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Commercial Code
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ዐሥራ ዘጠነኛ ዓመት
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19th Year No. 3



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Addis Ababa 5th May 1960

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NEGARIT GAZETA *Gazette Extraordinary*

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COMMERCIAL CODE OF THE EMPIRE OF ETHIOPIA
PROCLAMATION No. 166 OF 1960

*The first edition of this book was published during the 30th year of reign
of His Imperial Majesty Haile Selassie I, Emperor of Ethiopia.*

Berhanena Selam Printing Press of H.I.M. Haile Selassie I — 17-9-52 — No. 2071-52 — 5000

PROCLAMATION No. 166 of 1960
THE COMMERCIAL CODE PROCLAMATION OF 1960

**CONQUERING LION OF THE TRIBE OF JUDAH
HAILE SELASSIE I
ELECT OF GOD, EMPEROR OF ETHIOPIA**

WHEREAS the progress of Our Empire in the field of commerce requires the codification of Our commercial laws; and

WHEREAS a Commercial Code has been prepared under Our supervision and has received the approval of Our Senate and Chamber of Deputies;

NOW, THEREFORE, in accordance with Articles 34 and 88 of Our Revised Constitution, We approve the resolutions of Our Senate and Chamber of Deputies and We hereby proclaim as follows:

1. This Proclamation may be cited as the "Commercial Code Proclamation, 1960."
2. The Commercial Code of 1960, as published in a separate volume appearing as Extraordinary Issue No. 3 of 1960 of the Negarit Gazeta, shall come into force on the 11th day of September, 1960.
3. The Bankruptcy Law and the Company law of 12th July, 1933, are hereby repealed as from the 11th day of September, 1960.

Done at Addis Ababa this 5th day of May, 1960.

TSAHAFFE TAEZAZ AKLILU HABTE WOLD
Deputy Prime Minister and Minister of Pen

P R E F A C E

CONQUERING LION OF THE TRIBE OF JUDAH HAILE SELASSIE I ELECT OF GOD, EMPEROR OF ETHIOPIA

In the modern world, no nation can hope to expand its commercial and economic life unless there exists a firm legal basis which will assure the necessary elements of stability and security in business transactions while at the same time providing a sufficiently articulated yet flexible framework within which trade and commerce may flourish and grow. Today, in Ethiopia, the development of commerce has out grown the provisions of the laws relating to business organisations and bankruptcy which were promulgated during the first years of Our Reign and which were adapted to the commerce and industry of those early days. The commercial life of Ethiopia has expanded, increasing numbers of Ethiopian and foreign companies have been formed and registered, and more complex methods of transacting business have been developed in recent years.

Recognising the impetus which a modern Code regulating the constitution and activities of all business organisations could give to the further growth of trade and commerce, We directed the Codification Commission created by US to prepare a modern Commercial Code which would serve for the present day as well as provide a solid foundation for the further refinement of laws treating of these subjects. We have directed that in the expansion and consolidation of Our commercial laws, great attention should be given to the control of all trad-

ing, and in particular to the control of the carriage of passengers and goods, an aspect of commercial activity which has increased greatly in the last decade. Similarly, in view of the further expansion of both foreign and internal commerce, it has been necessary to elaborate laws governing negotiable instruments and banking transactions.

The Commercial Code which is today being promulgated fulfils these requirements. It is grounded in Ethiopia's ancient laws and customs and has been further extended by reference to the laws of other great commercial powers. We are confident that this Code will fulfil the aspirations of Our Beloved People and will assist in the swift and orderly development of Ethiopia's economic life. Our Parliament has studied with care and patience the detailed provisions of this Code and what has been approved by it is well suited to the needs of Our Own Country and to those persons and enterprises from other lands who are participating and sharing in the benefits of the commercial life of Our Empire. We are ever mindful that in the all-important task of the codification of Our laws We have been guided by Almighty God, and that the fruits of this work will underline the principle of international justice without which no nation can survive or prosper.

Given in the 30th year of Our Reign, this 5th day of May, 1960

HAILE SELASSIE I

Emperor

BOOK I. TRADERS AND BUSINESSES
TITLE I. GENERAL PROVISIONS APPLICABLE TO TRADERS
Chapter 1. Provisions Applying to Persons
Carrying on a Trade

Art. 1. — *Scope of application of the Civil Code.*

Unless otherwise provided in this Code, the provisions of the Civil Code shall apply to the status and activities of persons and business organisations carrying on a trade.

Art. 2. — *Scope of application of the Maritime Code.*

The relevant provisions of the Maritime Code shall apply to persons and business organisations carrying on maritime trade.

Art. 3. — *Persons and business organisations.*

The provisions of this Code applicable to persons other than those provisions applicable to physical persons only shall apply to business organisations. Nothing shall affect the special provisions of Book II and Book V Title IV of this Code applicable to business organisations only.

Art. 4. — *Bodies corporate under Public Law.*

- (1) Unless otherwise expressly provided by law, bodies corporate under public law, such as administrative or religious institutions or any other public undertakings, shall not be deemed to be traders even where they carry on activities under Art. 5.
- (2) The provisions of sub-art. (1) shall not apply to undertakings in which bodies corporate under public law only participate.

Chapter 2. Traders

Art. 5. — *Persons to be regarded as traders.*

Persons who professionally and for gain carry on any of the following activities shall be deemed to be traders:

- (1) Purchase of movables or immovables with a view to re-selling them either as they are or after alteration or adaptation;
- (2) Purchase of movables with a view to letting them for hire;
- (3) Warehousing activities as defined in Art. 2806 of the Civil Code;
- (4) Exploitation of mines, including prospecting for and working of mineral oils;
- 5) Exploitation of quarries not by handicraftsmen;

- (6) Exploitation of salt pans;
- (7) Conversion and adaptation of chattels, such as foodstuffs, raw materials or semi-finished products not by handicraftsmen;
- (8) Building, repairing, maintaining, cleaning, painting or dyeing movables not by handicraftsmen;
- (9) Embanking, levelling, trenching or draining carried out for a third party not by handicraftsmen;
- (10) Carriage of goods or persons not by handicraftsmen;
- (11) Printing and engraving and works connected with photography or cinematography not by handicraftsmen;
- (12) Capturing, distributing and supplying water;
- (13) Producing, distributing and supplying electricity, gas, compressed air including heating and cooling;
- (14) Operating places of entertainment or radio or television stations;
- (15) Operating hotels, restaurants, bars, cafes, inns, hairdressing establishments not operated by handicraftsmen and public baths;
- (16) Publishing in whatever form, and in particular by means of printing, engraving, photography or recording;
- (17) Operating news and information services;
- (18) Operating travel and publicity agencies;
- (19) Operating business as an agent, broker, stock broker or commercial agent;
- (20) Operating a banking and money changing business;
- (21) Operating an insurance business.

Art. 6. — Agricultural or Forestry undertakings.

- (1) Persons who carry on activities relating to agriculture, forestry, breeding cattle or maintaining pastureland, shall not be deemed to be traders where they sell the products of the land they exploit or use, or animals or the products of animals bred mainly from the resources of the land which the said persons exploit or use.
- (2) Such persons shall not be deemed to be traders whether the exploitation is individual or collective, such as an agricultural community or a cooperative undertaking.
- (3) Nurserymen who sell plants which grow on the land they exploit or use shall not be deemed to be traders.

Art. 7. — Agricultural Products How Dealt with.

- (1) Persons who carry on activities under Art. 6 (1) shall not be deemed to be traders where they deal with their products in accordance with

- (6) Exploitation of salt pans;
- (7) Conversion and adaptation of chattels, such as foodstuffs, raw materials or semi-finished products not by handicraftsmen;
- (8) Building, repairing, maintaining, cleaning, painting or dyeing movables not by handicraftsmen;
- (9) Embanking, levelling, trenching or draining carried out for a third party not by handicraftsmen;
- (10) Carriage of goods or persons not by handicraftsmen;
- (11) Printing and engraving and works connected with photography or cinematography not by handicraftsmen;
- (12) Capturing, distributing and supplying water;
- (13) Producing, distributing and supplying electricity, gas, compressed air including heating and cooling;
- (14) Operating places of entertainment or radio or television stations;
- (15) Operating hotels, restaurants, bars, cafes, inns, hairdressing establishments not operated by handicraftsmen and public baths;
- (16) Publishing in whatever form, and in particular by means of printing, engraving, photography or recording;
- (17) Operating news and information services;
- (18) Operating travel and publicity agencies;
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- (2) Such persons shall not be deemed to be traders whether the exploitation is individual or collective, such as an agricultural community or a cooperative undertaking.
- (3) Nurserymen who sell plants which grow on the land they exploit or use shall not be deemed to be traders.

Art. 7. — Agricultural Products How Dealt with.

- (1) Persons who carry on activities under Art. 6 (1) shall not be deemed to be traders where they deal with their products in accordance with

the usual practice of their business, so long as such dealing relates only to products of the land which they exploit or use, or to animals or products of animals bred mainly from the resources of the land which they exploit or use.

- (2) Such persons shall not be deemed to be traders whether the undertaking is individual or collective such as an agricultural community or a cooperative undertaking.

Art. 8. — *Fishermen and persons breeding fish, shell-fish or shells.*

Fishermen and persons who breed fish or shell-fish or shells shall not be deemed to be traders where they sell the products of their fishing or breeding.

Art. 9. — *Handicraftsmen.*

- (1) The provisions of this Code relating to traders shall not apply to handicraftsmen.
- (2) Handicraftsmen are persons who carry on an independent activity, who live mainly on their own manual work, who may carry on their activity with the assistance of members of their family and of not more than three employees or apprentices and who buy such material only as is necessary for carrying out their activities, without setting up stocks.
- (3) Handicraftsmen may use mechanical power.
- (4) Handicraftsmen are subject to the provision of any special law relating to their activities.

Art. 10. — *Business Organisations.*

- (1) Business organisations shall be deemed to be of a commercial nature where their objects under the memorandum of association or in fact are to carry on any of the activities specified in Art. 5 of this Code.
- (2) Share companies and private limited companies shall always be deemed to be of a commercial nature whatever their objects.

Chapter 3. Persons Capable of Carrying on a Trade

Art. 11. — *Persons incapable under the Civil Code.*

- (1) Persons incapable under the Civil Code may not carry on any trade.
- (2) Where incapable persons carry on a trade, they shall not, subject to the provisions of Art. 14 and 15, acquire the status of traders and their acts may be invalidated in accordance with the relevant provisions of the Civil Code.

Art. 12. — *Tutors.*

Tutors may not carry on a trade in the name and on behalf of a minor except in the cases provided in Art. 288 of the Civil Code. The same provisions shall apply to the tutor of an interdicted person.

Art. 13. — *Emancipated Minors.*

- (1) Notwithstanding the provisions of Art. 333 of the Civil Code, emancipated minors may not carry on a trade unless authorised in writing by the family council.
- (2) In default of authorisation under sub-art. (1), emancipated minors shall not be deemed to be of age.

Art. 14. — *Effect of Minority in relation to third parties.*

Notwithstanding the provisions of Art. 318 of the Civil Code, where a minor who carries on a trade has caused himself to be entered in the commercial register as though he were of age, his being a minor shall not affect third parties, in accordance with Art. 121 of this Code.

Art. 15. — *Publication of incapacity.*

Where a person has been declared incapable, such incapacity shall not affect third parties unless notice of such incapacity has been entered in the commercial register (Art. 121).

Chapter 4. Carrying on a Trade by Married Persons

Art. 16. — *Married persons may carry on trade.*

Any married person may carry on a trade as though he were unmarried unless his spouse objects thereto as provided in Art. 645 of the Civil Code.

Art. 17. — *Notification of objection.*

- (1) As between spouses an objection under Art. 16 may be notified to the trading spouse in any manner.
- (2) An objection under Art. 16 shall not affect third parties, in accordance with Art. 121 of this Code, unless notice of such objection has been entered in the commercial register.

Art. 18.— *Setting aside of objection.*

- (1) Where the trading spouse is of the opinion that the objection is not justified, having regard to the interest of the family, he may apply to the family arbitrators to set aside the objection.
- (2) Where the objection is set aside by the arbitrators, a notice to this effect shall be entered in the commercial register.

Art. 19.— *Debts contracted by the trading spouse.*

Debts contracted by the trading spouse shall be deemed to be debts of the marriage within the meaning of Art. 659 of the Civil Code and may be recovered on the personal estate of each spouse and on common property.

Art. 20.— *Effect of objection.*

Where an objection under Art. 16 has been entered in the commercial register, debts contracted by the trading spouse may be recovered on his personal estate only.

Art. 21.— *Cooperation of spouses.*

Where spouses together carry on a trade, they shall both be deemed to be traders, unless it is shown that one of them is the employee of the other.

Chapter 5. Right to Act as a Trader

Art. 22.— *Freedom to carry on trade.*

Subject to such prohibitions or lawful restrictions regarding unfair competition as may be prescribed, any person or business organization has the right to carry on any trade in accordance with the provisions regulating such trade.

Art. 23.— *Legal prohibitions or restrictions.*

- (1) Particular persons may be restricted or prevented from acting as traders or from carrying on a particular trade by legal provisions setting up prohibitions or incompatibilities.
- (2) Specific requirements as to age, qualifications, sex, nationality or licence may be imposed by law in respect of particular trades.

Art. 24.— *Effect of prohibitions and restrictions.*

- (1) Persons who carry on a trade subject to prohibition or restriction or without having the prescribed qualifications shall be liable to the penalties provided by law.
- (2) Persons who carry on a trade subject to prohibition or restriction may not invoke the said prohibition or restriction to free themselves from liabilities incurred in carrying on a trade subject to prohibition or restriction. They may not hold themselves out to be traders to third parties but they shall be liable as though they were traders.

Art. 25.— *Associations.*

- (1) Associations may not carry on any trade.
- (2) Any violation of the provisions of sub-art. (1) shall constitute a ground for dissolution under Art. 461 of the Civil Code.

Art. 26. — *Business organisations carrying on trade.*

No business organisation shall carry on a trade which it is not permitted to carry on or which is subject to specific requirements with which the said business organisation has not complied.

Art. 27. — *Bodies corporate under Public Law.*

The cases where a trade may be carried on by administrative or religious institutions or any other public undertaking and the conditions and effect of such trade shall be prescribed.

TITLE II. AUXILIARIES AND AGENTS
Chapter I. Commercial Employees

Art. 28. — *Definition.*

- 1) Commercial employees are persons who are bound to a trader by a contract of employment and who assist the trader by doing work of a non-manual nature as a salesman, secretary, accountant, guardian, inspector or director.
- 2) Commercial employees are not traders.

Art. 29. — *Civil Code applicable.*

Without prejudice to the provisions of this Code, the provisions of the Civil Code relating to contracts of employment shall apply to commercial Employees.

