minimum release of capital stock;
  - f) failure to grant the articles of incorporation in public deed in the cases in which this is required.
2. Defects resulting from the lack or nullity of the business name, the registered office or the capital stock as well as of the value of the entry of a partner and the services provided on his behalf may be remedied by a decision of the partners that is agreed upon with unanimity.

#### Article 100

#### **(Relations between partners prior to the establishment of the company)**

1. If two or more individuals, be it by the use of a common business name or be it by any other means, create the false appearance that relations between them are governed by articles of incorporation then they will be jointly and without limit be liable for the obligations assumed in these terms by each and any of them.
2. If it has been agreed to establish a commercial company and prior to the signing of the public deed or the registration thereof in the Commercial Registry Office the partners initiate their business, then the provisions on civil societies apply to the relations established between them and with third parties.

### **Section III**

#### **Invalidity, liability, suspension and inspection**

#### Article 101

#### **(Invalidity of the memorandum of association)**

1. The general rules on legal transactions, with the modifications contained in the following numbers, apply to the memorandum of association.

2. If the company is already registered or already initiated its activity, the declaration of nullity or annulment of the memorandum of association results in the company going into liquidation, while acts concluded with third parties in good faith will not be prejudiced.
3. Once the company is registered the declaration of nullity or annulment of only part of the memorandum of association, or only for one or some of the contracting parties, does not result in the company going into liquidation, unless the memorandum of association could not be completed without the part that is declared null and void or annulled.
4. Nullity resulting from violation of the provisions concerning the minimum content of the statutes must be remedied by a decision of the partners made pursuant to the terms concerning amendment of the statutes within a period of thirty days counting from the date the defect became known.
5. The nullity referred to in the previous number can be remedied, if the shareholders do not do so, by court upon request of any interested party.

Article 102  
**(Liability for incorporation of the company)**

1. The directors and the attorney who after having examined the whole process of incorporation issue the statement according to which no irregularity has been found in it, are jointly liable before the company for its falsity, inaccuracy or deficiency, without prejudice to the criminal liability pertaining to the fact.
2. In the relations among those liable the right of return exists to the extent of their culpability and the consequences arising from it, assuming that those liable are equally culpable.
3. However, not liable among those mentioned in number 1 are those who were unaware of the falsity, inaccuracy or deficiency of the declaration and who, acting with the diligence of a careful and methodical manager, could not be aware.

Article 103  
**(Suspension of the activity)**

1. The partners may unanimously decide to suspend the activity for a certain period of time.
2. The partners and all who act on behalf of the company are personally, jointly and severally and without limit liable for acts committed after registration of the suspension and while it lasts, without depending on the execution of the assets allocated for the activity of the company.
3. The suspension of the activity has a maximum duration of three years, is renewable once for the same period, and the decision to resume activity or renew suspension is to be made by the partners before the end of the current period, on pain of dissolution of the company.
4. The suspension does not prejudice the need for the governing bodies to be complete, for a company's balance sheet to be subject to approval by the partners at the end of each year and for the possibility of the partners to decide to reinstate the activity at any time.

**Section IV**  
**Rights and obligations of the partners**

Article 104  
**(Rights of the partners)**

1. The rights of the partners are:

- a) to share in the profits;
  - b) to participate in the deliberations of the partners, while it is not being allowed that the partner is deprived of the right to vote by a clause in the articles of incorporation, except in those cases in which the law itself allows for the introduction of restrictions to that right, as is the case of preferential shares without voting rights;
  - c) to inform himself about the ins and outs of company;
  - d) to be appointed to the administrative organs and to the supervisory board, if there is one.
2. No partner may receive interest or other fixed amounts in return for his capital or services.

Article 105  
**(Special rights)**

Special rights of a partner can only be created by means of stipulations in the articles of incorporation.

Article 106  
**(Suspension or modification of special rights)**

Under no circumstances are special rights of partners to be removed or modified without the consent of the holder, unless explicitly stated otherwise in the articles of incorporation.

Article 107  
**(Obligations of the partners)**

Every partner is obliged to:

- a) enter the company with assets liable to lien or in the case of a partner providing services with any type of service;
- b) participate in the losses, except for the provisions in capital and services companies.

Article 108  
**(Sharing of profits and losses)**

- 1. In the absence of provisions in the articles of incorporation the partners share the profits and losses of the company in proportion to the nominal value of their share capital.
- 2. Dividends are always calculated based on net profits of the accounting period.
- 3. A clause that excludes a partner from sharing in profits or that exempts him from sharing in losses is not allowed, except for the provisions concerning partners in services.
- 4. The division of profits or losses may not, under any circumstances, be left to the judgment of a third party.
- 5. In the absence of provisions in the articles of incorporation, if these only determine the share in profits of each partner, it is assumed to be the same with respect to his share of losses.
- 6. Under penalty of joint liability of its directors and executive members of the supervisory board the company can only distribute dividends during the accounting period, even to holders of preferential shares, based on net profits of the accounting period and after having made the

mandatory legal deductions regulated by this Code, or based on the special reserve fund provided for in the articles of incorporation or created by the general assembly for the payment of dividends on preferential shares.

#### Article 109

##### **(Profits and limits with respect to their distribution)**

1. Unless legal provisions determine otherwise no assets whatsoever of the company may be distributed among shareholders, except as profits.
2. The profit of the company is the value determined in the accounts of the accounting period, in accordance with the legal rules on drafting and approving them, which exceeds the sum of the capital stock and the amounts already set aside or to be set aside in the accounting period as reserves and that the law or the statutes do not allow to be distributed among shareholders.
3. In the case of losses being carried forward, the profits of the accounting period may not be distributed without first having covered these losses and subsequently having set aside or replenished the legal or statutorily required reserves.

#### Article 110

##### **(Decision to share profits)**

1. No sharing of profits can be executed without prior decision of the partners on this matter.
2. The decision shall specify the amounts to be shared, the profits of the accounting period and the free reserves.
3. The board of directors is obliged not to implement any resolution on profit sharing whenever it or its implementation, given the timing, is in breach of the provisions of the previous article.
4. In case of non-implementation of the resolution in accordance with the previous number the board shall notify the supervisory board or the single supervisor, if these exist, on the reasons that justify non-implementation and it shall call a general meeting to discuss and decide on the matter.

#### Article 111

##### **(Restitution of unduly received assets)**

1. Partners must return to the company that which they have received in breach of the law as profits, unless they were not aware of the irregularity and, given the circumstances, were under no obligation to be aware of it.
2. Corporate creditors can propose action for the restitution to the company of the amounts referred to in the previous number, provided that non-restitution would significantly affect the guarantee of their claims.

### **Section V Raising of capital**

#### Article 112

##### **(Form to raise share capital)**

1. The nominal value of share capital raised in money or in kind, must be a multiple of fifty thousand meticaïs.
2. When money raising consists in the payment of an amount in meticaïs at least equal to the nominal value of the share capital; when in kind it consists in the transfer of assets to the company susceptible to lien, of a value at least equal to the nominal value of share capital.
3. When share capital is raised by the transfer to the company of a right to a claim against a third party which is not timely satisfied by the debtor, then the partner must raise the claim or the part not received by the company in money within a period of eight days after maturity.
4. If for any reason there is a negative difference between the value of the assets at the date of raising and the value resulting from their assessment the partner is responsible for the difference, which is to be raised in money until the nominal value of his share capital.

#### Article 113

#### **(Verification of the value of payments in kind)**

1. The assets to be paid in kind as share capital must be identified, described and evaluated by means of a report to be elaborated by an auditor or an auditing firm, which will be attached to the memorandum of association.
2. The report shall be elaborated no earlier than sixty days before the memorandum of association and it must include the criteria used in the evaluation.

#### Article 114

#### **(Evaluation of assets)**

1. The assets and rights with which the partner intends, as his contribution, to join in the capital of the company are evaluated by three experts or by a specialized independent company, appointed by the general assembly of underwriters, with the underwriters being evaluated being forbidden to vote.
2. The experts or the specialized company must prepare a duly justified evaluation report based on commonly accepted methods and systems, indicating the assessment criteria used, which will be accompanied by documents proving the property rights concerning the assets or rights that are evaluated and to be incorporated into the company's assets.
3. The experts or the specialized company will be attending the evaluation meeting in order to report the conclusions of their/its report and provide information that may be requested by other underwriters.
4. Upon acceptance by the underwriter of the evaluation value, the assets can be incorporated into the assets of the company.
5. If the assembly of underwriters or the underwriter offering assets does not accept the evaluation value, the company cannot be established unless, instead of incorporating the asset, the raising of capital were to be made in money.
6. Under no circumstances may assets or rights be incorporated into the company's assets against a value that is higher than the one being attributed by their underwriter.
7. The evaluators and the underwriters of the incorporated asset are, independent of criminal liability, accountable to the company, the other underwriters and third parties for damages due to fraud or negligence in the evaluation process.

Article 115  
**(Evidence of the raising of capital stock)**

1. For incorporation purposes it must be proven before the entity responsible for commercial registration that the amount of capital stock has been raised, unless otherwise specified.
2. The evidence in question, in the case of share capital in cash, consists in presenting proof that the participations in question have been deposited in a credit institution by order of the management of the company.
3. The deposit referred to in the previous number may only be withdrawn by a person obliging the company and only after its registration.
4. When three months after the date of the deposit the company has not been registered the deposit referred to can be withdrawn by the one who made it.
5. In the case of share capital raised in kind, the evidence of it being raised consists in a statement signed by the directors of the company certifying that the company became owner of the assets and that these have already been delivered to the company, unless delivery of the assets has been deferred.
6. Raising share capital in kind can only be deferred if the company has an interest in it and always until the date established in the articles of incorporation.
7. When the asset or right incorporated in the company's assets is represented by a debenture, the underwriter receiving the title in question is always liable for the solvency of the debtor.

Article 116  
**(Moment of payment of share capital)**

1. Share capital must be fully raised at the time of the memorandum of association, without prejudice to the provisions in the following numbers.
2. The raising of shares in cash may be deferred under the terms established for each type of company.
3. The delivery of assets when raising share capital in kind can only be deferred if the company has an interest in this and always till the date to be mentioned in the memorandum of association.
4. If the deferment of the raising of share capital in kind exceeds one year then it should be subject to a new report elaborated by an auditor or audit firm and when its value is less than the result of the previous assessment the provisions of Nr. 4 of article 112 are applied.
5. If the company is deprived by a legitimate act of a third party of the asset already provided by the associate or when delivery is impossible when deferred in terms of number 3, the partner must raise the nominal value of his share capital in cash within a period of eight days after the occurrence of any of those facts.

Article 117  
**(Compliance with the raising of share capital)**

1. The rights of the company to raise share capital are inalienable and not subject to compensation.
2. The partner who does not timely raise the share capital he is obliged to is liable to pay, in addition to the matured capital, interest on deferred payment and other company damages resulting from his non-compliance.

3. While non-compliance occurs the partner may not exercise the rights corresponding to the part in arrears, in particular the right to profits.

#### Article 118

#### **(Rights of creditors with respect to deliveries)**

1. The creditors of any company may:

a) exercise the rights of the company with respect to matured and payable share capital;  
b) legally promote the raising of share capital before it is payable, provided it is necessary for the maintenance of an adequate guarantee of their claims.

2. The company may refute the claim of these creditors, satisfying their debts when matured or when not yet matured by adequately ensuring such claims or paying them at the discount corresponding to the anticipation.

#### Article 119

#### **(Loss of half the capital)**

1. The board of directors that, from the accounts of the accounting period, verifies that the net worth of the company is less than half the value of capital stock shall propose, pursuant to the provisions in the following number, that the company is dissolved or the capital reduced unless the associates raise amounts in cash that replenish the assets in equal measure to the capital value within a period of sixty days following the deliberations leading to the proposal in question.

2. The proposal must be presented and voted on, even if the subject is not on the agenda, in the same general assembly that examines the accounts or in an assembly to be convened within a period of eight days following their judicial approval pursuant to article 175.

3. If the board members not have complied with the provisions of the previous numbers or not have made the decisions foreseen therein, then any partner or creditor may request the court to dissolve the company for the duration of that situation, without prejudice to the efforts of the partners to make the entries referred to in number 1, until ninety days after the monition of the company, leaving the board suspended for this period.

### **Section VI**

#### **Other rights and obligations**

#### Article 120

#### **(Usufruct and security of share capital)**

1. The establishment of usufruct and the security of share capital are subject to the form required and to the limitations established for the transfer of such shares.

2. Unless expressly stipulated otherwise by the parties, the rights inherent to share capital subject to security accrue to the shareholder, but the balance of the liquidation of the company shall be delivered to the secured creditor and calculated as interest and guaranteed debt capital, with the excess being returned to the shareholder.

3. The usufructuary of share capital is entitled to:

a) the distributed profits corresponding to the duration of the usufruct;

- b) vote in general meetings, except in the case of deliberations that involve amendment of the statutes or dissolution of the company;
  - c) enjoy the values that at the time of liquidation of the company or of redemption of the quota accrue to capital shares subject to the usufruct.
4. In the deliberations that involve amendment of the statutes or merger, division, transformation or dissolution of the company, the vote belongs jointly to the usufructuary and the original owner.
5. Usufruct of share capital is governed by the provisions of the Civil Code with respect to all that is not provided for in this Code.

#### Article 121

##### **(Acquisition and sale of assets to partners)**

1. Except for those concerning consumption goods and that are part of the normal activity of the company, acquisitions and alienations of shares to partners holding shares exceeding one percent of capital stock can only be made against payment and after prior approval by a shareholders' decision in which the partner from whom the goods are to be acquired or to whom they are to be sold does not vote.
2. The decision of the shareholders shall always be preceded by an assessment of the value of the assets in accordance with article 114 and registered prior to the acquisition or alienation.
3. Contracts concerning the alienations and acquisitions relating to shareholders as referred to in number 1 shall, under penalty of nullity, be written documents, which may be of a private nature if no other form is required by the nature of the assets.

#### Article 122

##### **(Right to information)**

1. Without prejudice to the provisions for each type of company, every partner is entitled to:
- a) consult the books of minutes of general assemblies;
  - b) consult the register of onus, charges and guarantees;
  - c) consult the register of shares;
  - d) consult the records of attendance, if they exist;
  - e) consult all other documents, legal or statutory, that must be made available to partners before general assemblies;
  - f) ask the directors and, if they exist, the single supervisor or the members of the supervisory board for any information relevant to the topics on the agenda of the general assembly prior to voting, provided it is reasonably necessary for the informed exercise of the right to vote;
  - g) request in writing to management, written information about the company's management, namely on any operation in particular;
  - h) request a copy of resolutions or entries in the books referred to in paragraphs a) to d).
2. The right mentioned in the previous paragraph g) may be limited by the statutes and, with respect to partners with limited liability, be subject to the holding of a certain percentage of capital stock that may not, under any circumstances, exceed five percent.
3. The partner who uses information thus obtained to the detriment of the company shall be liable for damages to the company caused.

4. In case of refusal of the requested information, the partner may request the court to order that the information be given to him, justifying the request. After hearing the company, the judge will decide without further evidence within a period of ten days. If the request is granted, the directors responsible for the refusal shall compensate the partner for the damages caused and reimburse the expenses he has justifiably made.

5. The partner to whom false, incomplete or clearly non-explanatory information is provided may request the court for a legal examination of the company pursuant to article 124.

#### Article 123

#### **(Company communication to the partners)**

1. All acts of the company that have to be personally communicated to the partners shall be communicated by letter addressed to the residences of the partners contained in the company files.

2. When it is not possible to notify all partners by letter, announcements shall be published pursuant to article 317.

#### Article 124

#### **(Legal examination of the company)**

1. If any partner has justified reasons to suspect serious irregularities in the running of the company he may, stating the facts on which the suspicion is based and which the alleged irregularities in question are, request the court to conduct an examination of the society in order to clarify the matter at hand.

2. The court, after hearing the direction, may order the examination to go ahead, appointing to that end an accounting auditor.

3. The accounting auditor shall be appointed by the competent entity.

4. The court may, if it deems appropriate, subject the examination to the provision of bail by the applicant.

5. After irregularities have been found to exist the court may, in accordance with their gravity order:

a) the regularization of the illegal situations found, and establishing a deadline to that end;

b) the removal of the members of the governing bodies responsible for the irregularities found;

c) the dissolution of the company, if facts are found that warrant dissolution.

6. After irregularities have been found, court costs, the remuneration of the auditor referred to in number 2 and the expenses that the applicant has justifiably made, are defrayed by the company, which has the right to obtain redress against the members of the bodies responsible for the irregularities.

7. A similar legal examination of the company may be required by the head of the commercial registry where the absence of acts of registration or the content of documents presented for registration give rise to irregularities that, after notification of the direction, are not corrected.

#### Article 125

#### **(Liability of the majority partner)**

1. The dominant partner is the individual or corporate body that, alone or jointly with other companies of which he/it is also dominant partner or with other partners to whom he/it is bound by shareholder agreements, holds a majority participation in the capital stock, has more than half the votes or the power to elect a majority of board members.
2. The dominant partner who, either by him or through the persons mentioned in the previous number, uses the power of domination in a manner detrimental to the company or to other partners is liable for the damages caused to it or them.
3. Grounds for the duty to compensate are, in particular:
  - a) to have elected a director, a supervisory board member or a single supervisor known to be morally or technically unfit;
  - b) induce a director, agent, member of the supervisory board or single supervisor to perform an unlawful act;
  - c) conclude directly or through a third party a contract with the company of which he is the dominant partner on discriminatory terms to the benefit of himself or of a third party;
  - d) induce the direction of the company or any agent to conclude a contract with third parties on discriminatory terms and, to the benefit of him or of a third party;
  - e) to pass resolutions with the conscious purpose of obtaining for himself or for a third party undue advantage to the detriment of the company, other partners or company creditors.
4. The director, agent, member of the supervisory board or single supervisor who concludes or does not prevent, while being able to do so, any act or the conclusion of a contract mentioned in paragraphs b), c) and d) of the previous number is jointly and severally liable with the dominant partner for the damages caused to the company or directly to other members.
5. Partners who intentionally contribute with their votes to approve the decisions mentioned in paragraph e) of number 3, as well as the directors who intentionally execute it, are jointly and severally liable with the dominant partner for the damages caused.
6. If as a result of the practice, conclusion or execution of any act or contract or of making a decision as referred to in paragraphs b), c), d) or e) of number 3 the company assets are insufficient to satisfy the respective claims, any creditor may exercise the right to compensation that the company may have.

**Article 126  
(Single shareholder)**

1. If bankruptcy is declared of a company with a single shareholder, whether the company holds parts of its own capital or not, the single shareholder is personally, jointly and severally and without limit liable for all debts of the company, if it is shown that the company assets were not exclusively used to comply with its obligations.
2. Non-exclusive use referred to in the latter part of the previous number is assumed when the company's accounting books are not kept pursuant to paragraphs b) and g) of number 1 of article 157 or when legal transactions have been concluded between the company and the partner without being put into writing.

**Section VII  
Bodies of companies**

**Subsection I**

## **General provisions**

### Article 127 **(Bodies of companies)**

1. The bodies of commercial companies are:
  - a) the general assembly;
  - b) the direction;
  - c) the supervisory committee or the single supervisor.
2. The existence of the supervisory board or of the single supervisor is compulsory in companies that are in any of the following situations:
  - a) have ten or more partners;
  - b) issue bonds;
  - c) take the form of a joint stock company.
3. All office holders must declare in writing whether they accept the exercise of the positions for which they have been elected or appointed.

### **Subsection II General assembly**

#### Article 128 **(Forms of deliberation)**

1. The partners shall make decisions while meeting in a general assembly pursuant to the form prescribed for each type of company.
2. The partners may, in any one of corporate types, meet in a general assembly without observing any preliminary formalities, provided that all partners are present or represented and that all demonstrate the wish that the assembly is held and decides on a particular issue.
3. Once together the shareholders holding all capital may validly decide on any subject, whether or not placed on the agenda and whether or not a convocation has been issued.
4. The partners may decide without taking recourse to a general assembly, provided that all declare in writing their vote in a document that includes the proposed decision, duly dated, signed and addressed to the company.
5. The decision in writing is deemed to be taken on the date that the company receives the last of the documents referred to in the previous number.
6. Once a decision has been taken pursuant to numbers 4 and 5, the chairman of the general assembly or his substitute, shall notify all members in writing of that decision.

#### Article 129 **(Authority of the general assembly)**

In addition to the matters that are specially attributed to it by law, it is incumbent on the general assembly to decide on the following matters:

- a) the election and removal of the direction and the supervisory board;
- b) the balance sheet, the profit and loss account and the management report on the accounting period;

- c) the report and the opinion of the accounting period;
- d) the application of the results from the accounting period;
- e) the amendment of the statutes;
- f) the increase or reduction of capital stock;
- g) the division, merger and transformation of the company;
- h) the dissolution of the company;
- i) matters that by legal or statutory provision are not included in the competence of other bodies of the company.

#### Article 130

##### **(Participation of the partners in the general assembly)**

1. Unless provided otherwise by law all partners are entitled to attend general assemblies and there discuss and vote.
2. Unless provided otherwise in the statutes the partner can only be represented in the general assembly by another partner, the spouse or by a descendent or ascendant, sufficient as an instrument of voluntary representation is a letter signed by him and addressed to the chairman of the board.
3. The persons holding the positions in the governing bodies shall attend the general meetings when called upon by the chairman of the board.

#### Article 131

##### **(Restriction of the right to vote due to conflict of interests)**

A partner may not vote, either personally or through a representative, nor represent another partner in a vote, whenever in relation to the subject matter of the decision there he has a conflict of interest with the company.

#### Article 132

##### **(Ordinary and extraordinary meetings of the general assembly)**

1. The general assembly shall meet ordinarily within three months immediately following the end of each accounting period in order to:
  - a) decide on the balance sheet and the management report on the accounting period;
  - b) decide on the application of the results;
  - c) elect the directors and members of the supervisory council or the single supervisor to fill the vacancies occurring in these bodies.
2. The ordinary general assembly may decide to initiate legal liability proceedings against directors and on the removal of those deemed responsible by the general assembly, even if this matter is not on the agenda.
3. The general assembly meets extraordinarily whenever duly convened at the initiative of the chairman of the board or at the request of the direction, the supervisory board, the single supervisor or of partners representing at least ten percent of the capital stock.

#### Article 133

##### **(Convocation of the meetings of the general assembly)**

1. The general meeting is convened by the chairman of the board within the terms and deadlines determined for each type of company, with the exception of the convocation for first the general assembly, which is incumbent on the partners.
2. If the chairman of the board does not convene a general meeting when he should legally be bound to do so, the direction or the supervisory board or the single supervisor or the partners who have asked him convene the meeting directly, with the expenses they have justifiably incurred documented and paid by the company.

Article 134  
**(Notice of convocation)**

1. The convening notice shall at least contain:
  - a) the business name, registered office and registration number of the company;
  - b) the venue, date and time of the meeting;
  - c) the type of meeting;
  - d) the agenda of the meeting, specifically stating the matters to be submitted for decision by the partners.
2. The convening notice shall also contain an indication of the documents available at the registered office for consultation by the partners.
3. The meetings will take place at the company's registered office or when the board deems it appropriate elsewhere in the country, provided the venue is properly identified in the convening notice.
4. The convening notice shall be signed by the chairman of the board or, in the cases provided for in number 2 of the previous article, by any one of the directors, the chairman of the supervisory board or by the single supervisor or by the partners who convene the general meeting.
5. The general meeting is considered not to be convened when the convening notice is not signed by the person who has power to do so, or when it does not contain date, time, venue and agenda of the meeting.

Article 135  
**(Registration of participants)**

1. The partners who attend the assembly meeting shall sign the attendance book, identifying themselves and stating the name, address, and quantity, category and series of shares they hold.
2. Before opening the meeting the chairman of the board checks the quorum by examining the record of the signatures in the attendance book.

Article 136  
**(Quorum)**

1. The general assembly may decide, on first convocation, whatever the number of partners present or represented, except for the provision in the following number or in the contract.
2. In order for the general meeting to be able to vote on first convocation on the amendment of the articles of association, merger, division, transformation, dissolution of the company or on

other matters for which the law requires a qualified majority without specifying it, partners holding shares corresponding to at least one third of the capital stock must be present or represented.

3. On second convocation the assembly may decide whatever the number of partners present or represented and the capital they represent.

4. The convocation of an assembly may set the date for a second meeting in case the assembly cannot meet on the first date set due to a lack of the representation of capital required by law or by contract, provided that the two dates are more than fifteen days apart; and that on the functioning of the assembly meeting on the second date the rules for the assembly of the second convocation apply.

#### Article 137

##### **(Functioning of the general assembly)**

1. The meetings of the general assembly are conducted by a board composed of a chairman and at least one secretary.

2. The chairman and the secretary of the board are elected in the general assembly from among the partners or other persons.

3. When the chairman and the secretary of the board pursuant to the preceding number have not been elected or when they are not present any director or a person chosen by him will serve as chairman of the board.

#### Article 138

##### **(Interruption and suspension of sessions)**

1. When the issues on the agenda can not be treated fully on the day on which the meeting has been convened, it shall continue at the same time and same venue on the next working day.

2. Without prejudice to the provision in the previous number it may be decided to suspend the meeting and call a new one on a date no more than thirty days later.

3. A meeting of the general assembly can only be suspended twice.

#### Article 139

##### **(Majority)**

1. In no case is a decision considered made that has not been approved by the number of votes required by law or by the statutes.

2. The votes of partners who are ineligible to vote pursuant to article 131 are not taken into account for the determination of the majority required by law or by the articles of incorporation.

3. The allocation of votes, the quorum of the meeting of the general assembly and the formation of majorities required to make decisions, depending on the issue, follow the rules determined by law for each type of company.

#### Article 140

##### **(Unity of vote)**

1. The votes that each member is entitled to cannot be cast in different ways in the same vote, nor can they be only partially cast.
2. The breach of the provision in the previous number implies that all votes cast by the shareholder in that vote are counted as abstentions.
3. A member who represents others can vote differently from the persons he represents and decide not to cast his own vote or that of those he represents.

Article 141  
**(Lack of assent of partners)**

Unless legally or statutory provided otherwise the decisions of the partners concerning special rights of some or all partners or categories of partners have no effect whatsoever when the holders of such rights have not given their explicit or tacit consent.

Article 142  
**(Decisions that are null and void)**

1. Null and void are the decisions of the partners that:
  - a) are made in a general assembly that has not been convened, with the exception of the provision in number 2 of article 128;
  - b) are made in writing when any partner has not cast his vote in writing in accordance with the provision of number 4 of article 128;
  - c) offend good manners;
  - d) concern matters that are not, by law or by nature, subject to a decision of the partners or that are not on the agenda;
  - e) violate laws intended primarily or exclusively for the protection of creditors of the company or of the public interest.
2. The nullity of a decision cannot be challenged if more than five years have passed since the date of registration, with the exception of the Department of Justice in case the decision constitutes a criminal offense for which the law establishes a longer period of limitation.

Article 143  
**(Decisions that are voidable)**

1. Voidable are decisions of the partners that:
  - a) violate any provision of the law without resulting in nullity pursuant to number 1 of the previous article, or of the by-laws of the company;
  - b) have not been preceded by providing the partner the information he has requested and to which he is legally or statutory entitled;
  - c) have been made in a general assembly whose convocation contains some irregularity other than the ones mentioned in number 5 of article 134.
2. For the annulment of a decision based on the provision of paragraph b) from the previous number it is irrelevant that the general assembly or other partners state or have stated that the refusal to provide information has not influenced decision-making.
3. The voidability of a decision whose annulment has been requested within the legal time limit ceases as soon as the partners declare the decision being voidable by another decision; however,

the partner who is interested can continue the proceedings for annulment of the decision with respect to the period prior to the decision that has confirmed it.

Article 144  
**(Act of annulment)**

1. Standing to sue with respect to a decision are:
  - a) any partner who has participated in it, unless he has voted with the majority;
  - b) any partner who has been unlawfully prevented from participating in the assembly, or who has not attended due to it having been irregularly convened;
  - c) the supervisory board;
  - d) any director or member of the supervisory board, if the implementation of the decision may cause any of them to incur criminal or civil liability.
2. The deadline for bringing annulment proceedings is thirty days from:
  - a) the date on which the decision has been made;
  - b) the date on which the member was informed of the decision, if he was unlawfully prevented from participating in the assembly or if it was irregularly convened.

Article 145  
**(Common provisions on declarations of nullity and annulment)**

1. The proceedings for the declaration of nullity as well as that of annulment shall be brought solely against the company.
2. The company bears all costs of the proceedings proposed by the supervisory board, even if they are dismissed.
3. The judgment to declare a decision null and void is effective for and against all partners and bodies of the company, even if that these have not taken part in of or have not intervened in the proceedings.
4. A declaration of nullity or annulment does not prejudice the rights acquired in good faith by third parties, based on acts undertaken in the execution of the decision.
5. There is no good faith if the third party knew or should have known the cause of nullity or voidability.

Article 146  
**(Suspension of company decisions)**

1. Any person standing to request a declaration of nullity or annulment of a decision of the partners may request the court to order the provisional suspension of the execution of a decision or of its effectiveness in case it has already been executed or is being executed.
2. The deadline to apply for an injunction is five days, counting from the dates referred to in paragraphs a) and b) of number 2 of article 144 or from knowledge of the decision if the applicant is not a partner, member of the direction or of the supervisory board or the single supervisor.
3. The applicant shall indicate his interest in the injunction and the damages that the execution, the continuation of the execution or its effectiveness may cause.

4. In all matters not contrary to the provisions of the previous numbers the provisions of the Code of Civil Procedure shall apply.

Article 147  
**(Minutes)**

1. The decisions of the partners can only be proved by the minutes of the assemblies or, if decision-making is permitted in writing by the documents that contain them.
2. The minutes shall at least contain:
  - a) the venue, date, time and agenda of the meeting;
  - b) the name of the person who chaired the meeting;
  - c) the name of those who acted as secretary to the meeting;
  - d) a reference to the documents and reports submitted to the assembly;
  - e) the exact wording of the proposed decisions and the result of the respective votes;
  - f) the explicit mention of the vote of any shareholder who so requests;
  - g) the signature of the person chairing the meeting of the general assembly or of the person chairing the next meeting and of the person who acted as secretary of the meeting.
3. In the minute book or in loose sheets shall be included mention of the decisions made in writing, pursuant to numbers 3 and 4 of article 128, and of the decisions contained in public deed or in an instrument not included in the minutes [original unclear], while copies of these documents are being filed at the company.
4. Minutes can also be recorded in a separate document with the signatures of the partners being recognized by a notary.
5. No partner has the duty to sign minutes that are not recorded duly numbered and initialed in the corresponding book or in loose sheets.

Article 148  
**(Notarial deed)**

1. The minutes are recorded by a notary in a separate document when the law so requires or if a partner so requests in writing to the direction at least three working days prior to the date of the assembly.
2. The intervention of the notary in the preparation of the minutes of the general assembly may render the subsequent formality of a public superfluous in the cases where this is obligatory.
3. The notarial deed only needs to be signed by a notary and two witnesses, and the signatures of the partners are superfluous.

**Subsection III**  
**Direction**

Article 149  
**(Direction)**

1. Directors may be individuals and corporate bodies with full legal capacity.

2. If a corporate body is appointed director it shall appoint an individual to hold office in its stead; the corporate body is jointly and severally liable with the appointed person for the acts of the latter.
3. The composition, appointment, removal and functioning of the direction shall follow the rules established for each type of company, with the first direction to be appointed by the partners in the memorandum of association pursuant to paragraph i) of number 1 of article 92.
4. The individual who was appointed by a corporate body that was named director of a joint stock company to execute its task may be discharged from that office by an act of the corporate body that has appointed him, regardless of a decision by the general meeting of the company.

Article 150  
**(Duty of diligence)**

The directors of a company shall act with the diligence of a careful and coordinated manager in the interests of the company, taking into account the interests of the partners and employees.

Article 151  
**(Authority of the direction)**

1. It is incumbent upon the direction of a company to manage and represent the company pursuant to the terms established for each type of company.
2. Regardless of explicit authorization in the by-laws the company may, upon authorization of the general assembly or the board of directors, if any, propose managers to run some branch of business that falls within its activity or appoint assistants to represent it in certain acts or contracts or, by notarial deed, appoint attorneys to perform certain acts or categories of acts.
3. The company is civilly liable for the acts and omissions of the persons referred to in the numbers 1 and 2 in the same way that principals are liable for the acts and omissions of agents.

Article 152  
**(Powers of representation of the directors and binding of the company)**

1. The acts performed by directors on behalf of the company and within the powers granted to them by law bind the company to third parties, despite the limitations of the powers of representation contained in the by-laws or resulting from decisions of the partners, even if such decisions are published.
2. The company may, however, invoke these same limitations as well as those resulting from its activity against third parties if it proves that the third party knew or, given the circumstances, could not ignore that the act performed did not comply with this clause and if, meanwhile, the company did not assume the act by explicit or tacit decision of the partners.
3. The knowledge referred to in the previous number cannot be proved merely by the publicity given to the company's by-laws.
4. The directors bind the company by means of their signature, while indicating their capacity.

Article 153  
**(Resignation)**

1. The director may resign from his office by means of a letter addressed to the board of directors.
2. The resignation shall take effect at the end of the month following the one in which it was made known, unless, however, a replacement has been elected or appointed.
3. If the mandate has a limited period then the resigning director shall compensate the company for the damages it incurs resulting from this resignation.
4. The resignation shall be made known to third parties by adequate means, on pain of not being opposable [unclear: opposable by whom?] unless it is shown that they were informed about it at the time of concluding a business.

#### **Subsection IV Inspection**

##### Article 154

#### **(Supervisory board and single supervisor)**

1. The supervision of the company is incumbent on a supervisory board composed of three or five members, while the by-laws may determine its replacement by a single supervisor.
2. A supervisory board member or the single supervisor shall be an auditor or a firm of auditors of accounts.
3. The company of auditors of accounts which is part of the supervisory board shall appoint a partner or an employee, in any case an auditor of accounts, to perform the duties conferred upon it by the company.
4. The remaining members of the supervisory board shall be individuals with full legal capacity.
5. Supervision may also be undertaken by an independent auditing company.

##### Article 155

#### **(Impediments)**

1. Not eligible to be member of the supervisory board or single supervisor are:
  - a) the directors of the company;
  - b) any employee of the company or any person receiving any remuneration from the company other than for exercising the functions of member of the supervisory board or of single supervisor;
  - c) the spouses or relatives up to third grade, including the persons referred to in the previous paragraphs.
2. The auditor or firm of auditors of accounts that are single supervisor or member of the supervisory board cannot be a partner of the company.
3. The occurrence of any of the impediments referred to in the previous numbers leads to the automatic forfeiture of the appointment.

##### Article 156

#### **(Election and dismissal of members of the supervisory board or of the single supervisor)**

1. The members of the supervisory board and the single supervisor, with the exception of the provision in paragraph i) of number 1 of article 92, are elected in the ordinary general assembly

and remain in office until the next ordinary general assembly. The election shall also appoint the chairman.

2. The members of the supervisory board and the single supervisor may be re-elected.

3. The members of the supervisory board and the single supervisor may be dismissed by a decision of the partners made in the general assembly, provided that there is just cause for dismissal, but only after being given the opportunity to explain the reasons for their actions and omissions in this assembly,.

#### Article 157

##### **(Authority of the supervisory board or the single supervisor)**

1. It is incumbent upon the supervisory board or the single supervisor to:

a) control the company's management;

b) verify the regular and timely nature of the company books and documents that serve to support the entries;

c) verify when it deems appropriate and in the manner it deems appropriate, the existing cash and stock of any kind of goods or assets belonging to the company or received by it as a guarantee, deposit or otherwise;

d) verify the accuracy of the annual accounts;

e) verify whether the assessment criteria adopted by the company lead to a proper evaluation of assets and results;

f) prepare an annual report on its supervisory activities and give an opinion on the balance sheet, the profit and loss account, the proposed application of results and the report of the direction;

g) require that the accounting books and records offer easy, clear and precise information about the operations of the company and its equity;

h) comply with other requirements by law and by-laws.

2. The auditor of accounts has, without prejudice to the duties of other members of the supervisory board, the special duty to carry out all checks and examinations necessary for an accurate and complete audit and report on the accounts in accordance with the provisions of special legislation.

#### Article 158

##### **(Powers and duties of the members of the supervisory board or of the single supervisor)**

1. To meet the obligations of the supervisory board, members of the supervisory board, jointly or separately, or the single supervisor may:

a) obtain from the direction the presentation of books, records and documents of the company for examination and verification purposes;

b) obtain from the direction any information or clarification on any matter falling within its competence or in which any of them has intervened or has had knowledge of;

c) obtain from third parties that have carried out operations on behalf of the company the information they need for the proper clarification of such operations;

d) attend meetings of the direction.

2. The members of the supervisory board or the single supervisor have the duty to:

a) attend the meetings of the general assembly;

- b) attend the meetings of the direction in which the accounts of the accounting period are appreciated;
  - c) keep confidential any facts and information that has been acquired, without prejudice to the duty to report to the Justice Department of all unlawful acts punishable by criminal law;
  - d) inform the direction on irregularities and inaccuracies found and, if these are not corrected, inform the first general assembly held after the expiry of the period reasonably needed to carry out these corrections.
3. In carrying out their duties the members of the supervisory board or the single supervisor shall act in the interest of the company, the creditors and the general public, and show the diligence of a rigorous and impartial supervisor.

#### Article 159

#### **(Meetings, decisions and minutes of the supervisory board)**

- 1. It is incumbent upon the chairman of the supervisory board to convene and chair the meetings.
- 2. The supervisory board meets whenever any member requests the chairman and at least once every three months.
- 3. Decisions are taken by majority vote, and the board can only meet with a majority of its members, who can not delegate their functions present.
- 4. Minutes to be signed by all members present shall be prepared of the meetings, which shall contain the decisions made and a brief report of all checks, inspections and other steps taken by its members since the previous meeting, and their results.
- 5. If there is a single supervisor instead of a supervisory board, then at least once every quarter the report mentioned in the previous number shall be recorded in the book or attached to or otherwise incorporated into it, while duly signed

#### Section VIII

#### **Liability of holders of functions from company bodies**

#### Article 160

#### **(Liability of directors towards the company)**

- 1. The directors are liable towards the company for damages they caused by acts or omissions in breach of legal or statutory duties, unless they prove that they acted without fault.
- 2. Not liable for damages resulting from a decision of the direction are directors who have not participated in it or who have voted against it and who have not taken part in its execution; directors shall have their vote recorded in the minutes on pain of being presumed to have voted in favour.
- 3. Directors are not liable to the company if the act or omission is based on a decision of the partners, even if voidable, with the exception of the provision in the final part of number 5 of article 125, or if the decision has been made proposed by them.
- 4. Directors are jointly and severally liable, with the provision of number 2 of article 102 being applied to the relations between them.

#### Article 161

#### **(Exclusion, limitation, renunciation and limitation of liability)**

1. Any clause which excludes or limits the liability of directors is null and void.
2. The decision by which the partners approve the balance sheet and the accounts does not imply the waiver on the part of the company of the right to indemnization against the directors.
3. The company may only renounce the right to indemnization or reach a compromise on it by explicit decision of the partners passed without votes against it from a minority that represents at least ten percent of the capital stock, and then only if the damages do not constitute a relevant reduction of creditors' guarantees.
4. The limitation period only begins from the knowledge of the fact by most partners onwards.

#### Article 162

##### **(Liability proceedings initiated by the company)**

1. Liability proceedings initiated by the company depend on a decision of the partners passed by a simple majority, and shall be brought within a period of three months from the date on which the decision has been taken.
2. The decision to initiate bring liability proceedings implies the removal of the directors concerned, and the partners shall, if necessary, immediately appoint special representatives of the company to exercise the right to indemnization.

#### Article 163

##### **(Liability proceedings initiated by the partners)**

1. Liability proceedings in favour of the company can be initiated by an unlimited liability partner or partners or by those holding a capital participation of not less than ten percent, provided the company has not yet initiated the proceedings in question.
2. In the case of the previous number the intervention of the company in the proceedings shall be provoked in accordance with procedure law.

#### Article 164

##### **(Liability towards creditors of the company)**

1. Directors are liable towards the creditors of the company when, by neglecting a legal or statutory provision mainly or exclusively aimed at their protection, the net assets of the company become insufficient for the satisfaction of their claims.
2. Whenever the company or the partners have not done so, the creditors of the company may, provided there is just suspicion of a relevant reduction of the net assets, exercise the right to indemnization that the company may have.
3. To the liability referred to in number 1 are applied the provisions in the numbers 2, 3 and 4 of article 160.

#### Article 165

##### **(Direct liability towards partners and third parties)**

In general directors are also liable towards partners and third parties for damages caused directly in the exercise of their functions

Article 166

**(Liability of managers, attorneys and title holders from other bodies)**

1. The provisions of articles 160 to 165 apply, mutatis mutandis, to the managers and attorneys of the company.
2. The members of the supervisory board or the single supervisor are liable pursuant to articles 160 to 165, but they also are jointly and severally liable with the directors for their acts or omissions when the damages would not have been caused if these had complied with the diligence due to their obligations.