Art. 30. — *Prohibition from carrying on private trade.*

- 1) A commercial employee may not carry on, on his own behalf or on behalf of a third party, a trade similar to the trade carried on by his employer. Where an employee infringes this prohibition, his employer may claim damages and may cancel or refuse to renew the contract of employment in accordance with Art. 2591 of the Civil Code.
- 2) A contract of employment may only contain a prohibition from carrying on private trade upon the expiry of the contract of employment on the conditions specified in Art. 2589, 2590 and 2592 of the Civil Code.

Art. 31. — *Agents.*

- 1) Commercial employees may act as agents by express or tacit agreement.
- 2) The revocation of the power of agency shall not result in the cancellation of the contract of employment.

Art. 32.— *Powers of Employee in charge of sales.*

- 1) The employee in charge of the sales in a store shall be deemed to have a power of agency for the purpose of selling or receiving goods which come within the normal business activities of stores of such nature.
- 2) He may demand that goods sold by him be paid to him, unless payment is to be made to a special account.
- 3) The employee may not demand payment outside the store unless so expressly authorised or unless he produces a receipt signed by the trader.

Chapter 2. Managers

Art. 33. — *Definition.*

- 1) A manager is a person who has been authorised, expressly or tacitly, to carry out acts of management and to sign in the name of the trader.
- 2) A manager is not a trader.

Art. 34. — *Publicity.*

- 1) Where a manager has been appointed, the trader shall cause an entry to be made in the commercial register.
- 2) The manager shall have power to act by virtue of his appointment, notwithstanding that the provisions of sub-art. (1) have not been complied with.

Art. 35. — *Powers of Manager.*

- 1) In his relations with third parties, the manager shall be deemed to have full power to carry out all acts of management connected with the exercise of the trade, including the power to sign a negotiable instrument.
- 2) Unless expressly authorised to do so, he may not sell or pledge immovable property, nor may he sell, hire or pledge a business.

Art. 36. — *Restriction on powers.*

- 1) The powers of a manager may be limited to the management of a branch. Such a restriction shall not affect third parties in accordance with Art. 121 of this Code unless notice of such restriction has been entered in the commercial register.
- 2) Any other restriction shall not affect third parties.

Chapter 3. Commercial Travellers and Representatives

Art. 37. — *Commercial travellers.*

- (1) A commercial traveller is a person, domiciled at the place where the head office of the business is situate and bound to a trader by a contract of employment, who is entrusted by the trader with visiting clients and offering to them goods or services in the name and on behalf of the trader.
- (2) Unless otherwise agreed, contracts entered into by a commercial traveller shall be of no effect unless confirmed by trader.
- (3) Commercial travellers are not traders.

Art. 38. — *Commercial representatives.*

- (1) A commercial representative is a person, not domiciled at the place where the head office of the business is situate and bound to a trader by a contract of employment, who is entrusted by the trader with visiting clients in a specified area and offering to them goods or services in the name and on behalf of the trader.
- (2) Unless otherwise agreed, contracts entered into by a commercial representative shall become effective without confirmation by the trader.
- (3) Commercial representatives are not traders.

Art. 39. — *Private Business.*

- (1) Unless otherwise provided in the contract of employment, commercial travellers and representatives may not carry on private business. Where they carry on private business, they shall lose their compensation as provided in Art. 42 and 43.
- (2) The provisions of Art. 30 (2) shall apply where commercial travellers and representatives have been authorised to carry on private business.

Art. 40. — *Acting on behalf of other traders.*

- (1) Unless otherwise agreed, commercial travellers and representatives may not act on behalf of traders other than the trader to whom they are bound. Where they act on behalf of other traders, they shall lose their compensation as provided in Art. 42 and 43.
- (2) In no case may they act on behalf of a trader selling goods or offering services similar to the goods sold or the services offered by the trader to whom they are bound.

Art. 41. — *Remuneration.*

- (1) Commercial travellers and representatives shall be paid by salary or on commission or both.
- (2) The remuneration shall be fixed by the contract of employment or, where not fixed, by custom.

Art. 42. — *Compensation in case of termination of contract.*

Where the trader terminates the contract without good cause, commercial travellers and representatives who are bound by a contract entered into for an undefined period of time shall be entitled to fair compensation fixed in accordance with Art. 2583 of the Civil Code.

Art. 43. — *Compensation on account of clients introduced.*

Where a contract entered into for an undefined period of time is terminated by the trader or where a contract entered into for a specified period of time is not renewed by the trader, no fault being attributable to the commercial traveller or representative, the commercial traveller or representative shall be entitled to compensation equal to the profit derived from the customers introduced or goodwill created or extended by him.

Chapter 4. Commercial Agents

Art. 44. — *Definition.*

- (1) A commercial agent is a person or business organisation, not bound to a trader by a contract of employment and carrying out independent activities, who is entrusted by a trader with representing him permanently in a specified area and dealing or making agreements in the name and on behalf of the trader.
- (2) Unless otherwise provided in the agency agreement, contracts entered into by a commercial agent shall become effective without confirmation by the trader.
- (3) A commercial agent normally acts as agent and may act as broker. He is a trader.

Art. 45. — *Commercial agent exclusive agent.*

Unless otherwise provided in the agency agreement, a commercial agent shall be the exclusive agent of the principal in the area specified in the agreement.

Art. 46. — *Duties of commercial agent.*

- (1) A commercial agent shall safeguard the principal's interests with the care due by a good trader.
- (2) He shall:
 - (a) carry out all instructions of the principal;
 - (b) inform the principal of all contracts negotiated or entered into by him;

(c) send to the principal periodical reports on his activities and all such information as may be required on the state of affairs within the area where he acts.

- (3) Where the agency agreement comes to an end, a commercial agent may not take advantage of or disclose trade secrets revealed to him by the principal or of which he learned in the course of his duties as an agent.

Art. 47. — *Prohibition from carrying on private trade.*

- (1) A commercial agent may carry on any private trade which is not similar to the trade carried on by the principal. The agency agreement may be cancelled and damages may be due where the agent carries on trade similar to the trade carried on by the principal.
- (2) Unless otherwise provided in the agency agreement, a commercial agent may not act in the area specified in the agreement on behalf of traders other than the principal.
- (3) In no case may a commercial agent act, in the area specified in the agency agreement, on behalf of traders who carry on a trade similar to the trade carried on by the principal. The agency agreement may be cancelled and damages may be due where the agent disregards this prohibition.

Art. 48. — *Duties of principal.*

The principal shall, to the best of his ability, enable his agent to carry out successfully his duties under the agency agreement, in particular by making all necessary information and samples available to him.

Art. 49. — *Repayment of expenses.*

Unless otherwise agreed, current costs and expenses of the agency shall be borne by the commercial agent and are not subject to repayment by the principal. The agent shall only be entitled to the repayment of expenses occasioned by dealings made on behalf of the principal and of such special expenses as were made by him on the order of the principal.

Art. 50. — *Remuneration.*

- (1) A commercial agent shall receive remuneration for all dealings negotiated or made by him. Unless otherwise provided, he shall receive remuneration for all dealings made, in the area where he acts, either by the principal himself or by another agent of the principal.

- (2) A commercial agent shall receive remuneration even where dealings made by him are not carried out by the principal.
- (3) The remuneration shall be fixed in the agency agreement or, where not fixed, by custom.

Art. 51. — *Agent personally to carry out his duties.*

A commercial agent may not assign the agency agreement and may not substitute a third party for himself, as an agency agreement is made on the basis of the personal qualifications of the agent.

Art. 52. — *Termination of agency agreement.*

- (1) An agency agreement shall terminate:
 - (a) where the period of time for which it was entered into expires;
 - (b) where the agent, being a person, dies, becomes incapable or is declared bankrupt;
 - (c) where the business organisation acting as agent is wound-up.
- (2) Either party to an agency agreement made for an undefined period of time may terminate it on notice. Notice need not be given where there is good cause for termination.
- (3) The period of notice shall be fixed in the agency agreement or, where not fixed, by custom. It shall not be less than one month during the first year of service and not less than two months after the first year.

Art. 53. — *Compensation due in case of termination.*

Where the principal terminates without good cause an agency agreement entered into for an undefined period of time, the agent shall receive fair compensation which shall be fixed having regard in particular to the time for which he acted on behalf of the principal and to the customers introduced or goodwill created or extended by him.

Art. 54. — *Uncompleted business upon termination.*

- (1) Whenever an agency agreement terminates, the agent or his heirs or the business organisation having acted as agent shall receive remuneration for all contracts negotiated or entered into prior to the termination of the agreement.
- (2) Upon termination of the agreement, all remunerations and expenses due shall be paid forthwith by the principal.

Art. 55. — *Prohibition from carrying on similar private trade on termination of the agreement.*

- (1) The agency agreement may provide that, upon termination of the agreement, the commercial agent shall not carry on the same trade as the principal or act as commercial agent or representative for a trader carrying on the same trade as the principal.
- (2) Notwithstanding any provision to the contrary, any such prohibition shall not be effective for more than five years.

Chapter 5. Commercial Brokers

Art. 56. — *Definition.*

- (1) A commercial broker is a person or business organisation who, independently, professionally and for gain, brings parties together for the purpose of their entering into an agreement such as a contract of sale, lease, insurance or carriage.
- (2) A commercial broker is a trader, regardless of the parties he brings together and of the nature and object of the contract for the completion of which he acts as an intermediary.

Art. 57. — *Notice to parties.*

- (1) Unless customary or otherwise agreed, a commercial broker shall, where the parties have agreed to enter into a contract, inform both parties of the terms of the proposed contract.
- (2) Unless customary or otherwise agreed, the proposed contract shall not become effective unless it is confirmed by both parties.

Art. 58. — *Liability of broker.*

A commercial broker shall be liable for any damage he causes to either party.

Art. 59. — *Remuneration.*

- (1) A commercial broker shall receive remuneration when the contract for the completion of which he acted as an intermediary is entered into, whether such contract is performed or not.
- (2) Unless customary or otherwise agreed, the remuneration shall be paid only by the party having required the services of the broker.
- (3) The remuneration shall be fixed in the agreement or, where not fixed, by custom. The court may reduce the agreed remuneration where it appears excessive and disproportionate to the services rendered by the broker.

Chapter 6. Commission Agents

Art. 60. — *Definition.*

- (1) A commission agent is a person or business organisation who, independently, professionally and for gain, undertakes to buy or to sell in his name, but on behalf of the principal, goods, movables or any other thing of a similar nature, or to enter in his name but on behalf of the principal into a contract of carriage of goods.
- (2) A commission agent is a trader, regardless of the parties and of the nature and object of the contract.

Art. 61. — *Civil Code applicable.*

The provisions of Art. 2234-2252 of the Civil Code shall apply to contracts of commission.

Art. 62. — *Stock brokers.*

- (1) Stock brokers are commission agents.
- (2) Unless otherwise provided by law, they shall be subject to the provisions relating to contracts of commission.

TITLE III. ACCOUNTS

Chapter 1. Keeping of Accounts Compulsory

Art. 63. *Traders and Business Organisations.*

- (1) Any person or business organisation carrying on trade shall keep such books and accounts as are required in accordance with business practice and regulations, having regard to the nature and importance of the trade carried on.
- (2) The provisions of Art. 66-70 of this Code shall apply.

Art. 64. — *Petty traders.*

Petty traders may be exempted from keeping accounts on such conditions as may be prescribed.

Art. 65. — *Special rules applicable to business organisations.*

Nothing in this Title shall affect the special provisions of Book II of this Code applicable to business organisations.

Chapter 2. Books and Accounts to be kept

Art. 66. — *Entry of dealings.*

- (1) Every trader shall keep a journal where he shall make daily entries of all his dealings regardless of the nature of such dealings or of the manner in which they were carried out.

- (2) He may at least once a month balance the proceeds of such dealings and shall in such a case preserve all documents necessary for checking these dealings day by day.

Art. 67. — *Inventory and balance sheet.*

- (1) When beginning to carry on his trade, every trader shall prepare an inventory and a balance sheet.
- (2) A trader shall also, at the end of each financial year, prepare an inventory of his assets and liabilities and balance his accounts for the purpose of preparing the final balance sheet and the profit and loss account. The balance sheet and the profit and loss account shall be entered in special books.

Art. 68. — *Keeping of books.*

- (1) The books required under Art. 66 and 67 shall be kept in chronological order without any blanks or alterations.
- (2) They shall be given a serial number and initialled by the prescribed authority. The number of pages of which the books consist shall be specified by the prescribed authority on the last page of each book.

Art. 69. — *Preservation of books.*

All books and accounting documents shall be preserved for ten years from the date of the last entry in such books or from the date of such documents.

Art. 70. — *Correspondence.*

Originals of all letters, messages or telegrams received and copies of all letters, messages or telegrams sent shall be filed and preserved for ten years.

Chapter 3. Books and Accounts Admissible Evidence

Art. 71. — *Evidence in favour of party keeping books.*

Where a dispute arises between traders as to their commercial activities, the court may, notwithstanding the provisions of Art. 2016 of the Civil Code, admit as evidence in favour of a party books and accounts which have been kept by such party according to the provisions of the preceding Articles.

Art. 72. — *Evidence against party keeping books.*

- (1) Books shall prove against the party producing them.
- (2) A party who avails himself of books may not conceal any part of such books that may contradict his claim.

Chapter 4. Keeping of Accounts

Art. 73. — *Scope of application of this Chapter.*

- (1) The provisions of this Chapter shall apply to all commercial business organisations and to all persons carrying on a trade on such conditions as may be prescribed.

- (2) Special requirements may be prescribed in respect of certain kinds of traders or business organisations. These requirements may differ according to the nature and importance of the trade carried on.

Art. 74. — *Assets in the balance sheet.*

- (1) The balance sheet shall show, as assets, all the debit balances and, as liabilities, all the credit balances.
- (2) The assets shall appear in the following order:
- (a) Establishment expenses;
 - (b) Fixed assets;
 - (c) Stocks;
 - (d) Short term or liquid assets;
 - (e) The results (Debit balance of the Profit and Loss Account).

Art. 75. — *Liabilities in the Balance Sheet.*

The liabilities shall appear in the following order:

- (1) The proper capital account and reserves;
- (2) Profits brought forward and renewal funds;
- (3) Provisions and long term debts; personnel pension funds, if any;
- (4) Short term debts;
- (5) The results (Credit balance of the Profit and Loss Account).

Art. 76. — *Amortisations, provisions, adjustment accounts.*

- (1) Amortisations and provisions for depreciation shall appear under the respective headings of the assets in the balance sheet.
- (2) The adjustment accounts shall appear in the assets or liabilities side of the balance sheet following the accounts to which they relate.

Art. 77. — *Establishment expenses.*

Establishment expenses are expenses made on the formation of the undertaking or on the undertaking acquiring its permanent means of working.

Art. 78. — *Fixed assets.*

- (1) Fixed assets consist of assets used for working, assets not so used, assets completely amortised, and assets in course of being amortised.
- (2) Assets used in working are any assets acquired or manufactured by the undertaking not for sale or for transformation but to be used in a lasting manner as instruments of work.
- (3) Assets not used for working are any assets acquired or manufactured by the undertaking by virtue of the employment of capital and not for use as instruments of work.
- (4) Assets completely amortised are those still in use but whose value is entirely written off.