**Section IX**

**Books and accounts of the companies**

**Subsection I**

**Books of the companies**

Article 167

**(Mandatory books)**

1. In addition to the bookkeeping and fiscal control records provided for in article 43, companies in accordance with their type shall have:
  - a) the minute book of the general assembly;
  - b) the minute book of the direction;
  - c) the minute book of the supervisory board, if it exists;
  - d) the register of liens, duties and guarantees.
2. The book mentioned in paragraph d) of the previous number shall include all personal and real guarantees that the company provides, all liens and duties on assets of the company and also the limitations to full ownership or availability of assets of the company; attached to the book shall be filed copies of the acts or contracts from which the situations referred to arise.
3. The books shall always be at the registered office of the company or at some other location in the country, provided that this location to that effect has been communicated to the competent commercial registration entity by the direction of the company.
4. The books referred to in paragraphs a) and d) of number 1 shall be made available for consultation by the partners for at least two hours per day during business hours.
5. The book referred to in paragraph d) of number 1 shall be available for consultation by any interested party during the period referred to in the previous number.
6. All entries in the book referred to in paragraph d) of number 1 that are no longer up to date shall be canceled by the direction in a clearly visible manner that does not prevent the reading of the entry, and the person in charge shall sign and note the date of the cancellation in the margin.
7. Any interested party may request the entry in the books of acts concerning the company that should appear in the books.
8. Any partner or interested party that so requests shall be provided in the shortest possible period of time, not exceeding eight days, with a copy of any minutes or entries in books the consultation of which he is entitled to, at a price to be determined by the direction.
9. The partner has the right to consult and obtain copies of any minutes of meetings or decisions of the direction, provided that three months have elapsed since or, before that very period has

elapsed, if authorized by the administration, on the understanding that there is no risk of damages to the company by such a disclosure.

Article 168  
**(Liability for defects or irregularities in the books)**

The company is liable for losses caused to third parties by defects or irregularities observed in its corporate books.

**Subsection II**  
**Company accounts**

Article 169  
**(Duration, begin and end of accounting periods)**

The accounting period of companies shall be annual and begins on the 1<sup>st</sup> of January and ends on the 31<sup>st</sup> of December.

Article 170  
**(Annual accounts, report and proposal)**

At the end of each year, the direction of the company shall organize the annual accounts and, unless all partners are directors and the company does not have a supervisory board or a single supervisor, elaborate a report on the accounting period and a proposal for the application of the results.

Article 171  
**(Report of the direction)**

1. The report of the direction shall describe, with reference to the annual accounts, the state and evolution of the management of the company in the different sectors in which it is active, making special reference to costs, market conditions and investments in order to allow for an easy and clear understanding of the economic situation and the profitability achieved by the company.
2. The report shall be signed by all directors, unless some of them refuse to do so, which shall be justified in writing in an attached document.
3. The annual accounts, the report on the accounting period and the proposal for the application of the results shall be signed by the directors who are in office at the time of the presentation, and the previous directors shall provide all information requested from them regarding their mandate.

Article 172  
**(Report and opinion of the supervisory board or the single supervisor)**

1. The annual accounts, the report of the direction and the proposal for the application of the results shall be submitted to the supervisory board or the single supervisor, accompanied by the inventories that serve as support documents, up to thirty days before the date set for the ordinary general assembly.

2. The supervisory board or the single supervisor shall elaborate the report and the opinion referred to in paragraph f) of number 1 of article 157 until the date of issuance or publication of the convocations for the ordinary general assembly.
3. The report shall indicate:
  - a) whether the annual accounts and the report of the direction are accurate and complete, whether they offer an easy and clear picture of the assets of the company, whether they satisfy the legal and statutory provisions, and whether the supervisory board agrees or not with the proposal for the application of the results;
  - b) the care taken and the checks that have been made, and their results;
  - c) the assessment criteria adopted by the direction and their appropriateness;
  - d) any irregularities or unlawful acts;
  - e) any changes that are to be made to the documents referred to in number 1 and the reasons for them.
4. To the report and the opinion of the supervisory board or the single supervisor apply the provisions in the numbers 2 and 3 of the previous article.

#### Article 173

#### **(Accounts of issue of bonds and public subscription)**

1. The accounts in companies that issue bonds or take recourse to public subscription shall also be subject to the opinion to be issued by an auditor or firm of auditors of accounts, which has no relation to the company or to the single supervisor or to any member of the supervisory board.
2. The provision in the previous number applies to companies that permanently operate in the country even if they do not have their registered office or main administration here.

#### Article 174

#### **(Consultation of annual accounts)**

The annual accounts, the report on the annual accounts and the proposal for the application of the results, along with the report and the opinion of the supervisory board or the single supervisor, if these exist, shall be made available to the partners at the registered office of the company during working hours from the date of issuance or publication of convocations for the ordinary general assembly.

#### Article 175

#### **(Judicial approval of the accounts)**

1. If the annual accounts and the report of the direction are not presented to the partners within three months after the end of the respective accounting period, then any partner may ask the court to set a period not exceeding sixty days, for its presentation.
2. If after the period specified pursuant to the latter part of the previous number the presentation has not taken place, then the court may determine the cessation of the functions of one or more directors and order a judicial review pursuant to article 124, appointing a trustee in charge of the elaboration of the annual accounts and the report of the direction referring to the entire period elapsed since the last approval of the accounts.

3. Once the balance sheet has been elaborated the accounts and the report are subject to the approval of the partners in the general assembly called to that end by the trustee.
4. If the partners do not approve the accounts the trustee will ask the court within the context of the examination for judicial approval, accompanying them with the opinion of an auditor of accounts not related to the company.

## **Section X**

### **Amendments of the articles of incorporation**

#### **Subsection I**

#### **Amendments in general**

##### Article 176

##### **(General principles)**

1. An amendment of the articles of association be it by modification or suppression of some of their clauses be it by the introduction of a new clause, can only be decided by the partners, except when the law allows for the cumulative attribution of this authority to another body.
2. If the amendment results in an increase of the payments imposed by the by-laws upon the partners then such imposition shall bind only those shareholders who expressly agreed to such an increase.
3. The decision to amend the articles of association is made in accordance with the provisions for each type of company.
4. The amendment of the articles of association decided pursuant to the previous numbers can be recorded in writing signed by the partners who agree with it, with a signature certified in the presence of the person, and it shall be by public deed whenever immovables are involved.
5. Any member of the direction has the duty to grant the deed required by the previous number as soon as possible, without depending on special assignments by the partners.

#### **Subsection II**

#### **Increase of capital**

##### Article 177

##### **(Modalities and limits)**

1. The capital of a company can be increased by means of new contributions or by incorporation of available reserves.
2. An increase of capital cannot be decided when the initial capital stock or the capital from a previous increase has not been fully paid.

##### Article 178

##### **(Requirements for the decision)**

The decision to increase capital shall explicitly mention:

- a) the modality and amount of the capital increase;
- b) the nominal value of the new share capital;

- c) the deadlines for the payment of the share capital resulting from the increase;
- d) the reserves to be incorporated if the capital is increased by incorporation of reserves;
- e) whether only partners participate in the increase and on what terms, or whether it will be open to third parties with recourse to public subscription;
- f) whether new shares are created or whether the nominal value of existing ones is increased.

Article 179

**(Increase by recourse to new entries)**

The decision to increase capital by having recourse to new entries can only allow for a delay in the payment of the participations within the limits established by law.

Article 180

**(Increase by incorporation of reserves)**

1. The capital increase by incorporation of reserves, if not decided in the general assembly that approves the accounts, nor within sixty days thereafter, may only take place with the approval of a special balance sheet, organized, approved and registered pursuant to the requirements for the annual balance sheet.
2. The company's own shares participate in the increase, unless otherwise determined by the partners.
3. If there are company shares subject to usufruct, then the usufruct shall apply in the same way to the new shares arising from the increase by incorporation of reserves.

**Subsection III**

**Reduction of capital**

Article 181

**(Requirements for the decision in favour of reduction)**

1. A decision that determines the reduction of capital shall explain the purpose of this as well as the respective modality, indicating whether the nominal value is reduced or whether there will be a cancellation of shares and in the latter case which parties will be affected by the reduction.
2. A reduction not motivated by losses can only be approved if the net worth of the company will exceed the sum of capital, legal reserve and compulsory statutory reserves by at least twenty percent, certified through a report to be elaborated by an accounting auditor or audit company, which will be attached to the decision.

Article 182

**(Registration and publication of the decision)**

The decision that approves the reduction of capital stock shall be registered and published.

Article 183

**(Moment in which the reduction of capital stock takes effect)**

The reduction of capital stock takes effect with its final registration in the competent Registry of Legal Entities or with the granting of the respective public deed in cases where immovable property is involved.

Article 184  
**(Protection of company creditors)**

1. Provided they so require a guarantee shall be given to creditors whose claims have been constituted before the decision on the reduction was published and who cannot demand payment, within a period of thirty days from the date of publication; the creditors must be informed of the right referred to in this paragraph in the publication of the decision.
2. Creditors whose claims are already guaranteed can not exercise the right granted to them in the previous number.
3. Payments to partners based on the reduction of capital may not be made earlier than sixty days after the date of publication of the decision on reduction and only after having paid or given a guarantee to creditors who have so required.

Article 185  
**(Reduction motivated by losses)**

1. The provisions of the previous article do not apply to:
  - a) if the reduction is motivated by losses;
  - b) if the reduction is intended to constitute or increase the legal reserve.
2. In the cases mentioned in the previous number the partners are not exonerated of their obligation to release capital.

Article 186  
**(Simultaneous reduction and increase of capital)**

1. It is permitted to decide to reduce the capital to an amount less than the minimum established by law for the respective type of company if such a reduction is expressly subject to the fulfillment of a capital increase to an amount equal to or greater than that minimum, to be undertaken within a period of sixty days following such a decision.
2. The provisions on minimum capital for each type of company do not preclude the validity of the decision on reduction if simultaneously the decision is made to transform the company into a kind that can legally have the reduced amount of capital.

**Section XI**  
**Modifications of companies**

**Subsection I**  
**Merger of companies**

Article 187  
**(Concept. Modalities)**

1. Two or more companies, even of different types, can merge by joining into a single one.
2. The dissolved companies may merge with other companies if they meet the requirements for returning to the full exercise of their activity.
3. The merger can take place:
  - a) by the global transfer of the assets of one or more companies to the other and the allocation to the partners of the former parts of or shares in the latter;
  - b) by the incorporation of a new company to which the assets of the merged companies are globally transferred, with the partners of the latter being allocated parts of or shares in the new company.

Article 188  
**(Proposed merger)**

1. The directions of the companies who intend to merge shall jointly elaborate a merger proposal that shall include the following elements for the perfect knowledge of the proposed operation:
  - a) the modality, motivation, conditions and objectives of the merger with respect to all participating companies;
  - b) the business name, registered office, the amount of capital and the registration number of each company;
  - c) the participations that some company may have in the capital of another one;
  - d) the balance sheets of the companies involved, to be especially organized and stating the value of assets and liabilities to be transferred to the incorporating company or to the new company;
  - e) the company participations to be allocated to the partners of the company to be incorporated or of the companies to merge and, if any, the amounts of money to be allocated to these partners, specifying the exchange ratio of the company participations;
  - f) the draft of the amendments to be introduced to the articles of incorporation of the incorporating company or the draft of the articles of association of the new company;
  - g) measures to protect the rights of creditors;
  - h) the rights granted by the incorporating or by the new company to partners holding special rights;
  - i) in mergers where the incorporating or the new company is a joint stock company, the categories of shares of these companies and the date from which these shares are delivered and are entitled to profits as well as the modalities of this right.
2. The proposal shall indicate the adopted evaluation criteria and the basis of the exchange ratio referred to in paragraph e) of the previous number.

Article 189  
**(Supervision of the merger project)**

1. The direction of each of the companies participating in the merger shall communicate the draft of the merger and its attachments, if any, to its supervisory board or single supervisor or, in the absence of these, to an audit company with a view to issuing an opinion on these matters.
2. The supervisory board or the single supervisor or the audit company may require from all participating companies the information and documents needed, and pursue the necessary verifications while giving its opinion within a period of forty five days.

Article 190  
**(Registration of the merger project and convocation of the assembly)**

1. The proposed merger must be registered.
2. Once registered, the proposed merger shall be submitted for decision by the partners of each company involved in the merger, whatever the type of the company may be.
3. The assemblies are convened to meet not earlier than thirty days from the date of publication of the convocation.
4. A notice of the registration of the merger project shall be published in any one of the major newspapers of the country, indicating that the project and accompanying documents, if any, may be consulted at the registered office of each company by the respective partners and creditors and also stating the dates for the assemblies.

Article 191  
**(Consultation of documents)**

From the publication of the notice referred to in number 3 of the previous article, the partners and creditors of any of the merging companies have the right to consult at the registered office of each one of these companies the following documents and to obtain, without charge, a full copy of them:

- a) the merger proposal;
- b) reports and opinions elaborated by the supervisory bodies or by an audit company;
- c) accounts, reports of the direction and decisions of general assemblies concerning these accounts, covering the last three accounting periods.

Article 192  
**(Meeting of the assembly)**

1. At the meeting of the assembly, the direction shall explicitly state whether or not there has been a significant change with respect to the facts on which the proposed merger is based. If so, the direction shall indicate which modifications in the proposal it purports to make.
2. In case there has been a relevant change in terms of the previous number the assembly shall decide whether the merger process needs to be started over again or whether one continues to assess the proposal.
3. Any modification introduced by the assemblies to the proposed merger is considered a rejection of it, without prejudice to renewal.
4. The partner may request in the general assembly any information about the participating companies that is indispensable for him to gain a clear understanding of the merger project

Article 193  
**(Decision)**

1. In the absence of special provisions the decision is made in accordance with the rules governing the amendment of the articles of incorporation.
2. The decision can only be made after the consent of prejudiced partners has been obtained, if it:
  - a) increases the obligations of all or some partners;

- b) affects special rights held by some partners;
  - c) changes the proportion of their company participations in relation to the remaining ones of the same company, unless such changes result from payments required from them by legal provisions that impose a minimum or fixed value for each unit of participation.
3. If any one of the participating companies has multiple categories of shares, the decision of the respective general assembly concerning the merger will only take effect when approved by the assembly of each category.

#### Article 194

##### **(Participation of one company in the capital of another)**

1. In case any of the companies participates in the capital of another one, it cannot have a number of votes greater than the sum of those belonging to all other partners.
2. To the votes of the company are added the votes of other companies dominated by the one in the terms defined in this Code as well as the votes of persons acting in their own name but on behalf of some of those companies.
3. As an effect of a merger by incorporation, the incorporating company shall not receive any company participation in the merged entity in exchange for company participation in the incorporated company held by the latter or the former, or by persons acting in their own name but on behalf of one or another of these companies.

#### Article 195

##### **(Right to exoneration of partners)**

1. If the law or the articles of incorporation grant the partner who has voted against the proposed merger the right to exonerate, then the partner may require within a period of thirty days following the date of publication prescribed in number 3 of article 190 that the company acquires or has a third party acquire his company participation.
2. The value of the company participation shall be fixed by an accounting auditor without any relation to the merging companies, except where otherwise stipulated in the articles of incorporation or in an agreement between the parties.
3. The company shall pay the determined value within a period of ninety days on pain of the partner having the right to apply for its dissolution.
4. The right of the partner to alienate his company participation in another way is unaffected by the provisions in the previous numbers, nor do the limitations prescribed by the articles of incorporation apply to that alienation when made within the period determined therein.

#### Article 196

##### **(Merger document)**

1. Once the merger has been approved by a decision of the general assembly of each of the participating companies, it is incumbent upon their directions to sign the deed of the merger in the cases where immovable property is involved or to pursue registration at the Registry of Legal Entities with jurisdiction in the other cases.
2. If the merger is effected by the incorporation of a new company then one shall comply with the rules governing this incorporation unless its own *raison d'être* requires something else.

Article 197

**(Publication of the merger and opposition of creditors)**

1. Each of the participating companies shall promote, through its direction, the registration of the decision to approve the merger project and proceed with its publication.
2. Within thirty days following the last of the publications required in the previous number the creditors of the merging companies, whose claims precede publication, may oppose the merger in court, based on the damages that it causes to the payment of their claims.
3. The creditors referred to in number 2 shall be notified of their right to judicial opposition in the publication foreseen in number 1 of this article, and if their claims are contained in books or documents of the company or otherwise known to it, by letter.

Article 198

**(Effects of judicial opposition)**

1. Judicial opposition by any creditor blocks the registration of the merger in the commercial register until any of the following facts occur:
  - a) it is judged as being without merit by a decision turned *res judicata*, or if in case of acquittal of the proceedings the opponent has not brought new action within thirty days;
  - b) the opponent has withdrawn;
  - c) the company has satisfied the opponent or has given a guarantee determined by agreement or by court order;
  - d) the opponent agrees to the entry in the commercial register;
  - e) the amounts due to the opponent have been deposited.
2. If the court judges the opposition to have merit then it shall determine the reimbursement of the claim of the opponent or, if this cannot be demanded, the provision of bail.
3. The provisions in the previous article and in numbers 1 and 2 shall not impede the application of contractual clauses which give the creditor the right to immediate satisfaction of his claim, if the debtor company merges with another one.

Article 199

**(Bondholder creditors)**

The provisions of the preceding two articles apply to bondholders, albeit with the following alterations:

- a) Assemblies of the bondholders of each company shall be held, to be convened by the common representative of each issue, in order for them to discuss the merger with respect to the possible damages to these creditors, and decisions shall be made by absolute majority of the bondholders present or represented;
- b) if the assembly does not approve the merger, the right of opposition shall be exercised collectively through the common representative;
- c) the holders of bonds that are convertible or not into shares shall with respect to the merger enjoy the rights that have been assigned to them in this case; and if no specific right has been attributed to them they shall enjoy the right of opposition pursuant to this article.

Article 200  
**(Holders of other titles)**

Holders of securities other than shares, which do however carry special rights, shall continue to enjoy at least equivalent rights in the incorporating company or in the new company, unless:

- a) an extraordinary assembly of holders of securities decides by absolute majority of the number of each kind of security that those rights can be altered;
- b) all holders of securities of each kind individually consent to the modification of their rights, in case the special assembly is not foreseen in the law or in the articles of incorporation;
- c) the merger project foresees the acquisition of such securities by the incorporating company or by the new company and the conditions of such acquisition are approved in the special assembly by a majority of the holders of other securities that are present or represented.

Article 201  
**(Registration and effects of the merger)**

1. After the period provided for in number 2 of article 197 has elapsed without any judicial opposition or without any of the facts referred to in number 1 of article 198 having occurred, the direction of each company participating in the merger or in the new company pursue the commercial registration of the merger.

2. With the registration of the merger:

- a) the incorporated companies become extinct or in the case of incorporation of a new company, the merged companies transfer their rights and obligations to the incorporating company or to the new company;
- b) the partners of the extinct companies become partners of the incorporating company or of the new company.

Article 202  
**(Condition or term)**

If the taking effect of the merger is subject to a suspensive condition or term and before their occurrence [please check, occurrence of what?] there are relevant changes in factual elements upon which decisions have been based, then the assembly of any of the companies may decide to request the court for a dissolution or an amendment of the merger, the effect of which will be deferred until the decision made in the proceedings has turned *res judicata*.

Article 203  
**(Liability arising from the merger)**

1. The directors, members of the supervisory board or the single supervisor of each of the participating companies are jointly and severally liable for damages caused by the merger to the company and its partners and creditors, if they have not observed the diligence of a careful manager in verifying the assets of the companies and in completing the merger.

2. Amongst them the co-obliged parties are jointly and severally liable towards the participating companies for any falsity, inaccuracy or disability contained in the merger process, without prejudice to the criminal liability inherent to the fact.

3. The dissolution of companies resulting from the merger does not impede the exercise of rights of indemnization provided for in number 1, as well as the rights and obligations of these companies resulting from the merger, to this end these companies are considered to be existing.

#### Article 204

##### **(Enforcement of liability in the case of dissolution of a company)**

1. The rights mentioned in the previous article, when concerning the companies referred to in number 3 shall be exercised by a special representative, whose appointment can be judicially requested by any partner or creditor of the company.
2. The special representative shall invite the partners and creditors of the company by a notice published in the same manner as prescribed for company announcements, to claim their rights to indemnization, within a period not less than thirty days.
3. The indemnization awarded to the company shall be used to satisfy its creditors to the extent that they have not been paid or received a guarantee from the incorporating or the new company. The surplus shall be divided among the partners in accordance with the rules that apply to the distribution of the balance of a liquidation.
4. The partners and creditors who have not timely claimed their rights are not included in the distribution prescribed in the previous number.
5. The special representative is entitled to reimbursement of expenses that he has justifiably made and to a remuneration for his activity. The court at its prudent discretion shall determine the amount of expenses and remuneration as well as the extent to which such expenses and remuneration shall be paid by the partners and creditors concerned.

#### Article 205

##### **(Incorporation of a company totally controlled by another one)**

1. The incorporation by a company of another of whose shares it is the only holder, directly or on its behalf, but in its own name, is governed by the provisions of the previous articles, with the exception of the following rules:
  - a) the provisions concerning the exchange of company participations, the reports of the governing bodies of the incorporated company and the responsibility of these bodies do not apply;
  - b) the merger deed, in the cases in which it is obligatory, can be drawn up without prior decision of the general assemblies.
2. The event provided for in paragraph b) of the previous number is only possible provided that the following requirements are cumulatively met:
  - a) the proposed merger indicates that the merger deed or document will be signed without prior decision of the general assemblies, if the respective convocation is not made pursuant to the provision in paragraph d);
  - b) the publicity required by law has been made at least two months prior to the date of the merger document;
  - c) the partners have been able to gain knowledge, at the registered office, of the merger project, the reports and opinions elaborated by the supervisory board or by accounting auditors, from at least the eighth day following the publication of the merger project by means of notice made in the same project or simultaneously with its communication;

d) within fifteen days of the date set for the elaboration of the document no convocation of the general assembly to decide on the merger has been requested by partners holding five percent of the capital stock.

Article 206  
**(Nullity of the merger)**

1. The nullity of a merger can only be declared:
  - a) based on the lack of a merger deed in the cases where it is mandatory;
  - b) in the previous declaration of nullity or annulment of any of the decisions of the general assemblies of the participating companies.
2. Proceedings to declare the nullity of a merger cannot be brought after six months from the date of publication of the registered merger or of the publication of the decision turned *res judicata* that declares null and void or that annuls any of the decisions of the general assemblies referred to.
3. If the defect that produces the nullity of a merger is corrected within the term determined by the court then the court does not declare the nullity referred to.
4. The judicial declaration of nullity shall be published under the same terms as the merger.
5. After the commercial registration of the merger and before the judicial declaration of nullity the actions taken by the incorporating company are not affected; but the incorporated company is jointly and severally liable for the obligations incurred by the incorporating company during this period.
6. The merged companies are liable in the same vein for the obligations incurred by the new company if the merger is declared null and void.

**Subsection II**  
**Division of companies**

**Division I**  
**General principles**

Article 207  
**(Concept. Modalities)**

1. It is permissible for a society to:
  - a) detach part of its assets in order to incorporate another company with it;
  - b) dissolve and divide its assets, with each of the resulting parts intended to incorporate a new company;
  - c) detach part of its assets or dissolve, dividing its assets into two or more parts in order to merge them with existing companies or with parts of the assets of other companies, separated by identical processes and with the same purpose.
2. The division can take place even if the company is in liquidation.
3. The companies resulting from the division can be of different corporate type than the divided company.

Article 208  
**(Division project)**

1. In the case of simple division the direction of the company to be divided or, in the case of division-merger, the directions of the participating companies shall jointly proceed to the elaboration of a division proposal that, in accordance with the particular case, includes:

- a) the modality, motivation, conditions and objectives of the division with respect to all participating companies;
- b) the business name, registered office, the amount of capital and the registration number of each company;
- c) the participation that any one company has in the capital of another;
- d) a complete list of assets to be transferred to the incorporating company or to the new company, and the values attributed to those assets;
- e) in the case of division-merger, the balance sheets of each of the participating companies, to be especially organized, which shall state the value of the assets and liabilities to be transferred to the incorporating company or to the new company;
- f) the company participations of the incorporating company or of the new company and, where appropriate, the amounts of money to be allocated to the partners of the company to be divided, specifying the exchange ratio of the company participations as well as the basis of this ratio;
- g) the categories of company shares resulting from the division and the delivery dates of these shares;
- h) the date from which the new participations will entitle the holders to share in profits and particularities of that right;
- i) the rights guaranteed by the companies resulting from the division to the partners of the divided company who hold special rights;
- j) the draft amendments to be introduced to the articles of incorporation of the incorporating company or the draft of the articles of incorporation of the new company;
- l) the measures for the protection of the rights of creditors;
- m) the measures for the protection of the rights of third parties who are not partners to participate in the profits of the company;
- n) the maintenance of employment contracts entered into by the company or companies involved and their employees, which do not expire under the division;
- o) all other elements needed for the perfect knowledge of the proposed operation.

2. The project shall also indicate the adopted assessment criteria, as well as the basis of the exchange ratio referred to in paragraph f) of the previous number.

Article 209  
**(Provisions that apply)**

Applicable to the division of companies are provisions on mergers, with the necessary adaptations.

Article 210  
**(Exclusion of novation)**

There is no novation with respect to the attribution of debts of a divided company to the incorporating company or to the new company.

Article 211  
**(Liability for divisions)**

1. The divided company is jointly and severally liable for the debts that as a result of the division have been attributed to the incorporating company or to the new company.
2. Companies benefiting from entries resulting from the division are jointly and severally liable, up to the value of such entries, for the debts of the divided company incurred prior to the registration of the division.
3. The company that, by virtue of its joint and several liability, pays debts that are not attributed to it has the right of appeal against the main debtor.

**Division II**  
**Simple division**

Article 212  
**(Requirements of simple division)**

1. Not allowed is division foreseen in paragraph a) of number 1 of article 207:
  - a) if the value of the assets of the divided company is less than the sum of the amounts of capital and legal reserve, and the corresponding reduction of capital does not proceed before or jointly with the division;
  - b) if the company capital of the company to be divided is not fully paid.
2. For the purposes of paragraph a) of the previous number in limited companies, the amount of supplementary payments made by the partners and not yet refunded will be added.
3. Verification of requirements from the previous numbers is incumbent upon the supervision of the companies, as well as upon a company auditor or an accounting auditor.

Article 213  
**(Separable elements)**

1. In simple division the elements separated to incorporate the new society can only be the following:
  - a) participations in other companies, be it in their totality be it as a part of what the company to be divided holds, and only for the incorporation of the new company whose sole purpose is the management of company capital;
  - b) assets which in the property of the company to be divided are grouped so as to form an economic unit.
2. In the case of paragraph b) of the previous number to the new society may be attributed debts which economically are related to the incorporation or functioning of the unit referred to.

Article 214  
**(Reduction of capital of the company to be divided)**

The reduction of the capital of the company to be divided is only subject to general rules to the extent that it does not remain within the total amount of capital of the new companies.

### **Division III Division-dissolution**

#### Article 215 **(Scope of division-dissolution)**

1. The division-dissolution provided for in paragraph b) of number 1 of article 207, shall include all the assets of the company to be divided.
2. As a general rule assets are distributed among the new companies in the proportion that results from the project of division.
- 3 The new companies are jointly and severally liable for the debts.
4. The company that pays debts in an amount greater than the proportion resulting from the project of division has a claim against the other ones.

#### Article 216 **(Participation in the new company)**

The partners of the company that is dissolved by division-dissolution participate in each of the new companies in proportion to their participation in the dissolved company, unless there is another agreement among the interested parties.

#### Article 217 **(Effects of division-dissolution)**

Applicable to the division-dissolution are the effects of the registration with respect to mergers, with the necessary adaptations.

### **Division IV Division-merger**

#### Article 218 **(Special requirements that apply)**

In the case of division-merger the special requirements that, by law or contract, are subject to the transfer of certain assets or rights apply

#### Article 219 **(Incorporation of new companies)**

1. In the incorporation of new companies through simultaneous divisions-mergers of two or more companies, only these can intervene.

2. The participation of the partners of the divided company in the capital formation of the new company may not exceed the value of the separated assets, with the deduction of the debts that by convention accompany them.

Article 220  
**(Provisions that apply)**

1. In division-merger are especially applicable, mutatis mutandis, the provisions of articles 194, 202 and 203.

2. Also applicable to division-merger, if the divided company continues to maintain legal personality, are the provisions of articles 213 and 214 and in the opposite case, the provisions of articles 201, 204, 215 and 216.

**Subsection III**  
**Transformation of companies**

Article 221  
**(General principles)**

1. Any company, after its incorporation and registration, may adopt another type of company, unless the law prohibits this.

2. Public companies can be transformed into commercial companies provided that they adopt one of the types of companies mentioned in this Code, applying to them the rules governing the incorporation and registration of companies.

3. The transformation of a company does not imply its dissolution.

Article 222  
**(Prohibition of transformation)**

A company cannot be transformed:

a) if the capital participations foreseen in the articles of incorporation and matured already are not fully paid;

b) the balance sheet of the transformation shows that the net worth of the company is less than its capital;

c) in the case of a joint stock company, if it has issued bonds convertible into shares that are not fully converted or reimbursed.

Article 223  
**(Report of the direction)**

1. The company's direction shall elaborate a report justifying the transformation, accompanied by:

a) a balance sheet of the company, especially organized for this purpose;

b) a draft of the articles of incorporation, which shall govern the company.

2. If the general assembly, which decides on the transformation, is held within sixty days following the approval of the balance of the last accounting period, the presentation of a special balance sheet can be dispensed with, and the balance sheet shall be added to the report.
3. Applicable, mutatis mutandis, is all that this Code provides on the supervision of the project and on the consultation of the documents in the case of a merger of companies

Article 224  
**(Decisions)**

1. Subject to different decisions are:
  - a) the approval of the balance sheet;
  - b) the approval of the transformation and of the articles of incorporation that shall govern the company.
2. The decision on transformation that imposes on all or some partners the assumption of unlimited liability, or which implies the elimination of special rights, shall only take effect if it is approved by the partners who must accept that liability and by the affected holders of special rights.
3. The new articles of incorporation can not determine longer time limits for the payment of capital participations that are not yet due, nor can they contain any provision that undermines or in any way limits the previously existing rights of bondholders.

Article 225  
**(Formalities of the transformation)**

To the transformation of companies apply the provisions on amendments of the articles of incorporation in all matters that are not specifically regulated in this subsection.

Article 226  
**(Participation of partners)**

1. The proportion of each participation in relation to capital cannot be altered unless by agreement among all partners.
2. If the transformation impedes the maintenance of industry partners, then to these should be attributed the capital participation that has been agreed, reducing proportionately the participations of the remaining partners.

Article 227  
**(Dissenting partners: possibility of exoneration)**

1. Partners who do not vote in favor of the decision for transformation may withdraw from the company and must do so in writing within a period of thirty days following the publication of the decision.
2. To the dissenting partners who withdraw from the company will be paid the value of their participation, to be determined by an audit company or an accounting auditor and based on the state of the company at the date of the decision for transformation; if there is ongoing business, the partner or his heirs will share in the profits and losses resulting therefrom.

3. If the capital stock is affected by the payment of the value of the participations of partners who have withdrawn, then all partners are called to decide on the revocation of the transformation or on the reduction of capital.
4. The exoneration takes effect from the date of the deed of transformation in the cases where it is mandatory and from the moment of registration in the Commercial Registry Office that is competent in other cases.

Article 228  
**(Guarantees to third parties)**

1. The transformation does not affect the personal liability of the partners for debts previously contracted.
2. The personal and unlimited liability of the partners that results from the transformation of the partners does not include to previously contracted company debts.
3. The rights of enjoyment or guarantee that, at the time of transformation, befall social participation persist, and shall have the new corresponding participations as object.

**Subsection IV**  
**Dissolution and liquidation**

**Division I**  
**Dissolution**

Article 229  
**(Causes of dissolution)**

1. The company is dissolved as provided by law, the articles of incorporation and also in the following cases:
  - a) by decision of the partners;
  - b) by the suspension of the activity for a period exceeding three years;
  - c) by the expiry of the term of duration;
  - d) by not engaging in any activity for a period exceeding twelve consecutive months while not having suspended its activities pursuant to this Code;
  - e) by decision of the competent authority when its incorporation depends on the government authority in order to operate.
  - f) by the extinction of its object;
  - g) by illegality or impossibility originating in its object if, within a period of forty-five days, the alteration of the object has not been decided;
  - h) if it is verified by the accounts of the accounting period that the net worth of the company is less than half the value of the capital stock;
  - i) by bankruptcy;
  - j) by a merger with other companies;
  - l) by a judicial decision determining the dissolution.
2. Any creditor or the public prosecutor is entitled to request the court to declare the dissolution of the company based on any determinate factor even if there is a decision by the partners not to recognize the dissolution.

Article 230  
**(Registration and effects of dissolution)**

1. The dissolution shall be recorded.
2. The effect of the dissolution is the entry of the company in liquidation.
3. The dissolution takes effect from the date on which it is registered or, with respect to the parties, on the date of the sentence declaring turning into *res judicata*.

Article 231  
**(Publicity of the dissolution)**

The dissolution of any company shall be duly published.

Article 232  
**(Obligations of the direction of the dissolved company)**

1. After dissolution of the company, the directors shall submit for approval of the partners within a period of sixty days the inventory, the balance sheet and the profit and losses account till the date of registration of dissolution.
2. Once the accounts are approved by the partners, the directors who are not liquidators shall submit to them all documents, books, papers, records, money or assets of the company.
3. The directors shall also provide all the information and clarifications on the evolution and situation of the company that are requested by the liquidators.

**Division II**  
**Liquidation**

Article 233  
**(Rules on liquidation and sharing)**

The articles of incorporation and the decisions of the partners may regulate the liquidation in all matters that are not provided for in the following articles.

Article 234  
**(Legal personality of the company in liquidation)**

1. The company in liquidation continues to have legal personality and the precepts that governed it till the dissolution shall be applicable to it, unless explicitly otherwise provided for.
2. The directors of the company will continue to represent it while the liquidators do not assume the performance of their duties and, in case of dissolution by bankruptcy, until the final conclusion of the bankruptcy.

Article 235  
**(Business name of the company in liquidation)**

From the dissolution of the company onwards, to the business name shall be added the words “company in liquidation” or “in liquidation”.

Article 236  
**(Term of extra-judicial liquidation)**

1. The extra-judicial liquidation cannot last more than three years from the date of registration of the dissolution until the registration of the closure of the liquidation.
2. If not closed after the term set in the previous number the liquidation will continue in court, and the liquidators shall require the continuation of court proceedings within a period of five days.

Article 237  
**(Approval of inventory, balance sheet and accounts)**

After dissolution of the company the directors submit for approval of the partners in meeting or in general assembly the inventory, the balance sheet and the accounts of their final management according to the formal proceedings to be observed if it concerns the inventory, balance sheet and annual accounts .

Article 238  
**(Liquidators)**

1. The directors of the company are its liquidators, unless there is a decision or a clause in the articles of incorporation to the contrary.
2. Any interested party may in case of just cause require the judicial dismissal of liquidators.
3. The liquidators commence duties on the date of approval of the inventory, the balance sheet and the profit and losses account of the date of registration of the dissolution.
4. Corporate bodies cannot be appointed liquidator.

Article 239  
**(Functions of the liquidators)**

1. In general the liquidators have the duties, powers and responsibilities of the directors of the company.
2. The liquidators can only start operations within the scope of the company's objective and contract loans by prior resolution of the partners.
3. It is especially incumbent upon the liquidators to conclude businesses and operations already initiated on the date of dissolution, collect credits and comply with the obligations of the company and, unless there is a unanimous decision of the partners, transform remaining assets into money.
4. Liquidators shall also demand from the partners the contributions not paid to the extent that these become necessary to comply with the obligations of the company or to bear the costs of the liquidation.

Article 240

**(Presentation of the accounts and the report of the liquidators)**

1. At the end of each accounting period the liquidators shall submit accounts to the partners on the financial position of the company and the progress of the liquidation, as well as the final or closing accounts together with the full report on the liquidation and a proposal for the distribution of remaining assets.
2. After approval of the final accounts and the distribution proposal the liquidators shall:
  - a) satisfy or protect all claims of third parties known to them;
  - b) appoint the depository of the books and documentation of the company.
3. These books and documents of the company must be kept for five years.
4. Liquidators are personally and directly liable to staff and creditors for damages caused by non-compliance with the provisions of paragraph a) of number 2.
5. In case the company assets are insufficient to pay all debts of the company the liquidators shall immediately file for bankruptcy of the company.

Article 241

**(Rights of creditors)**

Company creditors have preference over creditors of each individual partner with respect to company assets, but if the creditors cannot be paid by the part from the remainder that belongs to their debtor, then these will subrogate his rights against other former partners for any surplus that he has contributed to the company.

Article 242

**(Distribution of assets)**

1. The assets, net of liquidation costs and tax debts are shared between its partners pursuant to the articles of incorporation or, if these do not contain such provision, they are shared by the partners in proportion to their company participations.
2. If after the refund in accordance with the provision of the previous number there is a balance, then this shall be shared in the proportion that applies to the distribution of profits
3. The liquidation balance that cannot be delivered to the respective partner shall be deposited in his name in a bank established in the country

Article 243

**(Registration and extinction of the company)**

1. The decision of closure of the liquidation shall be registered by the liquidators within a period of fifteen days.
2. The registration must be accompanied by the following documents:
  - a) a full report on the liquidation;
  - b) a proposal for the distribution of assets.
3. The company is considered extinct on the date of registration of the closure of the liquidation.

Article 244  
**(Supervenient liabilities and assets)**

1. After the extinction of the company the former partners are jointly and severally liable for the liabilities of the company that have not been considered in the liquidation up to the amount they have received in the distribution of the balance of the liquidation.
2. If after the extinction of the company assets exist that have not been shared, it is incumbent upon any partner, to the date of dissolution, to propose to the others their additional distribution, which will be undertaken under terms agreed by all or, if that is not possible, in proportion to the amount of the capital entries they actually paid.

Article 245  
**(Continuation of judicial proceedings)**

The judicial proceedings in which the company is a party continue after its extinction and the company is considered to be replaced by the partners at the date of dissolution, without suspending the prosecution and dispensing with qualification.

**Section XII**  
**Publicity of company acts**

Article 246  
**(Acts subject to registration and publication)**

Acts concerning the company are subject to registration and publication in accordance with the law.

Article 247  
**(Publications)**

1. Publications shall be made at the expense of the company in the Bulletin of the Republic.
2. In companies, whichever their type, notices, announcements and convocations addressed to the partners or creditors that are ordered by law or by the articles of incorporation to be published, are to be published in one of the most widely read newspapers of the place where the company has its registered office.

Article 248  
**(Lack of registration or publication)**

1. Bona fide third parties may avail themselves of acts whose registration or publication has not been made.
2. Acts subject to registration or that have to be published cannot be opposed by the company while the registration or publication has not been made.

Article 249  
**(Liability for discrepancies in publications)**

The company is liable for damages to third parties caused by discrepancies between the acts carried out, the contents of the registration and the content of these publications, for which the directors, managers, liquidators or their representatives are to blame, while such discrepancies are not resolved.

#### Article 250

##### **(References in external acts)**

1. All contracts, correspondence, publications, announcements and, in general, all external activities of companies shall contain:
  - a) the business name of the company;
  - b) the type of the company;
  - c) the registered office and the registration number at the relevant registration entity;
  - d) a statement that the company is in liquidation, if this happens to be the case.
2. Companies, whichever their type of company, shall also indicate the capital stock and the amount of capital paid, if this is different.

#### Article 251

##### **(Supervision by the Department of Justice)**

1. The public prosecutor shall request, without the need for declaratory action, the judicial liquidation of a company that:
  - a) without being registered, has been pursuing activities or more than three months;
  - b) has not been constituted or does not function in accordance with the law; or
  - c) has a purpose that is unlawful or contrary to the public order.
2. The court shall order the notification of the request to the company and its partners and in case regularization is possible set a reasonable deadline for it.

### **Section XIII**

#### **Statute of limitation**

#### Article 252

##### **(Statute of limitation)**

1. The rights of the company against the partners, directors, members of the supervisory board or the single supervisor and the liquidators, as well as the rights of these against the company, shall cease to exist after five years counting from:
  - a) the start of the default with respect to the obligation of payment of capital or supplementary payments;
  - b) the termination of the willful or negligent conduct, or of its revelation in case it has been hidden, and of the generation of the damages, regardless of whether these have completely occurred in relation to the obligation to compensate the company;
  - c) maturity with respect to any other obligation.
2. Barred after five years from the moment referred to in paragraph b) of the previous number are the rights of partners and third parties arising from liability towards them by other partners, directors, members of the supervisory board or the single supervisor and the liquidators.

3. Barred after five years from the date of registration of the extinction of the company are credit rights of third parties against the company that can be exercised against former partners and those that can be exercised by these against third parties pursuant to article 244, if, under other provisions, they do not cease to exist before that date.
4. Barred after five years from the date of the registration of the merger are the rights to indemnization referred to in article 203.
5. If the fact from which the obligation arises is a crime for which the law provides limitation subject to a longer term, then this is the term that applies.