- (5) Assets in course of being amortised are those which are still not written off at the end of the financial year.

Art. 79. — *Stocks.*

Stocks are goods, materials, supplies, semi-finished and finished products, works in progress and packing materials.

Art. 80. — *Capital and reserves.*

- (1) The capital is the original value of the elements put at the disposal of the undertaking by the owner or partners by way of contributions in cash or in kind.
- (2) All profits preserved for the undertaking and not forming part of the capital shall constitute a reserve.

Art. 81. — *Balance carried forward.*

The balance carried forward is made up of previous years' profits which have not been distributed or transferred to reserves, or of previous years losses which have not been covered by subsequent profits.

Art. 82. — *Amortisations and provisions.*

- (1) Amortisation is the accounting measurement of the loss sustained by the fixed assets that necessarily depreciate with time.
- (2) The provisions for risks are intended to provide for definite risks, namely clear precise losses, which are foreseen at the end of the financial year.
- (3) The provisions for depreciation are intended to provide for the reduction in the value of some of the assets which can reasonably be expected.

Art. 83. — *Adjustment accounts.*

The adjustment accounts are intended to correct debts and amounts owing not written in ordinary accounts so that only those effective debts and monies owing appear at any particular financial year.

Art. 84. — *Valuation.*

- (1) Fixed assets shall appear in the balance sheet at their value of origin or if they have been revalued at their revaluation.
- (2) Merchandise, materials, supplies, packing materials in stock at the date of inventory shall be valued at their cost price.
- (3) Immovable assets shall appear in the balance sheet at their purchase price.

- (4) Wastes (remains of materials and refuse proceeding from manufacture) shall be valued at the ruling price at the date of the inventory or in the absence of a ruling price at their probable value of realisation.
- (5) Products or works in progress shall appear at their cost on the day of the inventory.

Art. 85. — *Provisions for depreciation.*

If the real value of merchandise, materials, semi-finished products, finished products and packing materials in stock on the day of the inventory is less than the cost price, the trader or commercial business organisation shall constitute equivalent provisions for depreciation.

TITLE IV. THE COMMERCIAL REGISTER

Chapter I. Organisation of the Commercial Register

Art. 86. — *Local and central registers.*

The commercial register shall consist of:

- (1) local registers kept in each Taklay Guezat, and
- (2) a central register kept at the Ministry of Commerce and Industry.

Art. 87. — *Official commercial gazette.*

- (1) All principal or subsidiary entries and all complementary entries, alterations or deletions sent to the central register shall be published in the official Commercial Gazette.
- (2) Regulations may permit of the publication of extracts only.

Art. 88. — *Publicity.*

- (1) Publicity through the commercial register shall be effected, with regard to persons, by the entry of declarations made by such persons before the authorities responsible for keeping local registers. Entries in the commercial register shall have effect as from the working day following the day when the entry was made.
- (2) The provisions of Book II of this Code shall apply to entries of declarations made by business organisations.

Art. 89. — *Keeping of local registers.*

Local registers shall be kept in each Taklay Guezat by a person appointed by the Ministry of Commerce and Industry.

Art. 90. — *Central Register.*

- (1) The central register shall be kept in Addis Ababa by a special department of the Ministry of Commerce and Industry which shall be known as the Department of the Central Commercial Register.

(2) The Department shall:

- (a) collect from all local registers all information relating to any registered person;
- (b) ensure that the provisions of the law regarding commercial registers are complied with;
- (c) ensure that publications under Art. 87 are effected;
- (d) receive and preserve such acts, documents and notices regarding business organisations as are provided in Book II of this Code.

Art. 91. — *Liability.*

Officials in charge of commercial registers shall be personally liable for any damage caused by them or by employees appointed by them.

Art. 92. — *Communication of entries to third parties.*

Any person on payment of the prescribed fee may require the official in charge of a local or the central register to deliver to him a copy of any extract from the register or, where there is no entry for which he is searching, a certificate to the effect that there is no entry.

Art. 93. — *Particulars on business papers.*

All registered traders shall specify on all papers used in their business the Taklay Guezat in which they are registered and their registration number.

Chapter 2. Entries in the Commercial Register

Section 1. General Provisions

Art. 94. — *Entries.*

Entries in the commercial register shall consist of all principal, subsidiary or complementary registrations, and of all alterations and deletions.

Art. 95. — *Manner of making entries.*

- (1) Entries shall be made upon a written statement made by the person seeking registration.
- (2) Entries may be cancelled as of right as provided in Art. 114.

Art. 96. — *Form of statement.*

- (1) A statement under Art. 95. (1) shall be in writing and in three copies signed by the person seeking registration or his representative, and shall be handed to the official in charge of the local register.
- (2) All necessary documents, if any, shall be annexed to the statement.
- (3) The statement shall be made within two months from the occurrence of the fact to be registered.

Art. 97. — *Accuracy of statements.*

- (1) The official in charge of the register shall verify the accuracy of the statement made by the person applying for registration. Where a person applies to be registered as a trader, the official shall ascertain whether the applicant fulfils the legal requirements for carrying on the trade in respect of which registration is sought.
- (2) The official shall check all documentary evidence supporting the statement and the conformity of the statement to such evidence.
- (3) The official may require the applicant to produce such further documents or information as may be necessary.

Art. 98. — *Application how dealt with.*

- (1) The official in charge of the register shall make an entry of all statements which appear to be correct and shall return a copy of the statement to the applicant. The date of registration and the registration number, if any, shall be specified on such copy.
- (2) Two different types of numbers shall be used according to whether registration is sought by a person or a business organisation.
- (3) The official shall keep a copy of the statement and shall file it.
- (4) The third copy shall be sent to the Department of the central commercial register.

Art. 99. — *Disputes between applicant and official.*

Any dispute arising between the applicant and the official in charge of the register shall be decided on by the Minister of Commerce and Industry.

Section 2. Registration

Art. 100. — *Persons to be registered.*

- (1) Any Ethiopian or foreign person or business organisation carrying out commercial activities within the Empire of Ethiopia shall be registered.
- (2) The provisions of sub-art. (1) shall apply in particular:
 - (a) to any Ethiopian or foreign person who is a trader within the meaning of Art. 5 of this Code;
 - (b) to any Ethiopian or foreign business organisation which is a commercial business organisation within the meaning of Art. 10 of this Code;
 - (c) to any foreign public undertaking carrying out commercial activities and to any commercial representatives or agents of foreign States, public institutions or undertakings.

- (3) Special regulations applicable to undertakings under sub-art. (2), (c) shall be prescribed.

Art. 101. — *Application for registration compulsory.*

- (1) A person shall not be registered as a trader unless an application to this effect is made by the said person or his attorney.
- (2) The application shall be made within two months from the day on which the trader began to carry on his trade.
- (3) The power of attorney shall be annexed to an application made by an attorney.

Art. 102. — *Cancellation of registration of former trader.*

Where an existing business is sold or let out for hire, the purchaser or lessee shall not be registered for so long as the registration of the former trader has not been cancelled in the register.

Art. 103. — *Place of registration.*

- (1) The application for registration shall be made at the registry of the Taklay Guezat within whose jurisdiction the person seeking registration carries on his trade. Where the applicant carries on several trades, he shall make the application at the registry in the Taklay Guezat within whose jurisdiction the principal place of business is situate.
- (2) Where the head office of the business is abroad, the trader shall make the application at the registry in the Taklay Guezat within whose jurisdiction the principal branch or agency is situate.

Art. 104. — *Summary registration.*

- (1) No trader shall be principally registered in more than one local register nor shall he be registered under more than one registration number in one register.
- (2) Where a trader carries on a trade or is in charge of branches or agencies at places other than the place where he is principally registered, he shall make an application to be summarily registered in those places and a reference shall be made to the principal place of registration.

Art. 105. — *Particulars in respect of principal registration.*

Where a trader makes an application for principal registration, he shall state:

- (a) his name;

- (b) his date and place of birth;
- (c) his nationality;
- (d) his private address;
- (e) where he is a minor, the date on which he was authorised to carry on trade by the family council;
- (f) where he is married, the place and date of the marriage and whether or not a marriage settlement was made and the date and the place where or person with whom such settlement was deposited, if any;
- (g) the objects of the trade;
- (h) whether he created the business or acquired or leased it and in the latter cases, the name of the former trade and all necessary information regarding the registration of the former trader;
- (i) the trade-name;
- (j) the special designation under which he trades, if any;
- (k) the address of the business;
- (l) the address of other businesses, branches or agencies, if any, which the trader operates either at the place of registration or in any other places;
- (m) the names of the managers, if any, and whether their powers are limited to the management of a branch;
- (n) the date on which the licence for carrying on the trade was granted, if any.

Art. 106. — *Particulars in respect of summary registration.*

Where a trader makes an application for summary registration, he shall state:

- (a) his name;
- (b) his nationality;
- (c) his private address;
- (d) the trade name of the business, branch or agency;
- (e) the address of the business, branch or agency;
- (f) the objects of the trade;
- (g) the name of the manager and whether his powers are limited to the management of a branch;
- (h) the date on which the licence for carrying on the trade was granted, if any;
- (i) the reference to the principal registration, the place where it was made and the registration number.

Art. 107. — *Commercial business organisations.*

The relevant provisions of Book II of this Code shall apply to registration of commercial business organisations.

Section 3. Alteration of Entries and Additional Entries

Art. 108. — *Alteration of entries.*

- (1) Any registered person shall, within two months from the occurrence of a fact making necessary an alteration in the particulars of registration, apply for the entry to be altered.
- (2) An application under sub-art. (1) may be made by any legally interested person.
- (3) In particular, the dismissal of the manager shall be entered.

Art. 109. — *Additional entries in respect of persons.*

- (1) Any registered person shall apply for the following additional entries to be made where necessary:
 - (a) the marriage of the trader, the place and date of the marriage and whether or not a marriage settlement was made, the date and the place where or the person with whom the settlement was deposited, if any;
 - (b) the dissolution of the marriage on the decision of the family arbitrators or by the court;
 - (c) the judgment declaring the trader incapable;
 - (d) an objection of the spouse, if any;
 - (e) the setting aside of an objection under Art. 18 of this Code;
 - (f) the appointment of new managers;
 - (g) the opening of new branches or agencies. Where a new branch or agency is opened, it shall be summarily registered in the register of the Taklay Guezat where such branch or agency is situate.
- (2) An application under sub-art. (1) may be made by any legally interested person.

Art. 110. — *Additional entries in respect of business organisations.*

The relevant provisions of Book II of this Code shall apply to additional entries in respect of commercial business organisations.

Art. 111. — *Judgments in bankruptcy.*

The relevant provisions of Book V of this Code shall apply to additional entries of judgments relating to bankruptcy or schemes of arrangement.

Section 4. Cancellation of Entries

Art. 112. — *Cessation of trade.*

Any registered person shall apply for the registration to be cancelled within two months from his ceasing to carry on his trade or where he lets his business out for hire.

Art. 113. — *Death of trader.*

- (1) The heirs of a deceased trader shall apply for the registration to be cancelled within two months from the death.
- (2) Where the heirs carry on the trade under joint ownership, they shall apply for a new registration to be entered.
- (3) Where the joint ownership is dissolved, the entry made under sub-art. (2) shall be cancelled and the person to whom the business is assigned shall apply for a new registration to be entered.

Art. 114. — *Entries cancelled as of right.*

- (1) Cancellation may be ordered as of right by the Minister of Commerce and Industry in particular where he knows that a business has ceased to operate or that a trader has been declared incapable to trade or to carry on the registered trade.
- (2) The order of cancellation shall be notified by the Minister of Commerce and Industry to the trader concerned and to the official in charge of the registry where the cancellation is to be entered.

Chapter 3. Sanctions

Section 1. Penal Provisions

Art. 115. — *Failure to register.*

Whosoever fails to register or to cause an entry to be made in the register in accordance with the provisions of this Code shall be guilty of an offence and shall on conviction be liable to the penalties provided in Art. 428 of the Penal Code.

Art. 116. — *Inaccurate statements.*

Whosoever intentionally makes inaccurate statements in relation to registration shall be guilty of an offence and shall on conviction be liable to the penalties provided in Art. 387 of the Penal Code.

Section 2. Civil Sanctions

Art. 117. — *Effect of registration.*

- (1) All registered persons or business organisations shall be deemed to be traders, unless the contrary is proved.

- (2) Registered persons or business organisations shall not be permitted to prove that they are not traders and shall incur all liabilities which the status of trader entails.

Art. 118. — *Effect of failure to register.*

- (1) Any person who fails to register in accordance with the provisions of this Code may not hold himself out to be a trader to third parties, but he shall be liable as though he were a trader.
- (2) The relevant provisions of Book II of this Code shall apply to business organisations.

Art. 119. — *Effect of failure to cancel entries.*

Any registered person who assigns his business or lets it out for hire shall, until his registration is cancelled, be jointly and severally liable for all debts incurred by the assignee or lessee.

Art. 120. — *Effect of entries.*

- (1) Any person who caused an entry to be made in the register shall not be permitted to show that such entry is inaccurate unless an application is made for such entry to be altered.
- (2) Third parties shall not be permitted to prove that they did not know of a fact entered in the commercial register.

Art. 121. — *Facts relating to persons not to affect rights of third parties.*

The following facts shall not affect the rights of third parties in good faith where they have not been entered in the commercial register:

- (a) the minority of the trader;
- (b) the marriage of the trader;
- (c) the marriage settlement of the trader;
- (d) the dissolution of the marriage of the trader;
- (e) the judgment declaring the trader incapable;
- (f) an objection under Art. 16 of this Code;
- (g) the limitation of the powers of a manager to the management of a branch or agency;
- (h) the dismissal of a manager.

Art. 122. — *Facts relating to business organisations not to affect rights of third parties.*

Facts relating to business organisations which do not affect the rights to

third parties where they have not been entered in the commercial register are prescribed by Book II of this Code.

Chapter 4. Final Provisions

Art. 123.— *Matters to be prescribed.*

Regulations shall be made by the Ministry of Commerce and Industry for the purpose of carrying into effect the provisions of this Title relating to:

- (a) foreign public undertakings under Art. 100 (2) (c);
- (b) the manner of keeping local registers and the central register;
- (c) the manner of numbering registrations;
- (d) documentary evidence to be produced;
- (e) forms for making applications;
- (f) fees to be paid on registration and on delivery of copies or extracts from registers;
- (g) publication of the official commercial gazette, notices to be published therein and costs of such publication;
- (h) any other matters which may or shall be prescribed.

TITLE V. BUSINESSES

Chapter I. General Provisions

Art. 124. — *Definition.*

A **business** is an incorporeal movable consisting of all movable property brought together and organised for the purpose of carrying out any of the commercial activities specified in Art. 5 of this Code.

Art. 125. — *Traders and businesses.*

- (1) Every trader operates a business.
- (2) A trader may operate several businesses for the purpose of carrying out various commercial activities.
- (3) A trader may operate a business in the capacity of owner, usufructuary or lessee. Only the person who operates the business shall be deemed to be a trader and the owner or lessor of the business shall not be regarded as a trader.

Art. 126. — *Principal business and branches.*

- (1) A business may consist of one principal business or of a principal business with branches or agencies which shall be deemed to be part of the business.
- (2) The head office of the business shall be at the place where the trader operates his principal business.

- (3) Where a branch or agency is sold or let out for hire without the principal being sold or let out for hire, such sale or lease shall be deemed to be a sale or lease of a business and the head office of such business shall be at the place where the assignee or lessee operates the branch or agency.

Chapter 2. Elements of a business
Section 1. Consistency of a Business

Art. 127. — *Goodwill and incorporeal elements.*

- (1) A business consists mainly of a goodwill.
(2) A business may consist of other incorporeal elements such as:
(a) the trade-name;
(b) the special designation under which the trade is carried on;
(c) the right to lease the premises in which the trade is carried on;
(d) patents or copyrights;
(e) such special rights as attach to the business itself and not to the trader.

Art. 128. — *Corporeal elements.*

A business may consist of corporeal elements such as equipment or goods.

Art. 129. — *Assets and liabilities.*

- (1) A business shall normally not include the assets and debts of the trader, with the exception of the right to the lease of the premises.
(2) Nothing in this Article shall affect the special rules provided in Art. 2587 of the Civil Code and in Art. 159 and 673 of this Code.

Section 2. Goodwill and Unfair Commercial Competition

Art. 130. — *Definition of goodwill.*

The goodwill results from the creation and operation of a business and is of a value which may vary according to the probable or possible relations between a trader and third parties who may require from him goods or services.

Art. 131. — *Preservation of goodwill.*

A trader may preserve his goodwill by instituting proceedings for unfair competition or by setting up the legal or contractual prohibitions provided in Art. 30, 40, 47, 55, 144, 158, 159, 204 and 205 of this Code.

Art. 132. — *Unfair commercial competition.*

A trader may claim damages under Art. 2057 of the Civil Code from any person who commits an act of competition which amounts to a fault.

Art. 133. — Cases of unfair competition.

- (1) Any act of competition contrary to honest commercial practice shall constitute a fault.
- (2) The following shall be deemed to be acts of unfair competition:
 - (a) any acts likely to mislead customers regarding the undertaking, products or commercial activities of a competitor;
 - (b) any false statements made in the course of business with a view to discrediting the undertaking, products or commercial activities of a competitor.

Art. 134. — Effect of unfair competition.

- (1) The court may, in cases of unfair competition:
 - (a) order that damages be paid by the unfair competitor; and
 - (b) make such orders as are necessary to put an end to the unfair competition.
- (2) The court may in particular:
 - (a) order the publication, at the costs of the unfair competitor, of notices designed to remove the effect of the misleading acts or statements of the unfair competitor, in accordance with Art. 2120 of the Civil Code;
 - (b) order the unfair competitor to cease his unlawful acts in accordance with Art. 2122 of the Civil Code.

Section 3. Trade-Names**Art. 135. — Definition.**

- (1) A trade-name is the name under which a person operates his business and which clearly designates the business.
- (2) The relevant provisions of Book II of this Code shall apply to firm-names used by business organisations.

Art. 136. — Family Name of trader or assumed name.

The trade-name may be the trader's family name, with or without his surname, or an assumed name, but all business papers shall be signed by the trader in his own name.

Art. 137. — Trader's Name.

- (1) Every trader may carry on his trade under his family name, with or without his patronymic:
 Provided that Art. 45 of the Civil Code shall apply where such name or patronymic is likely to create confusion in a manner prejudicial to the interests of another trader.

- (2) Where proceedings for unfair competition are instituted by reason of confusion created by the use of the trader's name, the court may order that damages be paid by the trader who created confusion and may, in addition, order such trader to include his surname or patronymic in his trade-name so as to obviate confusion.

Art. 138. — *Assumed name.*

- (1) Every trader may carry on his trade under an assumed name provided such name is not likely to create confusion in a manner prejudicial to the interests of another trader.
- (2) Where proceedings for unfair competition are instituted by reason of confusion created by the use of an assumed name, the court may order that damages be paid by the trader who created confusion and may, in addition, prohibit such trader from using the assumed name.

Art. 139. — *Assignment of trade-name.*

- (1) The trade-name may not be assigned except together with the business to which it refers.
- (2) The trade-name may not be used by the new trader unless it is followed by the name of such trader and by the words "successor" or "lessee". The new trader may only use his own name in signing commercial papers.

Section 4. Distinguishing Marks

Art. 140. — *Definition.*

- (1) A distinguishing mark is the name, designation, sign or emblem affixed on the premises where the trade is carried on and which clearly designates the business.
- (2) The use of a distinguishing mark is not compulsory.

Art. 141. — *Choice of distinguishing mark.*

- (1) A trader may choose any distinguishing mark.
- (2) Damages may be claimed on the ground of unfair competition where the distinguishing mark is likely to create confusion in a manner prejudicial to another trader having used an identical or similar distinguishing mark.

Section 5. Right to the lease of the premises

Art. 142. — *Civil Code applicable.*

Without prejudice to the provisions of this Section, the provisions of the Civil Code shall apply to the right to the lease of the premises in which the trade is carried on.

Art. 143. — *Nature of the trade carried on.*

Where the contract of lease specifies the nature of the trade to be carried on by the lessee, the contract may be cancelled where the lessee carries on a different trade.

Art. 144. — *Prohibition of trade by the lessor.*

- (1) After the contract of lease has been entered into, the lessor may not carry on in the same building a trade similar to the trade carried on by the lessee.
- (2) Where the lessor disregards the prohibition provided in sub-art. (1), he shall be liable for damages and his business may be closed.

Art. 145. — *Prohibition from assigning or sub-letting.*

- (1) Notwithstanding the provisions of Art. 2959 of the Civil Code, any provision in the contract of lease which prevents the lessee from assigning the contract of lease or from sub-letting the premises to the person who buys his business, or which makes such assignment or sub-lease dependent on the lessor's consent, shall be of no effect.
- (2) Any provision which prevents or restricts a trustee in bankruptcy from exercising his rights under Art. 1062 of this Code shall be of no effect.

Art. 146. — *Termination of contract of lease.*

- (1) Where a business is mortgaged, the lessor shall inform the creditors when he terminates the lease or he intends amicably to terminate the lease or to enforce a provision for termination made in the contract. The lease shall terminate not earlier than one month following such notice to the creditors.
- (2) Where notice is not given, the termination of the contract of lease shall not affect creditors having secured rights on the business.

Art. 147. — *Lessee declared bankrupt.*

- (1) Any clause in the contract of lease providing that the contract shall terminate as of right where the lessee is declared bankrupt shall be of no effect.
- (2) Where the lessee is declared bankrupt, the trustee may exercise his rights under Art. 1040 and 1062 of this Code and the lessor may exercise his rights under Art. 1060 and 1061 of this Code.

Section 6. Patents and Literary or Artistic Copyright

Art. 148. — *Patents.*

- (1) A business may consist of patents relating to registered inventions, trade-marks, designs and models.

(2) Patents shall be subject to the provisions of special laws.

Art. 149. — *Literary and artistic copyright.*

(1) A business may consist of literary or artistic copyright.

(2) The provisions of Art. 1647-1674 of the Civil Code shall apply to literary or artistic copyright.

Chapter 3. Sale of a business

Section 1. General Provisions

Art. 150 — *Civil Code applicable.*

Without prejudice to the provisions of this Chapter, the provisions of Art. 2266-2367 of the Civil Code shall apply to the sale of a business.

Art. 151. — *Scope of application of this Chapter.*

(1) The provisions of this Chapter regarding the sale of a business shall apply :

(a) to any sale or assignment, even under a disguised form;

(b) to any sale by auction at the request of joint owners.

(c) to any distribution accompanied by compensation,

where such sale, assignment or distribution relates to a business or its goodwill or to a branch or agency assigned without the principal business being assigned or the goodwill of such branch or agency.

(2) The provisions of this Chapter shall not apply to the sale of individual parts of a business other than the goodwill, unless such sale entails or conceals the sale of the business or of the goodwill of a business.

Sections 2. Formalities

Art. 152. — *Sale to be in writing.*

The sale of a business shall be null and void unless evidenced in writing.

Art. 153. — *Particulars in the contract of sale.*

The contract of sale shall specify:

(1) the turnover and profits made during the last three financial years or since the business was created or acquired by the seller, where such creation or acquisition took place less than three years before the sale;

(2) where the business is carried on in premises let out for hire, the date on which the contract of lease was made and is to expire and the same and address of the lessor;

- (3) the mortgages on the business, if any.

Art. 154. — *Cancellation of the contract.*

- (1) The court may cancel the contract of sale on the application of the buyer where it is of opinion that the buyer was injured by the failure to comply with any of the requirements provided in Art. 153.
- (2) The court may cancel the contract of sale or reduce the price of the sale on the application of the buyer where it is of opinion that the buyer was injured by any inaccurate statement made under Art. 153.
- (3) Proceedings under sub-art. (1) and (2) shall be instituted during the year within which the contract was made.

Section 3. Duties of the Seller

Art. 155. — *Duty to hand over.*

- (1) The seller shall hand over the business to the buyer.
- (2) Unless otherwise agreed, the sale of a business implies the sale of all the constituent parts of such business.
- (3) The seller shall enable the buyer to take over the goodwill by handing to him all necessary documents and information.
- (4) The provisions of the Civil Code and of special laws shall apply to the assignment of patents and copyrights.

Art. 156 — *Books and accounts.*

- (1) On the day of the sale, the seller and the buyer shall check all accounts and prepare an inventory of all accounting documents and books.
- (2) The seller shall retain all his books and accounting documents and the correspondence sent or received by him, but he shall, notwithstanding any provision to the contrary, keep them available for inspection by the buyer for a period of two years.

Art. 157. — *Commercial correspondence.*

The seller shall hand to the buyer all correspondence relating to the business which he may receive after the sale of the business.

Art. 158. — *Seller prohibited from competing.*

- (1) During five years from the sale, the seller shall refrain from doing any act of competition likely to injure the buyer. He may not carry on, in the vicinity of the business he sold, a trade similar to the trade carried on by the buyer.
- (2) The contract of sale may specify the extent of such prohibition which shall in no case exceed five years.

Art. 159. — Rights of subsequent buyer.

A prohibition under Art. 158 shall be deemed to be an element of the business and may be enforced by the buyer and his heirs and by any subsequent buyer.

Section 4. Duties of the Buyer**Art. 160. — Duty to pay the price.**

The buyer shall pay the price in the manner provided in the contract or, where no special provision is made, in cash. Notwithstanding any agreement to the contrary, the provisions of Art. 162 of this Code shall apply.

Art. 161. — Publication of the sale.

The buyer shall ensure that notice of sale is published in accordance with the provisions of Art. 164-170 of this Code.

Art. 162. — Prohibition from disposing of proceeds of sale.

- (1) After the sale, the price of the sale shall not be paid to the seller until the period of time for making applications to set aside expires or, where any such application has been made, until the rights of the creditors have been settled by agreement or by the court and such creditors have been paid.
- (2) Until that time, no payment or assignment of the claim shall affect the rights of the seller's creditors.
- (3) The contract of sale may provide that the buyer shall deposit the price of the sale with a third party. Any such deposit shall discharge the buyer from his liabilities to the seller but the buyer shall remain liable to the seller's creditors.

Art. 163. — Guarantee of the seller.

Until he is fully paid, the seller shall be secured by a legal mortgage and shall have the right to cancel the contract as provided in Art. 173-176 of this Code.

Section 5. Publication of the Sale and Rights of the Seller's Creditors**Art. 164. — Publication of the sale.**

- (1) Where a business is sold, the buyer shall ensure that a notice to this effect is published in the official commercial gazette and in a newspaper empowered to publish legal notices circulating in the Taklay Guezat where the head office of the business is situate.

- (2) Where the business sold comprises branches or agencies situate in different places, the notice under sub-art. (1) shall be published in a newspaper empowered to publish legal notices circulating in the Taklay Guezat where each branch or agency is situate.

Art. 165. — Particulars to be published.

Notice under Art. 164 shall show:

- (a) the names and addresses of the seller and buyer;
- (b) the objects and address of the business;
- (c) the objects and address of any branch or agency which may have been sold with the business;
- (d) the date and nature of the contract of sale;
- (e) the price of the sale;
- (f) the address for service at the place where the business is situate.

Art. 166. — Time within which to publish notices.

- (1) Notices under Art. 164 shall be published during the month within which the sale took place.
- (2) Late notice shall be valid, but the buyer may be liable for any damage caused to the seller or to the seller's creditors by reason of the delay.

Art. 167. — Application to set aside.

- (1) Within one month from the publication of the last notice, any creditor of the seller may, even where his claim is not due, move the court to set aside the proceeds of the sale and shall notify the buyer at his address for service.
- (2) The application shall show the name and address of the creditor and the amount and basis of the claim.
- (3) Where notices under Art. 164 have not been published or did not contain all the particulars required under Art. 165, an application to set aside may be made at any time.
- (4) Until the application is decided on, the buyer or third party with whom the proceeds of the sale have been deposited may not dispose thereof and the provisions of Art. 162 shall apply.

Art. 168. — Application rejected.

The buyer may move the court to reject an application which is not correct in form, or which is late or made without good cause.

Art. 169. — *Distribution of the proceeds of the sale.*

- (1) The proceeds of the sale shall be distributed by agreement or by order of the court between the creditors having a claim secured by the business and the creditors having made an application to set aside.
- (2) The surplus, if any, shall be handed to the seller.

Art. 170. — *Overbid by creditors.*

- (1) Creditors under Art. 169 (1) may move the court to order that the business be sold by auction where the price of the sale is insufficient to meet their claims.
- (2) The court shall order the sale by auction and the price of the sale shall be higher by one tenth than the price specified in the contract of sale.
- (3) Where no third party presents himself at the sale, the business shall be sold to the creditor making the highest bid.

Chapter 4. Mortgage of a business

Section 1. General Provisions

Art. 171. — *Mortgage possible.*

- (1) A business may be mortgaged.
- (2) Mortgage of a business flows from the law or a contract.
- (3) Any mortgage, whether legal or contractual, shall be registered.

Art. 172. — *Mortgage under the law.*

- (1) The following persons shall have their claims secured by a legal mortgage on the business:
 - (a) the seller of a business, for so long as the price of the sale has not been fully paid to him;
 - (b) the creditors of bankrupt trader.
- (2) The relevant provisions of Book V of this Code shall apply to a mortgage under sub-art. (1) (b).