## **TÍTULO II SPECIAL COMMERCIAL COMPANIES**

### **Chapter I General partnerships**

#### **Section I General provisions**

##### Article 253 **(Characteristics)**

1. In a general partnership the partner is subsidiary liable to the partnership and jointly and severally with the other shareholders for the obligations of the partnership, even if these have been contracted prior to the date of entry.
2. The partner who satisfies the obligations of the partnership has the right of appeal against the remaining partners, in the proportion in which each must share in the losses of the partnership.
3. In case the difference referred to in number 4 of article 112 occurs the remaining partners in are subsidiary liable to the partner in question and jointly and severally amongst one another for the payment of the difference in cash.
4. Who is not a partner of the partnership and acts towards third parties as if he were, is jointly and severally liable with the partners towards the one who has conducted business with the partnership in the belief that he was a partner.

##### Article 254 **(Partners and their contribution)**

1. General partnerships may only be incorporated by at least two partners who can contribute capital or industry.
2. The period of deferral for the payment of capital participations cannot exceed five years.

##### Article 255 **(Contents of the by-laws)**

1. The by-laws of a general partnership shall in particular include:
  - a) the full name of each partner;
  - b) the value attributed to industry contributions in order to determine the distribution of profits.

2. In an attached statement industry partners shall briefly describe the activities they oblige themselves to carry out.

Article 256  
**(Industry partners)**

1. The value of contributions in industry is not taken into account in the company capital.
2. In internal relationships the industry partner does not share in losses, unless the by-laws determine otherwise.

Article 257  
**(Competition and participations in other companies)**

1. Only with the explicit consent of all other partners can a partner exercise, on his own or on someone else's behalf, an activity that falls within the partnership's objective, be a partner with unlimited liability of another company or be a partner with a participation of more than twenty percent in the capital or in the profits of a company whose objective, in whole or in part, coincides with the former.
2. The partnership may demand that a partner will transfer the right to profits obtained or to be obtained by a violation of the provision in the previous number and that he shall do so within a period of thirty days after having knowledge of the forbidden fact and, in any case, within six months after its occurrence.
3. The consent provided for in number 1 is assumed in the case where the activity or the participation in another company precedes the entry of the partner and where all other partners are aware of these facts.

Article 258  
**(Right to information)**

1. Any partner who is not a director, in addition to the right to information provided for in this Code has the right to be informed about the state of the business and the financial position of the partnership, and the directors shall facilitate the inspection of partnership assets and the consultation at the registered office of its accounts, books and documents.
2. In consulting accounts, books or documents and in the inspection of partnership assets the partner may be accompanied by an expert, as well as use the facilities for the reproduction of documents provided for in the Civil Code.

Article 259  
**(*Inter vivos* transfer of participations)**

1. In order for a partner to transfer *inter vivos* his share in the partnership the consent of all other partners is required.
2. Special rights are not transferred together with the participation.

**Section II**  
**Redemption, decease, execution, exoneration and exclusion**

Article 260  
**(Redemption of the participation)**

1. The participation of a partner shall be redeemed in the following cases:
  - a) by the death of the partner, unless some of the situations described in the following article arise;
  - b) by execution of the participation in accordance with the law;
  - c) by waiver or exclusion of the shareholder.
2. If the redemption of a participation is not accompanied by a corresponding reduction of capital, then the participations of the other shareholders are proportionally increased, and this fact shall be subject to registration.
3. However, the partners may unanimously decide to create one or more participations whose nominal value is equal to the one that has been extinguished, for immediate transfer to partners or third parties.
4. The redemption of the participation shall be in accordance with article 265.
5. After registration of the redemption of the participation the liability of the partner or their successors in case of death continues for two years with respect to businesses concluded before that time.
6. The redemption of a participation cannot proceed if at the moment of its execution the net worth of the partnership, after the payment of the redemption, will be less than the amount of capital.
7. If the redemption of a participation is to take place because of the death or exoneration of a partner based on number 2 of article 263 and it cannot take effect due to the reasons mentioned in the previous number, then profits are not distributed until, without violation of the provision in the preceding number, the redemption is paid.
8. If by exclusion of a partner the redemption cannot be paid for the reasons mentioned in the preceding numbers, the partner regains the right to profits and to the share in the liquidation until he has been paid.

Article 261  
**(Decease of a partner)**

1. When a partner dies and the by-laws do not provide anything to the contrary the remaining partners shall redeem the respective participation, however, they may continue the partnership with the heirs if these within a period of ninety days agree, or they may choose to dissolve the partnership, in which case they shall notify the heirs within a period of sixty days from the moment on which any of the partners learned of the death.
2. If the heirs are called to the partnership they can freely divide the part of the deceased or entitle one or some of them to it.

Article 262  
**(Execution of the participation)**

1. When there are sufficient other assets of the partner, a particular creditor of his can only execute his right to profits and to his share of the liquidation.

2. When the partner's assets become insufficient, the creditor may require the redemption of his participation.

Article 263  
**(Exoneration)**

1. In addition to the cases provided for by law or in the by-laws, if the duration of the partnership is indefinite or if it has been incorporated for the duration of the life of a partner or for a period exceeding thirty years, then any partner who has this capacity for at least ten years has the right to exonerate himself.

2. The same right shall be granted to any partner if the partnership, against his explicit vote and despite the existence of just cause, has decided not to dismiss a director or exclude a partner, provided he exercises his right within a period of ninety days from the date where he became aware of the fact that allows exoneration.

3. The exoneration only takes effect at the end of the accounting period in which the respective communication is made, but not before ninety days have passed.

Article 264  
**(Exclusion of the partner)**

1. The partnership may exclude a partner in the cases provided for by law and in the by-laws and also:

a) when he can be charged with a serious breach of his obligations to the partnership, in particular that of non-competition, or when he has been removed from the direction on the basis of a just cause that consists in a culpose fact susceptible to cause damages to the partnership;

b) in the case of interdiction, disability, declaration of bankruptcy or insolvency of the partner;

c) when, being an industry partner, it is impossible to provide the services to the partnership that he is obliged to.

2. The decision of exclusion must obtain the votes of all other partners and must be approved within a period of ninety days following the date on which any of the directors took notice of the fact that allows for the exclusion.

3. If the partnership has only two partners, the exclusion of any of them, based in some of the facts described in paragraphs a) and c) of number 1, can only be decreed by the court.

4. The calculation of the value of the part of the excluded partner is carried out with reference to the time of the decision of exclusion or, when the exclusion results from a judicial decision, from the date where it becomes *res judicata*.

Article 265  
**(Evaluation of the participation)**

1. In cases of death, exoneration or exclusion of a partner, the value of his participation is determined by an accounting auditor, based on the state of the partnership on the date on which the fact determining the redemption occurred or took effect; if there is ongoing business then the partner or the heirs will participate in the profits or losses resulting from it.

2. In assessing the participation one will observe, with the necessary adaptations, the provisions of numbers 1 to 2 of article 242, in so far as these are applicable.

3. Without prejudice to the provisions of number 6 of article 260, the payment of the value of the redemption is to be made, unless agreed otherwise, within a period of six months from the day the fact determining the redemption occurred or took effect.

### **Section III Decisions of partners and direction**

#### **Article 266 (Decisions of the partners)**

1. Unless there are legal or statutory provisions to the contrary, decisions based on a majority vote of the partners are considered made.

2. Amendments to by-laws, merger, division, transformation, dissolution and appointment of foreign directors to the partnership can only be decided unanimously.

3. Each partner has one vote.

4. The provisions of article 416 apply to the convocation of general assemblies.

#### **Article 267 (Direction and supervision)**

1. All partners are directors, whether they have constituted the partnership or whether they acquired this capacity later, unless determined otherwise in the by-laws.

2. By unanimous decision of the partners persons who are not partners may be elected directors.

3. Unless determined otherwise in the by-laws, the director who is partner can only be dismissed if there is just cause, by a decision based on a majority vote of the remaining partners or by court order issued in proceedings brought by any of them.

4. The removal of a director who is partner, in case the partnership only has two partners, or when he has been appointed by means of a special clause from the by-laws, can only be decided by the court.

5. The director who is not a partner can be dismissed at any time, with the votes of all members or of a majority, if there is just cause.

6. In the absence of a supervisory board or of a single supervisor the supervision of the partnership is incumbent upon all partners.

#### **Article 268 (Functioning of the direction)**

1. The management and representation of the partnership is incumbent upon the directors and all have, with the exception of statutory provisions to the contrary, equal and independent powers.

2. The director binds the partnership with his signature accompanied by an indication of the capacity in which he serves, which may be indicated by affixing a stamp of the direction or a seal of the partnership.

3. Any of the directors may oppose the actions planned by another, while the majority of the directors decide on the merits of opposition.

## **Section IV Dissolution and liquidation**

### **Article 269 (Dissolution and liquidation)**

1. Besides the cases prescribed by law, the partnership is dissolved if the number of partners is reduced to one and the plurality of partners has not been reconstituted or the partnership has not become a single shareholder limited company within a period of three months.
2. The company can also be dissolved in court at the request of the successor of a deceased partner or at the request of a partner who has been exonerated on the grounds of the provisions of number 2 of article 263, if the situation referred to in number 6 of article 260 lasts for three years.
3. For the payment of the debts of a partnership the liquidators shall claim from the shareholders, in addition to the unpaid capital participations the amounts necessary, in proportion to the share of each one in the losses, with the part of the insolvent partner being divided by the others in the same proportion.
4. When dissolution takes place during the period prescribed by the by-laws then its extension can be decided by a majority of the partners, applying to those who exonerate themselves the rules for redemption of participation.

## **Chapter II Secret partnerships**

### **Article 270 (Types of secret partnerships)**

A secret partnership can be incorporated as a simple secret partnership or as a partnership association when the participations of the secret partners are represented by shares.

### **Article 271 (Characteristics)**

1. Distinct elements in the secret partnership are the general partnership, which includes general partners and the secret partnership of funds [comandita de fondos].
2. Each of the secret partners is only liable for payment of his capital participation and he may not contribute with industry, the full partners are liable for the social obligations in the terms foreseen for the shareholders of a general partnership.
3. A limited companies or joint stock companies can be general partners.

### **Article 272 (Contents of the by-laws)**

1. The by-laws of the secret partnership shall distinctly indicate the partners.
2. The by-laws shall specify whether the company is constituted as a simple secret partnership or as a partnership association.

Article 273  
**(Rules of secret partnerships)**

1. The provisions concerning general partnerships apply to secret partnerships to the extent that they are compatible with the standards of this chapter.
2. In partnership associations the provisions concerning joint stock companies shall apply to secret partnership of funds in everything that is not especially regulated in this chapter.

Article 274  
**(Decisions)**

1. Secret and full partners vote separately; each full partner has one vote and each secret partner has one vote for every two hundred fifty thousand meticaïs capital held.
2. Decisions approved by an absolute majority vote of the general partners and by an absolute majority vote of the secret partners are considered to be made, without prejudice to different provisions in the law or by-laws.
3. Decisions on dissolution, merger, division or transformation of the company and those that have the effect of amending the by-laws can only be considered approved if they have the unanimous vote of the full partners and two-thirds of the votes of the secret partners.

Article 275  
**(Direction)**

1. All full partners are directors, whether they have constituted the company or whether they acquired that capacity later, unless otherwise provided for in the by-laws.
2. By unanimous decision of the full partners and two-thirds of the votes of the secret partners persons who are not full partners may be elected as directors.
3. Unless the bylaws determine otherwise, the full partner who is director can only be dismissed if there is just cause and by a majority decision of the remaining full partners and of the secret partners, or by a judicial decision made in proceedings brought by any of them.
4. If the company only has one or two full partners and any one of them or both are the only directors, then their dismissal can only be declared by judicial decision and in the case of just cause, at the request of any partner.
5. The director who is not a partner can be dismissed at any time, to that end the same votes that were needed for his election are required unless there is just cause, in which case the concurrence of the votes of the majority of the full partners and of the majority of the secret partners is sufficient.

Article 276  
**(Transfer of participations)**

1. The transfer *inter vivos* or on occasion of the death of part of a full partner depends on the unanimous consent of the remaining partners and on a decision passed by majority vote of the secret partners.
2. The transfer *inter vivos* of the participation of a secret partner of a simple secret partnership depends on a majority decision either of the full partners or of the secret partners.

3. In case the transfer of the participation of a secret partner is not allowed, the provisions concerning the redemption of shares apply with the necessary adaptations.

Article 277  
**(Dissolution)**

1. The company is dissolved with the disappearance of all secret partners if, within a period of forty-five days, no new partner is admitted or if not is decided to transform the company into a limited liability or joint stock company.
2. The absence of all secret partners leads to the dissolution of the company if, within a period of ninety days, a secret partner is not admitted or the company is not transformed into a general partnership or, in case the company only has one full partner who is not a corporate body, into a single shareholder limited company.
3. The decision to dissolve the company is taken by a two thirds majority of the votes from the full partners and a two thirds majority of the votes from the secret partners.

**Chapter III**  
**Business and industry corporation**

Article 278  
**(Characteristics)**

1. The business and industry corporation is characterized:
  - a) by having partners who contribute to the formation of capital by means of money, credit or other material assets and who limit their liability to the value of the contribution with which they underwrote the capital stock;
  - b) by having partners who do not contribute to the capital as such but who only join in the company with their labour and who are exempt from any liability for company debts.
2. the capital partners shall underwrite the entire capital stock in fixed amounts and without the subsequent division into shares.

Article 279  
**(Special clauses)**

The by-laws of the business and industry corporation shall contain in particular:

- a) the specification of the obligations of the industry partner or partners;
- b) the percentage accruing to industry partners in company profits.

Article 280  
**(Direction)**

1. The direction of a business and industry corporation belongs to one or more capital partners.
2. The industry partners will hold the position of director provided they pay a security previously determined in the articles of incorporation.

3. Unless the articles of incorporation determine otherwise the security referred to in the previous number shall be equal to the value of the capital underwritten by the capital partners and it will be used exclusively for liabilities for any maladministration committed.

Article 281  
**(Limitation of the activity of industry partners)**

Unless the articles of incorporation so allow, the industry partners are forbidden to engage in any commercial operation foreign to the objective of the company, under pain of being deprived of profits and excluded from the company.

Article 282  
**(Percentage of the industry partner in the profits)**

1. The industry partner participates in company profits in the percentage of the profits stipulated in the articles of incorporation.
2. In case the articles of incorporation do not stipulate anything in this regard it is assumed that the partner's participation in the profits will be equal to that of the capital partner with the smallest participation in the company capital.
3. In the event of liquidation the industry partner also has the right to a part of the total assets of the company. This right of the partner can only be executed after the liquidation of the company and after the restitution of the capital shares to the respective capital partners. In case there are any remaining profits these are distributed among all partners in the proportion stipulated in the articles of incorporation or, in the absence of any stipulations, in accordance with the provisions in the numbers 1 and 2 of this article.

**Chapter IV**  
**Limited company**

**Section I**  
**General provisions**

Article 283  
**(Characteristics)**

1. In a limited company the capital is divided into shares and the partners are jointly and severally responsible for paying the share capital in accordance with the provisions of this chapter.
2. The shares may not be incorporated in marketable securities.
3. Partners are only obliged to other contributions when the law or the articles of incorporation so require.

Article 284  
**(Company among spouses)**

A limited liability company between spouses is lawful and may be incorporated, whatever the matrimonial ownership of property.

Article 285

**(Participation of a minor as partner)**

A minor, even without having authority to act or authorized to pursue business, may participate as a partner, provided that the company capital is fully paid and remains that way as long as his minority status lasts, while he is being forbidden to participate in the direction.

Article 286

**(Liability of company assets)**

Only company assets are liable towards creditors for the debts of the company, with the exception of the provisions in the following article.

Article 287

**(Direct liability of partners towards creditors of the company)**

1. The articles of incorporation may stipulate that one or more partners, in addition to being liable towards the company as defined in number 1 of article 283 are also liable before the creditors of the company up to a certain amount; this liability may be jointly and severally as well as subsidiary, but for all members who are thus liable it shall be equal.
2. The liability prescribed in the preceding number refers only to obligations assumed by the company while the partner belongs to it and it is not transferred by his death, without prejudice to the transfer of obligations to which he was previously bound.
3. Unless otherwise provided by contract, the partner who pays company debts under this article has a claim against the company for all that he has paid, but not against the other partners.

Article 288

**(Maximum number of partners)**

1. A limited company cannot have more than thirty partners.
2. No act which leads to a limited company having more than thirty members produces any effect with respect to the company while it has not been transformed, by a decision of the partners, in a joint stock company.
3. If the fact that results in the number of partners exceeding the limit determined in number 1 is *mortis causa* then the successors may request the court to set a reasonable time limit, under pain of dissolution, in order to decide about the transformation into a joint stock company.
4. Whenever a share is held in common by several persons, they are considered as one partner only, for the purpose of this article.

Article 289

**(Minimum capital stock)**

1. The capital stock shall always correspond to the sum of the nominal value of the shares.

2. Limited companies cannot be incorporated with a company capital of less than twenty million meticaís, and this value must always be adequate for achieving the company objective.

## **Section II Payment of shares**

### Article 290 **(Shares and their payment)**

1. The nominal value of each share shall be expressed in national currency; it shall be less than five hundred thousand meticaís and constitute a multiple of one hundred.
2. Industry contributions are not admitted.
3. The assets or rights that the partner intends, as his contribution, to incorporate in the company capital shall be evaluated in accordance with article 114 of this Code.
4. The provision of number 1 applies to shares arising from division.
5. Company capital underwritten by each partner in the articles of incorporation can only correspond to one share.
6. The capital underwritten by each partner or that he holds after each capital increase only may correspond to one new share.
7. Shares to which special rights correspond are always independent and indivisible.

### Article 291 **(Unification of the share)**

1. The primitive share of a partner and those that he acquires later are independent, but the owner may, however, unify them.
2. For the unification of shares to take place the cumulative verification of the following requirements concerning funds and their form are indispensable:
  - a) the shares must be fully paid;
  - b) there are no rights and obligations corresponding to them, in accordance with the articles of incorporation;
  - c) they shall be formalized by public deed, in those cases where immovable property is involved.
3. The unification shall also be registered and communicated to the company for the purposes of its enforceability against third parties and the company itself.

### Article 292 **(Moment of payment of shares)**

1. The payment of shares to be paid in money may be delayed for up to half of their nominal value but the overall quantity of payments made on their behalf, jointly with the sum of the nominal value of shares corresponding to contributions in kind, shall make up the minimum capital determined by law.
2. The full payment of shares can only be deferred for a period not exceeding three years, and up to a definite date determined by the direction.

3. If the date is to be determined by the direction and it fails to do so then the obligation to pay falls due at the end of the three-year period counting from the date of registration of the articles of incorporation or of the decision to increase the capital.

#### Article 293

##### **(Negligent partner and liability of other partners for the integration of the shares)**

1. If a shareholder does not timely pay his share, by making within the prescribed period the payment he is obliged to, then the other partners are obliged to pay the delayed part in proportion to their shares, but jointly and severally to the company.
2. The company's direction shall notify the partner in delay and grant him a period of thirty days to pay the share.
3. The partner in delay is liable, in addition to the capital due, for the respective interest on the payment in arrears and for other damages to the company and the other partners resulting from his non-compliance.
4. The partner who does not timely pay his share may be deprived, in accordance with the articles of incorporation, from exercising the company rights corresponding to his share, in particular the right to vote and the right to share in profits, for the duration of his non-compliance.
5. In case the member in delay does not pay the share within the period prescribed in number 2 the company shall notify the other shareholders to pay the part in arrears.
6. The share in its entirety shall belong to the members who paid the part in arrears, in the proportion they paid and to this end it will shall be divided and added to their shares.
7. The partner who loses his share in accordance with the previous number has no right to recover any amounts already paid for the share in question.
8. The partner in delay shall also be notified about these effects.

#### Article 294

##### **(Preference in capital increases)**

Partners have a right of preference in underwriting increases of company capital but the right of preference may be limited or withdrawn by a decision of the general assembly made by the majority required to change the articles of incorporation of the company.

### **Section III**

#### **Division and transfer of shares**

#### Article 295

##### **(Division of shares)**

1. A share may be divided by partial redemption, parceled or partial transfer, sharing or division between co-owners, with each one of the shares resulting from the division having a nominal value in accordance with the provisions of this Code.
2. The acts occasioning a division of shares shall consist of a public deed where immovable property is involved and of a written document signed by the interested parties with signatures acknowledged in the presence of the persons in question or by court order.

3. The division of shares does not require the consent of the partners, without prejudice to the provisions in the law or in the articles of incorporation concerning the transfer of shares and the circumstances in which shares are not considered divided.
4. The division of shares must be entered in the company books and registered.

Article 296  
**(Indivisible share)**

1. The co-owners of an indivisible share shall exercise the rights and fulfill the obligations inherent to it through a common request.
2. The company minutes that must be personally notified to the shareholders shall be so notified to the common representative or, in his absence, to any of the co-owners.
3. The co-owners are jointly and severally liable for the obligations inherent to the share.
4. The appointment and dismissal of the common representative shall be communicated in writing to the company, under pain of not taking effect.
5. It is incumbent upon the common representative to exercise, with respect to the company, all rights and fulfill all obligations inherent to the indivisible share, any limitation of the powers of representation necessary to that end shall not be invoked against the company.
6. The provisions in this article apply to the share integrated in autonomous patrimony that is to be distributed, unless otherwise determined by law.

Article 297  
**(Transfer of shares)**

1. The *inter vivos* transfer of a share must be made in writing, which can be merely private, unless otherwise determined by law.
2. The transfer of a share is ineffective in relation to the company while it has not been notified in writing and the transfer has been registered.

Article 298  
**(Right of preference in the transfer of shares)**

1. Unless otherwise provided for by the by-laws, the company and, if it fails to exercise this right, the partners in proportion to their shares, have the right of preference in all cases of transfer of shares *inter vivos*.
2. The company can only exercise the right of preference if, as a result of acquisition, its net worth does not become less than the sum of the company capital, the legal reserve and the mandatory statutory reserve.
3. No transfer *inter vivos* is effective, even between parties, if the company and the partners have not been notified by letter on the exercise of the right of preference.
4. Once the company and the partners are notified about the intended transfer, its price, the identification of the proposed buyer and other conditions, the company first and the shareholders afterwards have forty-five and fifteen days respectively to exercise the right in question.
5. If the price of the intended transfer exceeds the share value resulting from the assessment expressly made for this purpose by an accounting auditor having no relation to the company,

with more than fifty percent, the company and the partners have the right to acquire the share for the value resulting from the assessment increased by twenty-five per cent.

6. The provisions of number 3 of article 306 apply to the share acquired by the company for the purpose of exercising the right of preference.

7. A judicial decision that determines the transfer of a share in any process shall be automatically notified to the company for the purposes of this article, and the company shall notify the partners in writing.

8. The by-laws cannot impose other restrictions on the transfer of shares *inter vivos*.

#### Article 299

#### **(Special rights of the partners)**

Special patrimonial and non-patrimonial rights are transferable with the respective share, unless it is clear from the articles of incorporation that they were created *intuitu personae*.

#### Section IV

#### **Redemption of shares, exclusion and exoneration of the partner**

#### Article 300

#### **(Redemption of shares)**

1. Redemption of shares may only take place in cases of exclusion or exoneration of a partner.

2. The redemption of shares leads to the extinction of the share, without prejudice, however, to the rights acquired already and the obligations already matured.

3. The company may not redeem shares that are not fully paid, except in the case of a reduction of capital.

4. If a company has the right to redeem the share it may, instead, acquire it or have it acquired by a partner or third party. In the first case all rights and duties inherent to the share are suspended, while it remains in the ownership of the company.

#### Article 301

#### **(Limitation of capital)**

The company may only decide to redeem a share when, on the date of making the decision the net worth of the company will not become less than the sum of the company capital and the legal reserves, as a result of the redemption.

#### Article 302

#### **(Form and term of redemption)**

1. Redemption shall take place by a decision of the partners in the case of exclusion of a partner, or by the intention a partner if he wants to exonerate himself from the company.

2. After the occurrence of a fact that legally or statutory allows for the exclusion of a partner the other partners may, within a period of ninety days from the knowledge of that fact by the direction, decide to redeem the shares that partner holds.

3. The decision in favour of redemption takes effect through notification of the excluded partner.

4. After the occurrence of a fact that allows for the exoneration of a partner he may, within a period of ninety days after acquiring knowledge of that fact, notify the company in writing of his intention to redeem his shares.

Article 303  
**(Compensation of redemption)**

1. The compensation of the redemption consists in the payment to the partner of the value of the share resulting from the evaluation by an accounting auditor not related to the company.
2. The compensation is paid in three equal installments falling due, respectively, six months, one year and eighteen months after the final establishment of the compensation.

Article 304  
**(Exclusion of a partner)**

1. A partner may be excluded in the cases especially specified in the articles of incorporation.
2. The partner may also be excluded by the court in an action brought by the company after prior deliberation, when his conduct that is disloyal to or severely disturbing the functioning of the company has caused or may cause significant damages to it.
3. The exclusion of the partner does not affect his duty to compensate the company for the losses that he has caused.
4. Only by unanimity is it allowed to alter the articles of incorporation governing the exclusion of partners.

Article 305  
**(Exoneration of a partner)**

1. A partner may exonerate himself from the company in the cases provided for in the articles of incorporation and also when, against his vote, the other partners decide to:
  - a) a capital increase to be underwritten in whole or in part by third parties;
  - b) transfer the company's registered office abroad.
2. A partner may exonerate himself only if his shares have been fully paid.

**Section V**  
**Acquisition of own shares**

Article 306  
**(Acquisition of own shares)**

1. The company may pursuant to a decision by the partners acquire own shares against payment and, by a mere decision of the direction, free of charge.
2. The company may only acquire own shares that are fully paid if as a result of the acquisition its net worth does not become less than the sum of the capital stock, the legal reserve and the reserves required by the by-laws.

3. With the exception of the right to receive new shares or increases of the nominal value of participations in capital increases by incorporation of reserves, all rights attached to shares held by the company are considered suspended.

## **Section VI** **Additional supply and payments**

### Article 307 **(Supply contract)**

1. A supply contract is a contract by which the partner loans money or other consumable goods to the company, with the company being obliged to reimburse the loan in the same kind and quality or by which the member agrees with the company to postpone the expiration of credit provided that, in either case, the credit has become permanent in nature.
2. An indication of the permanent character is the stipulation of a reimbursement term equal to or more than one year, be such stipulation made when the credit was supplied be it afterwards. In the case of postponement of the maturity of credit the time elapsed since the supply of the credit till the negotiation of the postponement is included in this term.
3. Also having a permanent character is the renouncement of the right to demand the reimbursement by the company for a year, from the supply of the credit, whether or not there has been a term stipulated.
4. Subject to the rules governing credit supply is credit supplied by third parties to the company that the partner acquires by a business *intra vivos*, provided that at the time of purchase the credit is of a permanent nature according to the terms laid down in numbers 2 and 3 of this article.

### Article 308 **(Form of the supply contract)**

The supply contract or the business contract on advancement of funds by the member to the company or the contract on deferred credit of partners does not depend on a particular form.

### Article 309 **(Rules governing the supply contract)**

1. If a term for reimbursement of supplies not has been stipulated then the provisions of number 2 of article 777 of the Civil Code apply; in determining the period the court will, however, take into account the consequences that reimbursement will have for the company, and it may in particular determine that the payment is divided into a number of installments.
2. Supply creditors cannot request for these very claims the bankruptcy of the company. However, the agreement concluded in bankruptcy proceedings produces effect in favour of and against supply creditors.
3. In case the company is declared bankrupt or dissolved for any other reason:
  - a) the supplies can only be reimbursed to its creditors after its debts to third parties have been fully settled;
  - b) compensation of company credit with supply credit is not admissible.

4. The priority of the reimbursement of credit of third parties established in paragraph a) of the previous number may be stipulated in an agreement entered into during the bankruptcy proceedings of the company.
5. The reimbursement of supplies made in the year prior to the sentence declaring bankruptcy may be resolved in accordance with articles 1200, 1203 and 1204 of the Code of Civil Procedure.
6. Real guarantees provided by the company with respect to its obligations to reimburse supplies are null and void and those concerning other obligations are cancelled when these are subject to the rules governing supplies.

Article 310  
**(Additional payments)**

1. The articles of incorporation may impose on all or some partners the obligation to make payments beyond down-payments, provided that they determine the essential elements of this obligation and specify whether the payments should match those of a typical contract, applying in that case the legal regulations proper to this type of contract.
2. If the stipulated payments are not in money the right of the company is not transferable.
3. If the obligation is agreed upon the quid pro quo can be paid regardless of whether there are profits of exercise.
4. The lack of compliance with additional obligations does not affect the status of the partner as such, unless the existence of provisions to the contrary.
5. Additional obligations are extinguished with the dissolution of the company.

**Section VII**  
**Supplementary payments**

Article 311  
**(Demand of supplementary payments)**

1. Supplementary capital contributions are only payable when provided for in the articles of incorporation.
2. Supplementary payments must be paid in money.
3. Supplementary payments do not bear interest, are not part of the company's capital stock and do not confer the right to share in profits.
4. Partners are obliged to make supplementary payments in proportion to their shares but the articles of incorporation shall determine the overall maximum amount of additional payments, on pain of these not being demandable.
5. The creditors of the company cannot subrogate partners in the exercise of the right to demand additional payments.

Article 312  
**(Decision on the need for supplementary payments)**

1. The need for supplementary payments always depends on a decision of the partners. That decision shall fix the maximum overall amount of supplementary payments and the period of their payments, which may not be less than ninety days.
2. The decision is based on an absolute majority of votes.

3. Underwritten capital must be fully paid for the partners to be able to decide on demanding supplementary payments. After the company has been dissolved for whichever reason it is not possible to decide on the need for supplementary payments.

Article 313  
**(Refunds of supplementary payments)**

1. Supplementary payments may only be refunded to partners provided that the company's net worth does not become less than the sum of the capital stock and the legal reserve and that the respective partner has already fully paid his share.
2. Supplementary payments may not be refunded after the company has been declared bankrupt.
3. The refund of supplementary payments depends on a decision of the partners.
4. Capital stock may not be increased when supplementary payments have not been refunded to the partners who have made them, except by their total or partial conversion.

**Section VIII**  
**Profits and legal reserve**

Article 314  
**(Profits)**

1. The distributable profits of the accounting period have the destination that has been decided by the partners.
2. The articles of incorporation may provide for a percentage, not less than twenty-five percent and not more than seventy-five per cent, of the distributable profits of the accounting period to be distributed to shareholders.
3. The claims of the partners to his share of the profits fall due thirty days after the date of the decision on the allocation of profits.

Article 315  
**(Legal reserve)**

1. From the profits of the accounting period, a part not less than twenty percent shall be retained by the company as a legal reserve, and it shall not be less than one fifth of the capital stock.
2. The articles of incorporation may set higher minimum amounts for the legal reserve.

Article 316  
**(Utilização da reserva legal)**

The legal reserve can only be used to:

- a) increase share capital;
- b) cover the portion of losses from the previous accounting period that cannot be covered by the profits of the accounting period nor by using other reserves determined by the articles of incorporation.

**Section IX**

## **General assembly, direction and supervision**

### **Subsection I General assembly**

#### **Article 317 (General assembly)**

1. At general meetings of limited companies the provisions on general meetings of joint stock companies apply in all matters not specifically regulated for these.
2. Any partner of a limited company may exercise the rights granted to a minority of shareholders of a joint stock company with respect to the convocation and the inclusion of matters on the agenda.
3. The convocation of general assemblies is incumbent upon anyone of the directors and shall be by letter, issued at least fifteen days beforehand, unless the law or the articles of incorporation require other formalities or establish a longer term.
4. No partner may be barred from attending the general assembly meetings, including those who are deprived of exercising their right to vote.
5. The minutes of general assemblies shall be signed by all partners who have participated in them.

#### **Article 318 (Determination of the majority)**

1. Every two hundred and fifty thousand meticaï of the nominal value of the share represents one vote.
2. However, the articles of incorporation may assign, as a special right, two votes for every two hundred fifty thousand meticaï of the nominal value of the share or shares of the partner.
3. Unless the law or the articles determine otherwise, decisions are considered made when they receive the majority of the votes cast.
4. In calculating the vote abstentions are not counted.

#### **Article 319 (Scope of competence of the partners)**

1. It is incumbent upon the partners to decide on the following matters:
  - a) amendments of the by-laws, without prejudice to the provisions of number 2 of article 94;
  - b) exercise of the right of preference on transfers of shares *intra vivos*;
  - c) exclusion of a partner and redemption of his shares;
  - d) acquisition of own shares of the company;
  - e) approval of the balance and company accounts and of the management report;
  - f) distribution of profits;
  - g) appointment and dismissal of directors;
  - h) need and refund of supplementary payments;
  - i) appointment and dismissal of members of the supervisory board or of the single supervisor;
  - j) merger, division, transformation and dissolution of the company;

- l) approval of the final accounts of the liquidators;
  - m) acquisition of participations in companies with an objective that differs from that of the company, in business and industry corporations and or in companies governed by special laws.
2. The law or the articles of association may determine other matters to be subject to decision by the partners.

## **Subsection II Direction**

### Article 320 **(Function and nature)**

1. The limited company is managed by one or more directors who, in addition to being able to constitute a collegial body, may be strangers to the society.
2. The direction meets whenever called by anyone of the directors and minutes shall be made of these meetings.

### Article 321 **(Appointment of directors. Duration of mandate)**

1. Directors may be appointed in the articles of incorporation or elected by a decision of the partners.
2. Unless otherwise determined in the by-laws the directors exercise their office for four years and may be reelected.
3. Directors can be represented in the exercise of their functions, provided the by-laws explicitly authorize this.

### Article 322 **(Substitution of directors)**

1. In case all directors are temporarily or permanently absent any partner may perform acts of an urgent nature that cannot wait for the election of new directors or the termination of the absence in question.
2. The provisions on rights and obligations of directors apply to those who substitute them.

### Article 323 **(Functioning of the direction)**

1. If there is only one director, the company is considered bound by acts undertaken on behalf of it by that director within the limits of his powers.
2. If the direction is composed of two directors, both have equal powers of administration, and the company is considered bound by acts undertaken on behalf of it by any of them within the limits of their powers, or by the two together if the by-laws so determine.
3. The by-laws may create a board of directors consisting of at least three members and unless there are provisions to the contrary in the by-laws decisions that have the votes of a majority of the directors are considered made.

4. Unless there are provisions to the contrary in the by-laws the company is bound by legal transactions concluded by the majority of the directors or ratified by a majority.
5. The provisions in the previous numbers do not prejudice the application of the rule of article 152 to the company's relations with third parties.
6. Unless there are provisions to the contrary in the by-laws the board of directors may delegate to one or some of the directors the powers to individually or jointly handle specified management matters of the company or to perform certain acts or categories of acts.
7. The delegation of powers provided for in the previous number shall be included in the minutes of the meeting of the organ that took the decision or in a particular document signed by a majority of the directors, with recognition of their signatures.
8. The board of directors meets informally or whenever called by any director and minutes shall be prepared from every meeting, which shall be signed by the directors present in the minute book or on a loose sheet or in a separate document and in the latter case the signature of the present directors shall be recognized by a notary.
9. In carrying out their responsibilities, directors shall respect the decisions of the partners regularly taken on matters of company management.

#### Article 324

##### **(Prohibition of competition)**

Administrators cannot, without the explicit consent of the partners, pursue on behalf of their own or others an activity within the scope of the company's objective, provided that it is pursued by it or that this has been subject to a decision by the partners.

#### Article 325

##### **(Remuneration of directors)**

1. Unless there are provisions to the contrary in the articles of incorporation directors have the right to earn a remuneration determined by a decision of the partners.
2. Any partner may request the court to reduce the remuneration of directors when it is disproportionate to the services rendered or to the situation of society.
3. Unless the articles of incorporation determine otherwise, the remuneration of directors may not consist wholly or partly in the sharing of profits from the company.

#### Article 326

##### **(Dismissal of directors)**

1. Partners may at any time decide to dismiss directors.
2. The articles of incorporation may require that the dismissal of any of the directors is decided by a qualified majority, or set other requirements. However, if the dismissal is based on just cause it may be decided by a simple majority.
3. If there is just cause, any member can ask the court to suspend and dismiss the director, in proceedings brought against the company.
4. If the company only has two partners, the dismissal of the director based on just cause can only be decided in court, in proceedings brought by the other.
5. A serious or repeated breach of the duties of the director constitutes just cause for dismissal. As a serious breach of the duties of the director are considered the following:

- a) the non-registration or late registration of acts subject to his powers and not maintaining and updating the company books;
  - b) pursuing on behalf of himself or others, a business that competes with the company, unless there is prior consent of the partners.
6. The director who is dismissed without just cause is entitled to receive, as compensation, the remuneration to the extent agreed in the articles of incorporation or until the end of the duration of the exercise of his office or, in the absence of a fixed duration, the remuneration equivalent to two accounting periods.

### **Subsection III Supervision**

#### **Article 327 (Supervision)**

If the deed or written document of incorporation of the company establishes a supervisory board, then the provisions relating to the supervisory board of limited companies will apply to him to the extent that these can be applied.

### **Chapter V Limited company with one single partner**

#### **Article 328 (Single shareholder limited company)**

1. Any individual may constitute a limited company of whose capital, which consists of a single share, he is initially the sole owner, and which is governed by the provisions of this chapter and, mutatis mutandis, the provisions applicable to limited companies.
2. The provisions of this chapter apply to single shareholder limited companies while sole proprietorship remains, and to limited companies that subsequently come to have a single shareholder, provided that the plurality of members is not re-established within a period of ninety days.

#### **Article 329 (legal transactions between the single shareholder and the company)**

1. The legal transaction directly or through an intermediary entered into between the company and the shareholder shall always be in writing, and it shall be necessary, useful or convenient for achieving the objective of the company, on pain of being null and void.
2. The legal transaction referred to in the previous number shall always be subject to a prior report elaborated by an accounting auditor not related to the company who, in particular, states that the company interests are properly safeguarded and that the transaction complies with normal market conditions and prices, on pain of not being able to be concluded.

#### **Article 330 (Decisions of the single shareholder)**

Decisions on matters that by law pertain to the decision making of the partners shall be made personally by the single shareholder and entered in a book intended for that purpose, while being signed by him.

**Chapter VI**  
**Joint stock company**

**Section I**  
**General provisions**

**Subsection I**  
**General Provisions**

Article 331  
**(Characteristics)**

In a joint stock company capital is divided into shares and each partner limits his liability to the value of the shares he has subscribed to.

Article 332  
**(Number of shareholders)**

1. The joint stock company can not be formed by less than three members, except when the law grants dispensation.
2. Excluded from the provision of number 1 are companies in which the state, directly or through mediation of public enterprises, state enterprises or other entities that are legally similar in this regard, is a shareholder, and these may be constituted with a single partner.

Article 333  
**(Mandatory content of the articles of incorporation)**

Subject to the provisions of article 92 of this Code, the articles of incorporation shall especially include:

- a) the number and nominal value of the shares;
- b) special conditions, if any, to which the transfer of shares is subjected;
- c) the categories of shares created or to be created, with an explicit indication of the number of shares and rights assigned to each category;
- d) whether the shares are nominative or to bearer and the rules for their possible conversion;
- e) the amount of capital raised and the deadlines for paying capital that only has been subscribed to;
- f) the authorization, if given, for issuing bonds;
- g) the structure of the direction and supervision of the company.

Article 334  
**(How to become a partner)**

The capacity of partner is acquired with the grant by the articles of incorporation or the registration of the decision to increase capital, and it does not depend on the issue and delivery of the stock certificate.

Article 335

**(Constitution with full capital subscription of the founders)**

If those who wish to found a joint stock company fully subscribe to the capital, then they may as soon as they consider the conditions from the previous article fulfilled, definitely incorporate the company.

Article 336

**(Subscription and payment of capital)**

1. The joint stock company can only be incorporated through the subscription of the entire capital stock, at least twenty-five percent of which must be paid.
2. The payment of capital in kind or the payment of the premium of issue, in case this exists, will not be delayed, with the exception of the provision in number 6 of article 115.

**Subsection II**

**Public subscription**

Article 337

**(Incorporation by public subscription)**

1. The incorporation of the company through public subscription shall be promoted by one or more persons, promoters, individuals or corporate bodies, who are jointly and severally liable for the entire process up to the registration of the company.
2. The promoters shall subscribe and pay in cash shares whose nominal values account for at least ten percent of the capital, which cannot be alienated or encumbered before the accounts of the third accounting period have been approved.
3. Companies incorporated by public subscription can only have ordinary shares of the same category, and capital can only be paid in money.
4. Public subscription can be intermediated by a banking institution that will subscribe, without prejudice to the provision of number 2, to the capital stock of the company and that may subsequently pass on the shares it has subscribed to the public.

Article 338

**(Project)**

The promoters shall elaborate a complete draft of the articles of incorporation and request its provisional registration, while the draft must contain:

- a) the full proposal of the by-laws with a concrete and precise specification of the objective of the company;
- b) the number of shares for public subscription, as well as their nature and nominal value and the issue premium, if any;

- c) the period for subscription and the credit institutions where subscription can be made;
- d) the period within which the constituent general assembly will meet;
- e) the estimated amount of costs incurred by the promoters, if these are to be reimbursed by the company, pursuant to this Code;
- f) a technical economic and financial study on the prospects of the company, organized on the basis of true and complete data and of forecasts justified by the circumstances known at that date, containing the information needed to properly clarify those who might be interested in subscribing;
- g) the rules governing the allocation of the subscription, if this is necessary;
- h) an indication of the conditions in which the company is incorporated if the public subscription is incomplete or an indication that in such a case, it will not be incorporated;
- i) the amount of the deposit to be paid by the act of subscription, the time and manner of reimbursement of that amount in case the company will not be incorporated;
- j) the complete identification of the promoters and authors of the technical, economic and financial study provided for in this article, if differences occur.

Article 339  
**(Liability of promoters)**

All promoters of the company and, in the same terms, the authors of the technical, economic and financial study provided for in the previous article are personally, jointly and severally and without limited liability for the correctness and accuracy of the facts described in the draft.

Article 340  
**(Supervision by the foreign exchange authority)**

1. A copy of the draft of the articles of incorporation referred to in article 338 shall be submitted to the Central Bank, as the country's foreign exchange authority.
2. Eight days after the submission referred to in the previous number the promoters shall formulate a public offer of subscription, signed by them, which shall be registered by the entity responsible for commercial registration, jointly with the draft.

Article 341  
**(Validity of subscription)**

1. The company can only be incorporated if at least seventy-five percent of the shares offered to the public have been subscribed to and if this option is included in the draft pursuant to paragraph h) of article 338.
2. If the company fails to be incorporated within a period of three months from the start of the subscription, the promoters shall, within five days following the end of the subscription period, issue an announcement notifying the underwriters that they may draw from the depositary bank the amount of their deposit, and they shall cancel the registration of the project.
3. The notification referred to in the previous number shall be repeated after one month.

Article 342  
**(Publicity)**

1. Upon registration of the draft and the offer, the documents concerned shall be published in full.
2. The publication of the technical, economic and financial study provided for in paragraph f) of article 338 may be waived provided that it is made known that copies of it are available to any interested party, free of charge, at the banking institutions where the subscription may be made.

Article 343  
**(Constitutive general assembly)**

1. Upon expiry of the subscription period and when the company can be incorporated the promoters shall within eight days convene a meeting of all subscribers, in order to:
  - a) decide on the incorporation of the company;
  - b) approve the articles of incorporation;
  - c) appoint the directors.
2. The convocation shall have two dates so that the assembly can take place on second call, and it shall comply with the provisions on general assemblies of joint stock companies.
3. The assembly is chaired by one of the promoters and the secretary shall be a subscriber who is not a promoter, to be indicated by the assembly.
4. Attendance lists shall be made of the meetings and minutes drawn up pursuant to articles 147 and 148 of this Code.
5. All documents concerning subscription and, in general, the incorporation of the company shall be made available to all subscribers, from the publication of the convocation onwards, which shall mention that fact, indicating the venue where they can be consulted.
6. In the assembly, each promoter and each subscriber has one vote, whatever the number of shares subscribed to.
7. On the first date set, the assembly can only meet when half of the subscribers are present or represented, not including the promoters, in which case decisions are taken by majority vote, including those of the promoters.
8. If on the second date half of the subscribers are not present or represented, including promoters, decisions are taken by two-thirds of the votes, including those of the promoters.
9. If the assembly cannot decide in accordance with the previous numbers on none of the dates stated in the convocation then the company cannot be incorporated and the provision of number 2 of the previous article applies.
10. In case the company fails to be incorporated all expenses incurred for the incorporation shall be paid by the promoters.

Article 344  
**(Changes of the project)**

1. With the unanimous vote of all, promoters and underwriters, changes in the draft of the articles of incorporation can be introduced.
2. If it is decided to incorporate the company even though the capital has not been fully subscribed to, then it shall be reduced to the amount subscribed to.
3. The act to alter the program shall be signed by the promoters and all the subscribers who have approved the incorporation of the company.

Article 345  
**(Invalidity of decisions)**

1. The rules on nullity, annulment and suspension of the proceedings of general meetings of partners apply to the decisions of the constituent assembly.
2. The declaration of nullity and annulment may also be requested on the basis of the falsehood of the report provided for in paragraph f) of number 1 of article 338 or of serious error of the forecasts referred to in that article, but the annulment may not be requested, irrespective of the grounds, after six months have elapsed since the registration of the incorporation of the company.
3. The provision in the previous number does not prejudice the civil and criminal liability of the promoters.

Article 346  
**(Registration of the incorporation)**

The minutes of the constitutive assembly serve as basis of the registration of the company.

Article 347  
**(Transferability of shares)**

Shares of companies incorporated by public subscription always freely transferable, provided that the company in its incorporation has obeyed the legal provisions that apply.

**Section II**  
**Shares**

**Subsection I**  
**Shares and their payment**

Article 348  
**(Value of the emission)**

1. The emission of shares below their nominal value is forbidden.
2. The by-laws shall determine the number of shares into which the capital of the company is divided.
3. When shares are issued against a higher than nominal value, the paid agio is subject to the rules governing the legal reserve.
4. The emission price of shares is determined in the general assembly.

Article 349  
**(Moment of payment of shares)**

1. The payment of the nominal value of the shares subscribed to may be deferred up to seventy-five percent of their nominal value.

2. The deferment of payment to a certain date determined or to be determined by the direction may not exceed five years.
3. If the direction is to determine the date and it fails to do so then the obligation to pay the shares matures five years after the date of registration of the memorandum of association of the company or of the decision to increase capital.
4. Payment of the emission premium cannot be deferred.

Article 350  
**(Types of shares)**

1. With the exception of different provisions by law or by the articles of incorporation, shares may be nominative or to bearer.
2. Shares shall be nominative:
  - a) Until they are fully paid;
  - b) When they cannot be transferred without the consent of the company;
  - c) When the shareholders have a preferential right in their transfer pursuant to the articles of incorporation;
  - d) in the case of shares whose holder is obliged under the articles of incorporation to make supplementary payments to the company.

Article 351  
**(Categories of shares)**

Both nominative and shares to bearer may be ordinary or preferential.

Article 352  
**(Ordinary shares)**

Ordinary shares are those that grant their holders the full extent of shareholder rights, including voting on resolutions of the general assemblies and electing the directors of the company.

Article 353  
**(Preferential shares)**

Preferential shares are those that grant their holders priority dividends in each accounting period, ensured in article 356, and that exceed in any case the values assigned to the holders of ordinary shares in the same period.

Article 354  
**(Voting right of preferential shares)**

1. The articles of incorporation may suppress the exercise of voting rights of preferential shares, except with regard to matters concerning the approval of the management report, the accounting statements and income statements of each accounting period.
2. The exercise of voting rights referred to in this article is full, with each preferential share having one vote.

3. Both for the purpose of voting for the approval of the accounts presented to the end of each accounting period as well as to discuss other matters, holders of preferential shares may participate in the general assembly of the company and supervise the directors pursuant to this Code.

Article 355

**(Recovery of the right to vote)**

Holders of preferential shares recover the full exercise of voting rights when the company for the period provided for in the articles of incorporation, not exceeding three consecutive accounting periods, interrupts the distribution of preferential dividends to holders, a right they maintain until the dividends are paid and, if cumulative, until the payment of the dividends in arrears.

Article 356

**(Preferential shares and advantages that may be guaranteed to preferential shares)**

1. To preferential shares is guaranteed the payment, with preference or priority, in relation to the holders of ordinary shares, of dividends on profits for the accounting period that are fixed or minimum, cumulative or not, in any case exceeding at least ten percent those assigned to ordinary shares.
2. The dividends actually distributed to preferential shares in each accounting period, although fixed or minimum, will be required to exceed the value of dividends paid to holders of ordinary shares ten percent.
3. Holders of preferential shares with the right to fixed or minimum dividends, cumulative or not, will, in case there are no profits to be distributed for the accounting period, receive in subsequent accounting periods the dividends not paid in previous accounting periods, with the balance of existing profits, after the normal payments of dividends of these last accounting periods, until the dividends in arrears are fully paid.

Article 357

**(Series or classes of ordinary shares)**

1. Ordinary shares of the company can be divided into series or classes in order to ensure their holders the following rights:
  - a) request to convert their shares into preferential shares;
  - b) see the legal requirements conferred upon these classes or types of shares being met;
  - c) to elect, separately, members of the board of directors or of the supervisory board, both member and substitute, in accordance with the articles of incorporation that have created this series of ordinary shares.
2. The amendment to the articles of incorporation that confers rights to holders of the various special classes of ordinary shares can only be promoted by the company with prior approval of two-thirds of the holders of the special class of shares in question, ensuring the dissenting shareholders of the same class the right of exoneration.

Article 358

**(Series or classes of preferential shares)**

1. Preferential shares may be divided into series or classes, ensuring their holders the following rights:

- a) request to convert their shares into preferential shares;
- b) guarantee in different ways that their owners have the rights, preferences and advantages referred to in article 356;
- c) to elect, separately, members of the board of directors or of the supervisory board, both member and substitute, in accordance with the articles of incorporation that have created this series of preferential shares

2. The amendment to the by-laws that confers rights to holders of the preferential shares can only be promoted by the company with prior approval of two-thirds of the holders of these shares, ensuring the dissenting shareholders of the same class the right of exoneration.

Article 359  
**(Forms of nominative shares)**

Nominative shares may be registered or book shares.

Article 360  
**(Nominative book shares)**

1. The articles of incorporation of the company may establish the creation of one or more series of nominative book shares, whether ordinary or preferential, which shall be kept in a deposit account in a bank authorized by the Central Bank, on behalf of their owners.

2. A company is liable jointly and severally with the depository banking institution for damages caused to the shareholder or to a third party, for any errors or irregularities in controlling the nominative book shares.

Article 361  
**(Ownership of nominative book shares)**

The ownership of nominative book shares follows, unless proven otherwise, from the registration of the name of the shareholder in a book or in proper control measures of the depository banking institution.

Article 362  
**(Transfer of nominative book shares)**

1. Nominative book shares are transferred by the depository banking institution when it records the entry in its books or control instrument on the debit side of the share account of the seller and on the credit side of the share account of the acquirer, upon a written order authorizing the operation, a document that will be filed with the depository banking institution.

2. If the new acquirer of the nominative book shares is not yet nominative shareholder of the company issuing the shares, then the depository banking institution will open a sheet or proper identification in the book or control instrument of shareholders, where the operations of alienation, cessation and transfer of new nominative book shares will be recorded.

3. The depository banking institution will provide a statement of account concerning the deposit of nominative book shares:

- a) whenever the shareholder so requests;
- b) monthly, independent of requests, when there have been operations in the deposit account;
- c) when there are no operations in the deposit account at least once a year.

Article 363  
**(Conversion of titles)**

1. Shares to bearer can be converted into nominative shares; constitutive nominative shares into shares to bearer if the articles of incorporation allow for shares to bearer.
2. The conversion is undertaken on the request and at the expense of the shareholder.
3. The company can execute the conversion by replacing the existing titles or by modifications in the respective text.

Article 364  
**(Coupons)**

Shares irrespective of their type can have coupons for the collection of dividends.

Article 365  
**(Liability for the payment of shares)**

1. Each shareholder is only liable for the payment of shares he has subscribed to.
2. In the case of deferral of cash contributions until a date to be determined by the direction, the shareholder only enters into delay after thirty days have passed since the notification of the decision by the direction that determines that date.
3. The initial subscriber and all those to whom shares have been transferred are jointly and severally liable for the payment of the shares.
4. If a shareholder or his predecessors enter into delay, the direction must notify them again so that they, within a further period of sixty days, pay the shares subscribed to that are in arrears, plus interest pursuant to the general law, under pain of losing the shares and the amount already paid for them to the company.
5. If the company has been incorporated by public subscription then, in the event of default, on the date of the dispatch of both the first and the second notification notices shall be published or posted to the subscribers in general.

Article 366  
**(Indivisibility and joint ownership)**

1. Each company share is indivisible.
2. The joint owners of a share shall exercise the rights inherent to it through a common accredited representative, and they are directly and jointly and severally liable for compliance with the obligations.

Article 367  
**(Suppression and restriction of special rights)**

1. The rights assigned to a special category of shares can only be suppressed, limited or restricted by a decision made at a general assembly of shareholders holding shares of this category, which has been especially convened for this purpose.
2. Changes to the articles of incorporation that affect in different ways various kinds and categories of shares, depend on a decision made at a especially convened general assembly of shareholders holding shares of each kind and category, by a two-thirds majority of the votes cast.

Article 368  
**(Transfer of special rights)**

Special rights are transferred with the shares they belong to.

Article 369  
**(Certificates representing shares)**

1. Each share shall have a serial number, which has to be included in the certificates in which they are incorporated.
2. The certificates that incorporate actions shall include:
  - a) the nature of the security;
  - b) the kind, category, serial number, nominal value and the total number of shares incorporated in each security;
  - c) the business name, registered office and registration number of the company;
  - d) the amount of capital stock;
  - e) the amount by which the shares incorporated in the certificate are paid;
  - f) the restrictions in the articles of incorporation concerning the transfer of shares;
  - g) the signatures of one or more directors, which can be represented by a seal.
3. The certificates representing the largest number of shares can be transformed into certificates representing a smaller number and vice versa, always at the request and the expense of the shareholder.

Article 370  
**(Delivery of certificates and provisional vouchers)**

1. The definitive certificates representing shares are to be delivered to the shareholders within six months after the act of incorporation of the company or of the capital increase.
2. Prior to issuing definitive certificates, the company can deliver to the shareholder provisional vouchers replacing for all purposes the definitive certificates while these have not been issued and which shall contain the information required for the definitive certificates.

Article 372  
**(Share registration books)**

1. At the registered office there will be a register of shares that shall contain, in sections separated by species, category of shares and nature of certificates, the following information:
  - a) the serial numbers of all shares;
  - b) the dates of delivery to the shareholders of the definitive certificates or, when these have not yet been issued, of the provisional vouchers;
  - c) the name and address of the first holder of each share;
  - d) the payments made for the release of the share;
  - e) the type, nominative or to bearer, of the share;
  - f) the conversions made;
  - g) the transformation of shares to bearer into nominative book shares;
  - h) transfers of nominative shares and the respective dates;
  - i) liens on shares incorporated in nominative certificates;
  - j) the re-issuing of preferential shares and the respective date;
  - l) redeemed shares and the amounts of redemption.
2. The share register shall also include, in separate sections, the shares held by the company itself.
3. A director or person appointed by the general assembly countersigns the entries in the book indicated in number 1 of this article.

Article 372  
**(Deposit of shares)**

1. The deposit of shares to bearer, for the purpose to attend a general assembly, may be made at any credit institution.
2. The chairman of the general assembly is obliged to admit the shareholders that present a document of deposit, provided it shows that the certificates have been deposited at least eight days before the occurrence of the general assembly and that the depositor has the number of certificates necessary to attend the meeting.
3. If the chairman of the general assembly does not admit the shareholder who has complied with the provision of the previous number he shall be subject to the penalty of the crime of qualified contempt, without prejudice to the civil liability resulting from that action.

Article 373  
**(How to make a deposit)**

1. The deposit is made on the basis of a written declaration by the interested part or by another person on its behalf, which identifies the company and the purpose of the deposit.
2. The statement is submitted in duplicate, with one of the copies staying with the depositor, mentioning that the deposit has been made.

**Subsection II**  
**Own shares**

Article 374  
**(Conditions for the purchase of own shares)**

1. The company may only purchase own shares as long as these are fully paid, with the exception of the provision in paragraph e) of number 3 of the following article.
2. The company may not accept shares representing its capital as collateral, except as security for the exercise of company functions.

#### Article 375

##### **(Restrictions and limits to the purchase of own shares)**

1. The articles of incorporation may totally prohibit the purchase of own shares or reduce the cases where it is permitted by this Code.
2. Except for the provision in the following number, a joint stock company cannot purchase own shares amounting to more than ten percent of its capital stock.
3. The limit established in the previous number may be exceeded or, in the event of a total ban, it may be disregarded when:
  - a) the acquisition results from compliance by the company, of legal provisions;
  - b) the acquisition is gratuitous;
  - c) a property is purchased in universal ownership;
  - d) the acquisition is made in enforcement proceedings if the debtor has no other assets that suffice;
  - e) the acquisition results from the failure to pay for their shares by subscribers.
4. The company may only purchase own shares if, by so doing, its net worth does not become less than the sum of the capital stock, the legal reserve and the mandatory statutory reserves.
5. All purchases made in violation of the legal provisions set forth in this subsection are null and void, making liable those who intervene in the purchase of own shares.

#### Article 376

##### **(Decision on the purchase of own shares)**

1. The purchase of own shares is subject to a decision of the general assembly.
2. The company decision shall indicate specifically:
  - a) the object;
  - b) the price and other terms of purchase;
  - c) the term;
  - d) the limits of variation within which the direction can purchase.

#### Article 377

##### **(Alienation of own shares)**

The provision in the previous article applies to the alienation of own shares.

#### Article 378

##### **(Negotiation with own shares)**

1. The company can only negotiate with its own shares:
  - a) in redemption and reimbursement operations pursuant to this Code;

- b) to keep them in treasury, provided they are purchased by the company with values available from profits and reserves, with the exception of the legal reserve, and without affecting the capital stock;
  - c) to reduce the capital stock pursuant to this Code;
  - d) in the event of repurchase, to prevent degradation of price quotations provided they have been previously authorized by the Central Bank.
2. While held in treasury, the shares have no dividend or voting rights.
  3. The annual management report shall obligatorily contain:
    - a) the number of treasury shares purchased in the course of the accounting period and the reasons for the purchases;
    - b) the number of treasury shares alienated sold in the course of the accounting period and the reasons for the alienations.

Article 379  
**(Redemption of shares)**

The redemption operation is for the removal of shares from the market when the company in accordance with this Code, wishes to reduce its capital stock.

Article 380  
**(Reimbursement of shares)**

1. Reimbursement is the operation whereby, in the cases provided for in this Code, the company pays dissenting shareholders in accordance with the decision of the general assembly the value of their shares.
2. The articles of incorporation regulate the proper way to calculate the reimbursement amount, which may not be less than the actual value of the shares, determined as provided for in this Code.
3. The reimbursement amount can be paid from the profits or the free reserves, and in these cases the redeemed shares stay in the treasury.

Article 381  
**(Suspension of rights)**

The rights attached to own shares of the company are considered to be suspended, with the exception of the right of the company to receive new shares in the event of a capital increase by incorporation of reserves.

**Subsection III**  
**Public share offering**

Article 382  
**(Addressees and conditions of offerings)**

1. The public share offering is directed to:
  - a) all shareholders, or

b) the holders of a category of shares, with the exception of the offerer himself or of companies related to the offering or of a group with an offering company.

2. The public offering may be dependent on its acceptance by holders of a certain number of shares and even then it may be limited to a higher maximum number of shares.

#### Article 383

#### **(Offering proceedings)**

All proceedings of the public offering, including its launch, content and compensation are defined by the legislation governing the stock market.

#### Article 384

#### **(Transfer of certificates representing shares)**

1. Shares are transferred by the transfer of the certificates in which they are incorporated.

2. The nominative certificates are transferred *inter vivos* by endorsement written in the certificate and by registration in the share registration book.

3. Certificates to bearer are transferred by simple delivery, and the exercise of rights attached to them is dependent on their possession.

#### Article 385

#### **(Legal restrictions to transfers)**

Provisional vouchers or certificates representing shares whose transferability is constrained by legal or statutory provisions shall specifically mention this on the front, in an easily understandable manner.

### **Section III**

#### **Bonds**

#### Article 386

#### **(Concept)**

Bonds are certificates representing a loan, issued in assets by the company, which are negotiable and which in a single issue confer equal credit rights for the same nominal value.

#### Article 387

#### **(Modalities of bonds)**

1. Bonds may be nominative or to bearer.

2. In any of these modalities bonds may be issued that:

a) give the holders the right to a fixed interest and to a supplementary interest or a redemption premium, either fixed or dependent upon the profits made by the company;

b) state interest and a reimbursement plan, depending on profits and dependent variables in function of their amount;

c) allow its conversion into shares, with or without emission premium;

d) confer the right to subscribe to one or several shares.

Article 388  
**(Emission limits)**

Bonds cannot be issued if there are shareholders in delay or if they exceed the amount of capital paid and existing, in terms of the last approved balance sheet.

Article 389  
**(Emission conditions)**

1. Bonds may only be issued by joint stock companies whose last two balance sheets are approved or that have resulted from the merger or division of companies of which one at least meets this requirement.
2. New bonds can only be issued when the bonds of a previous emission are fully subscribed to and paid.

Article 390  
**(Decision on emissions)**

1. Shareholders should decide the emission of bonds, unless the articles of incorporation authorize emissions to be decided by the direction.
2. The articles of incorporation or the shareholders through their decision may authorize the emission of bonds in installments, in a series determined by the direction or the shareholders, but such authorization shall forfeit after five years for the series that have not yet been issued.
3. A new series can only be issued when the bonds of previous series are subscribed to and paid.

Article 391  
**(Minimum content of emission decisions)**

1. The decision approving a bond emission shall at least contain:
  - a) the global amount of the emission and the reasons justifying it, the nominal value of the bonds, the price at which they are issued and reimbursed or the manner to determine this;
  - b) the interest rate and, depending on the case, the method to calculate the provision for payment of interest and reimbursement or the fixed interest rate, the criterion to determine supplementary interest or the reimbursement premium;
  - c) the loan redemption plan;
  - d) the identification of the subscribers and the number of bonds to be subscribed to by each, when the company does not use a public subscription.
2. The decision that approves an emission of convertible bonds shall also indicate:
  - a) the basis and terms of conversion;
  - b) the issue or conversion premium;
  - c) whether the shareholders are to be deprived of the right conferred in number 1 of article 441 and the reasons for such a measure.

Article 392  
**(Deed of emission)**

1. The contract conditions of the loan by the company with the purchasers of the bonds shall consist of the emission document that, as normative act and unilateral manifestation of the will of the issuing company, shall govern the relationships between the company and bondholders.
2. The emission document shall contain all obligations assumed by the company with respect to the bondholders, the guarantees provided, the conditions of release and they will necessarily have the approval of the trustee of the bondholders, in order to monitor compliance with the legal requirements governing the release of this title.
3. The Central Bank shall establish, through normative instruction, the mandatory clauses that have to be contained in the deed of emission.

Article 393  
**(Incomplete Subscription)**

When bonds are issued and only part of them are being subscribed to during the period established for the subscription, the emission is limited to the amount subscribed to.

Article 394  
**(Commercial registration)**

1. Subject to commercial registration is each emission of bonds, as well as the emission of each series of bonds.
2. While commercial registration of the emission of the bonds or the series has not taken place the respective certificates may not be issued.

Article 395  
**(Contents of certificates representing obligations)**

1. The certificates representing bonds shall clearly indicate:
  - a) the business name, the registered office and the registration number of the company;
  - b) the date of the decision on emission;
  - c) the date of the commercial registration of the emission;
  - d) the number of bonds issued, the nominal value of each bond, the total amount of bonds of the emission;
  - e) the rate and manner of payment of interest, the terms and conditions of reimbursement;
  - f) the bond sequence number;
  - g) special guarantees of the bond;
  - h) the type of bond and the rights they confer;
  - i) the series;
  - j) any other specific characteristics of the emission.
2. The certificate of the bond is signed by one or more directors of the company, and may be signed by seal, which may take place through the use of a stamp or by reproduction by means of a printing or any other mechanical process.
3. The nominal value of the bond must be expressed in national currency, unless payment in foreign currency is authorized.

Article 396  
**(Own obligations)**

The company can only purchase its own bonds in the cases provided for in number 3 of article 375 and when the condition laid down in number 4 of the same article has been met.

Article 397  
**(Assembly of bondholders)**

1. The assembly of the bondholders is the competent body to decide on any matter related to the rights of the bondholders as far as the company is concerned, including on the adoption of legal measures in order to preserve these rights.
2. The assembly may be convened by the trustee, by the company, by bondholders representing at least ten percent of the bonds issued, by the supervisory board, if there is one, or by the Central Bank.
3. The assembly will be held on first call with bondholders representing at least half of bonds in circulation and on second call, with any number.
4. The quorum for decisions is the absolute majority of those present, not counting the votes that are null and blank.
5. Decisions on proposals leading to changes in the emission document of bonds require the approval of more than half of the bonds in circulation, and the decision in question is binding for all bondholders, who cannot oppose it nor individually exercise rights grounded in the previous emission, which is the subject of the approved amendments.
6. In assembly decisions each bond carries one vote.

Article 398  
**(Trustee of bondholders)**

1. The bondholders' trustee represents, in accordance with this Code and the emission document of the bonds, the interests of the communion of bondholders towards the issuing company.
2. The trustee is appointed in the emission document of the bonds, which fixes their remuneration, and they may be removed at any time, by the assembly of the bondholders, through the decision quorum referred to in number 5 of the previous article, at which time, observing the same quorum, his substitute is elected.
3. Only one individual can hold the office of trustee, and for his appointment the same requirements of this Code for the election of the company director are to be met.
4. When issued bonds are to be placed on the market, the appointment and dismissal of the trustee depend on approval by the Central Bank, which supervises the exercise of his functions.
5. When bonds are to be placed on the market the emission document of bonds and the Central Bank will specify the duties and responsibilities of the trustee.
6. Among the duties of the trustee is the protection of the rights and interests of the bondholders, as well as the monitoring of compliance with the obligations borne by the company, contained in the document of emission, and the trustee assumes, where applicable, the sole responsibility of director of the assets of third parties.

Article 399  
**(Guarantees provided by obligations)**

Bonds may, in accordance with the provisions of the deed of emission, provide the following guarantees to bondholders:

- a) real guarantee;
- b) bail;
- c) general privilege on the goods that are part of the company's assets;
- d) other forms of guarantees established in the emission document or determined upon instruction of the Central Bank, in the case of bonds to be placed on the market.

Article 400  
**(Bonds that are convertible into shares)**

1. The emission document, which establishes the creation of bonds convertible into shares, shall specify:
  - a) the bases of conversion;
  - b) the categories, types or classes of shares into which the bonds may be converted;
  - c) the period or time for the exercise of conversion rights;
  - d) the identification of the subscribers and the amount of bonds to be subscribed to by each;
  - e) other conditions that subordinate the conversion operation.
2. Any amendment to the articles of incorporation that can change the rights of subscribers of bonds convertible into shares depends, while the conversion does not occur, on the approval of an absolute majority of the bondholders pursuant to and for the purposes set out in number 5 of article 397 of this Code.
3. Only companies whose shares are quoted on the stock market may issue bonds convertible into shares.

Article 401  
**(Supplementary interest)**

1. Supplementary interest of bonds may be:
  - a) fixed and only dependent on the existence of profits distributable in an amount equal to the supplementary interest;
  - b) variable and corresponding to a percentage not higher than ten percent of the established distributable profits.
2. It is allowed to establish that in any of the types of supplementary interest provided for in the previous number, the interest is only due if the distributable profits exceed a fixed amount or a fixed percentage of the capital, and the bondholders are entitled only to fixed interest if no distributable profit is established exceeding that limit.
3. If there is supplementary interest the accounting auditor issues an opinion on the establishment of the profit and particularly on the correctness and the justification of redemption and provisions made.
4. The distributable profit to be considered for the payment in a given accounting period of supplementary interest is that of the previous accounting period.

Article 402

**(Payment of supplementary interest and of the reimbursement premium)**

1. The supplementary interest for each year must be paid one or more times, separately or in conjunction with the fixed interest, in accordance with the provisions of the emission.
2. In case the redemption of a bond occurs prior to the date on which the supplementary interest falls due the issuing company shall provide a document to the holder that allows him to exercise his right to an eventual supplementary interest.
3. The reimbursement premium shall be fully paid on the date of redemption of the bonds, which cannot be fixed for a moment preceding the deadline for approval.

Article 403

**(Right of preference)**

1. Shareholders have preferential rights to subscribe to convertible bonds, and the provisions of article 441 apply.
2. Not allowed to take part in the vote to suppress or limit preferential rights of shareholders to subscribe to convertible bonds are all those who can benefit from such suppression or limitation, and their actions are not taken into account for purposes of meeting the quorum or the majority required for making decisions.
3. The decision to issue bonds may establish preferential rights of shareholders or bondholders in the subscription to the bonds to be issued, and their exercise is to be regulated.

Article 404

**(Prohibition of alterations)**

1. The conditions fixed by decision of the general assembly of shareholders to issue bonds can only be changed without the consent of the bondholders, provided that the change does not lead to any reduction of their advantages or rights or to an increase of their duties.
2. From the date of the decision to issue bonds convertible into shares, and while it is possible for any bondholder to exercise the right of conversion, it is forbidden for the company to alter the conditions of distribution of profits fixed in the memorandum of association, to distribute to the shareholders, for any reason, own shares and to grant privileges to existing shares.
3. If the capital is reduced as a result of losses, the rights of bondholders who opt for conversion are reduced correspondingly, as if these bondholders had been shareholders from the emission of the bonds onwards.
4. During the period of time referred to in number 2, the company may only issue new bonds convertible into shares, change the nominal value of its shares, distribute reserves among shareholders, increase the capital stock through new participations or by incorporation of reserves and take any other action that may affect the rights of bondholders that opt for conversion, on the condition that these are guaranteed equal rights as shareholders.
5. The rights referred to at the end of the previous number do not include the right to receive any bond yields or to participate in the distribution of free reserves for the period preceding the date on which the conversion starts to produce its effects.

Article 405

### **(Interest and dividends of convertible bonds)**

1. Bondholders are entitled to interest on their bonds till the time of conversion which, for this purpose, is always at the end of the quarter in which the conversion request is submitted.
2. Emission conditions shall always include the allocation scheme of dividends that will be applied to the shares into which the bonds are converted in the accounting period during which the conversion takes place.

### Article 406

#### **(Registration of capital increases)**

1. The increase in capital stock resulting from the conversion of bonds into shares is subject of written minutes of the decision.
2. These minutes shall be registered:
  - a) within thirty days after the deadline for the submission of the conversion request when, in terms of emission, the conversion shall be made in one go at a determined moment;
  - b) within thirty days following the end of each period for the submission of the conversion request when, in accordance with the emission terms, the conversion can be made in more than one time.
3. If the decision on the emission determines only one moment from which the conversion right may be exercised, then the capital increase shall be registered immediately after occurring in July and January of each year, and each registration shall cover the increase resulting from the conversions requested during the immediately preceding quarter.
4. The conversion is considered to have taken effect for all purposes:
  - a) in the cases provided for in number 2, on the last day of the term for filing the request;
  - b) in the cases provided for in number 3, on the last day of the month immediately preceding the one in which the capital increase covering this conversion is registered.
5. The registration of the capital increase shall be made within thirty days from the granting of the relevant documents.

### Article 407

#### **(Emission of new shares by conversion of bonds)**

Within one hundred and eighty days after the registration of the capital increase resulting from the emission, the direction of the company shall issue new shares and deliver them to their owners, unless the conversion requests can be satisfied with shares already issued and that are available for this purpose.

### Article 408

#### **(Composition with creditors and dissolution of the company)**

1. If the company issuing convertible bonds establishes a composition with its creditors, then the conversion may be exercised immediately after the composition is approved and according to the conditions established by it.
2. If the company that has issued convertible bonds is dissolved, without this fact resulting from a merger, the bondholders may, in the absence of suitable guarantees, demand anticipated reimbursement.

Article 409  
**(Subscription bonus)**

1. The authorized business corporation may, within the limit of the authorization, by a decision of the general assembly issue marketable securities named subscription bonus, which ensure their holders the right to subscribe to shares of the company, when the subscribed capital increase takes place [please check, original unclear].
2. When the company decides to increase the subscribed capital stock in accordance with this Code, the holders of subscription bonuses, upon presentation of their titles to the company and the payment of the emission price of the shares, will subscribe to and pay the capital stock within the limits conferred and contained in those titles.
3. The subscription bonus certificates will contain the title name, the name and identification of the issuing company, the sequence number, the category and series of the shares that may be subscribed to on the basis of the title, and by the time the subscription right may be exercised, the name of the holder, the date of emission of the certificate and the signature of two directors.
4. It is mandatory for the subscription bonus to be nominative and as far as its control and transfer are concerned the regulations of this Code for the control and transfer of nominative shares apply.

**Section IV**  
**Shareholders**

**Subsection I**  
**Resident shareholders or shareholders living abroad**

Article 410  
**(Resident shareholder or shareholder living abroad)**

1. The resident shareholder or the shareholder living abroad shall notify the company on the complete identification of the person who will receive, on his behalf, communication from the company as well as notifications and citations concerning administrative and judicial proceedings in which he as a shareholder is involved.
2. For the purposes of this Code, while resident or living abroad, this shareholder is deemed duly notified from the date on which the communication is made by the company to the person accredited by him.

Article 411  
**(Agreement of shareholders)**

1. Shareholders owning shares of any category or series may compose their interests by means of a shareholders agreement, formalized in writing, provided they do not enter into conflict with the interests of the company, the normative content of this Code and the principles governing its systematization and application.
2. Subject to the provision of the previous number, the shareholders agreement, among other things, can involve:

- a) the buying and selling of shares and securities convertible into shares issued by the company;
  - b) the exercise of the right to vote for the occupation of management positions in the company;
  - c) the adoption of common and legitimate initiatives aimed at acquiring or preserving the control of the company;
  - d) the adoption of policies concerning investment and the distribution of company profits.
3. The shares involved in a shareholders agreement cannot be alienated on the stock exchange or on the securities market.

## **Subsection II Decisions of shareholders**

### Article 412 **(Form and scope of decisions)**

1. The shareholders make decisions either in accordance with number 4 of article 128 or in general meetings duly called and held.
2. Shareholders make decisions on matters specially assigned to them by law or by the agreement and which are not subject to the powers attributed to other bodies of the company.
3. The shareholders may only act on matters of company management at the request of the board of directors

### Article 413 **(Registration of attendance)**

1. Shareholders who attend the assembly, including preferential ones, shall sign the Shareholders Attendance Book, identifying themselves and stating their name, domicile and quantity, category and series of shares they hold.
2. The chairman of the assembly, prior to opening the meeting checks the quorum by means of the records of the signatures in the Shareholders Attendance Book, as well as the number of preferential shares.

### Article 414 **(Participation in the general assembly)**

1. Every shareholder, with or without voting rights, is entitled to attend the general assembly and discuss the matters submitted for approval, provided he can prove to be a shareholder.
2. Whenever the articles of incorporation require the possession of a certain number of actions to confer voting, shareholders holding a number of shares less than the number required may join one another in order to complete the required number and be represented by one of the shareholders thus grouped together.
3. The shareholder is allowed to be represented at the general assembly by a proxy who is a lawyer, a shareholder or a director of the company, appointed with a written power of attorney granted during a fixed term of up to twelve months and with an indication of the powers conferred.
4. The legal representative of the shareholder is legitimately attends and exercises all rights conferred by the shares held by the one he represents.

5. The presence in the general assembly of any person not named in the previous numbers depends on the authorization of the chairman, but shareholders may object to such authorization.

#### Article 415

#### **(Documents to be made available to shareholders)**

1. Until one month before the date of the ordinary general assembly the directors shall provide the following documents to the shareholders:

a) the management report containing the businesses and main events that occurred in the previous accounting period;

b) copies of accounting statements, accompanied by the opinion of independent auditors and of the supervisory board, if any.

2. The shareholders are notified that the documents are at their disposal at the registered office of the company by means of the publication of a notice in a daily newspaper of general circulation, at least one month before the date set for holding the assembly.

3. Regardless of whether the shareholders are aware of the contents of the documents, their publication in a daily newspaper of general circulation, at least ten days before the date ordinary general assembly is held, is indispensable.

#### Article 416

#### **(Convocation of the assembly)**

1. The call notice shall be published at least thirty days before the general assembly is held.

2. The by-laws may impose additional formalities on the convocation of the shareholders and may allow the substitution of publications by the mailing of letters to the shareholders, with the same period in advance, when all shares are nominative.

#### Article 417

#### **(Votes)**

1. Unless otherwise provided in the articles of incorporation, each share represents one vote.

2. The articles of incorporation decide to have only one vote correspond to a certain number of shares, provided all shares issued by the company are covered and that one vote corresponds to at least every twenty thousand meticaïs of capital.

3. From the delay in paying the capital onwards and while this lasts, the shareholder cannot exercise the right to vote.

4. Plural voting is prohibited.

### **Section V**

### **Direction**

#### Article 418

#### **(Composition of the board of directors)**

1. The board of direction is composed of an odd number of members, who may or may not be shareholders of the company.
2. The articles of incorporation may authorize the appointment of substitute directors to a maximum number of three, whose order of precedence shall be established by election and that, if no decision is made, is determined according to age.

Article 419  
**(One single director)**

The articles of incorporation may determine in a clause that the joint stock company has only one director, who can be stranger to the company, provided that the capital stock does not exceed five hundred million meticaïs; to the single director apply the provisions concerning the direction that do not presuppose the plurality of directors.

Article 420  
**(Duration of the mandate and representation)**

1. The directors are appointed or elected for a period of four years, unless the partnership articles of incorporation establish a shorter period, and they can be re-elected once or more times.
2. Once the mandate expires the directors remain in office until new directors have been appointed.
3. It is forbidden for the directors to be represented in the exercise of their office, except by another director in meetings of the board of directors, by means of a letter addressed to the board.
4. The company, through the board of directors, has the power to appoint attorneys for specific acts or categories of acts, without the need for the articles of association to contain provisions to that end.

Article 421  
**(Impediments)**

Ineligible for whichever office in the direction of the company are persons barred by special laws, including those governing the capital market under the responsibility of the Central Bank, or who have been convicted of bankruptcy crime, malfeasance, bribery, graft or embezzlement against the economy and consumer rights, public faith, property and the environment, or by a criminal penalty that prohibits, even temporarily, access to public office.

Article 422  
**(Substitution of directors)**

1. In the case of the definitive absence of a director, the assembly proceeds with his substitution by calling the first substitute.
2. In the absence of substitutes, the first general assembly that follows shall, even when the matter is not on the agenda, elect one or more directors, to hold office until the end of the mandate of the remaining directors.

Article 423  
**(Chairman of the board of directors. Casting vote)**

1. The chairman of the board of directors may be chosen either by the board of directors or be appointed by the general assembly that elects the directors, whichever is determined by the articles of incorporation.
2. The articles of incorporation may grant to the chairman of the board the vote in the deliberations of that body.

Article 424  
**(Bail and remuneration)**

1. The liability of the directors is to be bailed if the articles of incorporation so determine.
2. The remuneration of the directors is to be determined by the articles of incorporation or, when these offer no provision, by the general assembly or a committee of shareholders elected by it.

Article 425  
**(Investiture and registration)**

1. Directors, under pain of nullity, are invested in their positions by signing the term of tenure in the minute book of the board of directors.
2. Directors, although appointed for a limited period, remain in their respective functions until the election and entrance into office of their substitutes.
3. The directors shall declare, by signing the term of tenure, the number of shares, subscription bonuses, options to purchase shares and bonds convertible into shares issued by the company and by companies controlled by the same group that they hold or have acquired through other persons.

Article 426  
**(Confidentiality imposed on the directors)**

The directors of the company shall strictly perform their duties as trustees of all shareholders, whether these are controlling or minority shareholders or holders of preferential shares, and their rights shall be treated equally, regardless of the participation of each in the capital stock.

Article 427  
**(Transactions with the company)**

1. Contracts entered into between the company and its directors, directly or through an intermediary, are null and void unless they have been previously authorized by a decision of the board of directors in which the interested party cannot vote, and with the favourable opinion of the supervisory board or the single supervisor.
2. The foregoing provision shall extend to acts or contracts entered into with companies that are controlled by, or form a group with, that of which the contractor is director.

3. The provision in numbers 1 and 2 do not apply when the act is part of the business of the company and no particular advantage results from or has been granted to the contracting director.

Article 428

**(Prohibition of competition)**

1. It is forbidden for directors, without permission of the general assembly, to exercise on their own behalf or that of or others, activities falling within the objective of the company.
2. The director who breaches the provision in the previous number, in addition to being dismissed with just cause as director, is liable for the payment of an amount equal to the value of the act or contract entered into illegally.

Article 429

**(Other prohibitions with respect to the director)**

1. It is also forbidden to the administrator:
  - a) without prior approval of the general assembly or the board of directors, borrowing funds and assets of the company, or use their services and credit for the benefit of yourself or others, as well as third party receiving any kind of personal advantage, due to the exercise of his office;
  - b) acts of generosity at the expense of society, except when authorized at a meeting of the board and for the benefit of employees or the community where the company acts in view of their social responsibilities;
  - c) fails to seize business opportunity in the interest of society, seeking to obtain advantages for themselves or others;
  - d) acquire, objectify profitable resale, or any other direct or indirect benefit as well or right that is necessary for society, or who intends to acquire.
2. The administrator elected by a group or class of shareholders has to society, the same duties as other directors.

1. É ainda vedado ao administrador:

- a) sem prévia autorização da assembleia geral ou do conselho de administração, tomar por empréstimo recursos e bens da sociedade, ou ainda usar os seus serviços e crédito, em proveito próprio ou de terceiros, bem como receber de terceiros qualquer modalidade de vantagem pessoal, em razão do exercício do seu cargo;
  - b) praticar actos de liberalidade às custas da sociedade, salvo quando autorizado em reunião do conselho de administração e em benefício dos empregados ou da comunidade onde actue a sociedade, tendo em vista as suas responsabilidades sociais;
  - c) deixar de aproveitar oportunidade de negócio do interesse da sociedade, visando à obtenção de vantagens para si ou para outrem;
  - d) adquirir, objectivando revenda lucrativa, ou qualquer outro benefício directo ou indirecto, bem ou direito que sabe necessário à sociedade, ou que esta tencione adquirir.
2. O administrador eleito por grupo ou classe de accionistas tem, para com a sociedade, os mesmos deveres que os demais administradores.