Section 2. Mortgage of the seller and action for the cancellation of the contract of sale

Art. 173. — *Legal mortgage.*

- (1) Where a person sells a business and the price of the sale is not fully paid to him, the payment of the price or such part thereof as is still due shall be secured by a legal mortgage on the business sold.

- (2) The provisions of sub-art. (1) shall not apply unless the sale was made in writing and the mortgage has been registered in the manner provided by law during the month within which the sale took place.

Art. 174. — *Action for the cancellation of the contract.*

The seller who is not fully paid may cancel the contract of sale. The cancellation of the contract shall not affect third parties unless the mortgage has been registered as provided by law and the possibility of bringing an action for cancellation has been entered in the register in which the mortgage was registered.

Art. 175. — *Registration of legal mortgage.*

- (1) The entry of the legal mortgage in the register shall show:
- (a) the names and addresses of the seller and buyer;
 - (b) the date and nature of the contract of sale and the price of the sale;
 - (c) the amount of the purchase price paid;
 - (d) the conditions for demanding payment and the rate of interest;
 - (e) the possibility of bringing an action under Art. 174;
 - (f) the objects and address of the business;
 - (g) the scope of the mortgage;
 - (h) the address of any branch or agency mortgaged with the principal business, if any.
- (2) The mortgage shall apply to such parts only of the business as are expressly specified in the entry.

Art. 176. — *Bringing of action for cancellation.*

- (1) The seller who cancels the contract on the ground that he has not been fully paid (Art.174) shall, whatever the part of the price still due, take back the whole business in its condition on the day of cancellation, but not including new parts acquired after the contract of sale was made.
- (2) The increase or reduction in the value of the parts sold shall be taken into account in settling the rights of the seller and buyer.

Section 3. Contractual Mortgage

Art. 177. — *Conditions of contractual mortgage.*

- (1) Any person who is capable under civil law and who owns a business may mortgage such business notwithstanding that he does not operate it himself.

- (2) The mortgage shall be in writing and shall be registered during the month within which the mortgage deed is drawn up.

Art. 178. — *Registration.*

- (1) The entry of the mortgage in the register shall show:
 - (a) the names and address of the mortgagor and mortgagee;
 - (b) the date and nature of the mortgage deed;
 - (c) the claim secured by mortgage, the conditions on which it may become due and the rate of interest;
 - (d) the objects and address of the business;
 - (e) the scope of the mortgage;
 - (f) the address of any branch or agency mortgaged with the principal business, if any.
- (2) The mortgage shall apply to such parts only of the business as are expressly specified in the entry.

Section 4. Manner of Registering Mortgages

Art. 179. — *Place of registration.*

- (1) The mortgage shall be registered by the official entrusted by the Ministry of Commerce and Industry with keeping in each Taklay Guezat the register of mortgages of businesses.
- (2) The mortgage shall be entered in the register kept in the Taklay Guezat within whose jurisdiction the business is situate.
- (3) Where the business comprises branches or agencies situate outside the jurisdiction of the Taklay Guezat, the mortgage shall be entered in the register kept in each Taklay Guezat within whose jurisdiction each branch or agency is situate.

Art. 180. — *Removal of the business.*

- (1) A debtor who wishes to remove his business shall inform the secured creditors. The debt shall become due immediately where such notice is not given or removal is effected earlier than one month from such notice.
- (2) Creditors may exercise their rights under Art. 188 where they are of opinion that the removal would reduce the value of the business.
- (3) Where creditors agree to the removal and the business removed remains within the same area of jurisdiction, the creditors shall apply for the entry in the register to be varied accordingly. Where the business is removed to another place, the creditors shall ensure that a new entry is made in the register kept in the Taklay Guezat within whose jurisdiction the new head office is situate.

- (4) Where an entry is varied or a new entry is made under sub-art. (3), such varied or new entry shall have effect as from the day of the original entry.

Art. 181. — *Principal claim and interest.*

Registration shall have the effect of securing two years interest in the same rank as the principal claim.

Art. 182. — *Duration of registration.*

Registration shall secure the claim for five years from the date of registration and shall cease to have effect where not renewed before the expiry of five years.

Art. 183. — *Cancellation of registration.*

Registration shall be cancelled either where all interested parties so agree in writing or following a final judgment by the court.

Art. 184. — *Communication of entries to third parties.*

Any person on payment of the prescribed fee may require the official in charge of the register of mortgages to deliver to him a copy of any extract from the register or, where there is no entry for which he is searching, a certificate to the effect that there is no entry.

Art. 185. — *Liability.*

The official in charge of the register of mortgages shall be liable for failing to make the entries he is required to make and for any error or omission committed in delivering a copy or a certificate under Art. 184.

Art. 186. — *Regulations.*

- (1) Regulations shall specify:
- (a) the manner of keeping registers of mortgages;
 - (b) the manner of making or cancelling entries.
- (2) The fees to be paid on registration and on delivery of extracts or certificates under Art. 184 shall be prescribed by law.

Section 5. Rights of Secured Creditors

Art. 187. — *Business assigned or let out for hire.*

- (1) Notwithstanding any provision to the contrary, the debtor may assign his business or let it out for hire.
- (2) It may be provided that the mortgage shall become due on the business being assigned or let out for hire. Such provision shall be of no effect unless it is entered in the register.

Art. 188. — *Reduction of the guarantee.*

Where the debtor reduces or is likely to reduce the value of the business in particular by removing it, by failing to pay the rent of the premises in which the trade is carried on or by reducing the stocks, any secured creditor may demand that new sureties be produced and, where not produced, may move the court to order that his claim be paid forthwith.

Art. 189. — *Attachment of business.*

- (1) A secured creditor whose claim is not paid on becoming due may move the court to order attachment of the business with a view to causing it to be sold by auction. Attachment may not be effected earlier than one month from the creditor having demanded payment and not having been paid.
- (2) Any provision to the effect that a credit may, failing payment, attach the business or cause it to be sold without complying with the requirements of the law, shall be of no effect.

Art. 190. — *Right to follow the business.*

- (1) A secured creditor may claim the business from a third party, as the mortgage follows the business into whatever hands it may fall.
- (2) The third party may avoid attachment by paying fully all secured creditors.

Art. 191. — *Scope of mortgage.*

- (1) The mortgage charges the business in its condition at the time of attachment, whatever the importance or value of its parts at that time.
- (2) The mortgage shall apply to such parts only of the business as are expressly specified in the entry.

Art. 192. — *Preferred rights.*

- (1) Secured creditors shall have a preferred right on the proceeds of the sale of a business.
- (2) As between secured creditors, rights shall rank in accordance with the date on which such rights have been registered. Mortgages registered on the same day shall rank concurrently.
- (3) The legal mortgage of the seller shall rank before contractual mortgages.

Art. 193. — *Mortgages may be set up against the creditors of a bankrupt person.*
The relevant provisions of Book V of this Code shall apply where regis-

tered mortgages on a business are set up against the creditors of a bankrupt person.

Chapter 5. Hire of a Business

Art. 194. — *Civil Code applicable.*

- (1) A business may be let out for hire.
- (2) Without prejudice to Art. 195-205 of this Code, the provisions of Art. 2896-2974 of the Civil Code shall apply where a business is let out for hire.

Art. 195. — *Publication of the contract of lease.*

- (1) A contract of lease shall not affect the rights of third parties unless it is in writing and it is published, on the application of either party, in the official commercial gazette and in a newspaper empowered to publish legal notices circulating at the place where the head office of the business is situate.
- (2) Notices published under sub-art. (1) shall show:
 - (a) the names and addresses of the lessor and lessee;
 - (b) the date and nature of the contract;
 - (c) the objects and address of the business;
 - (d) the period of time for which the contract is entered into.

Art. 196. — *Registration.*

The owner of the business let out for hire shall cause his name to be struck off and the lessee shall cause his name to be entered in the commercial register in accordance with the provisions of Title IV of this Book.

Art. 197. — *Liability of the lessor.*

Until the provisions of Art. 195 and 196 have been complied with and within one month from such formalities having been completed, the owner shall be jointly and severally liable with the lessee for any debt incurred by the lessee in operating the business.

Art. 198. — *Particulars on business papers.*

The contract of lease may be cancelled where the lessee fails to add the word "lessee" on all his business papers.

Art. 199. — *Duties of lessee.*

The contract of lease may be cancelled where the lessee fails to pay the agreed rent on the agreed day or does not operate the business with the care due by a good trader and in accordance with the objects of such business.

Art. 200 — *Guarantee.*

- (1) In addition to the rent, the contract of lease may provide that the lessee shall produce sureties to guarantee the fulfilment of his obligations towards the lessor or third parties.
- (2) Notwithstanding any provision to the contrary, the sureties shall be fully returned to the lessee upon the termination of the lease, where the lessee has fulfilled his obligations and no application is made by the creditors within the period of time specified in Art. 202 (3).

Art. 201. — *Lessee personally to carry out his duties.*

The lessee may not assign the contract of lease without the written consent of the lessor, as a contract of lease is made on the basis of the personal qualifications of the lessee.

Art. 202. — *Termination of contract of lease to be published.*

- (1) Where the contract of lease terminates, notices to this effect shall be published as provided in Art. 195 (1).
- (2) Notices published under sub-art (1) shall show:
 - (a) the names and addresses of the lessor and lessee;
 - (b) the objects and address of the business;
 - (c) the date of termination of the contract;
 - (d) the amount of the guarantee under Art. 200, if any.
- (3) The owner of the business shall be liable to third parties where the sureties under Art. 200 are returned to the lessee earlier than one month from the publication of the last notice.

Art. 203. — *Debts of lessee shall become due.*

Any claim which a creditor may have against the lessee shall become due on the termination of the contract of lease.

Art. 204. — *Prohibition of trade by the lessor.*

- (1) During the currency of the contract of lease, the owner of the business may not compete with the lessee by creating or acquiring a business having similar objects.
- (2) Where the owner disregards the prohibition provided in sub-art. (1), he shall be liable for damages and his business may be closed.

Art. 205. — *Prohibition of trade by the lessee.*

- (1) The parties may agree that, upon the termination of the contract of lease, the lessee shall not compete with the owner of the business by carrying on a trade similar to the trade carried on by the owner.
- (2) Any such prohibition shall not be effective for more than five years.

**Chapter 6. Contribution of a Business
to a business organisation**

Art. 206. — *Contribution to be published.*

Where a business is contributed to a business organisation being formed or in operation, notices to this effect shall be published as provided in Art. 195 (1).

Art. 207. — *Particulars to be published.*

Notices published under Art. 206 shall show:

- (1) the name and address of the contributor;
- (2) the objects and address of the business contributed;
- (3) the firm-name, nature and head office of the business organisation to which the contribution is made;
- (4) the date of the memorandum of association.

Art. 208. — *Objection to contribution.*

- (1) During the month within which the last publication under Art. 206 was made any creditor of the contributor may, even where his claim is not due, send a notice to the head office of the business organisation to which the contribution was made to the effect that he objects to the contribution.
- (2) Where no publication was made or it is invalid, a creditor may make his objection at any time.

Art. 209. — *Steps taken by partners.*

- (1) Within one month from an application under Art. 208 being made, any partner may move the court to dissolve the business organisation under formation or to cancel the contribution made to the business organisation in operation.
- (2) Where an application under sub-art. (1) is not made, the business organisation shall be jointly and severally liable with the contributor where the contribution is cancelled.

**BOOK II. BUSINESS ORGANISATIONS
TITLE I. GENERAL PROVISIONS**

Art. 210. — *Business organisation defined.*

- (1) A business organisation is any association arising out of a partnership agreement.
- (2) Any business organisation other than a joint venture shall be deemed to be a legal person.

Art. 211. — *Partnership agreement.*

A partnership agreement is a contract whereby two or more persons who intend to join together and to cooperate undertake to bring together contributions for the purpose of carrying out activities of an economic nature and of participating in the profits and losses arising out thereof, if any.

Art. 212. — *Different business organisations.*

- (1) There are six forms of business organisations under this Code:
 - (a) ordinary partnership;
 - (b) joint venture;
 - (c) general partnership;
 - (d) limited partnership;
 - (e) share company;
 - (f) private limited company;
- (2) Special provisions applicable to cooperative organisations may be prescribed.

Art. 213. — *Commercial business organisations.*

- (1) Any business organisation other than an ordinary partnership may be a commercial business organisation within the meaning of Art. 10 (1) of this Code.
- (2) Where a commercial business organisation is created in the form of an ordinary partnership or where the form of the organisation is not specified, the commercial business organisation shall be deemed to be a general partnership.

Art. 214. — *Formation to be in writing.*

The formation of any business organisation other than a joint venture shall be of no effect unless it is made in writing.

Art. 215. — *Void provisions.*

- (1) Any provision giving all the profits to one partner shall be of no effect.
- (2) Any provision relieving one or more of the partners of his share in the losses shall be of no effect.

Art. 216. — *Agents.*

- (1) A business organisation shall acquire rights and incur liabilities by its agents in accordance with the provisions relating to agency.
- (2) A business organisation shall act in legal proceedings by its agents.

- (3) Any summons to be served on a business organisation shall be served at the head-office.

Art. 217. — *Dissolution under the law or by agreement.*

Any business organisation shall be dissolved:

- (a) where its purpose has been achieved or cannot be achieved;
- (b) where the partners agree to dissolution prior to the expiry of the term for which the business organisation was formed;
- (c) where the term for which the business organisation was formed expires, unless the partners agree to continue the business organisation.

Art. 218. — *Dissolution by the court.*

- (1) Notwithstanding any provision to the contrary, a business organisation may be dissolved for good cause by the court on the application of a partner.
- (2) There shall be good cause in particular where a partner seriously fails in his duties or becomes through infirmity or permanent illness or for any other reason incapable of carrying out his duties or where serious disagreement exists between the partners.

Art. 219. — *Publicity.*

- (1) Any business organisation other than a joint venture shall be made known to third parties.
- (2) Such publicity shall be made:
 - (a) by a notice published in a newspaper empowered to publish legal notices; and
 - (b) by the deposit of two copies of the documents provided in Art. 221 with the official in charge of the commercial register; and
 - (c) by registration in the commercial register.

Art. 220. — *Publication of notice.*

A notice under Art. 219 (2) (a) shall be published in a newspaper empowered to publish legal notices circulating at the place where the head-office is situate.

Art. 221. — *Deposit of documents.*

- (1) A deposit under Art. 219 (2) (b) shall be made with the official in charge of the commercial register at the place where the head-office is situate.

- (2) Two copies of the memorandum and all complementary documents, if any, shall be deposited.
- (3) The official shall keep one copy of the documents deposited and shall send the second copy to the Department of the central commercial register provided in Art. 90 of this Code.
- (4) Any person may, on payment of the prescribed fee, require the official in charge of a local or of the central commercial register to deliver to him a copy of all entries relating to a business organisation.

Art. 222. — Registration.

- (1) The application for registration in the commercial register shall be deposited with the documents specified in Art. 221.
- (2) The provisions of Art. 95-99 of this Code shall apply. The official in charge of the register shall examine whether the legal conditions relating to the formation of the business organisation have been fulfilled.