Article 430

**(Dismissal)**

1. The mandate of the directors may at any time be revoked by a decision of the shareholders, but if the revocation is not based on just cause, the director is entitled to receive, as compensation, the remuneration he receive till the end of his mandate.
2. One or more shareholders who hold shares representing ten percent of the capital can require the judicial dismissal, at any time, of any administrator with good cause.

Article 431  
**(Competence of the board of directors)**

1. The board of directors manages the activities of the company, binds the company and represents it in court or elsewhere, and he shall be subordinate to the decisions of the shareholders or to the intervention of the supervisory board or of the single supervisor only where the law or the articles of incorporation so determine.
2. It is incumbent upon the board of directors to decide on any administrative matters concerning the company, namely:
  - a) the choice of its chairman in cases where the articles of incorporation so stipulate;
  - b) the appointment of directors;
  - c) the convocation of the general assemblies;
  - d) annual reports and accounts;
  - e) acquisition, alienation and encumbrance of real estate;
  - f) provision of collateral and guarantees, personal or real, by the company;
  - g) opening or closing of establishments;
  - h) changes in the organization of the company;
  - i) extensions or reductions of the company's activity;
  - j) merger, division and transformation of the company;
  - l) the establishment or termination of cooperation with other companies;
  - m) removal of the seat, capital increase and emission of bonds under terms specified in the articles of incorporation;
  - n) any other matter for which a director requires a decision of the board of directors.

Article 432  
**(Delegation of powers)**

1. The board may delegate the management of the company to one or more directors.
2. The competence over the matters listed in paragraphs d), f) i) and j) of number 2 of article 431 cannot be delegated.
3. The delegation of powers does not exclude the competence of the board to make any decisions on these very subjects.
4. The directors are jointly and severally liable with the managing director or the board members for damages caused to the company by their acts or omissions when, having knowledge of such acts or omissions or of the purpose of undertaking them, they do not prompt the board to take the necessary and appropriate measures.

Article 433  
**(Duties of the director)**

In addition to the duties established in this Code for directors of a company, the director's fiduciary duties are:

- a) maintain the confidentiality of information that has not yet been adequately confirmed and that may, when disclosed to the market, influence in a measurable way the price of securities of the company, and ensure that his subordinates do not disclose this information;
- b) divulge through the press in the days immediately following the fact, any decision of the general assembly or of the administrative bodies, relevant facts that occurred in its business and that may affect in a measurable way the decisions of investors in the stock market;
- c) not avail oneself of information obtained in its function as director in order to gain for oneself or others, advantages through purchase and sale of securities;
- d) establish an ethical relationship with the minority shareholders in terms of political rights, including the right to vote, of representation in governing bodies and those related to property rights;
- e) ensure the protection of the interests of shareholders, employees and other participants in the company, within the powers and status that the law confers, in order to achieve the purpose and function of the company;
- f) increase the confidence of investors in order to attract a larger volume of long-term capital;
- g) make optimal use of capital, by reducing its cost through more stable funding sources.

2. The person prejudicated by the purchase and sale of securities in violation of the provisions of subparagraph c) of the previous number shall be entitled to compensation from the offender for losses and damages unless, when suffering these losses and damages, he already was aware of this information.

#### Article 434

##### **(Periodicity of meetings and decisions of the board of directors)**

1. The board shall meet whenever convened by its chairman or by two other directors and it shall meet at least once every month, unless the articles of incorporation provide otherwise.
2. The board of directors may not decide without most of its members being present or represented.
3. Decisions are made by majority vote of the directors present or represented and of those voting by mail, if the articles of incorporation so permit.
4. The director cannot vote on matters in which he has, on his own behalf or on that of a third party, a conflict of interest with the company.
5. Of each meeting minutes are drawn up in the book signed by all directors who have attended.

#### Article 435

##### **(Exercise of powers of representation)**

1. Directors jointly exercise the powers of representation and the company is bound, unless the articles of incorporation provide for the contrary, by the transactions legally concluded by the majority of the directors or ratified by them, or by a smaller number of them stipulated in the articles of incorporation.
2. The articles of incorporation may also provide for the company to be bound by transactions concluded by the deputy director, within the limits of the delegation set by the board of directors.

3. Directors bind the company by affixing their signature and by indicating their capacity.
4. Notifications or declarations from third parties to the company can be directed to any of the directors.
5. Notifications or declarations from a director whose recipient is the company shall be addressed to the chairman of the board of directors

## **Section VI**

### **Supervisory board and single supervisor**

#### Article 436 **(Supervision)**

1. The supervision of the company is incumbent upon the supervisory board or a single supervisor.
2. The supervisory board consists of three members; the articles of incorporation may increase this number to five.
3. When the supervisory board has three members there will be one or two substitutes; when there are members there will be two substitutes.
4. When the supervisory board is not permanently functioning it is established by the general assembly at the request of shareholders representing at least one tenth of the voting shares and five percent of the preferential shares. Each functioning period ends at the first ordinary general assembly after its establishment.
5. The functions of the supervisory board cannot be delegated and extend into the first ordinary general assembly held after its election.
6. The supervisory board members and their substitutes may be reelected.

#### Article 437 **(Competence)**

1. It is incumbent upon the supervisory board or the single supervisor to:
  - a) monitor the actions of the directors and verify compliance with their legal and statutory duties;
  - b) review and comment on the annual management report and the accounting statements for the accounting period, including in its opinion additional information deemed necessary or useful for the decisions of the general assembly;
  - c) providing opinions on the proposals of the management bodies, to be submitted to the general assembly, concerning changes in capital stock, the emission of bonds or subscription bonuses, investment plans or capital budgets, the distribution of dividend, transformation, merger or division;
  - d) review, at least quarterly, the balance sheet and other accounting statements elaborated by the company;
  - e) perform such duties during the liquidation of the company, subject to the special provisions of this Code.
2. It is incumbent upon individual members of the supervisory board:
  - a) report to the management bodies and, if these do not take appropriate steps to protect the interests of the company, to the general assembly, errors, fraud or crimes discovered as a result of its regular supervisory activity, suggesting further remedial measures useful to the company;

- b) convene the ordinary general assembly if the administrative bodies delay for more than one month this convocation and the extraordinary general assembly whenever there are serious or urgent reasons to do so, including in the agenda of the meetings the issues it deems relevant;
- c) verify whenever it deems appropriate, the regularity of the books and accounting records of the company, in addition to cash, assets or values belonging to it or received as guarantee, deposit or as any other security.
3. The management bodies are obliged to make available to the individual members exercise of the supervisory board, within ten days, copies of the minutes of its meetings and, within fifteen days, copies of the balance sheets and other accounting and budget statements prepared by the company.
4. The supervisory board members attend the meetings of the board when this body decides on an issue they write an opinion about. The supervisory board members shall attend the general assembly meetings, and answer the questions that may be posed by the shareholders.
5. If the company has independent auditors, the supervisory board members may individually request them to offer further clarification or information and specific fact finding.
6. Whenever requested to do so the supervisory board shall provide the shareholder or group of shareholders representing at least five percent of the capital stock information about matters for which the board is competent within a period of fifteen days.

Article 438  
**(Duties and liabilities)**

1. Under this Code the supervisory board members have individually, and for what is relevant, the same duties as directors. They are individually liable, under the same conditions, for damages resulting from failure to fulfill their duties and from acts undertaken with negligence or willful misconduct or with violation of the law or the by-laws.
2. Subject to its obligations to the company and the duty of the individual to inform the department of justice about criminal conduct, heard the general assembly members of the supervisory board shall keep confidential facts and information that they have knowledge of by reason of their duties.
3. The supervisory board member or his substitute who, without good reason, fails to attend at least two board meetings stop watch in the course of the accounting period is dismissed.

**Section VII**  
**Increase and reduction of capital stock**

Article 439  
**(Increase of capital stock through capitalization of profits and reserves)**

1. The capital increase by incorporation of profits or free reserves, is proposed by the board of directors after consultation of the supervisory board, if functioning, and shall be decided by the general assembly, with the subsequent amendment of the articles of incorporation, and it may be effected by changing the nominal value of the share or by the emission of bonus shares issued in accordance with the categories and series of shares owned by the holder.
2. If the company shares are depreciated, the existing depreciation will extend to the bonus shares, unless otherwise provided for in the articles of incorporation.

Article 440  
**(Increase of capital stock through the exercise of the purchase option)**

The holders of the option to purchase shares may exercise the right to subscribe to new shares when the company decides to increase its capital stock pursuant to this Code and subject to the conditions established in the respective purchase option contract.

Article 441  
**(Right of preference)**

1. Persons who were shareholders at the date of the capital increase through subscription of new shares payable in cash, have the right of preference to subscribe to new shares in proportion to the number of shares that they hold.
2. In case not all shareholders exercise their right of preference, it returns to the remaining shareholders, until full satisfaction of the shareholders or subscription to the shares [original unclear].
3. If new shares of a certain category are not subscribed to by the holders of shares of the same category, then the right of preference is returned to the remaining shareholders.
4. The right of preference prescribed in this article may be suppressed or limited by a decision of the general assembly made by the majority required to change the by-laws.

Article 442  
**(Notice and term for the exercise of the right of preference)**

1. Shareholders shall be notified by proclamation that they have a period of not less than fifteen days to exercise their right of preference.
2. The announcement can be substituted by a letter addressed to the holders of shares, if all the company's shares are nominative.

Article 443  
**(Partial subscription)**

1. If the capital increase is not fully subscribed to, then the increase is limited to the subscriptions made, without prejudice to the decision that may determine that the increase does not take effect.
2. If the increase is without effect then the direction shall inform the subscribers of that fact, by means of an announcement within eight days after the end of the subscription period while simultaneously putting the sums collected at their disposal

**Section VIII**  
**Profits, profit and capital reserves**

Article 444  
**(Legal reserve)**

1. Before the formation of the statutory reserves or of other reserves regulated in this Code five percent of the value calculated for the constitution of the legal reserve fund, which shall not exceed twenty percent of the capital, are deducted from the net profit of the accounting period.
2. The legal reserve is intended to ensure the integrity of the capital stock and can only be used to compensate operating losses of the company.
3. Subject to the provisions governing the legal reserve are the reserves consisting of the following values:
  - a) premiums or agios obtained in the share emissions;
  - b) premiums of emissions or of the conversion of convertible bonds in shares;
  - c) the value of in-kind contributions that exceeds the nominal value of the shares paid in kind.

Article 445  
**(Use of the legal reserve)**

The legal reserve and the reserves subject to the provisions governing it can only be used for:

- a) covering part of the losses shown in the balance sheet, unless these can be covered by any other reserves;
- b) covering losses transferred from previous accounting periods that cannot be covered by profits from the accounting period or by the use of other reserves;
- c) incorporation into the capital stock.

Article 446  
**(Profit reserves)**

1. In addition to the legal and statutory reserves, the general assembly may, upon recommendation of the management bodies, decide to retain part of net profits for the constitution of the following profit reserves or for an increase of their values in case they have been established already in previous accounting periods:
  - a) an investment reserve for the expansion of the activities of the company, which will take into account the existence of duly approved projects and budgets. The budget shall include all funding sources and applications of working and non-working capital and shall be reviewed annually in case its duration exceeds one accounting period;
  - b) a reserve for tax incentives, for investments resulting from tax incentives;
  - c) a reserve for profits to be made, to which may be allocated parts of the net profits of the accounting period that exceed the amount of the mandatory dividend to be distributed to the shareholders, the dividends payable to holders of preferential shares and the amounts owed to holders of bonds issued by the company.
2. The destination of the net profit for the constitution of the profit reserves cannot be approved, in each accounting period, to the detriment of the mandatory distribution of dividends.
3. The balance of the profit reserves, with the exception of the unrealized profits reserve, may not exceed the capital stock. When this limit is achieved, the assembly will decide on the application of the surplus in integration or increase of capital, or in the distribution of dividends.

Article 447  
**(Capital reserves)**

Capital reserves can only be used to absorb losses that exceed the profit reserves, redemption, reimbursement or purchase of shares, incorporation in capital stock and payment of the dividend on preferential shares.

Article 448  
**(Deduction of losses)**

1. Accumulated losses are deducted from the results of the accounting period prior to any participation.
2. The losses of the accounting period are necessarily absorbed by the profit reserves and, in that order, by the unrealized profits reserve and the legal reserve.

Article 449  
**(Participations)**

The participations of bondholders and the statutory participations of employees and directors are deducted, successively, based on the profits that remain.

Article 450  
**(Proposal for the destination of profits)**

Jointly with the accounting statements, the management bodies of the company will submit a proposal to the ordinary general meeting on the destination to be given to the net profits of the accounting period, in accordance with the provisions of this Code and the articles of incorporation.

Article 451  
**(Payment of dividend)**

1. The company may only pay dividends on account of net profits and profit reserves, with the exception of the legal reserve and the capital reserve account in the case of preferential shares.
2. The distribution of dividends in violation of the provisions of this article implies joint and several liability of the directors and supervisors, which should return to the coffers of the company the distributed amount, without prejudice to criminal liability.
3. Shareholders are not obliged to return dividends received in good faith.
4. Bad faith is presupposed when dividends have been distributed without releasing the balance sheet or in disagreement with its results.

Article 452  
**(Mandatory dividend)**

1. Shareholders are entitled to receive, as mandatory dividend for each accounting period, the share of profits established in the by-laws or, if these are there omitted, the amount that will be determined by applying the following rules:
  - a) twenty-five per cent of net profit minus the amounts for the incorporation of the legal reserve;

- b) the payment of the mandatory dividend is limited to the amount of net profit that has been realized in the accounting period.
2. The value of the mandatory dividend, subject to the provisions of this article, is calculated by means of a percentage defined in the statutes, on the profits of the accounting period, minus the amounts for the incorporation of the legal reserve fund.
  3. When the by-laws do not offer provisions the general assembly may at any time through a proposal of the direction fix the value of the mandatory dividend, but never at less than twenty-five per cent of the net profit from the accounting period.
  4. The general meeting may, provided there is no opposition from any shareholder present, decide on the distribution of dividend that is less than the mandatory, in terms of this article.
  5. Following a proposal by the direction accompanied by an opinion of the supervisory board mandatory dividend may be not paid to the shareholders when there is well-founded suspicion that its payment during the accounting period that has been approved by the general assembly will create serious financial difficulties for the company.
  6. The profits that are not distributed in accordance with number four are recorded as special reserve and, if not absorbed by losses in subsequent accounting periods they must be paid as mandatory dividend, as soon as the financial position of the company so allows.
  7. The values of the net profits not intended as mandatory dividends may, by a decision of the general assembly, be distributed as dividends to the shareholders or allocated for the incorporation of a reserve for future capital increases.
  8. Mandatory dividends are also due to preferential shares, without prejudice to the financial benefits provided by the law and in the by-laws.
  9. The maturity of the shareholder's claim to profits takes effect thirty days after the registration of the decision that approves the accounts of the accounting period.

Article 453  
**(Intermediate dividend)**

The company which, by law or by provision in the by-laws, prepares a semi-annual balance sheet may, by decision of the general assembly distribute dividends from the profits determined in this balance sheet.

Article 454  
**(Advance payment of profits)**

The articles of incorporation may stipulate that in the course of an accounting period, advance payments on profits are made to the shareholders.

**Section IX**  
**Company books**

Article 455  
**(Company books)**

1. In addition to the accounting books mentioned in this Code, the company shall also have the following books:

- a) the share registration book;
  - b) the bond emission registration book;
  - c) the minutes book of general assembly;
  - d) the shareholders attendance book;
  - e) the minutes book of the meetings of the board of directors;
  - f) the minutes and opinions book of the supervisory board.
2. The registration book of nominative shares is intended for registration or annotation of the following information:
- a) the name of the shareholder and the number of shares he holds;
  - b) down-payments and installments of paid capital;
  - c) the conversions of shares of one category or series to another one;
  - d) the redemption and reimbursement of shares or their acquisition by the company;
  - e) the changes brought by the alienation or transfer of shares;
  - f) the pledge, usufruct or any charge, levied on shares or that precludes their trading.

Article 456

**(Mechanized or electronic records)**

The company books can be replaced by mechanized or electronic records, pursuant to the legal definitions.

Article 457

**(Formalities)**

The company books shall obey the legal formalities provided for in this Code and applicable to bookkeeping records and books.

**THIRD BOOK  
COMMERCIAL CONTRACTS AND OBLIGATIONS**

**TITLE I  
GENERAL PART**

**Chapter I  
General provisions**

Article 458

**(Definition of the commercial contract)**

A commercial contract is considered one entered into by commercial entrepreneurs among themselves or with a third party, provided it belongs to the pursuit of entrepreneurial activity.

Article 459

**(Adoption of official language)**

1. Commercial titles are valid, whatever the language in which they are formally written.

2. The contractual instrument, when written in a foreign language, shall be translated into the official language by a sworn public translator, on pain of not being admitted as evidence in a national court.

Article 460  
**(Legislation that applies to the formation of contracts)**

The commercial contract is considered formed at the place where the proposal is presented.

Article 461  
**(Solidarity of commercial co-obligors)**

With respect to commercial obligations co-obligors are joint and several, unless otherwise stipulated.

Article 462  
**(Solidarity of the guarantor)**

The guarantor of a commercial obligation, though not a commercial entrepreneur, is jointly and severally liable with the debtor.

Article 463  
**(Commercial interest)**

1. The commercial interest rate is that of legal interest, without prejudice to written stipulations to the contrary on the way to determine rates and on their variability.
2. To commercial credit is added, in case the debtor is delayed, a surcharge of two percent over the rate fixed in accordance with the previous number, without prejudice to the provisions of special laws.

Article 464  
**(Onus)**

1. The entrepreneur who, in the pursuit of his business, conducts business or provides services on behalf of a third party is entitled to claim remuneration, even in the absence of an agreement; in the case of deposit he may require the usual deposit fees.
2. The entrepreneur may also charge interest on loans, advance payments and any other expenses he has incurred, counting from the date of disbursement.

Article 465  
**(Obligations of the entrepreneur who refuses the mandate)**

1. The entrepreneur who wants to refuse the commercial mandate offered to him by another entrepreneur with whom he does business, shall immediately notify the principal; however, he is obliged to take the measures necessary for the conservation of any goods that have been

forwarded until the principal takes action, provided that the payment of expenses he has incurred is guaranteed.

2. If the principal does nothing after being notified, the entrepreneur to whom have been shipped the goods may deposit them, under general terms, at the expense of their owner, and sell those that may not be preserved or those necessary to meet the expenses he has incurred.

3. Non-compliance with any of the obligations referred to in the previous numbers obliges the entrepreneur to repair damages caused to the principal.

Article 466  
**(Death of the principal)**

The mandate with the purpose of carrying out legal acts related to the exercise of a commercial enterprise is not extinguished by the death of the principal if the enterprise continues to be active, without prejudice to the right of revocation of the proxy or the heirs.

**Chapter II**  
**Contract clauses**

**Section I**  
**Contracts**

Article 467  
**(Common contract clauses)**

The clauses in proposed contracts are included in the definitive contracts by the acceptance of the other contracting party, provided all norms of this Code have been observed.

Article 468  
**(Communication of contract clauses)**

1. Contract clauses shall be communicated in an appropriate manner and in full, to the other contracting party.

2. The communication referred to in the previous number shall be made in due time for complete and effective knowledge.

3. The burden of proof of appropriate and effective communication rests with the proponent.

Article 469  
**(Providing information)**

1. The proponent shall provide to the other contracting party, in accordance with the nature of the contract, the information on all relevant aspects present in the contract, as well the clarifications that have been requested.

2. Wills included in private writings, receipts, correspondence, pre-contracts, publicity in any media, bind the declarant or subscriber and can lead to pre-contractual liability, as defined by law.

Article 470  
**(Unwritten contract clauses)**

Deemed to be unwritten clauses are those that:

- a) have not been communicated pursuant to this Code;
- b) have been communicated in breach of the duty to information, so that they do not allow to be actually known;
- c) by the context, by the epigraph that precedes them or by their graphic presentation, are not understood by a normal contracting party put in the position of real contracting party;
- d) are judged a surprise, that is, those entered into forms after the signature of a contracting party.

Article 471  
**(Abusive contract clauses)**

Considered abusive and prohibited contractual clauses are, among other things, those that:

- a) exclude or limit directly or indirectly liability for damages to life, moral or physical integrity or the health of persons, even if it is by establishing a penalty clause;
- b) exclude or limit directly or indirectly liability for non-contractual property damage caused in the sphere of the counterpart or of third parties;
- c) exclude or limit directly or indirectly liability for final non-compliance, delay or defective compliance in case of willful or gross negligence;
- d) exclude or limit directly or indirectly liability for acts of representatives or assistants, in the case of willful or gross negligence;
- e) establish in favour of the proponent the right to compensation whose amount exceeds the value of the actual damage;
- f) bar the adherent to prove the absence of damage or the diminution of its value in relation to that which has been determined by the proponent;
- g) establish fines in cases of delay arising from default of obligation, which exceed ten percent of the value of the service rendered;
- h) confer directly or indirectly to whom they so wish, the exclusive capacity to interpret any term of the contract;
- i) exclude the exception of non-compliance with the contract or the prohibition of its resolution for non-compliance;
- j) waive or limit the retention right of the adherent and the right obtain compensation for necessary improvements;
- l) exclude the right to compensation where admitted by law;
- m) modify the criteria for allocating the burden of proof, restrict the use of legally admitted evidence procedures or impose on the recipient the burden of proof with respect to the circumstances of the sphere of liability of the proponent [please check, original unclear];
- n) provide for the exclusion of the right to warranty concerning the suitability of the product with regard to its replacement or the elimination of defects, or establish the condition of prior adoption of legal action against third parties;
- o) establish obligations considered unfair, abusive, that place the contracting party at an exaggerated disadvantage or that are inconsistent with the principles of good faith and equity;
- p) violate or allow the violation of environmental standards;

q) are in disagreement with the system of consumer protection.

#### Article 472

#### **(Preservation of the contractual relation)**

1. In the cases mentioned in the previous article, the part of contracts not affected by inadequate clauses can be preserved independent of the request of the prejudiced contracting party, or when, through the application of supplementary norms, principles and rules aimed at filling the gaps in legal transactions, the balance of contractual relations can be restored.

2. In applying the provisions for the preservation of the contractual relationship one shall take into consideration:

a) the legal core values relevant in the situation under consideration;

b) the trust created in the parties by the overall meaning of the contractual clauses in the process of elaborating the contract, by its contents and by any other elements that are reasonable and worthy of consideration;

c) the objective that the parties aim to achieve, through the type of contract used.

#### Article 473

#### **(Nullity of the contract)**

When it has not been possible to preserve in whole or in part, as indicated in the previous article, the contracts referred to, they are declared null and void, especially when essential aspects cannot be determined, when the imbalance in the provision of services is shown, when they are contrary to the principles of good faith and fairness or appear to be significantly burdensome to one of the contracting parties.

### **Section II**

#### **Adhesion contracts**

#### Article 474

#### **(General conditions in adhesion contracts)**

1. The general conditions of contracts, corresponding to the stipulations of predisposed content, when elaborated by one of the parties without individual business for the purpose of concluding an undetermined number of contracts, are governed by the provisions of this chapter.

2. For the purposes of the provision of this article, the general contract conditions can formally be included in the predisposed contract instrument or be contained in a separate document.

3. If a special clause has been negotiated that contravenes a clause in the general conditions, then the special clause prevails.

4. The burden of proof that a contract clause was the result of prior negotiations between the parties rests with the party who wishes to avail itself of its contents.

#### Article 475

#### **(General conditions of separate document contracts)**

1. In order for the general conditions of contracts contained in a separate document to oblige the other contracting party they shall cumulatively meet the following conditions:

- a) explicitly indicate the proponent, the integration of such clauses in the contract, regardless of transcription;
  - b) when the contract is signed deliver to the other contracting party a copy of the general conditions or the registration number;
  - c) acceptance by the other party of the contents of the predisposed contract.
2. Individual agreements that are or not are part of the body of the contract document prevail over general conditions. Clauses specifically agreed prevail over any general contract clauses, even when these consist of forms signed by the parties.

#### Article 476

#### **(Inapplicability of general conditions)**

1. The general conditions do not apply:
  - a) when there are typical provisions to the contrary, dictated by the legislature or resulting from treaties or international conventions in force in Mozambique;
  - b) in contracts subject to the rules of public law;
  - c) in instruments related to incorporation or reform of companies;
  - d) in other cases provided by law.
2. The general clauses of insurance contracts, of investment corporations and of participation or other businesses subject to regulation, may be dictated or approved by the competent authorities.

### **TITLE II SPECIAL CONTRACTS**

#### **Chapter I Commercial buying and selling**

#### **Section I General provisions**

#### Article 477

#### **(Deposit of sold asset)**

1. If in sales of movable goods undertaken by a commercial entrepreneur in the exercise of an enterprise the buyer refuses or fails to show up in order to receive the goods bought, then the seller can deposit them on account and at the expense of the buyer pursuant to the provisions of the Code of Civil Procedure.
2. The seller shall immediately notify the buyer on the deposit made.

#### Article 478

#### **(Forced execution due to non-compliance of the buyer)**

1. If in sales referred to in the previous article the buyer does not pay the price, the seller can sell the goods at the expense of the buyer.
2. The resale occurs in an appropriate establishment, and the seller is required to timely notify the buyer on day, hour and venue of the resale.

3. In the case of goods subject to rapid deterioration, the seller can proceed with their sale by private negotiation, while immediately notifying the buyer.
4. If the price obtained in the resale does not cover the stipulated price and the value of losses due to non-compliance then the seller is entitled to demand the difference from the buyer; if the price obtained surpasses the stipulated price plus the amount of damage suffered, the difference belongs to the buyer.

#### Article 479

#### **(Forced execution due to non-compliance of the seller)**

1. If the sale concluded between commercial entrepreneurs in the exercise of their businesses, concerns consumables and the seller does not fulfill his obligation, the buyer may have the goods bought without delay at the expense of the seller and will be obliged to notify the seller immediately on the purchase.
2. The buyer is entitled to demand the difference between the stipulated price and the value of the expenses incurred in the purchase and the suffered losses from the seller.

#### Article 480

#### **(Uses)**

1. In contracts entered into between commercial entrepreneurs in the exercise of their businesses, parties are bound by the usage to which they have consented and by the practices established between them.
2. Unless otherwise agreed, it is understood that the parties consider every and any use that they have or should have known applicable to the contract or its formation.
3. For the purposes of the previous number use is considered any practice or mode of action that, being regularly observed in a certain place or in a certain commercial activity, is such that it justifies the expectation that it will be followed in the contract in question.

### **Section II**

#### **Guarantee of sold goods**

#### Article 481

#### **(Vouching risks)**

Under a commercial buying and selling contract, the seller shall ensure the risk of vouching in order to offer the buyer the goods or right free of any claims, legal or otherwise, by third parties that may encumber, restrict or eliminate in full or in part, the right to its transfer.

#### Article 482

#### **(Partial vouching)**

In the case of partial quantitative or qualitative vouching with respect to transferred rights, the buyer can dissolve the contract with its consequences, provided it is significant and it cannot be proven that, under the circumstances, he would be interested in purchasing the goods, even while

supporting the effects of vouching. In the latter case, it is up to the buyer only to reduce the price, without prejudice to damages and losses.

Article 483

**(Primitive vouching of claim grounded on intangible property)**

1. The seller shall deliver the goods free of third party claims based on industrial, intellectual or another kind of property, which he knew or could not ignore at the time of the signing of the contract.
2. The seller is relieved of the obligation provided in this article when, arguably, the buyer has knowledge or cannot ignore the risks of vouching or when the goods delivered by the seller has been prepared according to techniques, designs, formulas, technology or similar specifications, provided by the buyer himself.

Article 484

**(Clause excluding the vouching guarantee)**

1. Except as otherwise provided for in special legislation protecting the consumer, the clause that excludes the vouching guarantee is valid and may be subject to agreement between the contracting parties.
2. The clause that excludes the vouching guarantee is considered not written whenever the vouching is the result of a fact attributable to the seller himself or when he deliberately hides the existence of a legal defect.

Article 485

**(Rights of the vouched buyer)**

The vouched buyer is guaranteed the right to a refund of the price, plus the burden arising from the exercise of his right to proceed for the purposes of compensation for the products he has to return to third parties as well as for damages resulting from the concluded business.

**Section III**

**Special modality of commercial buying and selling**

Article 486

**(Sale on the basis of documents)**

If in a sale on the basis of documents the documentation is deemed in order, then the buyer cannot refuse payment on the grounds of a defect in the quality or the state of the thing sold, unless the defect has already been previously demonstrated and communicated in writing to the seller.

**Chapter II**

**Forwardcontract**

Article 487

**(Concept)**

The forward contract is a contract whereby the lender transfers to the borrower the property of securities of a certain type at a given price, and the borrower assumes the obligation to transfer to the lender, at the end of the agreed period, the ownership of an equal amount of securities of the same type, against the reimbursement of the price, which may be increased or decreased to the extent agreed upon.

Article 488

**(Accomplishment of the contract)**

The forward contract is accomplished by the actual delivery of the securities.

Article 489

**(Additional rights and obligations inherent to securities)**

Additional rights and obligations inherent in securities subject to forward contract belong to the lender pursuant to the following articles.

Article 490

**(Interest, dividends and voting right)**

1. Interest and dividends payable after the signing of the contract and before the examination of the term, when collected by the borrower, shall be credited to the lender.
2. Voting rights, unless agreed upon otherwise, belong to the borrower.

Article 491

**(Right of option)**

1. The right of option attached to securities subject to a forward contract belongs to the lender.
2. The borrower, provided that the lender informs him timely, shall take the necessary steps for the lender to exercise his right of option or exercise it on behalf the lender if the latter has provided the borrower with the necessary funds.
3. In the absence of instructions from the lender, the borrower shall proceed to sell the rights of option an account of the lender, through a bank.

Article 492

**(Allotment)**

If the securities involved in a forward contract are subject to allotment for the attribution of premiums or for reimbursement purposes, the rights and duties deriving from the allotment belong to the lender when the contract is signed prior to the beginning of the allotment.

Article 493

**(Payments of unreleased securities)**

The lender shall deliver to the borrower, up to two days before maturity, the sums required to make the payments for the unreleased securities.

Article 494

**(Prorogation of the term and renovation of the forward contract)**

1. The parties may extend the term of lending by one or more successive terms.
2. After the forward contract period has expired and the parties liquidate the differences, for them to make separate payments and renew the forward contract with respect to different quantities of securities or for kinds of a different price, the renewal is considered a new contract.

Article 495

**(Non-compliance)**

In case of non-compliance of one of the parties, the counterpart has the right to make a compensatory or replacement sale, as the case may be.

**Chapter III**

**Barter or exchange**

Article 496

**(Commercial nature of exchange)**

Barter or exchange is commercial in the same cases where buying and selling is, and is governed by the same rules in all that is applicable to the circumstances or conditions of the contract.

**Chapter IV**

**Supply Contract**

Article 497

**(Concept)**

A supply contract is the one by which one of the parties agrees to provide, periodically or continuously, things to the other against payment of a price.

Article 498

**(Quantity of the supply)**

1. When the quantity to be supplied is undetermined, it is understood that it will be that that corresponds to the needs of the recipient, taking into account the time of the signing of the contract.
2. If the parties have stipulated only the maximum and minimum limits for the full supply or for each individual operation, it is incumbent upon the client to determine, within the established limits, the quantity due.

3. If the quantity of the supply has to be determined with respect to the needs and a minimum limit has been stipulated, the client is obliged by the quantity corresponding to his needs that exceeds the minimum limit referred to.

Article 499  
**(Determination of the price)**

With respect to periodic supply if the price has to be determined in accordance with the Civil Code, the amount of each periodic supply shall be taken into account.

Article 500  
**(Payment of the price)**

The price in periodic supply is paid at the moment of the provision of each of the periodic supplies and proportionally to each of them; the price in continuous supply is paid at intervals stipulated or, in the absence of stipulations, in accordance with usage.

Article 501  
**(Maturity of individual supply)**

1. The deadline for individual supply is assumed established for the benefit of both parties.
2. If the recipient is the one entitled to establish the degree of compliance of each individual supply then he shall communicate the date for the supply to his counterpart adequately beforehand.

Article 502  
**(Dissolution of the contract)**

In case one of the parties defaults with respect to individual supplies the other can dissolve the contract when the non-compliance by its seriousness raises doubts as to compliance with the remaining supplies.

Article 503  
**(Suspension of the supply)**

1. The suspension of the supply cannot be effected without adequate advance notice, except in fortuitous circumstances or force majeure.
2. If the recipient is in default and it is of little importance, the supplier cannot suspend the execution of the contract without adequate advance notice.

Article 504  
**(Pre-emption agreement)**

1. The agreement whereby the recipient obliges to give preference to the supplier in concluding a new supply contract for the same purpose may not be entered into for more than five years; when a longer period is stipulated it is considered to be reduced to that limit.

2. The recipient party is obliged to notify the supplier on the conditions proposed by a third party and the supplier is obliged to declare, on pain of forfeiture, within the established period or, in case there is none, within a period in accordance with the circumstances or usage, whether he intends to exercise the pre-emption right,.

Article 505

**(Exclusivity in favour of the supplier)**

If exclusivity in favour of the supplier has been agreed upon, the counterpart cannot receive supplies of the same nature from third parties nor can he with own resources promote the production of goods that are the subject of the contract, unless otherwise agreed.

Article 506

**(Exclusivity in favour of the recipient)**

1. If an exclusivity clause in favour of the recipient has been agreed upon then the supplier may not supply to third parties in the area for which exclusivity has been agreed and for the duration of the contract he may not directly or indirectly offer supplies of the same kind as those that are the subject of the contract.

2. If the recipient has assumed the obligation to promote the sale of the goods for which he has exclusive rights in the area agreed upon, he is liable for damages resulting from non-compliance with these obligations, even if he has complied with the minimum limit that has been set in the contract.

Article 507

**(Denunciation)**

Denunciation is only allowed in supply contracts entered into for an indefinite period and shall be made in accordance with the advance note stipulated or according to usage; in the absence of any stipulation or uses, with adequate advance note taking into account the nature of the supply contract.

Article 508

**(Remission)**

The rules governing the contract to which individual provisions correspond apply to the supply contract in all that is compatible with the previous articles.

**Chapter V**

**Commercial service provision contract**

**Section I**

**General provisions**

Article 509

**(Non-personal nature of the provision)**

1. The provision of commercial services is not personal, unless otherwise stipulated.
2. The personal character of the obligation may result from the particular nature of the service provision itself or from the circumstances in which the transaction is formed.

## **Section II**

### **Execution of the contract**

#### Article 510

#### **(Obligations of the service provider)**

The service provider, individual or corporate body, assumes among other things the following obligations:

- a) conduct himself with complete good faith in order to serve the interests of the recipient, as if they were his own;
- b) execute the contract in accordance with the terms contained therein;
- c) ensure the efficiency of the services provided;
- d) to be bound by the proposal and by the conditions present in advertising and public disclosure, even when these precede the transaction itself;
- e) provide services that are compatible with the objectives of the contract, unless the professional service provider is specialized and the contract indicates specific tasks to be performed; and
- f) not to disclose confidential or proprietary information, as provided for in the contract or by law, that has been obtained through compliance with the contract, even after its termination, on pain of liability for damage caused.

#### Article 511

#### **(Obligations of the receiver of the services)**

The recipient of services assumes, among other things, the following obligations:

- a) provide the venues, facilities and equipment for which he is responsible and that are needed, in accordance with the nature of the services to be provided, to enable the provider to carry out his activities;
- b) direct the execution of activities of the provider, subject to their normal possibilities, contractual limits, local usage and applicable legislation;
- c) offer the service provider upon his request a certificate of completion of the services or an equivalent document; and
- d) check whether the services have been provided pursuant to the provisions of the contract that gave them cause, under pain of being able to hold the service provider responsible.

## **Section III**

### **Remuneration**

#### Article 512

#### **(Advance payment of expenses)**

The recipient of the services, unless otherwise stipulated, can further the pre-payment of expenses needed to execute the contract.

**Section IV**  
**Delay**

Article 513  
**(Delay of the receiver)**

1. The delay by the recipient of services, with respect to his admission or approval, ensures the service provider the right to demand the agreed remuneration, without being bound to later provide the services he was contractually obliged to.
2. From the remuneration to be received shall be deducted the costs not incurred by the supplier due to non-performance, the advantages he has gained from having provided services to a third party during the time the recipient has been waiting, or still the advantages that, fraudulently, have been gained or capitalized on.

**Section V**  
**Cessation of the contract**

Article 514  
**(Mutual agreement)**

An agreement by which the parties decide to end their contractual relationship will observe the same form that has been adopted when it was entered into, unless stipulations to the contrary.

Article 515  
**(Forfeiture)**

The contract for the provision of commercial services expires:

- a) when the stipulated term expires;
- b) by the completion of the provision.

Article 516  
**(Termination)**

1. Despite not having stipulated a term or when this term is indefinite, it is lawful for parties to terminate the contract, provided that an advance notice is issued at least thirty calendar days beforehand, while the remuneration is being paid per month.
2. Unless there is special legislation, the clause that establishes the period of the advance notice to be more than thirty days, as well as the stipulation fixing the amount of compensation to be paid by the recipient in order to dispense the provider from providing the services within the period of the advance notice is lawful, provided that it corresponds at least to the average value of remuneration over the same period as that of the advance notice.
3. In case the remuneration is fixed for a period of less than thirty days, the minimum advance period shall be eight days, and four days if payment is weekly or fortnightly and one day when the contract is for less than seven days.

Article 517

**(Advance notice)**

1. Unless there is special legislation, the clause that, in contracts for an indefinite term, enables the stipulation of compensation to be paid by the recipient in order to dispense the provider from providing the services within the period of the advance notice, is lawful
2. The amount of compensation referred to in this article shall at least correspond to the average value of the remuneration received over the same period as that of the advance notice, calculated over the last six months.

Article 518

**(Termination by the service provider)**

In case of termination, for whatever reason, by the provider before the end of the execution period, he is obliged to refund the advance payments received for the services to be provided, without prejudice to the losses and damages incurred by the recipient due to the interruption of compliance, in accordance with the limits set by law to protect the small entrepreneur when he is the service provider

Article 519

**(Termination independent of motive by the receiver)**

In case of termination, for whatever reason, by the recipient before the end of the execution period, he is obliged to pay the remuneration for services already provided, without prejudice to the losses and damages incurred by the provider due to the interruption of compliance in a proportion that corresponds to at least half the remaining time, notwithstanding the demonstration of larger losses incurred by the provider.

Article 520

**(Determination of the term according to nature or the purpose of services or the law)**

The provision of commercial services whose execution period may be limited by the nature or the purpose of the contracted services or by the law, is not considered to be indefinite.

Article 521

**(Decisions)**

The contract for the provision of commercial services may be terminated by either party if:

- a) the counterpart fails to fulfill its obligations when, due to its seriousness or reiteration, the continuation of the contractual relationship cannot be demanded; and
- b) there occur circumstances that make impossible or that seriously prejudice the completion of the contractual purpose, to the extent that the continuation of the contract until the expiration of the term stipulated or imposed in case of termination, cannot be demanded.

**Chapter VI**

**Agency contract**

## **Section I General provisions**

### Article 522 **(Concept)**

Agency is a contract whereby one party obliges to promote on behalf of the other party the conclusion of contracts in an autonomous and stable way and against remuneration, and it may be attributed a certain geographical area or a certain circle of customers.

### Article 523 **(Form and confirmation of the contract)**

1. The agency contract is subject to written form and shall contain, among other things, the following elements:
  - a) the full name and address of the parties;
  - b) the generic or specific indication of the products and services covered by the agency;
  - c) its duration;
  - d) the precise area of activity and / or circle of clients where the activity by the agent is to be carried out.
2. The contract may also contain the following elements:
  - a) obligations and responsibilities of the contracting parties;
  - b) the existence or not of a guarantee of exclusivity in favour of the agent in the area of activity;
  - c) reasons that justify the canceling of the exclusivity of the area of activity of the agent and criteria for the compensation of the loss of that right;
  - d) the existence or inexistence of a guarantee of exclusivity of the agent in favour of the principal;
  - e) the form of remuneration of the agent for the exercise of the agency.
3. The omission of any of the elements referred to in number 2 of this article does not wrongly characterize or lead to the nullity of the contract, and their lack shall be met by the rules of integration of contracts and by the general principles of the regulatory system of commercial enterprise in this Code, with the additional application of local customs and traditions.

### Article 524 **(Agent with power of representation)**

1. Without prejudice to the following numbers, the agent can only enter into contracts on behalf the other party if it has given him the necessary powers in writing.
2. However, claims or other statements relating to the transactions concluded through his mediation may be submitted to the agent.
3. The agent is entitled to require the urgent steps to be taken that are indispensable for the protection of the rights of the other party.

### Article 525 **(Collection of credits)**

1. The agent can only collect credits if the other party authorizes him in writing to do so.
2. The collection of credits by the agent who has been granted powers of representation, arising from contracts concluded by him, is presumed to be authorized.
3. If the agent collects credits without the necessary authorization, then the provisions of article 770 of Civil Code apply, without prejudice to the provisions set out in article 546 of this Code.