Art. 223. — Effect of publicity.

A business organization shall have no legal existence nor personality until all the provisions of this Code relating to publicity have been complied with and registration is published in accordance with Art. 87 of this Code.

Art. 224. — Modifications.

- (1) Any modification in the memorandum of association shall be deposited.
- (2) Any modification of a fact published and registered, shall be published and the entry shall be corrected in accordance with Art. 108 of this Code.

Art. 225. — Branches.

- (1) Where a business organization comprises branches or agencies situate in places other than the place where the head-office is situate, the provisions of this Code relating to publicity shall be complied with in each place where a branch or agency is situate.
- (2) Registration in the commercial register shall be made by way of summary registration and shall refer to the principal registration.
- (3) A summary registration shall contain the same particulars as a principal registration and shall show the address of the branch and the name of the manager of the branch.

Art. 226. — *Cancellation of registration.*

Where a business organisation is dissolved and wound-up, the liquidators shall apply for the registration of the business organisation in the commercial register to be cancelled. The business organisation shall have no legal personality after cancellation has been published in the Official Commercial Gazette.

TITLE II. ORDINARY PARTNERSHIP

Chapter 1. General Provisions

Art. 227. — *Definition.*

A partnership is an ordinary partnership within the meaning of this Title where it does not have characteristics which make it a business organisation covered by another Title of this Code.

Art. 228. — *Joint ownership.*

- (1) The provisions of this Title shall not apply to joint ownership, where property is held by several persons for reasons outside their control.
- (2) Joint owners may agree to create a partnership for the management of the property jointly owned.

Chapter 2. Contributions

Art. 229. — *Nature and amount.*

- (1) Each partner shall make a contribution, which may be in money, debts, other property or skill.
- (2) Property or the use of property may form a contribution.
- (3) Unless otherwise agreed, contributions shall be equal and of the nature and extent required for carrying out the purposes of the partnership.

Art. 230. — *Guarantee.*

- (1) Where property is contributed, the contributing partner shall carry out the duties of a seller.
- (2) Where the use of property is contributed, the contributing partner shall carry out the duties of a lessor.
- (3) Where a partner contributes a debt, he guarantees only the existence of the debt and not the solvency of the debtor, unless otherwise agreed.

Art. 231. — *Risks.*

- (1) Where property is contributed, the risks shall pass to the partnership

in accordance with the provisions relating to sale.

- (2) Where the use of property is contributed, the risks shall remain with the contributing partner.

Art. 232. — *Interest.*

Where money is contributed, the contributing partner shall be liable to the partnership for interest thereon where payment is made after the due date.

Chapter 3. Management of the Partnership

Art. 233. — *Modification of the agreement.*

- (1) The partnership agreement may be varied only with the consent of all the partners.
- (2) The partnership agreement may contain a clause providing for the variation of a particular clause with the consent of the majority of the partners.

Art. 234. — *Majority.*

- (1) Where the law or the partnership agreement provides that a decision may be taken by a majority of the partners, the majority means a majority of the individual partners.
- (2) The partnership agreement may provide that the majority shall be calculated on a majority holding in the partnership.

Art. 235. — *Special acts.*

The consent of all the partners shall be required for the appointment of an attorney or the carrying out of any act which goes beyond normal partnership practice.

Art. 236. — *Appointment of managers.*

All the partners shall have a right to act as managers, unless the partnership agreement or a decision of the partnership has appointed one or more of the partners or a third party to be the manager.

Art. 237. — *More than one manager.*

- (1) Where several persons have been appointed managers and their duties have not been specified or where it has not been specified that they act jointly, they may each carry out acts of management.
- (2) Each manager may object to dealings contemplated by other managers.
- (3) The objection shall be decided on by a majority vote of all the partners.

Art. 238. — *Joint management.*

- (1) Where joint managers have been appointed, decisions shall be taken jointly.
- (2) Where an act of management is of an urgent nature and the other joint managers cannot be consulted, one joint manager may act alone.

Art. 239. — *Manager appointed under partnership agreement.*

A partner appointed as manager under the partnership agreement may carry out all acts of management in disagreement with the other partners in the absence of fraud.

Art. 240. — *Revocation of the statutory manager.*

- (1) The appointment of a manager appointed under Art. 239 may not be revoked or his powers restricted by the other partners, save for good cause.
- (2) Where there is good cause, the appointment may be revoked notwithstanding any provision to the contrary in the partnership agreement.
- (3) Gross breach of duty or unfitness to exercise powers of management shall constitute good cause under this Article.

Art. 241. — *Rights and duties of managers.*

- (1) The provisions relating to agency shall apply to the rights and duties of managers.
- (2) Managers shall be jointly and severally liable to the partners for failure to carry out their duties according to law or under the partnership agreement.
- (3) Where liability has been incurred and such liability is not due to the fault of a manager, the manager shall have a right of action against the person through whose fault the liability was occasioned.

Art. 242. — *Unauthorised agency.*

Where a person holds himself out to be a manager of a partnership or where a manager exceeds his powers, the rules relating to unauthorised agency shall apply.

Chapter 4. Rights and Duties of Partners

Art. 243. — *Duties of the partners.*

- (1) Every partner shall, in conducting partnership business, use the diligence and skill which he uses in conducting his private affairs.

- (2) Every partner shall be liable to the other partners in respect of any damage which he has caused by his default. Any benefit which he has procured for the partnership in handling other business may not be set off against such damage.

Art. 244. — *Duty to obtain.*

No partner may handle, either for his own benefit or for a third person, any business which would be contrary or prejudicial to the partnership.

Art. 245. — *Use of partnership property.*

- (1) Property, debts and rights brought into or acquired by the partnership shall belong to the partners in common under the terms of the partnership agreement.
- (2) Every partner may use partnership property in accordance with usual partnership practice.
- (3) No partner may use partnership property against the interests of the partnership or so as to prevent his co-partners from using such property in accordance with their rights.

Art. 246. — *Necessary expenses.*

Every partner may require his partners to share such expenses as may be necessary to preserve the partnership property.

Art. 247. — *Advances or loans.*

- (1) A partner who makes an advance of funds to the partnership shall be entitled to interest.
- (2) A partner who borrows funds from the partnership shall pay interest.
- (3) He may, where appropriate, be liable to pay damages in addition to interest.

Art. 248. — *Right to check books and papers.*

Every partner shall, notwithstanding any provision to the contrary in the partnership agreement, have the right to check the state of the firm's business, to consult the books and papers of the partnership and to draw up a statement of the financial position.

Art. 249. — *Reports.*

- (1) Where a partnership continues for more than one year, the partners may require a report on the management to be prepared at the end of each year.
- (2) Any provision in a partnership agreement for reports to be submitted at intervals exceeding twelve months shall be of no effect.

Art. 250. — *Association with third parties.*

- (1) No partner may introduce a third party as a partner without the consent of the other partners.
- (2) Where a partner gives an interest in his partnership share to a third party or assigns his share to him, the third party does not become a partner and has no right under Art. 248.

Art. 251. — *Profit sharing.*

- (1) The partners shall share all profits which, by their nature, are partnership profits.
- (2) Unless otherwise agreed, every partner may require that the profits be distributed immediately after approval of the management report.

Art. 252. — *Manner of distributing profits and losses.*

- (1) Unless otherwise agreed, every partner shall have an equal share in the profits and losses, irrespective of his contribution.
- (2) If the agreement specifies either the share in the profits or the share in the losses, this provision shall apply equally to the share of profits and losses.

Art. 253. — *Distribution by a third party.*

- (1) Where the partners agree to refer the distribution of profits to one of them or to a third party, such distribution may only be challenged as being inequitable.
- (2) No claim shall be entertained where the partner who considers himself to be aggrieved by the distribution has not challenged such distribution within three months of his becoming aware thereof, or where such partner has initiated the execution of the distribution.

Art. 254. — *Contribution of skill.*

Notwithstanding the provisions of Art. 215, provisions may be made to the effect that a partner who contributes skill only shall share in the profits and not in the losses.

Chapter 5. Relations of the partnership with third parties

Art. 255. — *Creditors of the partnership.*

- (1) The creditors of the partnership may claim against partnership assets.
- (2) They may also claim against the personal property of the partners

Who shall, unless otherwise agreed, be jointly and severally liable to them for the obligations of the partnership. A partner who is sued on his personal property may require, as though he were a guarantor, that the creditor first distrain the property of the partnership.

- (3) Any provision relieving the partners or some of them of joint and several liability may not be set up against third parties unless it is shown that such parties were aware of such provision. Notwithstanding any provision to the contrary, the partners who acted in the name of the partnership shall always be jointly and severally liable.

Art. 256. — *Personal creditors.*

- (1) Personal creditors of the partners may attach the share in the profits due to their debtor.
- (2) They may take all steps necessary to protect the share due to their debtor upon the winding-up of the partnership.
- (3) If the personal property of their debtor is not sufficient to indemnify them, they may require that, within three months from the date of their demand, the debtor's share in the partnership be disposed of.

Art. 257. — *Set-off.*

A person who is a debtor of the partnership may not set off a debt against one of the partners.

Chapter 6. Dissolution and winding-up of partnership

Art. 258. — *Partnership for an undefined period.*

- (1) Where a partnership is entered into for an undefined period or for the life of one of the partners, or where the power to dissolve on notice is provided in the agreement, every partner may bring about its dissolution by giving six months notice.
- (2) Notice to dissolve shall be given in good faith and not be unseasonable.
- (3) Notice to dissolve shall be deemed to be unseasonable where the situation is not determined and the dissolution of the partnership should be postponed.

Art. 259. — *Withdrawal of a partner.*

Where a partner has given notice to dissolve under Art. 258, his partners may prevent dissolution by paying out his share, and the partnership shall continue as between the other partners.

Art. 260. — *Death, incapacity or bankruptcy.*

- (1) A partnership shall be dissolved where one of the partners dies or is

no longer able, under the law, to be a partner.

- (2) A partnership shall be dissolved where a partner is declared bankrupt or where one of his personal creditors causes his share to be disposed of under Art. 256 (3).
- (3) The partnership may by agreement continue as between the remaining partners, or with the heirs or representatives of the deceased, incapable or bankrupt partner.

Art. 261. — *Expulsion of a partner.*

The court may order the expulsion of a partner for good cause and the partnership shall continue as between the remaining partners.

Art. 262. — *Paying out partner leaving.*

- (1) Where a partner leaves a partnership and the partnership continues as between the other partners, the rights of the partner who has left shall be settled in cash, on the basis of the value of his rights on the day when he leaves the partnership.
- (2) A partner who leaves the partnership shall share in the profits and losses arising from dealings completed or outstanding on the day when he leaves.
- (3) He shall be liable to third parties for all dealings made prior to his leaving.

Art. 263 — *Powers of managers after dissolution.*

- (1) The managers shall retain on dissolution their powers until they have made arrangements for the dissolution.
- (2) During dissolution, they may only exercise such powers as are necessary to complete the dissolution.

Art. 264. — *Appointment of liquidators.*

- (1) After dissolution, the winding-up shall be carried out by one or more liquidators, appointed under the partnership agreement or by all the partners.
- (2) Failing the agreement of the partners, the court shall appoint liquidators.

Art. 265. — *Duties and responsibilities of liquidators.*

- (1) Unless otherwise provided in the partnership agreement or by law, the liquidators shall have the same duties and responsibilities as managers.

- (2) The appointment of liquidators may be revoked by the decision of all the partners, or by the court at the request of one partner.

Art. 266. — *Inventory.*

- (1) The managers shall hand over to the liquidators the property of, and documents relating to, the partnership and render an account of their management upto the date of handing over.
- (2) The liquidators shall draw up an inventory of the assets and liabilities of the partnership

Art. 267. — *Powers of the liquidators.*

- (1) The liquidators shall take all steps necessary to complete the winding-up of the partnership.
- (2) The liquidators may sell the property of the partnership, represent the partnership in legal proceedings and may compromise or refer to arbitration any matters in issue.
- (3) The liquidators may not undertake new business in the name of partnership but may complete business already started.

Art. 268. — *Settlement with creditors.*

- (1) The liquidators shall pay the creditors of the partnership, where necessary calling upon the partners for contributions.
- (2) They shall settle with the partners debts which they hold against the partnership and restore to partners property whose use only was contributed to the partnership.

Art. 269. — *Restitution of contributions.*

- (1) A partner who has contributed property may not claim it back in kind.
- (2) He shall have a claim to the value of his contribution as accepted in the partnership's accounts.
- (3) If the value has not been so fixed, restitution shall be made on the basis of the actual value at the time the contribution was made.

Art. 270. — *Distribution of profits and losses.*

- (1) Where there is a surplus after all claims have been met and contributions returned, the surplus shall be distributed among the partners.

- (2) Where the assets are insufficient to repay contributions after payment of debts, expenses and advances, the loss shall be distributed among the partners.
- (3) The distribution of profits and losses is to be made among the partners in equal shares, where no other proportion has been specified in the partnership agreement.

TITLE III. JOINT VENTURE

Art. 271. — *Definition.*

A joint venture is an agreement between partners on terms mutually agreed and is subject to the general principles of law relating to partnerships.

Art. 272. — *Absence of divulgation.*

- (1) A joint venture is not made known to third parties.
- (2) A joint venture agreement need not be in writing and is not subject to registration and other forms of publication required in respect of other business organisations.
- (3) A joint venture does not have legal personality.
- (4) Where a joint venture is made known to third parties, it shall be deemed, insofar as such parties are concerned, to be an actual partnership.

Art. 273. — *Contributions.*

Unless otherwise provided, every partner owns his contribution.

Art. 274. — *Shares.*

- (1) A joint venture may not issue negotiable securities.
- (2) Unless otherwise provided, shares may be assigned only with the agreement of all the partners.

Art. 275. — *Management.*

- (1) A joint venture shall be managed by one or more managers, who need not be partners.
- (2) Where no manger is appointed, all the partners shall have the status of managers.
- (3) The appointment of a partner as manager may not be revoked without good cause.
- (4) The powers of the manager shall be specified in the memorandum of association. The provisions relating to these powers may not be set up against third parties.

Art. 276. — *Partners who are not managers.*

- (1) The manager is known to third parties. He shall be fully responsible

for the liabilities of the joint venture.

- (2) Partners who are not managers shall meet liabilities only to the extent fixed in the memorandum of association.
- (3) The partners may supervise the work of the manager.
- (4) In a commercial joint venture, partners who are not managers and who take part in the management shall be jointly and severally liable as between themselves and with the manager.
- (5) Every partner shall deal with third parties in his own name.

Art. 277. — *Duty to account.*

A manager shall account to the partners. Any provision relieving him from this duty shall be of no effect.