#### Article 526

#### **(Exclusivity clause in favour of the agent)**

1. If the contract has an exclusivity clause in favour of the agent, then the principal is barred from hiring another agent to promote business in the same branch and in the same area of activity, except with the consent of the first agent.
2. The breach of the obligation to respect the exclusivity in favour of the agent constitutes just cause for the revocation of the agency contract.

#### Article 527

#### **(Exclusivity clause in favour of the principal)**

1. The parties may stipulate in the contract the exclusivity of the entrepreneurial activity of the agent in favour of the principal, and the latter is barred to broker proposals and requests for another principal, even if it concerns a different branch of business.
2. If the contract has no such provisions or if there is no exclusivity in favour of the principal, then the prohibition to act on behalf of other principals is understood to be limited to goods and services that are covered by the agency contract.
3. The breach of the obligation to respect the exclusivity in favour of the principal constitutes just cause for the revocation of the agency contract.

#### Article 528

#### **(Direct acting by the principal in the activity area of the agent)**

The principal is assured of the right to directly promote his business in the activity area of the agent, provided he pays the commissions that would be due if the latter had treated the proposals and requests of the concluded business.

#### Article 529

#### **(Sub-agency)**

1. Sub-agency is permitted, unless otherwise agreed upon.
2. The provisions of this chapter shall apply, mutatis mutandis, to sub-agency.

### **Section II Rights and obligations of the parties**

#### Article 530

#### **(Obligations of the agent)**

1. In fulfilling his obligations the agent shall, as a general regulating principle of his activities, act in good faith, safeguard the interests of the other party and develop appropriate activities to fully achieve the purpose of the contract.
2. The agent is obliged, among other things, to:
  - a) observe the instructions of the other party that do not affect his autonomy;
  - b) provide information as requested or necessary for good management, particularly that relating to the creditworthiness of customers;
  - c) provide clarifications to the other party about the market situation and its prospects for development;
  - d) render accounts as agreed, or whenever justified.

Article 531  
**(Obligation of confidentiality)**

The agent cannot, even after the termination of the contract, use or reveal to third parties any secrets of the principal that he was entrusted with or has gained knowledge about while carrying out his activity, except to the extent allowed by the rules of professional ethics.

Article 532  
**(Obligation of non-competition)**

1. The agreement which establishes the obligation of the agent not to exercise activities that compete with those of the principal after the termination of the contract must be made in writing.
2. The non-competition obligation can only be agreed upon for a maximum period of two years and is limited to the area or the circle of clients entrusted to the agent.

Article 533  
**(*Del credere* agreement)**

1. The agent may guarantee, by an agreement in writing, compliance with the obligations related to contracts negotiated or concluded by him.
2. The *del credere* agreement is only valid when it specifies the contract or individualizes the persons guaranteed.

Article 534  
**(Temporary inability)**

The agent who is temporarily unable to fulfil the contract in whole or in part shall immediately notify the principal.

Article 535  
**(Rights of the agent)**

1. The agent is entitled to demand from the principal conduct in accordance with good faith, aimed at fully achieving the purpose of the contract.
2. The agent has the right, among other things, to:

- a) obtain from the other party the elements that, given the circumstances, are necessary to pursue his activity;
- b) be informed promptly of acceptance or rejection of negotiated contracts and of those that he has concluded without the necessary powers;
- c) receive periodically a list of the concluded contracts and the commissions due, not later than on the last day of the month following the quarter in which the right to commission has been acquired;
- d) demand that he be provided with all information, in particular with an extract from the commercial bookkeeping books of the other party, necessary to check the amount of commissions owed to him;
- e) the payment of remuneration, as agreed;
- f) receiving special commissions, which can be cumulative, for the task of collecting credit and for the *del credere* agreement;
- g) a compensation for the non-competition obligation after the termination of the contract.

### **Section III Other rights of the agent**

#### Article 536 **(Right to notice)**

The agent has the right to be immediately notified that the principal is only able to conclude a number of contracts that is considerably lower than that which was agreed or to be expected under the circumstances.

#### Article 537 **(Remuneration)**

In the absence of an agreement by the parties, the remuneration of the agent is calculated according to usage or, in its absence, in accordance with equity.

#### Article 538 **(Right to commission)**

1. The agent is entitled to a commission for contracts he promoted, as well as for contracts with clients that he arranged, provided they are concluded before the expiry of the agency relationship.
2. Unless otherwise agreed upon in writing the agent who has the right of exclusivity does not lose the right to commission with respect to contracts concluded directly by the other party with persons within the area or the circle of clients that he has been given.
3. The agent is only entitled to the commission for contracts concluded after the termination of the agency relationship upon proving that he negotiated them or that, having them prepared, their conclusion is mainly due to the activity carried out by him, provided that in both cases they are concluded within a reasonable time period following the termination of the agency.

Article 539  
**(Succession of agents)**

The agent is not entitled to commission during the contract period if it is due, pursuant to number 3 of the previous article, to the agent that precedes him, without prejudice to the commission being divided equally between them, when there are circumstances that justify this.

Article 540  
**(Acquisition of the right to commission)**

1. The agent acquires the right to commission as soon as and to the extent that any of the following circumstances occur:
  - a) the principal has fulfilled the contract or should have done so under the agreement entered into with the third party;
  - b) the third party has fulfilled the contract.
2. Any agreement between the parties about the right to commission cannot prevent it from being acquired, at least when the third party fulfills the contract or should have done so, if the principal has already fulfilled his obligation.
3. The commission mentioned in the previous numbers shall be paid until the last day of the month following the quarter in which the right has been acquired.
4. When there is a *del credere* agreement, however, the agent may demand the commissions due upon the conclusion of the contract.

Article 541  
**(Contractual non-compliance)**

If non-compliance with the contract is due to reasons attributable to the principal, the agent does not lose the right to claim commission.

Article 542  
**(Expenses)**

In the absence of an agreement to the contrary the agent has no right to reimbursement of expenses incurred in the normal course of his activity.

**Section IV**  
**Protection of third parties**

Article 543  
**(Duty of information)**

1. The agent shall inform interested parties about the powers he has, in particular through signs posted in their workplaces, and all documents that identify him as an agent of another person shall always indicate whether he has powers of representation and whether or not he may collect credits.
2. It is obligatory for the information with respect to the previous number to be written in the official language.

Article 544  
**(Representation without powers)**

1. Without prejudice to the provision of the following article, the contract concluded by the agent without powers of representation on behalf of the other party has the effects referred to in number 1 of article 268 of the Civil Code.
2. The contract is considered ratified if the other party, once it has knowledge of its conclusion and of its essential content, does not communicate its opposition to the contract to the third party of good faith within five days after acquiring such knowledge.

Article 545  
**(Apparent representation)**

1. The contract concluded by an agent without powers of representation produces effects for the principal if there are weighty reasons, objectively assessed, taking into account the circumstances of the case that justify the trust of the third party of good faith in the legitimacy of the agent, provided that the principal has also contributed to establishing the confidence of the third party.
2. The provision of the previous number applies, mutatis mutandis, to the collection of credits by an unauthorized agent.

**Section V**  
**Termination of the contract**

Article 546  
**(Form of mutual agreement)**

An agreement by which the parties decide to end their contractual relationship shall be made in writing.

Article 547  
**(Forfeiture)**

The agency contract expires, especially:

- a) when the stipulated term ends;
- b) if the condition to which the parties have subordinated the agency occurs or if it is certain that it cannot occur, depending on whether the condition is dissolving or suspensive;
- c) by the death of the agent or, in the case of a corporate body, by its extinction;
- d) by bankruptcy of the agent or the principal.

Article 548  
**(Duration of the contract)**

1. If the parties have not agreed a term, the contract is presumed to be concluded for an indeterminate period.

2. The contract that continues to be fulfilled by the parties after the expiry of the term is deemed to be renewed for an indeterminate period.

Article 549  
**(Termination periods)**

1. Termination is only allowed in contracts concluded for an indeterminate period, provided that  
it is communicated in writing to the other party at least with a minimum advance notice of:
  - a) one month if the contract lasts for more than a year;
  - b) two months if the contract has lasted over a year;
  - c) three months if the contract has lasted more than two years;
  - d) four months if the contract has lasted more than three years;
  - e) five months, if the contract has lasted more than four years;
  - f) six months if the contract has lasted more than five years.
2. Unless otherwise specified, the term referred to in the previous number ends on the last day of the month.
3. If the parties stipulate longer periods than those mentioned in number 1, then the time to be observed by the principal may not be less than that of the agent.
4. In the case referred to in number 2 of the previous article, the time elapsed during the term will also have to be taken into account to determine the advance notice with which the termination shall be communicated.

Article 550  
**(Lack of advance notice)**

1. Those who terminate the contract without respecting the time limits referred to in the previous article are obliged to compensate the other party for damages caused by the lack of the notice.
2. Instead of compensation the agent may demand an amount calculated on the basis of the average monthly remuneration earned during the previous year, multiplied by the time lacking; if the contract has lasted less than one year, the average monthly remuneration earned in the course of the contract shall be used.

Article 551  
**(Resolution)**

1. The agency agreement may be terminated by either party:
  - a) if the other party fails to fulfill its obligations and when, by its seriousness or reiteration, the continuation of the contractual relationship cannot be demanded;
  - b) when there occur circumstances that make impossible or that seriously prejudice the completion of the contractual purpose, to the extent that the continuation of the contract until the expiration of the term stipulated or imposed in case of termination, cannot be demanded
2. The resolution is made in a written statement, within a period of one month after gaining the knowledge of the facts that justify it, indicating the reasons on which it is based.

Article 552  
**(Indemnization)**

1. Irrespective of the right to terminate the contract, either party has the right to be compensated, in general terms, for damages resulting from non-compliance with the obligations by the other party.
2. The resolution under subparagraph b) of number 1 of the previous article 1 confers the right to indemnization according to equity.

Article 553  
**(Compensation for goodwill)**

1. Without prejudice to any indemnization that may occur under the previous provisions, the agent is entitled, after the termination of the contract, to compensation for goodwill, provided that the following requirements have been cumulatively met:
  - a) the agent has arranged new clients for the other party or substantially increased the volume of business with existing clients;
  - b) the other party will considerably benefit after termination of the contract from the activity of the agent;
  - c) the agent ceases to receive any remuneration for contracts negotiated or concluded after the termination of the contract with the clients referred to in a).
2. In case the agent dies, compensation for goodwill can be claimed by his heirs.
3. The right to compensation for goodwill annulled if the agent or his heirs do not communicate to the principal within one year from the date of termination of the contract that they intend to receive it, and judicial proceedings shall be brought within the year following that communication.

Article 554  
**(Calculating the compensation for goodwill)**

1. The compensation for goodwill is calculated in terms of equity, but it cannot exceed a value equivalent to an annual indemnization, calculated on the basis of the average annual remuneration received by the agent during the last five years.
2. If the contract has lasted less time, the average of the period during which it was in force will be used.

Article 555  
**(Right of retention)**

For the credit resulting from his activity the agent has the right of retention over the objects and values he holds under the contract.

Article 556  
**(Obligations of restitution)**

Without prejudice to the provision of the previous article, each contracting party has an obligation to return the objects, values and other elements belonging to the other party at the end of the contract.

## **Chapter VII Carriage contract**

### **Section I General provisions**

#### **Article 557 (Concept)**

A carriage contract is that by which a person undertakes to convey persons or goods from one place to another, against payment.

#### **Article 558 (Modalities)**

Transport can be by land, sea, river, lake, rail and air.

#### **Article 559 (Rules)**

The carriage contract shall be governed by the legal norms that are directly applicable by virtue of the means of transport used and by the provisions of this chapter compatible with them.

#### **Article 560 (Price)**

1. The price of carrying persons is called the fare and that of goods is called freight.
2. If contracts for the carriage of persons do not indicate the modality and form of the payment of the fare, it is assumed that this was paid on demand and in cash before the commencement of travel.
3. In contracts for the carriage of goods, the freight is presumed to have been paid on demand and in cash upon receipt by the carrier of the thing to be transported

### **Section II Carriage of persons**

#### **Article 561 (Duration)**

1. Carriage covers the whole period during which the passenger is in the vehicle used and the operations of embarking and disembarking at the place of origin, of stop-overs or of destination.
2. The carriage of a passenger's luggage covers the time elapsed from the moment it was entrusted to the carrier until the moment it is delivered by him on the agreed place.

#### **Article 562**

### **(Ticket)**

1. The ticket represents the carriage contract and shall indicate:
  - a) the name of the carrier;
  - b) the name of the passenger, with the exception of legal, regulatory or contractual provisions to the contrary;
  - c) the time and place of embarking and destination;
  - d) the date of issue;
  - e) the agreed conditions, including those concerning the weight and volume of the passenger's luggage.
2. The ticket is not necessary to prove the conclusion of the contract, local usage and customs shall be considered as well as the means of transport employed.

### Article 563

#### **(Obligation to deliver the ticket)**

1. The carrier is obliged to deliver the ticket.
2. The ticket is valid for one year from the date of issue, unless contractual stipulations to the contrary.

### Article 564

#### **(Obligations of the passenger)**

The obligations of the passenger are to:

- a) pay the price of the ticket;
- b) be present at the designated place to commence the journey at the hour previously set, if the carriage is contracted at a fixed time;
- c) obey legal norms and regulations;
- d) obey the rules established by the carrier and included in the ticket;
- e) refrain from any acts that cause discomfort or injury to other passengers, damage means of transport, hinder or prevent the normal execution of the contract;
- f) other obligations that have been agreed by the parties.

### Article 565

#### **(Liability of the carrier)**

1. The carrier is liable for conveying the passenger sound and safe, under the conditions of convenience agreed upon, to the destination.
2. The carrier is liable for accidents happening to the person of the passenger and for the loss or damage to luggage entrusted to him by the passenger, unless this results from a cause not attributable to it.
3. The carrier is not liable for loss or damage to money, securities, documents, precious metals, jewelry, artwork or other valuables, except where such goods have been declared to the carrier and accepted by him.
4. The carrier is not liable for loss or damage to hand luggage or any goods in the care of the passenger, unless this results from a cause not attributable to him.

5. Any clause that purports to exclude the liability of the carrier is null and void.
6. The carrier may demand the declaration of the value of the luggage with the purpose of fixing the limit of indemnization.

Article 566  
**(Connecting carriage)**

1. In the case of connecting carriage each carrier is only liable for his own route, unless one of the carriers assumes responsibility for the entire journey.
2. Damages resulting from delay or interruption of the journey are determined in relation to the whole route.

Article 567  
**(Termination of the contract by the passenger)**

1. The passenger is allowed to terminate the contract of carriage for which has been issued a ticket prior to initiating the trip, with due restitution of the value of the ticket, provided that the carrier has been notified timely in order to re-issue the ticket.
2. Not entitled to the reimbursement of the value of the fare is the passenger who fails to embark, unless he proves that another person was conveyed in his place, in which case the value of the unused ticket shall be reimbursed to him.
3. In the cases provided for in this article, the carrier is entitled to retain up to ten percent of amount to be reimbursed to the passenger, as a compensatory fine, provided that this has been previously provided for under the conditions contained in the ticket.

Article 568  
**(Reimbursement of the value of the ticket)**

The passenger is entitled to reimbursement of the amount already paid for the ticket if the carrier were to cancel the journey.

Article 569  
**(Interruption of the journey)**

1. If the journey is interrupted for any reason beyond the control of the carrier, even as the result of an unpredictable event, the carrier remains liable for the completion of the contracted carriage by other means of transport from the same category, in addition he shall assume the costs of accommodation and food of the passenger, while waiting for new transportation.
2. The passenger may choose to travel using means of transport from a category different from the contracted one, while assuming the costs of the alteration if the value of the ticket is higher than the price of the previous one.

Article 570  
**(Delay and interruption of carriage)**

1. When delays of more than four hours occur in departure, the carrier shall provide the passenger boarding in transportation of the same type that provides equivalent service for the same destination, if any, or immediately refund the value of the ticket, in case the passenger so wishes.
2. If there is an interruption or delay at the airport, port or station for more than four hours for reasons attributable to the carrier, then the passenger can opt for the endorsement of the ticket in favour of another carrier, or for the immediate reimbursement of the price.
3. All expenses resulting from the interruption or delay of the journey, including carriage of any kind, food and lodging, are assumed by the carrier, without prejudice of liability for losses and damages.

Article 571  
**(Excess reservations)**

1. In the carriage contract the passenger with a confirmed reservation who cannot travel under the claim of excess passengers is entitled to an indemnization under the law.
2. In the event that the passenger is accommodated on another means of transport, the carrier assumes all expenses incurred for food, lodging, transportation and phone calls.
3. The indemnization defined in number 1 of this article applies to both domestic and international transport.
4. The expenses referred to in number 2 of this article are paid directly by the carrier.

Article 572  
**(Indemnization proceedings)**

The action for damages in carriage contracts shall lapse:

- a) three years from the date of the incident concerning the passenger or third parties;
- b) one year from the date of delivery of the thing, by the losses incurred due to malfunction or delay in delivery;
- c) after the deadline for delivery, the losses suffered by the loss or theft of the thing;
- d) by damages resulting from delays in the carriage of people, whether departing or arriving;
- e) by the loss, embezzlement or damages caused to passenger luggage;
- f) one hundred twenty days for losses suffered by the carrier due to inaccurate information or the false description of things carried.

Article 573  
**(Execution of the carriage contract)**

The execution of the carriage contract of persons includes boarding and landing operations, in addition to operations executed on board the vehicle of transport.

Article 574  
**(Luggage slip)**

1. In the carriage contract of persons, the carrier shall deliver a slip to the passenger corresponding to the luggage received.

2. The luggage slip shall be issued in two copies, indicating the place and date of issue, the points of departure and destination, the passenger ticket number, the quantity, weight and value declared of the luggage, with one copy being delivered to the passenger.
3. The execution of the contract begins with the delivery of the slip to the passenger and ends with the receipt of the luggage.
4. It is lawful for the carrier to verify the contents of the volumes of luggage, in accordance with the provisions in the regulations that apply.
5. In addition to checked-in luggage, the passenger may carry personal effects as hand luggage, provided that it complies with the specific regulatory standards.
6. In case of a break-down or a delay in departure, the addressee shall make a protest declaration in writing when receiving the luggage for the purpose of safeguarding his rights to compensation.
7. In the event of loss or embezzlement of checked-in luggage, the passenger may lodge a complaint with the carrier within a period of forty-eight hours counting from the moment that the luggage should have been delivered.
8. The receipt of luggage without protest implies the assumption that the luggage is in good condition.

### **Section III Carriage of goods**

#### **Article 575 (Duration)**

The carriage of goods covers the period from the time they were entrusted to the carrier until the time when they are delivered by him at the agreed place.

#### **Article 576 (Indications and delivery of documents)**

1. The shipper shall accurately inform the carrier on the name of the recipient, the place of destination, the nature, possible danger, quality and quantity of the goods and give him all the additional information necessary for properly executing the carriage contract.
2. The shipper shall provide the carrier with the invoices and other documents that ensure the free movement of the goods, including those necessary to comply with any tax, customs, health or police obligations.
3. The shipper is liable towards the carrier for damages resulting from omissions or errors in the information provided and for the absence, insufficiency or irregularity of the documents.

#### **Article 577 (Bill of lading)**

1. The shipper shall deliver to the carrier, upon his request, a bill of lading signed by him that contains the information referred to in number 1 of the previous article and additional conditions agreed upon.
2. The carrier shall deliver to the shipper, upon his request, a second copy of the bill of lading signed by him or, if a bill of lading has not been submitted, a cargo receipt with the same

information.

3. With exception of legal provisions to the contrary, the copy of the bill of lading and the cargo receipt can be issued to order or to bearer.

Article 578  
**(Disposal of goods)**

1. The shipper has the right to dispose of the goods, asking the carrier to suspend their transport, to modify the place designated for delivery and to deliver them to a recipient other than the one indicated in the bill of lading.

2. The shipper who wishes to exercise the right referred to in the previous number shall submit the duplicate of the bill of lading or the cargo receipt which has been delivered to him to the carrier, in order for the new instructions as well as the costs resulted from these changes, to be inserted in it.

3. The right of disposal of the shipper ceases when the goods are put at the recipient's disposal.

4. If the duplicate of the bill of lading or the cargo receipt has been issued to order or to bearer, the right referred to in number 1 belongs to its bearer, who must submit it to the carrier in order for the new instructions as well as the costs resulted from these changes, to be inserted in it.

Article 579  
**(Impossibility or delay of carriage)**

1. If transport can not take place or is extraordinarily delayed by a cause not attributable to the carrier, then the carrier shall immediately request instructions from the shipper, while providing custody of the goods.

2. If it is not possible to obtain instructions from the shipper or if these are not feasible, the carrier may pursue a judicial deposit of the goods or, in case these are perishable, their judicial sale.

3. The carrier shall immediately inform the shipper on the deposit or the sale.

4. The carrier is entitled to reimbursement of all expenses incurred.

5. If the carriage has already commenced, the carrier is entitled to a part of the value of the transport in proportion to the distance covered, unless the carriage is interrupted due to the total loss of the goods transported.

Article 580  
**(Delivery of goods)**

1. The carrier is obliged to put the transported goods at the disposal of the recipient in the place, within the term and under any other conditions indicated in the contract or, in its absence, according to usage.

2. If the delivery is not to be made at the domicile of the recipient, the carrier is obliged to notify him immediately of the arrival of the goods transported.

3. If the shipper has issued a bill of lading, the carrier shall present it to recipient.

Article 581  
**(Rights of the recipient)**

1. The rights under the contract of carriage may be exercised by the recipient from the time the goods arrive at the agreed place or from the moment, after the expiry of the period in which they should have arrived, he requests their delivery.
2. The recipient cannot exercise the rights arising from the contract before reimbursing the carrier for expenses arising from the carriage incurred by him, and paying the credits that the shipper has instructed the carrier to charge, when indicated in the bill of lading.
3. When there is disagreement between the carrier and the recipient about the amount to be paid the recipient is required to deposit the difference in question in a credit institution

#### Article 582

##### **(Impediments to delivery)**

1. If the recipient is not at the address indicated on the bill of lading or if he has refused the goods or is delayed in receiving them, the carrier shall immediately request instructions from the shipper, by applying the provisions of article [...which article?].
2. If more than one person with a qualifying title claims delivery of the goods at the place of destination, or if the addressee is delayed in receiving them, the carrier may proceed with their deposit or, if they are subject to rapid deterioration, with their judicial sale on account of the entity they belong to.
3. The carrier shall immediately inform the shipper on the deposit or sale.

#### Article 583

##### **(Bill of lading or cargo receipt to order or to bearer)**

1. If the carrier has delivered to the shipper a duplicate of the bill of lading or a cargo receipt to order or to bearer, the rights arising out of carriage shall be transferred with the endorsement or delivery of the document in question.
2. In the case referred to in the previous number the carrier is not obliged to give notice of the arrival of the goods unless for delivery the address of a third party has been indicated as the place of destination and the indication is included in the duplicate of the bill of lading or in the cargo receipt.
3. In the cases mentioned in this article, the carrier may refuse delivery of the goods while the duplicate of the bill of lading or the cargo receipt has not been returned to him.

#### Article 584

##### **(Liability of the carrier towards the shipper)**

1. The carrier who delivers transported goods without requesting the recipient to reimburse expenses and to pay the credits referred to in number 2 of article 582, or the amount of the deposit referred to in number 3 of the same article, is liable towards the shipper for the payment of the credits that the latter has instructed him to collect and he cannot demand from him to reimburse the expenses incurred in carriage.
2. The provision of the previous number shall not prejudice the rights of the carrier against the recipient.

#### Article 585

### **(Liability for loss or deterioration of goods)**

1. The carrier is liable for loss or damage of goods occurring between its reception and its delivery at the agreed place, unless he proves that the loss or damage resulted from:
  - a) a fact attributable to the shipper or addressee;
  - b) the nature or a defect of the goods or of their packaging;
  - c) a fortuitous event or *force majeure*.
2. If the carrier accepts without reserve the goods to be carried then it is assumed that they do not have visible defects.

#### Article 586

### **(Presumption of fortuitousness or of *force majeure*)**

The clauses establishing the presumption of unforeseeable circumstances or of *force majeure* are valid for those situations that, taking into account the means of transport used or the conditions of carriage, usually result from unforeseeable circumstances or *force majeure*.

#### Article 587

### **(Diminishing weight or size)**

1. When the goods are by nature subject to a decrease in weight or size during transport, the carrier may limit his liability to a percentage or a part by volume.
2. The limitation has no effect if the shipper or the addressee proves that the decrease was not caused by the nature of the goods or that, under the circumstances, it could not have been caused by their nature.

#### Article 588

### **(Calculating indemnization)**

1. Deterioration occurred since the delivery of goods to the carrier is proven and evaluated by convention and, when this is absent or insufficient, in accordance with general legislation, based on the current price at the time and place of delivery.
2. During the process of investigation and assessment of deterioration the goods may be delivered to whom they belong by a court decision, with or without bail.
3. The criterion laid down in number 1 also applies to the calculation of indemnization in the case of loss of goods.
4. The shipper is not allowed to be shown evidence that among the goods named there were other goods of greater value, unless these have been declared and accepted by the carrier.

#### Article 589

### **(Right to verification by the addressee)**

1. The addressee has the right to verify, at his own expense, the condition of the transported goods, even though they do not show outward signs of deterioration.
2. If there is no agreement on the condition of the goods, they shall be judicially deposited, with the parties using the legal means at their disposal for the recognition of their rights.

Article 590  
**(Loss of the right to claim)**

1. If the addressee receives the goods without reservation and pays what is due to the carrier he loses the right to any claim against the carrier, except in cases of willful misconduct or gross negligence on the latter's part.
2. The provision in the previous number does not apply to partial loss or deterioration that is not visible or easily detectable at the time of delivery of the goods, cases in which the addressee has thirty days from the date of delivery, to make a claim.

Article 591  
**(Connecting carriage)**

1. In connecting carriage, where there is a single contract, all carriers are jointly and severally liable for the loss or deterioration of goods, from their receipt to delivery in the place agreed upon.
2. In relations between different carriers, the obligation to compensate shall be shared in proportion to the route covered by each; but if it is possible to determine the carrier on whose route the damage occurred then he will be the only one liable.
3. Excluded from the provision of the previous number is the carrier who can prove that the damage did not occur on his route.
4. In case one of the carriers enters into bankruptcy his share is divided among the others, in proportion to their routes.

Article 592  
**(Consecutive carrier)**

The consecutive carrier has the right to declare in the bill of lading or in a separate document the state the goods to be carried are in at the time of delivery to him, assuming, in the absence of any statement, that he received them in good condition and in accordance with the indications in the bill of lading.

Article 593  
**(Collection of credits)**

1. The last carrier represents those preceding him in collecting from the addressee the credits derived from the contract of carriage.
2. If he does not undertake the collection, then the last carrier is liable towards the other ones for the amounts due by the addressee.

**Section IV**  
**Multimodal carriage**

Article 594  
**(Concept)**

A carriage contract is considered a single one when it is agreed in a single legal act, even while being executed successively and continuously by two or more modes of transport.

Article 595

**(Who executes multimodal carriage)**

Multimodal carriage is executed under the sole responsibility of one single multimodal transport operator who is responsible for issuing the bill of lading.

Article 596

**(Liability of the multimodal transport operator)**

The multimodal transport operator is directly liable for providing the contracted transportation services, from the moment he receives the object through to delivery at their destination.

Article 597

**(Regress)**

1. The multimodal transport operator has right of regress against contracted or subcontracted third parties for damages due to losses caused to the object carried.
2. Damages caused by delay or interruption of travel are determined in function of the whole route.

Article 598

**(Effects of replacing some carrier)**

Having replaced some carrier along the way, the liability of the substitute carrier is jointly and severally with the substituted one.

Article 599

**(License and registration)**

The activity of the multimodal transport operator requires prior qualification and registration with the competent entity

**Chapter VIII**  
**Association in participation contract**

**Section I**  
**General provisions**

Article 600  
**(Concept and rules)**

1. The association in participation contract is the one in which a person enters into a partnership with a commercial entrepreneur for the exercise of an enterprise, with the former person participating in profits or losses resulting from the exercise for the latter.
2. Profit sharing is an essential element of the contract.
3. Participation in the losses may be waived.
4. To matters not covered in the following articles apply the conventions of the parties and the regulatory provisions of other agreements, in accordance with the analogy of the situations.

Article 601  
**(Plurality of associates)**

1. Given that various persons may join in one single association in participation with the same associating party, the former are not deemed to be jointly and severally liable, be it passively or actively, with the latter.
2. The exercise of the rights to information, supervision and intervention in management by the various partners shall be regulated in the contract.
3. In the absence of the regulations referred to in the previous number the rights to information and supervision may be exercised individually and independently by each one of them, and the consent required by paragraphs b) and c) of numbers 1 and 2 of article 606 shall be provided by the majority of the associates.

Article 602  
**(Form of the contract)**

1. The association in participation contract is not subject to a special form, with the exception of that which is required by the nature of the goods contributed by the associate.
2. However, the clause which excludes the associate from sharing in the losses of the business and the one that, when such losses occur, establishes unlimited liability of the associate, shall be in writing.
3. The provision of number 2 of article 615 applies to the association in participation contract.

Article 603  
**(Form of contribution by the associate)**

1. The associate obliges himself to provide or he shall provide a patrimonial contribution that, when it consists in the constitution or transfer of a right, shall join the patrimony of the associating party.
2. The contract may stipulate that the contribution provided for in the previous number is replaced by the reciprocal participation in the association between the same people, agreed simultaneously.
3. The contract shall attribute a value in money to the contribution of the associate. The assessment can be made in court at the request of the interested party, when necessary for the purpose of the contract.
4. Unless otherwise provided by the contract, the delay of the associate suspends the exercise of his legal or contractual rights, but it does not affect the enforceability of his obligations.
5. If he participates in the losses the contribution of the associate may be waived in the contract.

#### **Article 604**

##### **(Inexistence of relationship between associates and third parties)**

1. In association in participation, there is no legal relationship between third parties and the associates, and the acts and transactions concluded in pursuit of the common interest are the sole responsibility of the associated party
2. The creditors of the associated party cannot assert their rights over the assets of the associates.

#### **Section II**

##### **Execution of the contract**

#### **Article 605**

##### **(Participation in profits and losses)**

1. The amount and the demandability of the participation of the associate in profits or losses are determined by the rules contained in the following numbers, unless different arrangements result from a convention between the parties or from the circumstances of the contract.
2. If only the criterion for determining the participation of the associate in profits or losses is agreed upon, then the same criterion applies to the determination of the participation of the associate in losses or profits [please check, looks a tautology to me]
3. If participation cannot be determined in accordance with the provision in the previous number, while the contributions of associates and associating party are evaluated in accordance with the contract, the participation of the associate in profits and losses shall be proportional to the value of his contribution.
4. If there is no such assessment, then the participation is half of the profits or half of the losses, but the interested party may request a reduction deemed equitable in court, taking into account circumstances.
5. The participation of the associate in losses is limited to his contribution.
6. The associate participates in profits or losses from operations pending on the date of commencement or termination of the contract.
7. The participation of the associate refers to the results of the accounting period, calculated in accordance with the criteria established by law or resulting from commercial usage, taking into account the circumstances of the commercial enterprise.

8. From profits that, under contractual or legal terms, are to be paid to the associate in an accounting period are deducted the losses incurred in previous accounting periods, to the limit of the responsibility of the associate.

#### Article 606

#### **(Duties of the associating party)**

1. The duties of the associating party, in addition to other ones resulting from the law or the contract are:

- a) to proceed, in exercising his enterprise, with the diligence of a careful and orderly manager;
- b) maintain the essential bases of the association in the way the associate may expect them to be maintained, in accordance with the circumstances of the contract and the functioning of similar enterprises, with the associating party not being allowed, without consent of the associate, to terminate or suspend the operation of the enterprise, substitute its objective or change the legal form of its exploitation;
- c) not to compete with an enterprise in which the association is contracted, unless such competition has been expressly approved;
- d) to provide to the associate the information justified by the nature and purpose of the contract.

2. The contract may stipulate that certain management decisions shall not be made by the associate without previously hearing or without prior consent of, the associate.

3. The associating party is liable for damages that the associate may incur from management acts carried out in non-compliance with the contractual stipulations from the previous number, without prejudice to other penalties provided for in the contract.

4. Changes of partners or of directors of the associating company are irrelevant, except when the law or the contract stipulate otherwise.

#### Article 607

#### **(Rendering accounts)**

1. The associating party shall render accounts in the periods legally or contractually determined for the associate to claim his participation in profits and losses and also for each annual accounting period, for the duration of the association.

2. Accounts must be rendered within a reasonable period after the expiry of the period they refer to; if the associating party is a commercial company, then the period for rendering accounts to the general assembly shall apply.

3. The accounts shall provide a clear and accurate indication of all the operations the associate is interested in and justify the amount of participation of the associate in profits and losses if there were any such participation at the time.

4. If the associating party fails to render accounts or if the associate does not condone the accounts presented, then the special process for accountability set out in the Code of Civil Procedure is used.

5. The participation of the associate in losses or profits is immediately payable if the accounts have been rendered in court; otherwise, the participation in losses to the extent that these exceed the contribution, shall be paid within a period not exceeding fifteen days from the date of the claim by the associating party.

### **Section III**

## **Cessation of the contract**

### Article 608

#### **(Extinction of the association)**

The association is extinguished by the facts provided in the contract, plus by the following:

- a) full realization of the purpose of the association;
- b) impossibility of achieving the objective of the association;
- c) by the will of the heirs or after the lapse of a certain period after the death of a contractor in terms of the following article;
- d) the extinction of the contracting corporate entity, in terms of article 610;
- e) confusion of the positions of associating party and associate;
- f) resolution;
- g) termination;
- h) bankruptcy of the associating party.

### Article 609

#### **(Death of the associate or of the associated party)**

1. The death of the associating party or of the associate has the consequences referred to in the following numbers, unless there are different contractual stipulations or an agreement between the associating party and the heirs of the associate.
2. The death of the associating party or of the associate does not extinguish the association in participation, but the surviving contractor or the heirs of the deceased can extinguish it within a period of ninety days after the date of the death.
3. If the liability of the associate is unlimited or greater than the contribution made or promised by him, then the association shall cease to exist ninety days after his death, unless within that period the heirs of the associate state they wish to continue as associates.
4. In case the association is extinguished the heirs of the associate do not bear the losses occurred since the date of death.

### Article 610

#### **(Extinction of the associate or of the associated party)**

1. With respect to the extinction of the associated corporate entity, heirs are considered the person or persons to whom, in the settlement, the position pertains that the corporate entity had in the association.
2. The association ends by the dissolution of the associated corporate entity, unless the contract provides otherwise or the shareholders of the corporate entity decide that during the settlement it continues its activity; in the latter case, the association ends when the corporate entity is extinguished.
3. After the end of the association by the dissolution of the associated corporate entity and it is revoked by a decision of the shareholders, the association continues without interruption if the associate so wishes, by a declaration addressed to the other party within ninety days following upon knowledge of the revocation.
4. The heirs of the corporate entity are liable for damages possibly due to the other party.

Article 611  
**(Dissolution of the contract)**

1. Contracts entered into for a fixed period or which concern certain operations can be resolved by either party in the case of just cause.
2. If just cause consists in neglect by one of the parties then it shall compensate the damages caused by the dissolution.

Article 612  
**(Termination of the contract)**

1. Contracts whose duration is not determined and whose objective does not consist of certain operations may be terminated by the will of a party, with an advance notice of six months after ten years have elapsed since they were entered into.
2. The party that terminates the contract without observing the advance notice referred to in the previous number is obliged to compensate the counterpart for resulting losses.

**Chapter IX**  
**Consortium contract**

**Section I**  
**General provisions**

Article 613  
**(Concept and objective of the consortium contract)**

1. Consortium is a contract by which two or more individuals or corporate entities that pursue an economic activity mutually oblige one another to undertake in a concerted manner a certain activity or to make a certain contribution for the purpose of achieving any of the following objectives:
  - a) engaging in material or legal acts, preparing either a certain undertaking or a continuous activity;
  - b) the execution of a certain undertaking;
  - c) providing a third party with goods, equal or complementary among one another, produced by each one of the members of the consortium;
  - d) research or exploitation of natural resources;
  - e) production of goods in kind divisible between the consortium members.
2. The consortium has no legal personality.

Article 614  
**(Form)**

1. The consortium agreement is subject to written form, which can be merely private, unless another form is required by the nature of the goods with which the members join the consortium.

2. The lack of a public deed only produces total nullity of the transaction when the final part of article 292 of the Civil Code applies and when it is not possible to apply article 293 of the same Code, so that the contribution becomes the simple use of the goods whose transmission requires that form.

Article 615  
**(Content)**

1. The parties have full autonomy with respect to fixing the terms and conditions of the contract, without prejudice to the mandatory provisions under this Chapter.
2. If the objective of the contract covers the provision of some contribution, it shall consist of a tangible object or the use of a tangible object.
3. Cash contributions are only allowed if the contributions of all members are in cash.

Article 616  
**(Duties of the members)**

In addition to the general duties determined by law or by contract a member of the consortium shall:

- a) refrain from competing with the consortium, unless there are terms and conditions under which competition is permitted;
- b) provide to the other consortium members all information that may be requested or that is important for the proper execution of the contract;
- c) allow the examination of the activities, including goods that, by contract, are to be provided to third parties.

Article 617  
**(Prohibition of common funds)**

The constitution of common funds in the consortium is prohibited.

Article 618  
**(Alteration of the contract)**

1. Changes to the consortium contract require the agreement of all parties, unless waived by the contract itself.
2. Changes take the form used for the consortium agreement.
3. Changes in the direction or of partners of the members, when these concern corporate entities, do not affect the contract unless otherwise agreed upon.

**Section II**  
**Forms of the consortium**

**Subsection I**  
**General provisions**

Article 619

## **(Forms of the consortium)**

The consortium can be external or internal.

### **Subsection II External consortium**

#### **Article 620 (Concept)**

The consortium is external when the activities or goods are delivered directly to third parties by each member of the consortium, with an express declaration of that capacity.

#### **Article 621 (Supervisory board)**

1. The external consortium agreement may admit the creation of a supervisory board of which all members are part.
2. The decisions of the supervisory board are taken by majority and bind the head of the consortium as instructions from all his principals, provided they stay within the powers attributed or granted to them.

The supervisory board has no powers to proceed to modification or termination of contracts entered into under the consortium contract, nor of the value of any commercial transaction.

#### **Article 622 (Name)**

The external consortium shall be named a business consortium, in full or in the abbreviated form CE, which is preceded or followed by a particular name.

#### **Article 623 (Distribution of profits and division of duties)**

1. The profits resulting from the consortium activities are considered as of its members and shall be apportioned according to the consortium contract or, if the contract has no provisions to that end, in proportion of the participation of each member in the undertaking.
2. Consortium members shall contribute to the payment of the surplus of expenses over revenues in the proportion prescribed in the consortium contract or, if the contract has no provisions to that end, in proportion of the participation of each member in the undertaking.

#### **Article 624 (Relations with third parties)**

1. The leader of the consortium, who may delegate his powers to a member of the consortium, is responsible with respect to third.

2. Relations of members of an external consortium with third parties do not presume active or passive joint and several liability between those members.
3. The obligation to compensate third parties for giving rise to civil liability is restricted to those of the members of the external consortium to whom such liability is attributable by law.
4. The payment of fines or the compliance with other penalty clauses by all members of the consortium established in contracts entered into with third parties, does not presume their joint and several liability for other active or passive obligations.

Article 625  
**(Cessation of participation)**

Any member of the consortium may forego, in whole or in part, his participation, either to [in?] another member or a third party through previous authorization granted unanimously by the other participants [please check, original unclear].

Article 626  
**(Admission of third parties in the consortium)**

1. New consortium members may be admitted when there is unanimous agreement of the members of consortium.
2. The new consortium member is liable for the debts of the consortium, unless in the act of joining the consortium an exemption clause has been explicitly established.

Article 627  
**(Provision of security)**

1. Any member of the consortium can offer security concerning his participation in the consortium through previous authorization granted unanimously by the other members.
2. Once the security is provided, its holder will not become a member of the consortium, leaving him only with the right to the goods from the consortium member who provided the security or to proceed to alienate the security to another member.

**Subsection III**  
**Internal consortium**

Article 628  
**(Concept)**

The consortium is internal when:

- a) the activities or goods are provided or delivered to one of the members of the consortium and only this member establishes relationships with third parties;
- b) the activities or goods are provided or delivered directly to third parties by each one of the consortium members, without the explicit invocation of this capacity.

Article 629  
**(Sharing profits and losses)**

1. When the parties in an internal consortium have agreed to share profits, losses or both, the percentage agreed upon applies.
2. If there is no contractual provision, the share of parties in profits and losses shall be proportionate to the value of their contributions.
3. The share of each contracting party in losses from operations is limited to its contribution

### **Section III Cessation of the contract**

#### **Article 630 (Extinction of the consortium)**

1. The consortium will become extinct by:
  - a) unanimous agreement of its members;
  - b) achieving its purpose or when this turns out to be impossible;
  - c) the expiry of the period specified in the contract without there being an extension;
  - d) extinction of the plurality of its members;
  - e) any other cause in the contract.
2. In the absence of any of the cases provided for in the previous number the consortium shall expire after ten years from the date of its conclusion, without prejudice to possible explicit extensions.

#### **Article 631 (Exoneration of members)**

1. A member of the consortium may withdraw from this if:
  - a) he is unable, without fault, to fulfill his obligations to perform a certain activity or to make a certain contribution;
  - b) events occurred mentioned in paragraphs b) or c) of number 2 of the following article concerning another member that have resulted in relevant damage, while not all members have agreed to rescind the contract with the defaulter.
2. In the case of paragraph b) above, the member who exonerates himself from the consortium is entitled to be compensated, in general terms, for damages resulting from his withdrawal.

#### **Article 632 (Rescission of the contract)**

1. The consortium agreement may be rescinded with respect to any of the parties by a written statement from all the other parties in the case of just cause.
2. Deemed just cause for rescission of the consortium contract with respect to one of the parties are:
  - a) a declaration of bankruptcy;
  - b) serious non-compliance in itself or by its repetition, with or without fault, with the duties of the consortium member;

c) the impossibility, with or without fault, to comply with the obligation to undertake a certain activity or make a certain contribution.

3. In the case of paragraphs b) and c) of the previous number the rescission of the contract does not affect the right to compensation that is due.

Article 633

**(Term of limitation in the consortium)**

1. The term of limitation of debt claims resulting from the activities of the consortium against the member who has withdrawn shall be five years counting from the date of registration of the act in the Registry of Legal Entities.

2. If the registration referred to in this article has not been pursued the consortium member who withdrew continues to be liable for the debts arising from the activities undertaken until the date of withdrawal, although he is assured of the right of regress against those responsible.

3. The term of limitation of actions against the consortium for debts arising from its activities is five years, counting from the termination of the liquidation that has already been registered.

**BOOK FOUR  
SECURITIES**

**TITLE I  
SECURITIES IN GENERAL**

**Chapter I  
General provisions**

Article 634

**(Freedom of emission)**

Securities not specifically regulated by law may be issued provided that the intention to issue such securities is clearly indicated in them and that the law does not forbid them.

Article 635

**(Securities to bearer, to order and nominative ones)**

1. Securities to bearer are those declared as such by law or those from which by the text or their form cannot be doubted that the provision is due to their bearer.

2. Securities to order are those in which the creditor is the person mentioned in the security and that contain a clause to order, or that are declared as such by law.

3. Nominative securities are those in which the creditor is the person mentioned in the security and in the registry of the issuer and that are not issued to order nor declared as such by law.

Article 636

**(Subscription to security by issuer)**

1. Securities must be subscribed by the issuer, unless the law offers dispensation; a mechanical reproduction of the signature is sufficient in the case of securities issued in large numbers and it is deemed sufficient for usage.
2. The validity of substitution [?? or: subscription?] may be subordinated to the observance of formalities mentioned in the security.
3. Subscription is meant to be any material sign that serves, in accordance with the customs of the country, to identify in a document or security the personality of the one enclosing it.

#### Article 637

#### **(Signature by a representative and upon request)**

Securities, including notes, can be signed by someone as representative or at the request of others.

#### Article 638

#### **(Indication of the object of provision, divergence in the indication of the amount)**

1. Securities shall contain an indication of the object of the provision.
2. If on the security the indication of the amount payable is written in full and in figures and there is disagreement between these, then the one written in full prevails.
3. If on the security the indication of the amount payable is written more than once, either in full or in numbers and there is disagreement among these various indications, then the one written in full of the lower amount prevails.
4. When the security shows an obvious error of indication, then the indication without error prevails.

#### Article 639

#### **(Amount mentioned in instalments)**

1. The amount of securities can be mentioned in installments, when the law does not exclude it.
2. In the case provided for in the previous number, as well as to issue as many titles as the installments, the provisions of article 770 of the Civil Code apply, provided that the security clearly indicates that this is the amount in installments or the security representing one of the installments.
3. The provision of the previous number only applies to intermediate relations; general rules apply to immediate relations.

#### Article 640

#### **(Stipulation of interest)**

1. Interest may be stipulated in securities, when the law does not prohibit it.
2. The interest rate shall be indicated in the security, in the absence of an indication the interest is deemed to be the legal rate.
3. Interest is payable from the date indicated on the security, in the absence of an indication from the date of the security itself.

Article 641

**(Purchase of credit by the holder or the subsequent bearers)**

1. The security holder only acquires the credit through negotiation with the issuer.
2. The later bearers acquire the ownership of the credit through acquisition in good faith and without gross negligence, even when the title has been put into circulation without the intention of the subscriber.

Article 642

**(Pleas that may be invoked against the bearer)**

1. The debtor can only invoke against the bearer of the security the pleas of lack of capacity or of representation at the date of issue, of falsity of his signature, physical coercion, lack of form, those resulting from the literal content of the security, those that are personal to the bearer or the lack of the necessary conditions for contractual capacity.
2. The debtor can only invoke against the bearer of the title pleas founded on their personal relationships with earlier bearers, when the holder, in acquiring the title, has known the pleas and knowingly acted to his detriment; the good faith of a bearer makes these pleas not invokable against subsequent purchasers of the security.
3. The debtor may invoke against the bearer of the security title the plea that he does not have the power to dispose of it because he acquired the security in bad faith or, when buying it, he acted with gross negligence, or some other legitimate cause.

Article 643

**(Causal securities)**

1. The obligations arising from securities are not necessarily independent of their cause.
2. If the cause is mentioned in the security, it is not permitted to invoke against the third party in good faith that the cause is not true, but one may invoke against that third party pleas based on the cause mentioned, if its mentioning means that the issuer wanted to stay with the said capacity.
3. If the cause is not mentioned in the security, or only accidentally or just for clarity, one may not invoke against the third party in good faith pleas based on the cause.
4. Situations where the law determines the opposite of what is prescribed in the previous numbers remain unaffected.

Article 644

**(Purchase in good faith)**

1. He who has acquired a security in accordance with its rules of circulation is not obliged to return it to the one from whom it has been, for whatever reason, dispossessed, unless he has acquired it in bad faith or, while buying it has acted with gross negligence.
2. Bad faith consists in knowing that the seller is not the owner of the security or does not have the power to dispose of it or the capacity or power of representation, or that the act of acquiring the security has any other defect.

3. If a bearer has acquired the security without bad faith or gross negligence, the plea of dispossession cannot be invoked against a later bearer, even if he is aware of the defects of the previous transfer.

4. In case of the right to restitution of the security judicial action can be brought even by him who, not being the holder of that right, acquired the security in accordance with common law or who owned the security due to a reason that allows him to demand delivery.

Article 645  
**(Rescission of alienation)**

1. If the alienation of a security, undertaken in accordance with the previous article, is rescinded then the ownership of the security is with the true previous owner and not with the one who, without right, alienated it.

2. The same happens if the seller alienated the security without right to a third party of good faith in order to repurchase it later.

Article 646  
**(Compliance by the debtor in good faith)**

1. A debtor who, without fraud or gross negligence, pays at the moment when he is required to pay, the one to whom the security formally confers the capacity of creditor, is validly discharged, even if the person to whom he pays is not the real owner of the right or does not have the capacity or power of disposition.

2. The fraud only exists when the debtor has clear and precise evidence of non-ownership or of incapacity or the lack of power of disposition.

3. If the security is to order the debtor is obliged to verify the regularity of the series of endorsements, but not the authenticity of the signatures of the endorsers or other circumstances that result from the provision of number 1.

Article 647  
**(Provision against delivery or mention and receipt)**

1. The debtor of a security is only obligated to provide against the delivery of the security with a receipt written on it or on an attached sheet, if any.

2. The right to demand delivery of the security with receipt written on it or on the attached sheet, or just the delivery or only the receipt, may be exercised after payment.

3. If the provision is partial, the debtor may demand that the security mentions such provision and that he will be given a receipt.

4. The mentioning and the receipts shall be signed and dated by the one receiving the provision and in the case the provision is partial, indicate the amount of it.

5. In the event of execution the provisions of the previous numbers apply, mutatis mutandis, under procedural law.

6. When the security is delivered to the debtor, who may exonerate himself through payment, he acquires its ownership even when the bearer does not want to transfer it to him or does not have the right to dispose of the security.

Article 648  
**(Security with obligation to pay an amount in cash)**

1. The security with the obligation to pay a sum of money cannot be issued to bearer nor, when it is part of an emission in series, to order, except in cases authorized by law.
2. The security that is put into circulation without lawful authorization or without compliance with the conditions, upon which that authorization depends, is null and void and the issuer who has put it into circulation is obliged to compensate third parties of good faith for damages that they would not have suffered if the emission had not been made.

Article 649  
**(Transfer of additional rights)**

The transfer of a security includes the additional rights inherent to it.

Article 650  
**(Securities representing merchandise)**

Securities representing merchandise confer upon the bearer the right to delivery of the goods, which are specified in them, their ownership and the capacity to dispose of them by transferring the security.

Article 651  
**(Liens or charges against right)**

The pledge, attachment, lien or any other encumbrance or charge against the right mentioned in a security or on the merchandise it represents are not effective if they are not undertaken against the security.

Article 652  
**(Limits of usufruct and pledge against securities with the right to random utilities)**

1. The usufructuary of a security is only entitled to the enjoyment of premiums or other random utilities produced by the security, and these very utilities shall be applied in the general terms relating to the application of capital burdened with usufruct and collected during it.
2. The pledge of a security does not cover the premiums and utilities referred to and only extends to interest coupons, rents or dividends belonging to the same security if delivered to the pignorative creditor.

Article 653  
**(Guarantees of the fundamental relation)**

The guarantees the fundamental relationship ensure the obligation arising from a security even for the benefit of third parties, unless there is novation, in which case its provisions apply.

Article 654

### **(Conversion)**

1. A security to bearer can be converted into a nominative security or one to order, upon request and at the expense of the bearer.
2. If the conversion is not expressly excluded by the issuer then a nominative security may be converted into a security to bearer, upon request and at the expense of the person in whose name it is inscribed, while he proves his identity and capacity in accordance with the requirements of article 698.
3. A security to order can be converted into a security to bearer, upon request and at the expense of the interested party if all those to whom it confers rights and all those who have obligations give their permission.
4. The permission of the issuer of a security to bearer or to order may be given by a statement in the security that the conversion of it to any bearer is permitted.
5. The agreements under this article are mentioned in the security.

### Article 655

### **(Renovation)**

The bearer of a security that due to being deteriorated is no longer fit for circulation, but is certainly identifiable with respect to its essential content and distinguishing signs, has the right to require from the issuer, against payment and anticipating expenses, an equivalent security against the restitution of the deteriorated one.

### Article 656

### **(Combination and division)**

1. Securities issued in series may be combined into one single security and those that consist of various securities can be divided into securities of lesser value.
2. The combination and division referred to in the previous number are undertaken upon request and at the expense of the bearer.

### Article 657

### **(Duplicates)**

When the law does not prohibit it duplicates of securities can be issued to which are extendible the provisions governing the emission of bills of exchange, in the relevant part.[unclear to me]

### Article 658

### **(Suspension of limitation of action)**

1. The limitation of action under a security is suspended with the prohibition of payment, to the benefit of the applicant of said prohibition and to the benefit of the applicant of annulment after the debtor has been notified on the decision of annulment.
2. Suspension starts with the application for prohibition or with the notification of the decision of annulment and ends with the completion of the annulment procedure or, where appropriate, with some of the facts referred to in numbers 2 and 3 of article 667.

Article 659  
**(Destruction of the security)**

If the document representing a security is materially destroyed or no longer allows for the individualization of the rights therein, then this right is not extinguished but it cannot be exercised or be subject of disposition; voluntary compliance with the holder not legitimized by the security is valid.

Article 660  
**(Extinction of right)**

1. If the law mentioned in the security has been extinguished with compliance and the security mentions that this occurred, then this very compliance has effect in relation to the parties and third parties.
2. If it is not mentioned in the security compliance can only be invoked in immediate relations or the third party that has knowingly acquired the title to the detriment of the debtor.

Article 661  
**(Legitimation documents and improper securities)**

The rules of this security do not apply to documents that only serve to identify the person entitled to benefit, or to allow the transfer of the right without observing the own formalities of the transfer.

Article 662  
**(Special rules)**

1. The rules of this security apply in all matters not otherwise provided for by other provisions of this Code or of special laws.
2. Government securities, bank notes and other equivalent securities are regulated by special law.

**Chapter II**  
**Securities to bearer**

Article 663  
**(Transfer)**

1. The transfer of a security to bearer takes effect by an agreement between seller and buyer, and delivery of security to the buyer; delivery can be made by the seller or by others upon instruction of the seller; delivery to the buyer is deemed accomplished when delivery to the third party appointed by him has been made.
2. Delivery is waived if the buyer already holds the security and in the case of a proprietary covenant [*constituto possessório*].

3. Ownership of a security to bearer can also be acquired, once the right to credit has been constituted, by the other means by which one acquires ownership of movable goods, where applicable, and it may be lost by abandonment, as those goods in question.
4. The credit arising from a security to bearer may be assigned, but can not be transferred without delivery of the security to the assignee.

#### Article 664

#### **(Interest coupons, or analogous ones, to bearer)**

1. If for a security interest coupons are issued to bearer, then the debtor cannot oppose the claim based on these coupons, the extinction of the main obligation or cancellation or the modification of the obligation to pay interest, unless otherwise stated in them.
2. If, at the time of payment of the capital the coupons that mature after the reimbursement of the capital are not delivered, the debtor has the right to retain their amount until the term of these coupons complete, except if they are given bail or if the coupons have been annulled.
3. The provisions of article 649 do not apply to interest or analogue coupons issued for securities different from the ones there foreseen; if they are issued for securities referred to in that article then the decision that authorizes the emission of these securities, implicitly authorizes that of the coupons.

#### Article 665

#### **(Annulment)**

1. Securities to bearer that are totally or partially destroyed, lost or stolen can be canceled at the request of the one who is entitled to them.
2. Equal to destruction is a deterioration so severe that it prevents renewal, a problem dealt with in article 655.
3. The issuer shall give the bearer the information and the documents and other means of proof necessary for the process of annulment; expenses related to these documents and other means of proof shall be paid and anticipated by the bearer.
4. Annulment is inadmissible in the case of isolated coupons or other securities to bearer without interest, issued in large numbers, payable on demand and destined to replace cash.

#### Article 666

#### **(Prohibition of payment)**

1. In the case of securities being destroyed, lost or stolen and action for annulment of the security being brought, the court may, upon request of the bearer forbid the issuer and those listed in the security or referred to by the applicant to make a payment to the holder of the security, under pain of being subject to the duty to pay again, and authorize them to deposit the amount of the security upon maturity, indicating the place of deposit.
2. The prohibition covers the emission of new interest coupons, rents or dividends or their renewal.
3. The prohibition of payment shall be notified to the issuer and to the others mentioned in number 1 and in addition shall be published.
4. The prohibition directed towards the issuer shall also concern payers not listed in the security.

Article 667  
**(Revocation of the prohibition of payment)**

1. If for any reason, the annulment process ends without annulment of the security then the prohibition of payment shall be automatically revoked.
2. The prohibition is also lifted, when the assumptions upon which the forfeiture of the preventive procedure depend turn out to be true, by negligence of the applicant, pursuant to procedural law.
3. If the holder of the security is known, the bearer shall bring action for recovery against him within the time limit stated by the court, lifting the prohibition of payment if the action is not brought within that period or if the applicant is negligent in advancing its proceedings, in accordance with the previous number.
4. The revocation must be notified and published with the prohibition.

Article 668  
**(Payment in good faith)**

Even when the bearer of the security notifies the debtor of the destruction, loss or theft of the security the subsequent payment by the debtor to the bearer of the security releases the debtor, when there has not been willful misconduct or gross negligence on his part.

Article 669  
**(Right of the bearer before or after the limitation of action)**

1. The legitimate bearer of a destroyed, lost or stolen security who communicates these facts to the issuer and proves them may demand payment after the period of limitation terminates.
2. If the debtor pays the holder of the security before the end of the period of limitation he is released, unless it is proven that he acted with willful misconduct or gross negligence.
3. Even if no action for annulment has been brought the legal bearer of destroyed, lost or stolen shares to bearer may be authorized by the court, while providing security if necessary, to exercise the rights resulting from these shares even before the deadline of the limitation of action if the securities are not presented by another person.
4. The rights of the author of the communication against the holder of the security are safeguarded.

Article 670  
**(Isolated coupons)**

1. In cases of destruction, loss or theft of isolated coupons the judge shall order upon request of whoever is entitled to them, that the amount is deposited within a period set by the same judge, after the maturity or, if matured already, after the court decision.
2. The amount is, by court order, ordered to be delivered to the applicant after the expiry of the limitation of action if in the meantime no one has appeared who is entitled to the same amount.

### **Chapter III**

#### **Securities to order**

##### Article 671

##### **(Subscription by various debtors)**

1. The security to order can be underwritten by more than one debtor.
2. In the absence of a stipulation to the contrary in the security the various debtors are jointly and severally liable to the creditor, who may individually or collectively proceed against them, without being required to observe the order in which they have become liable.
3. The fact that the creditor exercises his right against one of the liable parties does not prevent him from asserting his rights against the other ones, even if it follows upon the former.

##### Article 672

##### **(Name of the creditor)**

1. The creditor shall be named by his name or by reference to a position, if it sufficiently identified.
2. In case the beneficiary is named by reference to an office, his signature as endorser shall be accompanied by an indication of his capacity.

##### Article 673

##### **(Forms of transfer)**

1. The transfer of securities to order is made by endorsement and delivery of the instrument depends on the endorsee; delivery is effected in accordance with the provisions for securities to bearer.
2. Securities to order may also be transferred by an ordinary assignment, in which case they produce the particular effects of the assignment.
3. The transfer of credit in case of assignment requires delivery of the security in accordance with number 1 of this article.

##### Article 674

##### **(Form of endorsement)**

1. The endorsement shall be written in the security or on a sheet attached to it (annex), in which the security is fully transcribed or otherwise sufficiently identified, and shall be signed by the endorser.
2. The endorsement is valid even if it fails to name the endorsee or consists only in the signature of the endorser but, in the latter case, it must be written on the back of the security or on either side of the attached sheet.
3. Endorsement to bearer has the effects of a blank endorsement.
4. The endorsement to a particular person that contains the words “or to bearer” or some other equivalent is considered an endorsement to bearer; and the endorsement can then only be transformed by the bearer in nominal endorsement by deleting the clause “to bearer” or its equivalent when this bearer is the person named alongside the clause in question.

Article 675

**(Conditional or partial endorsement)**

1. The condition attached to the endorsement shall be considered unwritten.
2. Partial endorsement is null and void; it is forbidden to mention some borrowers or endorsees in such a way that each is authorized to demand a share of the credit; but there may be several creditors provided that they jointly exercise all the rights inherent to the security or that one of them, taking possession of the security demands the payment on behalf of all.

Article 676

**(Effects of endorsement)**

1. The endorsement transfers all the rights inherent to the title, including, unless something else has been determined, the personal or real guarantees not mentioned in the very security.
2. Guaranty, even if it concerns securities to order for which the law allows suretyship, is governed by its respective provisions.

Article 677

**(Claimability of the payment by the bearer not formally legitimized)**

1. If a title is transferred through endorsement by the true owner who is not formally legitimized the endorsement is not null and void but the buyer needs to obtain the formal legitimation for the effects that depend on it according to the law.
2. The bearer who is not formally legitimized may, unless the law determines otherwise, demand the debtor to pay, proving that the lack of formal legitimation does not imply the absence of the material right arising from the security.

Article 678

**(Blank endorsement)**

1. A blank endorsement formally legitimizes the bearer of the security, provided that that endorsement is in the proper place in the chain of endorsements.
2. He who acquires a security to order by a blank endorsement has the legal position that an acquirer would have through a complete endorsement.
3. The bearer of a security from blank endorsement can:
  - a) fill in the blank space in the final endorsement, from which he derives his legitimacy, either with his name or the name of someone else, and with the other regular elements of an endorsement and he can only add other statements to these if they reduce the obligation of the endorser;
  - b) re-endorse the security in blank in favour or some other person, without filling in the previous endorsement in his favour;
  - c) forward the security to a third party without endorsing it and without filling in the blank space, while this space is not being filled in or a full endorsement is not being made; in which case the transfer of the security depends on the requirements to which the endorsement is subordinated, with the exception of the statement of endorsement in the security.

4. The bearer of a security to order endorsed in blank can assign the credit arising from the security, according to the general rules governing the assignment of credits derived from securities to order.

Article 679  
**(Liability of the endorser)**

The endorser, if the law or a clause in the security does not determine otherwise, is not liable in the case the issuer of the security does not comply with the obligation.

Article 680  
**(Legitimation of the bearer)**

1. The bearer of a security to order has legitimacy to exercise the right indicated in it if, not being the borrower of the security, his right is justified by an uninterrupted series of endorsements, even when the last one is blank.
2. Cancelled endorsements are considered to be not written, for this purpose.
3. When a blank endorsement is followed by another endorsement, it is presumed that the signatory from the latter acquired the security by a blank endorsement.
4. Only he who has the material right may cancel the endorsements that may be necessary to be canceled in order to obtain his formal legitimation in accordance with this article, to the extent that he does not thereby prejudice the rights of third parties, unless there are legal provisions to the contrary.
5. The series of endorsements shall result from the security itself, although taking into account the text of the security with the general usage of trade.
6. The chain of legitimation is not interrupted by fictitious names or forged subscriptions.
7. The purchaser of a security to order by means other than endorsement may, through a judicial decision declaring his ownership, obtain legitimacy resulting from endorsement

Article 681  
**(Assignment)**

1. The assignee of a security to order cannot avail himself of the protection granted to the endorsee of good faith with respect to the acquisition in good faith and to the fact that valid exceptions against [?] the previous bearers cannot be opposed [please check, meaning unclear to me].
2. The assignee may endorse the security; the endorsee may avail himself of the protection referred to in the previous number, provided that the assignee has acquired the right that he transfers and that the other legal requirements are met; the debtor is released by paying the endorsee in accordance with article 647, if the assignee has acquired the right that he transferred, and if the remaining legal requirements are met.
3. If in the case provided for in the previous number one of the endorsements is materially null and void, especially if it is falsified, then the legitimacy of the subsequent bearers of the security is not affected by such a fact; this legitimacy depends on articles 645 to 647, depending on the effect in question.

Article 682  
**(Assignment to the endorsee)**

If the credit arising from a security to order or derived from the underlying legal relation is assigned to the one to whom the security is or was endorsed, the endorsee may avail himself of the strongest protection that endorsement can ensure with respect to the fact that exceptions cannot be opposed, unless it is to be understood that such protection is intended to be excluded.

Article 683  
**(Partial assignment)**

Partial assignment of the credit arising from a security to order is null and void and the provision in number 2 of article 678 applies.

Article 684  
**(Endorsement for collection or proxy)**

1. When an endorsement contains the words “value to collect”, “for collection”, “proxy” or any other involving a simple mandate for collection, the endorsee may exercise all rights arising from the security but he can only endorse it in his capacity as a proxy.
2. The issuer may only invoke against the endorsee by proxy the exceptions enforceable against the endorser; the endorser is not liable towards the endorsee, even if it concerns a security in which this liability exists in the case of a full endorsement.
3. The force of the endorsement by proxy is not extinguished by death or supervening incapacity of the endorser.
4. To endorsement by proxy apply the rules of the mandate, to the extent that they are not excluded by law or by some other provision to the contrary.
5. If the endorser revokes the mandate for collection and the debtor, knowing that fact pays the endorsee, then he is released, without prejudice, however, to the obligation to compensate the endorser in accordance with general terms.

Article 685  
**(Pledge)**

1. When an endorsement contains the words “value in guarantee”, “value in pledge” or any other phrase implying the creation of a pledge, the endorsee may exercise all the rights arising from the security but an endorsement by him is only valid as an endorsement by proxy.
2. The indication of the pledge shall be recognizably connected with the endorsement and subscribed by the endorser; the right of pledge presupposes the delivery of the security and an agreement about the pledge.
3. The issuer cannot invoke against the endorsee the exceptions based on his personal relationship with the endorsee, unless the endorsee upon receiving the security acted knowingly to the detriment of the issuer.
4. The endorser is liable for the payment of the security to the extent of the collateral debt, if the security in one of those that allow for the liability of the endorser.

5. The internal relationship between endorser and endorsee shall be regulated by the general rules concerning the pledge of credits.

Article 686  
**(Blank securities)**

1. Anyone can subscribe to a security to order leaving blank one or some of its essential elements.
2. If the security is later completed contrary to the agreement of completion, then non-compliance cannot be invoked against the bearer unless the latter has acquired the title in bad faith or with gross negligence.
3. Likewise, the subscriber cannot oppose the breach of the agreement of completion against the bearer who acquired and completed in good faith and without gross negligence a security still blank.

Article 687  
**(Liability of the debtor)**

1. If the security is wrongly completed the subscriber responds in writing to the first buyer within the limits of the agreement of completion, provided that he reduces what has been written on the security and not to replace it by something else; if a maturity later than agreed upon is indicated the subscriber can comply with the date indicated, if this represents an advantage granted to him.
2. The debtor is liable towards any subsequent acquirer of the security that has been wrongly completed, even in bad faith, at least in the same way as towards the first acquirer, unless he has some personal exception against that acquirer, according to general terms.

Article 688  
**(Right to extend clauses)**

1. When the borrower of the security is allowed to add admissible clauses, be these clauses concerning essential elements whose lack is made up for by law, be they clauses about optional elements, the security will be blank and number 2 of article 687 applies to it.
2. If the indication was left open without the purpose to be later completed then the completion is effective against third parties, unless the assumption of number 2 of article 687 occurs.

Article 689  
**(Nullity)**

1. If a security lacks an essential element not made up for by law and the subscriber would not give the borrower the right to complete it then the security is null and void.
2. If the borrower completes it the completion is treated as a falsification; however, with respect to third parties of good faith the security so completed is valid, in accordance with number 2 of article 687.

Article 690

**(Partial completion)**

The security may be partly completed and transferred; the right to complete the remaining part can be transferred.

Article 691

**(Transfer of the right of completion)**

1. The right of completion is transferred through the transfer of the rights of the incomplete security and thus, by endorsement or, if the instrument does not yet indicate the name of the borrower, also by means of agreement and delivery of the security.
2. The right of completion cannot be transferred separately.
3. The buyer in an execution procedure of a blank security shall comply with the agreement on completion.

Article 692

**(Obligatory nature of completion)**

1. The bearer of a blank security lacking an essential element that cannot be made up for by law has to complete it before claiming the credit.
2. The security can be completed even if on the date of completion the subscriber has died or lost the capacity or has become bankrupt or insolvent, or if the representative who subscribed to it no longer has power of attorney.

Article 693

**(Prohibition of payment)**

1. In cases of total or partial destruction, loss or theft of a security to order the bearer can request the court to forbid the debtor from paying and authorize him to deposit the amount of the security when it matures, indicating the place of deposit.
2. The provisions concerning the same prohibition in the case of securities to bearer extends in the applicable part to the prohibition of payment.
3. Although the bearer of the security notifies the debtor of the destruction, loss or theft of the security the payment later made by the debtor to the holder of the security releases the debtor, when there has no willful misconduct or gross negligence on his part.

Article 694

**(Annulment)**

1. In the cases provided for in number 1 of the previous article, the title may be annulled.
2. Annulment proceedings may be exercised even if the title holder is known, and then superfluous phases and formalities of the process shall be skipped.
3. Annulment proceedings are incumbent upon whoever has the legitimacy to exercise the right embodied in the security, whether or not he is the holder of that right.
4. The depositary, the trustee and like persons may bring an action for annulment, proving their interest in it and the legitimacy of the person on whose behalf the action is initiated.

Article 695  
**(Deterioration)**

In the case of deterioration the relevant provisions on securities to bearer apply.

**Chapter IV**  
**Nominative securities**

Article 696  
**(Legitimation of the bearer)**

The bearer of a nominative security is legitimized to exercise the right mentioned in the security by an entry in his favour in the security and in the register of the issuer.

Article 697  
**(Transfer)**

1. In order for the transfer of nominative securities to take effect in relation to the issuer and third parties, the name of the purchaser shall be recorded in the security and in the register of the issuer or a new security in his name shall be delivered to the purchaser, and the delivery shall be recorded in the register.
2. Entries in the security and the register shall be made by the issuer and under his responsibility.
3. If the registration or the delivery of a new security is required by the one who transfers then he shall prove his identity and capacity of disposal by means of a notarized document.
4. If the registration or the delivery of a new security is required by the buyer then he shall present the security and prove their right.
5. If the issuer has taken the steps necessary for the transfer in accordance with this article then he does not incur liability, unless he acted with negligence.

Article 698  
**(Endorsement)**

1. If the law does not prohibit it nominative securities may be transferred by endorsement.
2. The endorsement shall indicate the endorsee and be dated and signed by the endorser; when the title is not completely paid the endorsement shall also be signed by the endorsee.
3. The transfer of the security by endorsement only takes effect in relation to the issuer with the entry in his register.
4. The endorsee who shows that he is bearer of the security as a result of a continuous succession of endorsements may demand such registration.

Article 699  
**(Applicability of number 1 of article 674)**

The provision in number 1 article 674 applies to the transfer of nominative securities.

Article 700

### **(Onus and charges over credit)**

1. Liens and charges over credit take effect only in relation to the issuer and third parties if written in the security and in the register.
2. The provisions of numbers 3 and 4 of article 698 apply to annotation.

#### Article 701 **(Usufruct)**

The usufructuary of the credit mentioned in a nominative security may demand a security that differs from that of the owner.

#### Article 702 **(Pledge)**

The provisions concerning the pledge of securities to order extend to the applicable part of the pledge of nominative securities.

#### Article 703 **(Destruction, loss or theft)**

1. The provisions of the preceding chapter concerning destruction, loss or theft of securities to order extend, where applicable, to cases of destruction, loss or theft of a nominative security; annulment can be requested by the one in whose name the security is registered, or by the endorsee.
2. In the case of nominative shares, the applicant of annulment can during the period of opposition, exercise the rights arising from shares, providing bail when necessary.

## **TITLE II UNIFORM LAW ON NOTES AND PROMISSORY NOTES**

### **Chapter I Notes**

#### **Section I Emission and form of the note**

#### Article 704 **(Requirements of the note)**

The note contains:

- a) the word “note” inserted in the very text of the security and expressed in the language employed in the wording of this title;
- b) the unconditional order to pay a specific amount;
- c) the name of the one who is to pay (drawee);

- d) the time of payment;
- e) an indication of the place where the payment is to be made;
- f) the name of the person to whom or to whose order the payment is to be made;
- g) the indication of the date on which and the place where the note is issued;
- h) the signature of the one who issues the note (drawer).

Article 705  
**(Consequences of not meeting requirements)**

A security in which any of the requirements mentioned in the previous article are missing is not effective as a note, except in the cases determined in the following paragraphs:

- a) the note that does not indicate the time of payment is deemed to be payable o sight;
- b) in the absence of a special indication the place mentioned alongside the name of the drawee is deemed the place of payment and at the same time, the place of residence of the drawee;
- c) the note without indication of the place where it is issued is deemed as having been issued in the place mentioned alongside the name of the drawer.

Article 706  
**(Forms of drawing)**

The note may be to the order of the drawer:

- a) can be drawn on the drawer himself;
- b) can be drawn to order and on account of a third party.

Article 707  
**(Place of payment)**

The note may be payable at the domicile of a third party, either in the locality where the drawee has his home, or in another locality.

Article 708  
**(Stipulation of interest)**

1. In a note payable at sight or at a certain time after sight, the drawer may stipulate that its amount bears interest. In any other kind of note the stipulation of interest is deemed not written.
2. The interest rate shall be specified in the note; lacking an indication the stipulation is deemed not written.
3. Interest is counted from the date of the note if no other date is indicated.

Article 709  
**(Divergence in the indication of the amount to be paid)**

1. If the indication on the note of the amount to be paid is written in full and in numbers and there is a discrepancy between these, then the writing in full prevails.

2. If the indication on the note of the amount to be paid is written more than once, either in full or in numbers and there are discrepancies between the various indications, the indication of the lower amount prevails.

Article 710

**(Rules about null and void signatures)**

If the note contains signatures of persons incapable of obliging themselves by notes, forged signatures, signatures of fictitious persons or signatures that for whichever reason cannot oblige the persons who signed the note or on whose behalf it was signed, the obligations of the other signatories do not thereby cease to be valid.

Article 711

**(Lack of power to sign – or abuse of power)**

Whoever puts his signature on a note as a representative of a person who he had in fact not the powers to represent is bound by the note and, if paying, has the same rights as the person purported to represent. The same rule applies to the representative who has exceeded his powers.

Article 712

**(Responsibility of the drawer)**

1. The drawer guarantees both acceptance and payment of the note.
2. The drawer can exonerate himself from guaranteeing acceptance; every and any clause whereby he exonerates himself from the guarantee of payment is considered to be not written.

Article 713

**(Breach of the agreements on completion)**

If an incomplete note at the time of issue has been completed contrary to the agreements made, the non-compliance of these agreements cannot be invoked against the bearer unless he has purchased the note in bad faith or, acquiring it, is guilty of gross negligence.

**Section II  
Endorsement**

Article 714

**(Transfer of the note)**

1. Every bill of exchange, even if it does not explicitly involve the clause to order, may be transferred by means of endorsement.
2. When the drawer has inserted in the note the words “not to order” or an equivalent expression, then the note can only be transferred in the form of and with the effects of an ordinary assignment of credits.
3. The endorsement can be made even in favour of the drawee, accepting it or not, the drawer or of any other party bound. These persons may re-endorse the note.

Article 715  
**(Modalities of endorsement)**

1. The endorsement must be unconditional. Any condition to which it is subordinate is deemed not written.
2. Partial endorsement is null and void.
3. Endorsement to bearer has the validity of a blank endorsement.

Article 716  
**(Requirements of the validity of endorsement)**

1. The endorsement shall be written on the note or on a slip attached to it (annex). It shall be signed by the endorser.
2. The endorsement may not designate the beneficiary or consist simply of the signature of the endorser (blank endorsement). In the latter case, for the endorsement to be valid it shall be written on the back of the note or on the attached sheet.

Article 717  
**(Rights arising from endorsement)**

1. The endorsement transfers all the rights arising from the note.
2. If the endorsement is blank, the bearer may:
  - a) fill in the blank either with his name or with the name of another person;
  - b) re-endorse the note in blank or in favour of another person;
  - c) remit the note to a third party without filling in the blank and without endorsing it.

Article 718  
**(Responsibility of the endorser)**

1. The endorser guarantees acceptance and payment of the note unless there is a clause to the contrary.
2. The endorser may prohibit a new endorsement and in this case does not guarantee payment to the persons to whom the note has been subsequently endorsed.

Article 719  
**(Position of the holder of the note)**

1. The holder of a note is considered its legitimate bearer if he justifies his right by an uninterrupted series of endorsements even if the last one were blank. For this purpose cancelled endorsements are deemed not written. When a blank endorsement is followed by another endorsement, it is presumed that the signatory of the note acquired it by the blank endorsement.
2. If a person has been in any manner dispossessed of a note then its bearer, provided he justifies his right in the manner indicated in the preceding number, is not obliged to return it unless he has acquired it in bad faith or, acquiring it, is guilty of gross negligence.

Article 720

**(Possible position on the part of the defendant)**

People sued on the basis of a note cannot invoke the exceptions against the bearer based on their personal relations with the drawer or with previous bearers, unless the bearer, in acquiring the note has knowingly acted to the detriment of the debtor.

Article 721

**(Endorsement by mandate)**

1. When an endorsement contains the words “amount to be collected” (*valeur en recouvrement*), “for collection” (*pour encaissement*), “by proxy” (*par procuration*), or any other phrase implying a simple mandate, the bearer may exercise all rights arising from the note but he can only endorse it in the capacity as a proxy.
2. In this case the other persons liable can only invoke the exceptions against the bearer that were enforceable against the endorser.
3. The mandate resulting from an endorsement by proxy is not extinguished by the death or supervening legal incapacity of the trustee.

Article 722

**(Endorsement implying a guarantee)**

1. When an endorsement contains the words “value in security”, “value in pledge” or any other phrase implying a guarantee the bearer may exercise all rights arising from the note but an endorsement by him is only valid as an endorsement in his capacity as proxy.
2. The other parties liable may not invoke the exceptions against the bearer based on their personal relations with the endorser, unless the bearer upon receiving the note has knowingly acted to the detriment of the debtor.

Article 723

**(Endorsement after maturity or under protest.  
Endorsement without data)**

1. Endorsement after maturity has the same effects as an endorsement prior to it. However, the endorsement after protest for nonpayment or after the expiry of the deadline for protesting only produces the effects of an ordinary assignment of credit.
2. Unless proved otherwise, it is assumed that an undated endorsement was made before the expiration of the deadline for protesting.

**Section III  
Acceptance**

Article 724

**(When, where and by whom may a note be presented for acceptance)**

Until maturity the note may be presented for acceptance to the drawee at his home, by the bearer or even by a mere holder.

Article 725

**(Stipulation of the drawer concerning acceptance)**

1. The drawer may in any note stipulate that it be presented for acceptance, with or without setting a deadline.
2. Presentation for acceptance may be prohibited in the note itself, unless it concerns a note payable at the domicile of a third party or a note payable in a location different from the domicile of the drawee, or a note drawn at a fixed period after sight.
3. The drawer can also stipulate that the presentation for acceptance shall not take place before a certain date.
4. Every endorser may stipulate that the note shall be presented for acceptance, with or without a time limit, unless it has been declared unacceptable by the drawer.

Article 726

**(Term for presentation for acceptance in notes payable at a fixed period after sight)**

1. Notes payable at a fixed period after sight must be presented for acceptance within one year of their dates.
2. The drawer can shorten this period or stipulate an extended period.
3. These time limits may be reduced by the endorsers.

Article 727

**(Second presentation upon request of the drawee)**

1. The drawee may demand that a note be presented to him for a second time on the day following upon the day of the first presentation. Interested parties are only allowed to claim non-compliance with this request if it is mentioned in the protest.
2. The bearer is not obliged to pass on the note presented for acceptance to the accepting party.

Article 728

**(Form and place of acceptance)**

1. The acceptance is written on the note itself. It is expressed by the word “accepted” or any other equivalent word; the acceptance is signed by the drawee. The mere signature of the drawee on the front of the note constitutes an acceptance.
2. In case of a note payable at a certain time after sight, or that should be presented for acceptance within a period determined by special stipulation, the acceptance shall be dated on the day it was given, unless the bearer requires that the date is that of the presentation. In the absence of a date, the bearer, in order to preserve his right to appeal against the endorsers and the drawer shall record that omission by a protest made in time.

Article 729

**(Kinds of acceptance)**

1. An acceptance is unconditional, but the drawee may limit it to an important part of the drawn amount.
2. Any other modification introduced by the acceptance in the text of the note amounts to a refusal to accept. The accepting party remains, however, bound in accordance with the terms of his acceptance.

Article 730  
**(Place of payment)**

1. When the drawer has indicated in the note a place of payment other than the domicile of the drawer, without designating a third party at whose domicile payment is to be made, the drawee can appoint in the act of accepting the person who shall pay the note. In the absence of such appointment the accepting party itself is deemed to be bound to make the payment at the place indicated in the note.
2. If the note is payable at the domicile of the drawee, the latter may in the act of accepting indicate another domicile in the same place for the payment to be made.

Article 731  
**(Obligations of the drawee)**

1. The drawee is bound by the acceptance to pay the note at the date of maturity.
2. In default of payment, the bearer, even if he is the drawer, has against the accepting party the right of action arising from the note with respect to everything that may be required in accordance with articles 752 and 753.

Article 732  
**(Annulment of acceptance)**

1. If the drawee before returning the note deletes the acceptance given then acceptance is deemed to be refused. Unless proven otherwise, the annulment is deemed to have taken place before the returning of the bill.
2. However, if the drawee has notified in writing the bearer or any other signatory of the note that he accepts it then he is liable towards these, in accordance with the terms of his acceptance.

**Section IV**  
**Suretyship**

Article 733  
**(Extension of suretyship. Who can provide it)**

1. The payment of a note may be in whole or in part guaranteed by suretyship.
2. This guarantee is given by a third party or even by a signatory of the note.

Article 734

### **(Requirement of suretyship)**

1. The endorsement is written on the note itself or on an attached sheet.
2. It is expressed by the words “good as suretyship” or by any equivalent formula; it is signed by the party giving suretyship.
3. Suretyship is considered to result from the placing of the mere signature by the party giving it on the face of the note, unless it is the signature of the drawee or the drawer.
4. Suretyship shall indicate by whom it is given. Lacking this indication, it will be understood to be given by the drawer.

#### Article 735

### **(Responsibility of the party giving suretyship)**

1. The giver of suretyship is liable in the same way as the person by him guaranteed.
2. His obligation remains even if the liability he has guaranteed is null and void for any reason other than a defect of form.
3. If the party giving suretyship pays the note, it remains subrogated to the rights arising from the note against the person in favour of whom suretyship was given and against those liable to the latter by virtue of the note [please check, original unclear to me].