Art. 278. — *Grounds for dissolution.*

- (1) A joint venture may be dissolved on one of the following grounds:
 - (a) the expiry of the term fixed by the memorandum of association, unless there is provision for its extension;
 - (b) the completion of the venture;
 - (c) failure of the purpose or impossibility of performance;
 - (d) a decision of all the partners for dissolution taken at any time;
 - (e) a request for dissolution by one partner, where no fixed term has been specified;
 - (f) dissolution by the court for good cause at the request of one partner;
 - (g) the acquisition by one partner of all the shares;
 - (h) death, bankruptcy or incapacity of a partner, unless otherwise lawfully agreed;
 - (i) a decision of the manager, if such power is conferred upon him in the memorandum of association.
- (2) The provisions of this Article shall apply notwithstanding any provision to the contrary in the memorandum of association.

Art. 279. — *Expulsion of a partner.*

- (1) Where dissolution is requested for reasons attributable to one partner, the court may, on the application of the other partners, order the expulsion of the partner at fault in lieu of dissolution.
- (2) The memorandum of association may provide for expulsion.
- (3) A partner who is expelled shall be paid what is due to him on the day of expulsion.

TITLE IV. GENERAL PARTNERSHIP

Art. 280. — *Nature of general partnership.*

- (1) A general partnership consists of partners who are personally, jointly, severally and fully liable as between themselves and to the partnership for the partnership firm's undertakings. Any provision to the contrary in the partnership agreement shall be of no effect with regard to third parties.
- (2) Where the partnership is a commercial partnership, each partner shall have the status of a trader.
- (3) The partnership shall have a firm-name.
- (4) The provisions of Art. 282 shall apply where partnership shares are assigned or transferred.

Art. 281. — *Firm-name.*

- (1) The firm-name shall consist of the names of at least two of the partners followed by the words "General partnership," and may not contain names of persons who are not partners.
- (2) Where a partner who is mentioned in the firm-name ceases to be a partner, the firm-name shall be changed accordingly.
- (3) Where a person not being a partner permits his name to be used in the firm-name, he shall be liable as a full partner.

Art. 282. — *Rules concerning shares.*

- (1) A share may be assigned or transferred where all the partners agree.
- (2) The memorandum of association may provide that approval shall be given by a majority of the partners.
- (3) Unless the firm's creditors agree, a partner who has assigned his share shall be liable for the firm's debts up to the date of assignment.

Art. 283. — *Granting of beneficial interest in share to third party.*

- (1) A partner may without approval grant to a third party the beneficial rights and interests in his share.
- (2) Such grant shall not bind the partnership.
- (3) The third party has none of the rights of a partner.

Art. 284. — *Memorandum of association.*

The memorandum of association shall be drawn up by the partners. It shall contain:

- (1) the name, address and nationality of each partner;

- (2) the firm-name;
- (3) the head office and branches, if any;
- (4) the business purposes of the firm;
- (5) the contributions of each partner, their value and the method of valuation;
- (6) the services required from persons contributing skill;
- (7) the share of each partner in the profits and in the losses and the agreed procedure for allocation;
- (8) the managers and agents of the firm;
- (9) the period of time for which the partnership has been established.

Art. 285. — *Publication of notice and registration.*

- (1) A notice published under Art. 219 (2) (a) and 220 shall contain the particulars specified in Art. 284 (1) - (6), (8) and (9).
- (2) The same particulars shall appear on the application for registration in the commercial register. The application shall be signed by the manager or a person acting on his behalf.

Art. 286. — *Undertakings of partnership.*

The partnership may acquire rights and liabilities and sue or be sued under its firm-name.

Art. 287. — *Administration of partnership.*

- (1) The partnership shall be administered by one or more managers who may or may not be partners.
- (2) Where no manager is appointed, each partner shall be a manager.

Art. 288. — *More than one manager.*

- (1) Where all the partners are managers, or where several persons have been appointed managers and their duties have not been specified, or it has not been specified that they act jointly, they may each carry out acts of management.
- (2) Where the memorandum provides for the separation of duties of the managers, such separation shall only affect third parties where it has been entered in the commercial register or if it is shown that the third parties were aware of such separation.
- (3) Each manager may object to dealings contemplated by other managers. Such objection shall be decided on by a majority vote of all the partners.

Art. 289. — *Scope of duties of managers.*

- (1) Managers may, in accordance with the law, act for and bind their firm.
- (2) Any provisions restricting the extent of these powers shall only affect third parties where such provisions have been entered in the commercial register or if it is shown that the third parties were aware of such provisions.

Art. 290 — *Manager's exercise of powers.*

- (1) Where a manager acts in the firm-name for his own profit, the partnership shall be liable to third parties in good faith. Where it is shown by the firm that the third party was aware of the improper use of the firm-name by the manager, the manager alone shall be liable.
- (2) Where a manager deals with a third party without using the firm-name, he shall be deemed to have acted on his own behalf. The firm shall be liable where the third party can show that the manager was transacting business for the firm.
- (3) A manager who acts outside the scope of his employment shall alone be liable.

Art. 291. — *Dealings with the partnership.*

Except with the special approval of the partners, a manager may not have dealings with the firm on his own behalf.

Art. 292. — *Restrictions on private trade.*

- (1) Unless otherwise agreed, no partner may carry out transactions on behalf of a third party or on his own behalf which relate to business carried on by his firm, nor may he be a partner with joint and several liability in the management of a firm carrying on similar business.
- (2) An unlimited agreement under sub-article (1) shall be valid for one year only.

Art. 293. — *Dismissal of manager.*

- (1) A manager appointed in the memorandum of association or following an amendment of the memorandum may only be dismissed by the court for good cause.
- (2) A manager not appointed as provided in sub-art. (1) may be freely dismissed by the partners.

Art. 294. — *Liability of partners.*

No action may be taken against individual partners for debts due by the partnership until after payment has been demanded from the partnership: Provided that an action for the repayment of fictitious dividends may be brought directly against individual partners.

Art. 295. — *Other provisions applicable.*

The provisions of Art. 227-232, 233 (1), 235, 248, 249, 258, 260, 267-270 of this Code shall apply to general partnerships.

TITLE V. LIMITED PARTNERSHIP

Art. 296. — *Nature of limited partnership.*

A limited partnership comprises two types of partners: general partners in full liable personally, jointly and severally and limited partners who are only liable to the extent of their contributions.

Art. 297. — *Firm-name.*

- (1) A limited partnership shall have a firm-name.
- (2) This name shall consist of the names of the general partners, with the words "Limited Partnership" added.
- (3) Where a limited partner allows his name to be included in the firm-name, he shall be liable to third parties in good faith as though he were a general partner.

Art. 298. — *Memorandum of association.*

The memorandum of association shall contain the particulars required by Art. 284 and particulars showing who are general or limited partners.

Art. 299. — *Publication of notice and registration.*

- (1) A notice published under Art. 219 (2) (a) and 220 shall contain the particulars specified in Art. 284 (1) - (6), (8) and (9) and 298.
- (2) The same particulars shall appear on the application for registration in the commercial register. The application shall be signed by the manager or a person acting on his behalf.

Art. 300. — *General partners.*

The general partners in a limited partnership shall have the same rights and obligations as partners in a general partnership and only they may be appointed managers.

Art. 301. — Limited partners.

- (1) Action may be taken by a firm's creditor to compel limited partners to subscribe their contribution.
- (2) Limited partners need not repay dividends received by them in good faith after approval of the firm's balance sheet.
- (3) Limited partners may not act as managers even under a power of attorney. A limited partner who contravenes this rule shall be fully jointly and severally liable for any liabilities arising out of his activities. Where appropriate, he may be declared jointly and severally liable in respect of some or all the firm's undertakings.
- (4) A limited partner shall not be deemed to act as manager when he:
 - (a) consults with other partners;
 - (b) deals with the firm;
 - (c) investigates managerial acts;
 - (d) gives advice and counsel to the firm;
 - (e) gives permission to do acts outside the manager's powers.
- (5) Limited partners may be employed in the firm and bind themselves by contracts of employment.
- (6) Limited partners may inspect the books of the firm and may call for the accounts.
- (7) Unless otherwise agreed, nothing affecting a limited partner shall be a ground for dissolution.

Art. 302. — Assignment of shares.

Shares may not be assigned except with the agreement of the managers and the majority of the limited partners.

Art. 303. — Other provisions applicable.

Without prejudice to the provisions of the preceding Articles, the provisions of Art. 227-232, 233 (1), 235, 248, 249, 258, 260, 262-270, 282, 283, 286-291, 293 and 294 shall apply to limited partnerships.

TITLE VI. COMPANIES LIMITED BY SHARES

Chapter 1. General Provisions

Art. 304. — Definition of share company.

- (1) A share company is a company whose capital is fixed in advance and divided into shares and whose liabilities are met only by the assets of the company.

(2) The members shall be liable only to the extent of their share holding.

Art. 305. — *Company name.*

The company name shall be as agreed but shall not offend public policy nor the rights of third parties and shall include the words "Share company."

Art. 306. — *Minimum amount of capital and a nominal value of shares.*

- (1) The capital shall not be less than 50,000 Ethiopian dollars.
- (2) The amount of the par value of each share shall not be less than 10 (ten) Ethiopian dollars.

Art. 307. — *Founders.*

- (1) A company may not be established by less than five members.
- (2) Persons who sign the memorandum of association and subscribe the whole of the capital shall have the legal status of founders.
- (3) Where a company is to be formed by the issue of shares to the public, persons who sign the prospectus, bring in contributions in kind or are to be allocated a special share in the profits, shall have the status of founders.
- (4) Any person, even though outside the company, who has initiated plans or facilitated the formation of the company, shall have the status of a founder.

Art. 308. — *Commitments entered into by the founders of the company.*

- (1) The founders shall be fully jointly and severally liable to third parties in respect of commitments entered into for the formation of the company. All persons who have acted in the name of the company before its registration in the commercial register shall be similarly liable.
- (2) The company shall take over these commitments from the founders and refund the founders with all the expenses made by them insofar as such commitments and expenses were necessary for the formation of the company or approved by the general meeting of the subscribers.
- (3) Where the company is not established for whatever reason, the subscribers shall not be liable for the commitments or expenses made by the founders.

Art. 309. — Liability of the founders.

- (1) The founders shall be jointly and severally liable to the company and third parties for any damage in connection with:
 - (a) the subscription of the capital and the payments required for the formation of the company;
 - (b) contributions in kind as provided under Art. 315;
 - (c) the accuracy of statements made to the public in respect of the formation of the company.
- (2) Claims for damages under this Article shall be barred after five years from the date when the aggrieved party knew of the damage and of the person liable. There shall be absolute limitation after ten years from the date when the act complained of took place.
- (3) Nothing in this Article shall affect cases where the liability of the founders arises from the commission of a criminal offence.

Art. 310. — Limit of profits which may be allocated to the founders.

- (1) The founders may, for a period not exceeding three years, reserve personally to themselves in the memorandum of association and in addition to their rights as shareholders, a share which shall not exceed one fifth of the net profits in the balance sheet.
- (2) No other advantage to founders may be provided in the memorandum of association.
- (3) The benefits provided by this Article are personal to the founders but no founder shares may be issued.

Art. 311. — Members reduced in number below the legal minimum.

- (1) No company shall remain in business for more than six months after the number of members is reduced to less than five. Every member aware of such reduction shall be personally liable for the debts contracted thereafter.
- (2) Where the members are less than five in number or the company does not possess the prescribed organs, the court may order the winding-up of such company on the application of a member or creditor. The court may adjourn its decision upon such term as it thinks fit to permit of the reorganisation of the company and order such conservatory measures as may be necessary.

Chapter 2. Formation of the company

Art. 312. — General requirements in respect of formation.

- (1) A share company shall not be formed until:
 - (a) the capital has been fully subscribed;

- (b) one quarter at least of the par value of the shares has been paid up and deposited in a bank, in the name and to the account of the company.
- (2) Sums deposited under sub-art. (1) shall not be paid over to the legal representatives of the company until registration in the commercial register has been effected.
- (3) Where registration has not been effected within one year from deposit in a bank, the sums deposited shall be repaid to the subscribers. Such repayment shall be effected by the founders who shall be jointly and severally liable. After one year such sums shall bear interest at the legal rate.

Art. 313. — *Memorandum of association.*

The formation of a company shall be by public memorandum which shall contain:

- (1) the names, nationality and address of the members, the number of shares which they have subscribed, provided that a member may not subscribe less than one share;
- (2) the name of the company;
- (3) the head office, and the branches, if any;
- (4) the business purposes of the company;
- (5) the amount of capital subscribed and paid up;
- (6) the par value, number, form and classes of shares;
- (7) the value of contributions in kind, their object, the price at which they are accepted, the designation of the shareholder and the number of shares allocated to him by way of exchange;
- (8) the manner of distributing profits;
- (9) any share in the profits allocated to the founders and reasons for such share;
- (10) the number of directors and their powers and the agents of the company;
- (11) the auditors;
- (12) the period of time for which the company is to be established;
- (13) the manner in which the company will publish its reports.

Art. 314. — *Articles of association.*

- (1) The articles of association which govern the operation of the company shall be drawn up by the founders in accordance with the law.

- (2) Articles of association may follow the model supplied by the Ministry of Commerce and Industry with any necessary modifications.
- (3) Articles of association shall be deemed to form part of the memorandum of association and shall be attached thereto.

Art. 315. — Valuation of contributions in kind.

- (1) A member who makes a contribution in kind shall file a report made and sworn by experts appointed by the Ministry of Commerce and Industry.
- (2) The report shall contain a detailed description of the property contributed, the value given to each item and the method of valuation. It shall be annexed to the memorandum of association.
- (3) Within six months from the date of formation of the company the directors and auditors shall verify and, where necessary, review the valuation given in the report. The shares representing contributions in kind shall remain deposited with the company and may not be assigned until the valuation has been verified.
- (4) Where verification under sub-art. (3) results in the value of the contribution being lowered by one fifth, the value of the capital shall be reduced accordingly: provided that the contributor may make good the difference or shall withdraw from the company.
- (5) The provisions of sub-art. (3) and (4) shall apply notwithstanding approval having been given to the report under sub-art. (1) by a general meeting of the subscribers.

Art. 316. — Formation as between founders.

Where shares are not offered for public subscription, the founders shall show in the memorandum of association:

- (1) that all the shares have been allocated;
- (2) that the sums have been deposited in the manner required by Art. 312 (1) (b);
- (3) that the provisions of Art. 315 have been applied to contributions in kind;
- (4) that they have provided for the administrative organs of the company.

Art. 317. — Formation by public subscription.

Where a company is formed by public subscription, the provisions of Art. 318-322 shall apply.

Art. 318. — *Prospectus.*

- (1) An offer to subscribers shall be made by a prospectus signed by all the founders and shall contain:
 - (a) the text of the draft memorandum of association;
 - (b) a summary of the principal provisions of the articles of association;
 - (c) a summary of the expert report under Art. 315, if any;
 - (d) the date until when the subscribers may be required to discharge their obligations;
 - (e) the price at which shares are to be issued;
 - (f) the amount to be paid up on the shares until the general meeting of the subscribers;
 - (g) the place where applications and payments shall be made.
- (2) Copies of the prospectus and of the expert report shall be made available to all persons who may wish to subscribe.