#### **Section V**

### **Forms of maturity**

#### Article 736

### **(Forms of maturity)**

1. A note may be drawn:
  - a) on sight;
  - b) at a certain period after sight;
  - c) at a certain period after date;
  - d) payable on a fixed day.
2. Notes with different maturities or with successive maturities are null and void.

#### Article 737

### **(Maturity of a note on sight)**

1. A note on sight is payable upon presentation. It shall be presented for payment within one year counting from the date. The drawer can reduce this period or stipulate a longer one. These periods may be shortened by the endorsers.
2. The drawer may stipulate that a note payable on sight shall not be presented for payment before a certain date. In this case, the deadline for the presentation is counted from that date.

#### Article 738

### **(Determination of maturity of the note at a certain period after sight)**

1. The maturity of a note at a certain time after sight is determined either by the date of acceptance or by the protest.
2. In the absence of protest, an undated acceptance is understood, as far as the accepting party is concerned, as having been given on the last date for presentation for acceptance.

Article 739

**(Maturity in other special cases)**

1. The maturity of a note drawn one or more months after the date or sight is on the date corresponding with the month in which the payment must be made. In the absence of a corresponding date, it falls due on the last day of that month.
2. If a note is drawn one or more months and a half after the date or sight, then the whole months are counted first.
3. If the maturity is fixed at the beginning, the middle or the end of the month, it is understood that the note matures on the first, fifteenth or last day of that month.
4. The expressions “eight days” or “fifteen days” shall be understood not as one or two weeks but as a period of eight or fifteen days effectively.
5. The expression “half a month” indicates a period of fifteen days.

Article 740

**(Maturity with different calendars)**

1. If a note is payable on a fixed day in a place where the calendar is different from the place of emission then the date of maturity is considered to be fixed according to the calendar of the place of payment.
2. If a note drawn between two places having different calendars is payable at a fixed term after sight then the day of emission refers to the corresponding day of the calendar of the place of payment for the purpose of determining the date of maturity.
3. The deadlines for presentation of notes calculated according to the rules of the preceding number.
4. These rules do not apply if a clause in the note or just the mere text of the note indicates the intention to adopt different rules

**Section VI**

**Payment**

Article 741

**(Term to present payment)**

1. The bearer of a note payable on a fixed day or a fixed period after date or sight shall present it for payment on the day on which it is payable or on one of the two following working days.
2. The presentation of the note to a clearing house is equivalent to presentation for payment.

Article 742

**(Total or partial payment)**

1. The drawee who pays a note may demand that he be given the respective receipt.

2. The bearer cannot refuse any partial payment.
3. In the case of partial payment the drawee may demand that such payment shall be mentioned in the note and that he be given the receipt.

Article 743  
**(Payment on maturity or before)**

1. The bearer of a note cannot be obliged to receive payment before maturity.
2. The drawee who pays a note before maturity does so at his own risk.
3. Whoever pays a note on maturity is validly discharged, unless he has been guilty of fraud or gross misconduct. He is obliged to verify the correctness of the succession of endorsements, but not the signature of the endorsers.

Article 744  
**(Currency in which the payment shall be made)**

1. If a note stipulates the payment in a currency that is not legal tender in the place of payment, then its amount can be paid in the currency of the country, according to its value on the day of maturity. If the debtor is delayed then the bearer may, at his option, request that the payment of the amount of the note be made in the currency of the country at the exchange rate of the maturity or at the exchange rate of the day of payment.
2. The value of foreign currency is determined according to the customs of the place of payment. The drawer may, however, stipulate that the sum to be paid shall be calculated in accordance with a rate fixed in the note.
3. The above rules do not apply to the case where the drawer has stipulated that payment shall be made in a certain specified currency (actual payment clause in foreign currency).
4. If the amount of the note is indicated in a currency that has the same name but a different value in the country of issue and payment, then it is assumed that it refers to the currency of the place of payment.

Article 745  
**(Deposit of the amount of the note)**

If the note is not presented for payment within the period determined in article 742, any debtor has the power to deposit its amount with the competent authority at the expense and risk of the bearer.

**Section VII**  
**Action due to lack of acceptance and lack of payment**

Article 746  
**(Rights of the bearer of the note)**

The bearer of a note can exercise his right of recourse against the endorsers, the drawer and other liable parties at maturity, if no payment has been made and even before maturity:

- a) if acceptance was totally or partially refused;

b) in cases of bankruptcy of the drawee, whether he has accepted or not, of suspension of payments even if not declared by a judgment, or when execution of his assets has been attempted without success;

c) in cases of bankruptcy of the drawer of a non-acceptable note.

#### Article 747

#### **(Protest because of lack of acceptance or payment)**

1. The refusal of acceptance or of payment shall be evidenced by a formal act (protest due to non-acceptance or lack of payment).
2. Protest against non-acceptance shall be lodged within the term fixed for presentation for acceptance. If in the case provided for in number 1 of article 728, the first presentation of the note has been made on the last day of the term, protest can still be lodged on the next day.
3. Protest against non-payment of a note payable on a fixed day or in a fixed period after date or sight, shall be lodged on one of the two working days following the day on which the note is payable.
4. If it concerns a note payable on sight, the protest shall be lodged under the conditions indicated in the previous number for the protest against non-acceptance.
5. Protest against non-acceptance dispenses presentation for payment and protest against non-payment.
6. In case of suspension of payments of the drawee, whether accepted or not, or in case execution of his assets has been attempted without success, the bearer of the note can only exercise his right of recourse after having presented it to the drawee for payment and after having lodged a protest.
7. In case bankruptcy of the drawee has been declared, whether accepted or not, as well as in the case of declared bankruptcy of the drawer of a non-acceptable note, the presentation of the judicial decision of bankruptcy suffices for the bearer of the note to be able to exercise his right of recourse.

#### Article 748

#### **(Notice to be given when acceptance or payment is lacking)**

1. The bearer shall give notice of lack of acceptance or payment to his endorser and the drawer within the four working days following the day of the protest or the presentation, in case the note contains the clause "without expenses". Each endorser shall, in turn, within the two working days following the receipt of the notice, inform his endorser of the notice that was received, indicating the names and addresses of those who have sent previous notices, and so on until the drawer has been reached. The periods mentioned above are counted from the receipt of the preceding notice.
2. When, in accordance with the provision in the previous number a signatory of the note has been notified his provider of suretyship shall also be notified within the same period of time.
3. In case an endorser has not indicated his address or has done so ineligibly, it is sufficient that the notice is sent to the preceding endorser.
4. The person who shall give notice can do it in any form, even by simple returning the note.
5. This person shall prove that the notice was sent within the term set. The term shall be considered as having been observed whenever the letter containing the notice has been posted within it.

6. The person who does not give notice within the time limit mentioned above does not lose his rights; he will be liable for losses, if any, caused by his negligence but his liability shall not exceed the amount of the note.

Article 749

**(Dispensation of protest: forms)**

1. The drawer, an endorser or the provider of suretyship may, by the clause “without expenses”, “without protest” or another equivalent clause, release the bearer from lodging a protest against non-acceptance or lack of payment in order to be able to exercise his rights of recourse.
2. That clause does not exempt the bearer from presenting the note within the prescribed period of time nor from the notices to be given.
3. Proof of non-compliance with the term is incumbent upon him who invokes it against the bearer.
4. If the clause is written by the drawer it takes effect with respect to all signatories of the note; if it is inserted by an endorser or a provider of suretyship, it is effective only with respect to this endorser or provider of suretyship. If, despite the clause written by the drawer, the bearer lodges the protest then the expenses are on his account. When the clause emanates from an endorser or a provider of suretyship, the expenses of the protest, if lodged, can be recovered from all signatories to the note.

Article 750

**(Joint and several liability of the signatories of the note)**

1. All drawers, accepting parties, endorsers or providers of suretyship of a note are jointly and severally liable towards the bearer.
2. The bearer has the right to recourse against all these persons, individually or collectively, without being required to observe the order in which they are bound.
3. The same right has any of the signatories of a note when he has paid it.
4. Proceedings against a party liable do not prevent recourse against the others, even those who are later than the party proceeded against first.

Article 751

**(Rights of the bearer)**

1. The bearer can claim from the one against whom he exercises his right of recourse:
  - a) the payment of the non-accepted or unpaid note, with interest if so stipulated;
  - b) interest at a rate of 6 percent from the date of maturity;
  - c) the expenses of protest and of notices given and other expenses.
2. In case of recourse before the maturity of the note a discount will be debited from its amount. This discount is calculated in accordance with the official discount rate (Central Bank rate) in force at the place of domicile of the bearer at the time of recourse.

Article 752

**(Rights of the bearer of the note)**

The person who pays a note may claim against its guarantors:

- a) the whole sum he has paid;
- b) the interest on that sum, calculated at the rate of six percent, from the date on which he paid;
- c) the expenses he has incurred.

#### Article 753

#### **(Rights of the other liable party that paid)**

1. Any of the parties liable, against whom has been or may be brought recourse can demand, provided it pays the note, that it shall be given to him with the protest and a receipt.
2. Any endorser who has paid a note can delete his endorsement and those of subsequent endorsers.

#### Article 754

#### **(Partial acceptance and payment of the amount due)**

In the case of recourse intended after a partial acceptance, the person paying the amount in respect of which the note was not accepted may demand that this payment be mentioned in the note and that he shall be given a receipt. In addition the bearer shall give that person a certified copy of the note and the protest, in order to allow for the exercise of further rights of recourse.

#### Article 755

#### **(When can re-draft be done)**

1. Anyone who has a right of recourse may, unless otherwise stipulated, reimburse himself by means of a new note (redraft) on sight, drawn on one of the liable parties and payable at the domicile of that party.
2. The redraft includes, in addition to the amounts mentioned in articles 752 and 753, a right to brokerage and the cost of the seal of the redraft.
3. If the redraft is drawn by the bearer then its amount is determined in accordance with the fee for a note on sight, drawn in the place where the first note was payable on the place of domicile of the liable party. If the redraft is drawn by an endorser then its amount is determined in accordance with the fee for a note on sight, drawn in the place where the drawer of the redraft has his domicile upon the place of domicile of the liable party [please check latter part, unclear to me].

#### Article 756

#### **(Loss by the bearer of the right to recourse)**

1. The bearer loses his rights of recourse against the endorsers, against the drawer and against the other liable parties, with the exception of the accepting party, after the expiry of the deadlines:
  - a) for the presentation of a note on sight or at a fixed period after sight;
  - b) to protest against non-acceptance or non-payment;
  - c) for the presentation in the case of the clause “without expenses”.
2. Failure to present acceptance within the period stipulated by the drawer results in the bearer losing his rights of recourse due to non-payment and to non-acceptance, unless from the terms of

the stipulation it follows that the drawer only intended to exonerate from the guarantee of acceptance.

3. If the stipulation of a deadline for presentation is contained in an endorsement, only the endorser can make use of it.

#### Article 757

#### **(When and how terms may be extended)**

1. When the presentation of the note or the protest cannot be done within the time indicated due to an insurmountable cause (legal provisions declared by some State or another case of *force majeure*), these deadlines will be extended.

2. The bearer shall immediately notify his endorser of *force majeure*, and mention this notice, dated and signed, in the note and in an attached sheet; for the remainder the provisions of article 749 apply.

3. Provided that the case of *force majeure* has ceased, the bear shall without delay submit the note for acceptance or payment and, if there is cause to do so, lodge a protest.

4. If the case of *force majeure* continues beyond thirty days from the date of maturity, recourse can be exercised without the need for presentation or protest.

5. For notes on sight or at the fixed period after sight, the period of thirty days counts from the date on which the bearer, even before the expiry of the deadline for the presentation, gave notice of the case of *force majeure* to his endorser; for notes at the fixed period after the period of thirty days is added to the period mentioned in the bill on sight.

6. Not considered are cases of *force majeure* that are purely personal of the bearer or the person whom he entrusted with the presentation of the note and to lodge a protest.

### **Section VIII**

### **Intervention**

#### **Subsection I**

#### **General provisions**

#### Article 758

#### **(Modalities of intervention)**

1. The drawer, an endorser or the provider of suretyship may indicate a person who can accept or pay in case of need.

2. The note may, under the conditions indicated below, be accepted or paid by a person who intervenes on behalf of a debtor against whom there is a right of recourse.

3. The intervening actor may be a third party or even the drawee or a person already liable under the bill, except the accepting party.

4. The intervening actor is obliged to notify within two working his intervention to the person for whom he intervenes. In case this period is observed [?? or: not observed?] the intervening actor is liable for damages, if any, resulting from his negligence, although losses and damages cannot exceed the amount of the note.

#### **Subsection II**

## **Acceptance by intervention**

### Article 759

#### **(Cases and consequences of acceptance by intervention)**

1. Acceptance by intervention can take place in all cases where the bearer of an acceptable note has a right of recourse before maturity.
2. When the note indicates a person who in case of necessity accepts or pays in the place of payment, the bearer cannot exercise his right of recourse before maturity against the one who indicated this person and against subsequent signatories, unless he has presented the note to the appointed person and, this one having refused to accept, has lodged the protest.
3. In other cases of intervention, the bearer may refuse acceptance by intervention. If, however, he accepts it then he loses the right of recourse before maturity against the person by whom acceptance was given and against subsequent signatories.

### Article 760

#### **(Requirements of acceptance by intervention)**

Acceptance by intervention is mentioned in the note and signed by the intervening actor. He shall indicate on behalf of whom the intervention is made; when that indication is lacking it is assumed that he intervenes on behalf of the drawer.

### Article 761

#### **(Obligations of acceptance by intervention)**

1. The accepting party by intervention is liable towards the bearer and the endorsers subsequent to the party on whose behalf he intervenes in the same way as this party.
2. Notwithstanding the acceptance by intervention, the one on behalf of whom it was made and his guarantors may demand from the bearer against payment of the amount mentioned in article 752 to submit the note, the protest, and, if applicable, an account with the receipt.

## **Subsection III**

### **Payment by intervention**

#### Article 762

##### **(Cases of payment by intervention)**

1. Payment by intervention may take place in all cases in which the bearer of a note has the right of recourse at the date of maturity or before that date.
2. Payment shall include the whole amount that would have to be paid on behalf of whom the intervention was made.
3. Payment shall be made no later than the day following the last day on which it is allowed to lodge a protest against non-payment.

#### Article 763

##### **(Presentation of the note and protest)**

1. If the note has been accepted by intervening actors having their domicile in the place of payment, or if persons having their domicile in the same place were indicated to pay the note in case it is necessary, then the bearer shall present it to all these persons and, if necessary, lodge the protest against lack of payment not later than the day following the last one on which it was allowed to protest.

2. In the absence of protest within this period, he who has indicated the persons to pay in case of need or on whose behalf the note has been accepted, and the subsequent endorsers, shall be released.

#### Article 764

#### **(Effect of refusal to pay by intervention)**

The bearer who refuses payment by intervention loses his right of recourse against those who have been exonerated.

#### Article 765

#### **(External form of payment by intervention)**

1. Payment by intervention [please check original] shall be verified by a receipt passed on the note, containing the indication of the person on whose behalf it has been made. Lacking this indication it is assumed that the payment was made on behalf of the drawer.

2. The note and the protest, if any, shall be delivered to the person who paid for intervention.

#### Article 766

#### **(Subrogation of the intervening party that pays)**

1. The one who pays by intervention is subrogated in the rights arising from the note against the one on whose behalf he paid and against those who are bound to the latter by virtue of this note. He may not, however, endorse the note again.

2. Endorsers subsequent to the signatory on whose behalf payment was made are exonerated.

3. When various people offer to pay a note by intervention, preference shall be given to the one who releases the greatest number of persons bound. He who, aware of the facts, intervened contrary to this rule loses his right of recourse against those who would have been exonerated.

### **Section IX**

#### **Plurality of specimens and of copies**

#### **Subsection I**

#### **Plurality of specimens**

#### Article 767

#### **(Possibility to draw in various parts)**

1. The note may be drawn in various parts.

2. These parts shall be numbered in the text itself, failing which each part shall be considered as a separate note.
3. The bearer of a note that does not specify that it has been drawn as a single note can demand at his own expense the delivery of the various parts. To this end the bearer shall address his immediate endorser, so that this one may assist him in proceeding against his own endorser [unclear, who does what against whom?], and so on, until the drawer has been reached. The endorsers are obliged to reproduce their endorsements in the new parts.

#### Article 768

##### **(Effect of the payment of one of the parts)**

1. The payment of one of the parts functions as a discharge, even when it is not stipulated that that payment annuls the effect of the other ones. The drawee remains, however, liable for each of the parts accepted that not have been returned to him.
2. The endorser who has transferred parts of a note to several people and the subsequent endorsers are liable for all the parts bearing their signatures that have not been returned.

#### Article 769

##### **(Acceptance of one of the parts)**

1. He who sends for acceptance one of the parts of the note shall indicate on the other parts the name of the person in possession of that part. This person is obliged to hand over this part to the lawful bearer of the other specimen [part?].
2. If he refuses to do so, the bearer can only exercise his right of recourse after protesting that:
  - a) the part sent for acceptance has not been returned to him at his request;
  - b) it has not been possible to achieve acceptance or payment of another part.

### **Subsection II**

#### **Copies**

#### Article 770

##### **(Right to make copies. Its requirements)**

1. The bearer of a note has the right to make copies of it.
2. A copy shall reproduce the original exactly, with the endorsements and all other references found in it. It shall mention where the copy ends.
3. The copy can be endorsed and surety can be offered in the same way and producing the same effects as the original.

#### Article 771

##### **(Mandatory indications on the copies)**

1. A copy shall indicate the person in whose possession is the original security is. This person is obliged to hand over the security in question to the lawful bearer of the copy.

2. If he refuses to do so then the bearer can only exercise his right of recourse against the persons who have endorsed the copy or offered suretyship, after lodging a protest stating that the original has not been submitted to him at his request.
3. If the original security after the last endorsement before making the copy contains the clause: “from now on is only endorsement of the copy is valid” or some other equivalent formula then any endorsement signed later on the original is null and void.

## **Section X Changes**

### *Article 772*

#### **(Consequences of changing the text of a note)**

If the text of a note is altered then those who signed after such a change shall be liable in accordance with the altered text; previous signatories are liable in accordance with the original text.

## **Section XI Limitation of action**

### *Article 773*

#### **(Time limits)**

1. All actions against the accepting party with respect to notes lapse after three years from their maturity.
2. Actions by the bearer against the endorsers and against the drawer lapse after one year from the date the protest is made within the time set, or from the date of maturity in case it concerns a note containing the clause “without expenses”.
3. Actions by endorsers against one another and against the drawer lapse after six months counting from the day on which the endorser paid the note or on which action was brought against him.

### *Article 774*

#### **(Effect of the interruption of a time limit)**

The interruption of the time limit only produces effect with respect to the person for whom the interruption has been made.

## **Section XII General provisions**

### *Article 775*

#### **(Time limits ending on a holiday: its prorogation)**

1. The payment of a note that falls due on a legal holiday may only be demanded on the next working day. Likewise, all acts concerning a note, especially presentation for acceptance and protest, can only be performed on a working day.
2. When one of these acts has to be performed within a certain period and the last day of that period is a legal holiday, then said period is extended until the first working day following upon it.

Article 776  
**(Counting of terms)**

Legal time or conventional time limits do not include the day of their beginning.

Article 777  
**(Inadmissibility of days of grace)**

Days of grace, wither legal or judicial, are not admitted.

**Chapter II**  
**Promissory notes**

Article 778  
**(Requirements of a promissory note)**

The promissory note contains:

- a) the word “promissory note” inserted in the text of the security and expressed in the language employed in conceiving the security;
- b) the unconditional promise to pay a specific amount;
- c) the time of payment;
- d) the indication of the place in which the payment is to be made;
- e) the name of the person to whom or to whose order the payment is to be made;
- f) the indication of the date and place where the promissory note is issued;
- g) the signature of the person who issues the promissory note (subscriber).

Article 779  
**(Effects of the lack of requirements)**

1. The text that lacks any of the requirements mentioned in the previous article has no effect as a promissory note, except in the cases determined in the following numbers.
2. The promissory note that does not specify the time of payment is deemed to be payable on sight.
3. In the absence of a special indication, the place where the security has been issued is considered to be the place of payment and at the same time the place of domicile of the subscriber of the promissory note.
4. The promissory note that does not indicate the place where it was issued is considered as having been issued in the place mentioned alongside the name of the subscriber.

Article 780  
**(Provisions applying to promissory notes)**

1. Applicable to promissory notes, as far as they do not contradict the nature of this security, are the provisions concerning notes that treat of:
  - a) endorsement (articles 715 to 723);
  - b) maturity (articles 736 to 740);
  - c) payment (articles 741 to 745);
  - d) right of recourse against non-payment (articles 746 to 754 and 756 to 757);
  - e) payment by intervention (articles 759 and 760 to 766);
  - f) copies (articles 770 and 771);
  - g) changes (article 772);
  - h) time limits (articles 773 and 774);
  - i) public holidays, the counting of time limits and prohibition of days of grace (articles 776 to 777).
2. Equally applicable to promissory notes are the provisions concerning notes payable at the domicile of a third party or at a location different from the domicile of the drawee (articles 707 and 741), the stipulation of interest (article 708), the differences in the indications of the amount to be paid (article 709), the consequences of placing a signature in the conditions indicated in article 710, of the signature of a person who acts without powers or who exceeds his powers (article 711) and the blank note (article 715).
3. Also applicable to promissory notes are the provisions concerning suretyship (articles 733 to 735); in the case provided for in number 4 of article 734, if suretyship does not indicate the person by whom it is given then it is deemed to be by the subscriber of the promissory note.

Article 781  
**(Liability of the subscriber of the promissory note. Promissory note at a certain period after sight)**

1. The subscriber of a promissory note is liable in the same manner as the accepting party of a note.
2. Promissory notes payable at a fixed period after sight shall be presented for endorsement of the subscribers within the terms set determined in article 726. The time limit is counted from the date of endorsement by the subscriber. The refusal by the subscriber to give his endorsement is certified by a protest (article 723), whose date will serve as the beginning of the term of endorsement.

**TITLE III  
UNIFORM LAW ON CHEQUES**

**Chapter I  
Emission and form of a cheque**

Article 782  
**(Formal requirements of a cheque)**

The cheque contains:

- a) the word “check” inserted in the text of the security and expressed in the language employed in drawing up the security;
- b) the unconditional order to pay a specific amount;
- c) the name of who should pay (drawee);
- d) the indication of the place where payment is to be made;
- e) the indication of the date when and the place where the check is drawn;
- f) the signature of the person who draws the check (drawer).

#### Article 783

#### **(Lack of some requirement)**

1. The security missing any of the requirements listed in the preceding article does not produce effects as a check, except in the cases determined in the following numbers.
2. In the absence of a special indication the place mentioned alongside the name of the drawee is considered as the place of payment. If several places are indicated next to the name of the drawee of the check then it is payable at the first place named.
3. In the absence of these indications or of any other indication the check is payable at the place where the drawee has his principal establishment.
4. The check without indication of place of issue is considered to have been drawn in the place named alongside the name of the drawer.

#### Article 784

#### **(Provision of funds)**

The check is drawn on a banker who has funds available to the drawer and in harmony with an explicit or tacit agreement, whereby the drawer is entitled to dispose of these funds by check. The validity of the security as check is not, however, impaired in the event of non-compliance with these provisions.

#### Article 785

#### **(Prohibition of acceptance)**

The cheque may not be accepted. The statement of acceptance on a cheque is considered not written.

#### Article 786

#### **(Modalities of payment)**

1. The check can be made payable:
  - a) to a certain person, with or without the explicit clause “to order”;
  - b) to a certain person, with the clause “not to order” or an equivalent clause;
  - c) to bearer.
2. The check made payable to a certain person but with the words “or to bearer” or an equivalent phrase is considered to be a check to bearer.
3. The check without indication of the beneficiary is considered to be a check to bearer.

Article 787  
**(Modalities of the cheque)**

1. The check can be drawn to order of the drawer himself.
2. The check can be drawn on account of a third party.
3. The check cannot be drawn by the drawer himself except when it concerns a check drawn by an establishment on another establishment belonging to the same drawer.

Article 788  
**(Inadmissibility of interest)**

Any stipulation of interest inserted in the cheque is deemed not written.

Article 789  
**(Cheque payable at the domicile of a third party)**

The check can be payable at the domicile of a third party, either in the locality where the drawee has his domicile or in another locality, on condition, however, that the third party is a banker.

Article 790  
**(Discrepancies between amounts mentioned in the security)**

1. If the amount of a check is expressed in full and in numbers then in the case of a discrepancy the amount is the one written in full.
2. If the amount of a check is written various times, either in full or in numbers, then in the case of a discrepancy the amount is the lesser one.

Article 791  
**(False or invalid signatures)**

If the check bears signatures of persons incapable of obliging themselves by check, forged signatures, signatures of fictitious persons, or signatures which for any other reason cannot oblige the persons who signed the check or on whose behalf it has been signed, then the obligations of the other signatories are not thereby rendered invalid.

Article 792  
**(Cheque signed by a representative without powers)**

Whoever puts his signature on a check as a representative of a person whom to represent he has not the de facto powers is bound by virtue of the check and, if paid, has the same rights as the person he purports to represent. The same rule applies to the representative who has exceeded his powers.

Article 793  
**(Liability of the drawer)**

The drawer guarantees payment. Any statement by which the drawer releases himself from this guarantee is considered not written.

Article 794  
**(Abusive completion of an incomplete cheque)**

If a check which was incomplete when drawn has been completed contrary to the agreements made, then the non-compliance with these agreements cannot be invoked against the bearer, unless he has acquired the check in bad faith or, in acquiring it, has acted with gross negligence.

**Chapter II**  
**Transfer**

Article 795  
**(Forms of transfer of a cheque)**

1. A check made payable in favour of a particular person, with or without the explicit clause “to order”, is transferable by means of endorsement.
2. A check made payable in favour of a particular person, with the clause “not to order” or some equivalent clause is only transferable in the manner and with the effects of an ordinary assignment.
3. The endorsement can be made even in favour of the drawer or any other liable party. These persons can re-endorse the check.

Article 796  
**(Endorsement and its nullity)**

1. The endorsement shall be unconditional. Any condition to which it is subordinate is considered not written.
2. Partial endorsement is null and void.
3. Equally null and void is endorsement by the drawee.
4. An endorsement to bearer is only valid a receipt unless the drawee has several establishments and the endorsement is made in favour of an establishment other than the one which the check has been drawn.

Article 797  
**(Place and form of endorsement)**

1. The endorsement shall be written on the check or on a sheet attached to it (annex). It shall be signed by the endorser.
2. The endorser may leave the beneficiary unnamed or consist simply of the signature of the endorser (blank endorsement). In the latter case, the endorsement, in order to be valid, shall be written on the back of the check or on the attached sheet.

Article 798

### **(Effects of the endorsement)**

1. The endorsement transfers all rights arising from the check.
2. If the endorsement is blank, the bearer can:
  - a) complete the space left open, either with his name or the name of another person;
  - b) endorse the check in blank or to another person;
  - c) transfer the check to a third party without completing the blank space and without endorsing it.

### Article 799

#### **(Liability of the endorser)**

1. Unless otherwise stipulated, the endorser guarantees payment.
2. The endorser may prohibit any further endorsement and in this case does not guarantee payment to the persons to whom the check is subsequently endorsed.

### Article 800

#### **(Presumption in favour of the holder)**

The holder of an endorsable check is considered the legitimate bearer if he justifies his right through an uninterrupted series of endorsements even if the latter one is blank. Deleted endorsements are, for this purpose, considered as not written. When the blank endorsement is followed by another endorsement it is presumed that the signatory of the latter one acquired the check by a blank endorsement.

### Article 801

#### **(Endorsement of the cheque to bearer)**

An endorsement on a check drawn to bearer makes the endorser liable under the provisions governing the right of recourse but it does not convert the security into a check to order.

### Article 802

#### **(Holder of the cheque)**

When a person has by any way been dispossessed of a check, the holder who takes hold of it is not bound to return it - whether it be a cheque to bearer or an endorsable check in respect of which the holder establishes his right in the manner indicated in article 800, unless the holder has acquired it in bad faith or, in acquiring it, has acted with gross negligence.

### Article 803

#### **(Exceptions that cannot be invoked against the bearer)**

Persons sued on the basis of a cheque cannot invoke against the bearer exceptions based on their personal relations with the drawer or with previous bearers, unless the bearer in acquiring the cheque has knowingly acted to the detriment of the debtor.

Article 804

**(Endorsement in form of a mandate)**

1. When an endorsement contains the words “amount to be collected” (*valeur en recouvrement*), “for collection” (*pour encaissement*), “by proxy” (*par procuration*), or any other phrase implying a simple mandate, the bearer may exercise all rights arising from the cheque but he can only endorse it in the capacity as a proxy.
2. In this case the other persons liable can only invoke the exceptions against the bearer that were enforceable against the endorser.
3. The mandate resulting from an endorsement by proxy is not extinguished by the death or supervening legal incapacity of the trustee.

Article 805

**(Endorsement with effect of assignment)**

1. The endorsement made after protest or an equivalent declaration, or after the end of the deadline for submission, only produces effect as an ordinary assignment.
2. Unless proved otherwise, it is assumed that an undated endorsement has been made before the protest or equivalent declarations, or before the deadline stated in the preceding number.

**Chapter III  
Suretyship**

Article 806

**(Function of suretyship)**

1. The payment of the amount of a cheque can be wholly or partly guaranteed by a suretyship.
2. This guarantee can be given by a third party other than the drawee, or even by a signatory of the cheque.

Article 807

**(Place and form of suretyship)**

1. Suretyship is given on the cheque or on the attached sheet.
2. It is expressed by the words “good for suretyship” or some equivalent formula; it is signed by the guarantor.
3. Suretyship is considered to result from the simple signature of the guarantor on the face of the cheque except in the case of the signature of the drawer.
4. Suretyship shall indicate to whom it is given. In the absence of this indication it shall be deemed to be given to the drawer.

Article 808

**(Rights and obligations of the provider of suretyship)**

1. The provider of suretyship is obliged in the same way as the person he guarantees.

2. His liability remains valid even if the obligation he has guaranteed is null and void for any reason other than a defect of form.
3. Paying the cheque the provider of suretyship acquires the rights arising from it against the person guaranteed and against those who are liable towards the latter as a result of the cheque.

#### **Chapter IV**

#### **Presentation and payment**

##### Article 809

##### **(Payment on sight)**

1. The cheque is payable on sight. Any indication to the contrary is considered not written.
2. The cheque presented for payment before the date indicated as the date of issue is payable on the day of presentation.

##### Article 810

##### **(Presentation: terms and their counting)**

1. The cheque payable in the country where it is issued must be presented for payment within eight days.
2. A cheque issued in a country other than that where it is payable shall be presented within a period of twenty days or seventy days, according to whether the place of issue and the place of payment are located in the country or in other parts of the world.
3. To this end cheques issued in a European country and payable in a country bordering on the Mediterranean, or vice versa, are considered issued and payable in the same part of the world.
4. The time limits mentioned above begin counting from the day indicated on the cheque as the date of issue.

##### Article 811

##### **(Different calendars)**

When the cheque has been issued in one place and is payable in another with a different calendar, then the date of issue will be the day in the calendar of the place of payment

##### Article 812

##### **(Presentation at a clearing agency)**

The presentation of the cheque at a clearing agency is equivalent to presentation for payment.

##### Article 813

##### **(Revocation of the cheque)**

1. The revocation of the check only takes effect after the expiry of the deadline for presentation.
2. If the check has not been revoked, the drawee may pay it even after the deadline.

Article 814  
**(Death or incapacity of the drawer after emission)**

Death or incapacity of the drawer after the emission of the cheque does not invalidate its effects.

Article 815  
**(Rights of the drawee when paying the cheque)**

1. The drawee may require, when paying the cheque, that it will be delivered to him with a receipt from the bearer.
2. The bearer cannot refuse partial payment.
3. In case of partial payment the drawee may require that such payment shall be mentioned on the cheque and that he will be given the receipt.

Article 816  
**(Obligation of the drawee to verify the regularity of the endorsements)**

The drawee who pays an endorsable check is obliged to verify the regularity of the succession of endorsements, but not the signature of the endorser.

Article 817  
**(Currency of payment)**

1. If a cheque is payable in a currency that is not legal tender in the place of payment then the amount may be paid within the period of presenting the cheque in the currency of the country in which it is presented, according to its value on the day of payment. If payment has not been made at presentation then the bearer may, at his choice, request that the payment of the amount of the cheque in the currency of the country where it is presented is be made against the exchange rate on the day of presentation or on the day of payment.
2. Determining the value of foreign currency is made according to custom of the place of payment. The drawer may, however, stipulate that the sum payable shall be calculated at a rate indicated on the cheque.
3. The above rules do not apply to the case in which the drawer has stipulated that payment is to be made in a certain specified currency (actual payment clause in foreign currency).
4. If the amount of the check is specified in a currency having the same denomination but a different value in the country of issue and payment, it is assumed that references concern the currency in the place of payment.

**Chapter V**  
**Crossed cheques and cheques payable in account**

Article 818  
**(Crossed cheque)**

1. The drawer or the bearer of a check can cross it, thus producing the effects shown in the following article.

2. Crossing consists in two parallel lines drawn on the face of the check and may be general or special.
3. Crossing is general if it consists only of the two lines, or between them is written the word “banker” or an equivalent phrase; it is special when between the lines the name of a banker is written.
4. A general crossing may be converted into a special one but the latter cannot be converted into a general one.
5. The cancellation of a crossing or of the name of the banker shall be deemed not to be made.

#### Article 819

#### **(To whom a crossed cheque may be paid)**

1. A cheque with a general crossing may only be paid by the drawee to a banker or a customer of the drawee.
2. A check with a special crossing may only be paid by the drawee to the banker named or, if this is the drawee, to his client. The banker named can, however, use another banker to settle the cheque.
3. A banker can only acquire a crossed check from one of his clients or from another banker. He cannot collect it for account of persons other than those listed above.
4. A cheque with several special crossings can only be paid by the drawee in case there are two crossings, one of which is a settlement by a clearing agency.
5. The drawee or the banker who fails to observe the above provisions is liable for resulting damages up to an amount equal to the amount of the check.

#### Article 820

#### **(Rules for cheques “payable in account”)**

1. The drawer or the bearer of a check may prohibit its payment in cash mentioning on the face of the cheque the word across “payable in account”, or an equivalent phrase.
2. In this case the drawee can only make the settlement of the cheque by book-entry (credit account, transfer from one account to another or compensation). Settlement by the launch of entry is equivalent to payment.
3. Deleting the words “payable in account” is considered as not having occurred.
4. The drawee who fails to observe the above provisions is liable for the damage that this may lead to an amount equal to the amount of the cheque.

### **Chapter VI**

#### **Recourse due to non-payment**

#### Article 821

#### **(Rights of recourse of the bearer)**

The bearer can exercise his right of recourse against the endorsers, the drawer, and other liable parties if the cheque timely presented is not paid, and if the refusal to pay is verified:

- a) by a formal act (protest);

- b) by a statement by the drawee, dated and written on the check, indicating the day on which it was presented;
- c) by a statement dated from a clearing agency, stating that the check was timely presented but not paid.

Article 822  
**(Term for the protest)**

1. A protest or an equivalent declaration shall be made before expiry of the deadline for presentation.
2. If the cheque is presented on the last day of the period then the protest or the equivalent statement can be made on the next working day.

Article 823  
**(Notice of non-payment)**

1. The bearer shall give notice of non-payment to his endorser and the drawer within the four working days following the day of the protest or the equivalent declaration, or the day of presentation if the check contains the clause “without expenses”. Each endorser in turn shall inform his endorser of the notice he received within two working days following the receipt of the notice, indicating the names and addresses of those who sent preceding notices and so on, until the drawer is reached. The periods mentioned above include the receipt of the preceding notice.
2. If in accordance with the previous number notice is given to a signatory of the check then notice shall also be given to his provider of suretyship within the same period of time.
3. In case an endorser has not indicated his address, or has done so ineligibly, it is sufficient that the notice is sent to the preceding endorser.
4. The person who is to give notice can do it in any form, even by simply returning the cheque.
5. That person shall prove that the notice was sent within the time set. The term is considered as having been observed when the letter containing the notice has been put in the mail within this period.
6. The person who does not give notice within the period indicated above does not lose his rights. He is liable for damages, if any, caused by his negligence, but that liability shall not exceed the value of the cheque.

Article 824  
**(Clause that dispenses protest)**

1. The drawer, an endorser or a provider of suretyship may by means of the clause “without expenses”, “without protest”, or any other equivalent phrase exempt the bearer from lodging a protest or an equivalent statement to exercise their rights of recourse.
2. This clause does not exempt the bearer from presenting the cheque within the time limit set nor from giving the notice due. Proof of non-compliance is incumbent upon the one who wants to invoke it against the bearer.
3. If the clause is written by the drawer then it takes effect with respect to all signatories of the cheque; if it is inserted by an endorser or provider of suretyship then it only takes effect with

respect of such endorser or provider of suretyship. If, despite the clause written by the drawer the bearer lodges the protest or an equivalent statement then the expenses are paid by latter. When the clause emanates from an endorser or a provider of suretyship the costs of the protest or the equivalent declaration, if lodged, can be charged to all signatories of the cheque.

#### Article 825

#### **(Joint and several liability of the persons liable)**

1. All persons liable for a cheque are jointly and severally liable towards the bearer.
2. The bearer has the right to proceed against such persons, individually or collectively, without the need to observe the order in which they have been bound.
3. The same right has any signatory of a cheque who has paid.
4. Proceedings against a party liable do not preclude the proceedings against the others, even though these were bound later than the party proceeded against first.

#### Article 826

#### **(What can the bearer claim from the person proceeded against)**

The bearer can claim from the party against whom he exercises his right of recourse:

- a) the unpaid amount of the cheque;
- b) interest at the rate of six percent from the day of presentation;
- c) expenses of the protest or the equivalent statement, those from notices made and other expenses.

#### Article 827

#### **(Rights of the payer)**

The person who has paid the check can claim from those liable towards him:

- a) the whole amount he has paid;
- b) the interest of this very amount at a rate of six percent from the day that he paid;
- c) the expenses incurred by him.

#### Article 828

#### **(Rights of co-liable party that paid the cheque)**

1. Any of the liable parties against whom action was or can be brought can demand, provided that they reimburse the cheque, its delivery with the protest or the equivalent declaration and a receipt.
2. Any endorser who has paid the cheque can cancel his endorsement and those of subsequent endorsers.

#### Article 829

#### **(Cases of extension of the time limits)**

1. When the presentation of the cheque, their protest or an equivalent statement cannot be undertaken within the specified period of time due to insurmountable obstacles (legal

provisions declared by a State or any other case of *force majeure*) then these periods of time are extended.

2. The bearer shall immediately give notice of *force majeure* to his endorser, and make a dated and signed statement of this notice on the cheque or on the attached sheet; the provisions of article 823 apply to other cases.

3. Provided that the case of *force majeure* has ceased the bearer shall immediately submit the cheque for payment and, if there is cause to do so, lodge a protest or an equivalent statement.

4. If the case of *force majeure* continues for longer than fifteen days from the date on which the bearer, even before the expiry of the deadline for the presentation notified the endorser of the case of *force majeure* then recourse can be exercised without the need for presentation, protest or an equivalent statement.

5. Not considered cases of *force majeure* are facts that are of a purely personal interest to the bearer or the person whom he entrusted with the presentation of the cheque or with lodging the protest or an equivalent statement.

## **Chapter VII** **Plurality of specimens**

### Article 830 **(Admissibility of various specimens)**

1. With the exception of the check to bearer, any other cheque issued in a country and payable in another country can be drawn in several identical specimens.

2. When a check is issued in various specimens, these shall be numbered in the text of the very security, otherwise each will be considered as a distinct cheque.

### Article 831 **(Effect of the payment of one of the specimens)**

1. The payment made against one of the specimens functions as a discharge even when there is no stipulation that this payment cancels the effect of the others.

2. The endorser who has transferred the specimens of a cheque to several persons and the subsequent endorsers are liable for all specimens bearing their signatures that have not been returned.

## **Chapter VIII** **Alterations**

### Article 832 **(Effects of the alteration of the text)**

If the text of a cheque is altered then those who signed after such a change shall be liable in accordance with the altered text; previous signatories are liable in accordance with the original text.

## **Chapter IX**

## **Limitation of actions**

Article 833

### **(Time limits for action)**

All actions by the bearer against the endorsers, the drawer or the other liable parties are barred after six months, counting from the end of the term for presentation.

Article 834

### **(Interruption of time limits)**

A interrupção da prescrição só produz efeito em relação à pessoa para a qual a interrupção foi feita.

## **Chapter X General provisions**

Article 835

### **(Scope of the word “banker”)**

In this law the word “banker” also includes persons or institutions assimilated by law to bankers.

Article 836

### **(Extension of the term that expires on a holiday)**

1. Presentation and protest concerning a cheque can only be done on a working day.
2. If the last day of the period prescribed by law for performing acts relating to a cheque and especially for its presentation or the establishment of a protest or an equivalent act turns out to be a legal holiday then the deadline is extended until the first working day following the end of holiday. Intermediate holidays are included in the determination of the period.

Article 837

### **(Counting of terms)**

Periods of time in this law do not include the day of their beginning.

Article 838

### **(Inadmissibility of days of grace)**

Days of grace, wither legal or judicial, are not admitted.