Art. 319. — *Application for shares.*

- (1) Applications for shares shall be made on the form provided and deposited in the place of application.
- (2) The applicant for shares shall declare that he has read the prospectus and the expert report, if any. He shall state on the form his name and address, the number of shares applied for and the date of application.

Art. 320. — *Meeting of subscribers.*

- (1) When the time for making applications has expired, the founders shall call a meeting of the subscribers.
- (2) The provisions relating to the calling and decisions of an extraordinary general meeting shall apply to meetings of subscribers, without prejudice to the provisions of Art. 322.

Art. 321. — *Purpose of the meeting.*

The purpose of the meeting under Art. 320 shall be:

- (1) to verify that the requirements relating to the formation of the company have been complied with;
- (2) to draw up the final text of the memorandum and articles of association;
- (3) to approve contributions in kind, if any, and the share in the profits allocated to the founders;

- (4) to make all appointments required under the memorandum of association.

Art. 322. — *Special rules regarding resolutions of the meeting.*

- (1) Resolutions of subscribers' meetings shall be drawn up and signed by the founders and all documents submitted to the meeting shall be annexed thereto.
- (2) Any subscriber may take part in the discussions at the meeting and may exercise his voting rights under the articles of association.
- (3) Founders may not vote in their capacity of shareholders or proxies on the resolution approving their special share in the profits. The same shall apply to contributors in kind as regards the resolution approving the valuation of their contributions in kind.
- (4) Amendments of substance to the draft memorandum and articles of association require the approval of all subscribers.

Provided that a majority vote shall be sufficient where the amendments relate to approval of contributions in kind or approval of shares allocated to the founders.

- (5) The provisions of Art. 315 (4) shall apply where the meeting reduces the number of shares allocated to contributors in kind.

Art. 323. — *Deposit of the memorandum of association and registration in the commercial register.*

- (1) The provisions of Art. 219-224 of this Code shall apply regardless of the manner in which the company was formed.
- (2) The following documents shall be deposited:
 - (a) the memorandum of association;
 - (b) the articles of association, if any;
 - (c) the prospectus;
 - (d) the minutes of the subscribers' meeting and all complementary documents.
- (3) The notice to be published and the application for registration shall contain the particulars specified in Art. 313 (1) - (7) and (10) - (12).

Art. 324. — *Effect of publicity.*

- (1) Where publication and registration have been made, the company shall have a legal existence and personality notwithstanding that all the legal requirements relating to the formation of the company have not been complied with.

- (2) Where the interests of creditors or shareholders are endangered by the legal or statutory requirements not having been complied with, the court may, on the application of any such creditor or shareholder, order the dissolution of the company and such provisional measures as may be necessary.
- (3) An application not made within three months from the date of publication in the Official Commercial Gazette shall not be considered.

Chapter 3. Shares and the rights and duties of shareholders

Art. 325. — *Form of shares.*

- (1) Shares are either registered in the name of the shareholder or to bearer, as required by the shareholder.
- (2) Shares shall be registered in the name of the shareholder where bearer shares are prohibited by law, the memorandum or articles of association.
- (3) Where bearer shares are not prohibited, any shareholder may notwithstanding any provision to the contrary convert his bearer shares into registered shares and vice versa.

Art. 326. — *Price at which shares issued.*

- (1) Shares may not be issued at a price lower than their par value.
- (2) Shares may be issued at a price greater than their par value where such issue is provided by the memorandum or articles of association or decided by an extraordinary general meeting. The difference between the par value and the price at which shares are issued shall be known as a premium.

Art. 327. — *Shares issued before registration of the company in the commercial register.*

Shares issued before the registration of the company in the commercial register shall be null and void, but liabilities arising thereunder shall not be affected.

Art. 328. — *Indivisibility of shares.*

- (1) Shares are indivisible.
- (2) Where several persons hold shares jointly, they shall appoint a representative to exercise the shareholder's rights.
- (3) Failing such appointment, notices and declarations made by the company to one joint owner shall be effective against all joint owners.

- (4) Joint owners of a share shall be jointly and severally liable in respect of any liabilities as shareholder.

Art. 329. — Pledge or usufruct.

- (1) Where a share is pledged or subject to a usufruct, the right to vote at meetings shall, unless otherwise agreed, be exercised by the pledgee or usufructuary.
- (2) Where there is a preferential right subscription, such right shall be retained by the shareholder. If the right is not exercised, it shall be sold on behalf of the shareholder as provided in Art. 342.
- (3) The shareholder shall be liable for calls on shares which have been pledged. If the calls are not met, the pledgee may sell the share under Art. 342.
- (4) A usufructuary shall be liable for calls on shares but may claim for repayment when the usufruct expires.

Art. 330. — Indications on shares.

Every share shall be signed by a director and shall show:

- (a) the name, head office and period for which the company is established;
- (b) the amount of capital and the par value of the share;
- (c) the date of the memorandum of association and of registration of the company in the commercial register, and the place of registration;
- (d) the serial number of the share, its series or class, whether it is ordinary or preferential and the kind of preference share;
- (e) the amount of part payments on shares not fully paid up, or a statement that the share is fully paid up;
- (f) a statement showing whether a share may be transferred to a foreigner.

Art. 331. — Register of shareholders.

- (1) Every share company shall keep at its head office a register of shareholders.
- (2) The register shall contain the names and addresses of shareholders, the number and numeration of the shares, the amount paid up and the date of entry of the shareholder in the register.
- (3) The register may be inspected by any shareholder without charge; it may also be inspected by any other person upon payment of the prescribed fee.

- (4) Any person may within one month obtain a copy of or an extract from the register upon payment of the prescribed fee.
- (5) The Ministry of Commerce and Industry may, on the request of any interested party or partner or of the company itself, order the rectification of the register, where an error has occurred.

Art. 332. — *Purchase by the company of its own shares.*

- (1) A company may acquire its own shares where:
 - (a) the acquisition has been authorised by a meeting of the shareholders; and
 - (b) the purchase price is made from the net profits of the company; and
 - (c) the shares are fully paid.
- (2) The directors may not dispose of shares thus purchased and the voting rights on such shares shall be suspended.
- (3) The provisions of sub-art. (1) shall not apply where the purchase has been decided by an extraordinary general meeting to reduce the capital.
- (4) The provisions of this Article shall apply where a company receives its own shares in pledge.

Art. 333. — *Restriction on free transfer of shares.*

- (1) Provisions may be made in the articles of association or by resolution of an extraordinary meeting restricting the free transfer of shares.
- (2) Provisions may be made for the assignment of shares with the consent of the board of directors. Such provisions shall be of no effect unless:
 - (a) a right of pre-emption is reserved to the company or the shareholders; and
 - (b) the conditions relating to the exercise of the right of pre-emption are specified and the price of pre-emption is fixed.
- (3) These provisions may not result in preventing assignment of shares nor in causing serious damage to a shareholder who may wish to assign his shares.
- (4) Where the pre-emptive right is reserved to the company, the price shall be paid from reserve funds.

Art. 334. — *Company shall not grant advances nor make loans on its shares.*

A company shall not grant advances on its own shares, nor make loans to enable third parties to acquire shares.

Art. 335. — *Classes of shares.*

- (1) The memorandum of association or an amendment thereto by a general meeting may provide for the setting-up of several classes of shares with different rights.
- (2) All shares of the same class shall have the same par value and the same rights.
- (3) No change in the rights conferred to a class of shares may be made unless a meeting of the class of shareholders has agreed under the same conditions as the general meeting having recommended the change.

Art. 336. — *Preference shares.*

- (1) A share company may create preference shares either in the memorandum of association or by resolution of an extraordinary general meeting. Such shares enjoy a preference over other shares, such as a preferred right of subscription in the event of future issues, or rights of priority over profits, or assets or both.
- (2) The issue of shares with a preference as to voting rights is prohibited.
- (3) Notwithstanding the provisions of Art. 345 (3), the memorandum of association may provide that shareholders who have been given rights of priority over profits and distribution of capital upon dissolution of the company may vote only on matters which concern extraordinary meetings.
- (4) The number of shares having restricted voting rights under sub-art. (3) may not exceed half the amount of capital.

Art. 337. — *Dividend shares.*

- (1) A company may repay, from profits or reserve funds, without reducing the capital, to shareholders the par value of their shares.
- (2) Shareholders whose shares are thus redeemed shall receive dividend shares (*actions de jouissance*). These shares do not confer any right to that part of the dividend representing the statutory interest, nor to repayment of contributions upon the dissolution of the company. They retain however a right of vote, unless otherwise provided in the memorandum of association, a right to that part of the dividend exceeding the statutory interest and a right to distribution of a share of the surplus in the winding-up.

Art. 338. — *Paying up of cash shares.*

- (1) Shares subscribed in cash shall be paid up upon subscription as to one

fourth of their par value or a greater amount if so provided in the memorandum of association and, where appropriate, as to the whole of the premium. They may only be registered shares until they are fully paid.

- (2) Payment of the balance may be spread over a period of five years from the date of registration of the company.
- (3) Where shares have been issued by existing companies before the coming into force of this Code, the period of five years shall run from the date of coming into force.

Art. 339. — *Paying up of shares by way of contribution.*

- (1) Shares representing contributions in kind shall normally be fully paid at the time of formation of the company and not later than the day of registration of the company.
- (2) They may not be separated from the counterfoil and be negotiated before two years from registration.

Art. 340. — *Assignment of shares.*

- (1) Bearer shares are assigned by delivery, without any other requirement.
- (2) Unless the country is proved, such shares shall be deemed to be the property of the holder for the purpose of payment of dividends, redemption and right of participation in general meetings.
- (3) The provisions of Art. 731 of this Code shall apply to bearer shares which are lost or stolen.

Art. 341. — *Conveyance of registered shares.*

- (1) Ownership of registered shares shall be established by the relevant entry in the register kept at the head office.
- (2) No transfer is complete until recorded in this register.

Art. 342. — *Liability to meet calls.*

- (1) Holders, previous assignees and subscribers shall be jointly and severally liable for calls on shares.
- (2) Any subscriber or shareholder who has assigned his share shall cease to be liable for calls after two years from the date of the assignment.
- (3) Where a shareholder fails to pay the call at the due date, he shall be liable to pay interest at the legal rate where no rate has been provided in the articles of association.
- (4) The company may fifteen days after the receipt by the shareholder of a registered letter demanding payment offer the unpaid shares for sale

by auction. These shares shall be cancelled and new shares delivered to the purchaser.

- (5) Where the sale of the shares cannot be effected, the directors may order the forfeiture of the shares and retain the amounts paid up, without prejudice to any other claim they may have.
- (6) Where unsold shares have not been put in circulation during the trading period in which forfeiture was ordered, they shall be cancelled and the capital reduced accordingly.
- (7) A member who fails to make payments on shares when they become due shall lose his voting rights.

Art. 343. — *Temporary warrants.*

- (1) Temporary bearer warrants shall only be issued in respect of bearer shares which are fully paid. Temporary warrants shall be of no effect where they are issued before bearer shares are fully paid.
- (2) Where temporary registered warrants are issued in respect of bearer shares, they may only be transferred under the provisions relating to the assignment of debts.
- (3) Temporary warrants in respect of registered shares shall be registered. The provisions relating to registered shares shall apply to the transfer of such warrants.

Art. 344. — *Joint holdings.*

- (1) Where ten per cent or more of the capital of one company is held by a second company, the first company may not hold shares in the second company.
- (2) Where two companies each have a capital holding in the other company and one of such holdings is ten per cent or more of the capital, the companies shall declare their holdings to the Ministry of Commerce and Industry which shall require the companies by agreement to reduce their holdings so as to conform to the provisions of sub-art (1). If the companies fail to agree, the Ministry of Commerce and Industry shall order the company possessing the smaller holding to dispose of that holding.
- (3) Where the respective holdings are equal, and failing one company disposing of its shares in the other, each company shall reduce its holding to less than ten per cent of the capital of the other.
- (4) The companies shall furnish to the Ministry of Commerce and Industry a sworn statement that they have complied with either sub-art. (2) or sub-art. (3) of this Article.

Art. 345. — *Rights arising out of shares.*

- (1) Every share shall confer a right to participation in the annual net profits and to a share in the net proceeds on a winding-up.
- (2) Unless otherwise provided in the memorandum or articles of association, the share in the profits or in the net proceeds on a winding-up shall be calculated in proportion to the amount of capital held.
- (3) Subject to the provisions of Art. 336, every share shall confer voting rights.
- (4) Every shareholder has a preferred right, in proportion to his holding, to allotment of cash shares issued on an increase of capital.
- (5) The provisions of Art. 470 *et seq* shall apply to the exercise of this right.
- (6) Similar rights may be reserved to holders of preference shares by an express provision in the memorandum or articles of association.

Art. 346. — *Liability of founders and directors.*

Subject to the provisions of Art. 309, founders and directors shall be jointly and severally liable to the company and to third parties for the observance of the provisions of this Chapter.

Chapter 4. Directors, Auditors and Shareholders' Meetings
Section 1. Management

Art. 347. — *Directors.*

- (1) Only members of a company may manage the company.
- (2) A company shall have not less than three nor more than twelve directors who shall form a board of directors.
- (3) Where the memorandum of association does not specify the number of directors but fixes only a maximum and a minimum, the meeting of subscribers shall decide the number of directors to be appointed.
- (4) Bodies corporate may be directors, but the chairman of the board of directors shall be a person.

Art. 348. — *Chairman. — General Manager. — Secretary.*

- (1) The board shall elect a chairman from among its members where no chairman has been elected by a meeting of subscribers or shareholders.
- (2) The board may revoke the appointment of a chairman elected by the board.
- (3) A general manager shall be appointed by the board. The provisions of Art. 34, 35, 109 (1) (f) and 121 (h) of this Code shall apply.

- (4) The general manager is an employee of the company and may not be a director.
- (5) The board may appoint a secretary.

Art. 349. — *Qualification shares.*

- (1) The directors shall deposit as security with the company such number of their registered shares in the company as is fixed in the memorandum of association.
- (2) These shares shall not be handed back until the owners have ceased to be directors and have fully discharged their liabilities, if any, to the company.

Art. 350. — *Appointment of directors.*

- (1) The first directors may be appointed under the memorandum or articles of association. This appointment shall be submitted to a meeting of subscribers for confirmation. If such confirmation is not given, the meeting shall appoint other directors.
- (2) Subsequent directors shall be appointed by a general meeting.
- (3) Directors may not be appointed for more than three years.
- (4) Unless otherwise provided in the memorandum or articles of association, directors are eligible for re-election.
- (5) Where more than two directors are to be elected, such elections may not take place simultaneously.

Art. 351. — *Replacement of directors.*

- (1) Where, during a financial year, one or more of the directors have left the board, the surviving directors may appoint other persons to complete the period for which the directors who have left the board were appointed.
- (2) Their appointments shall be submitted to the next general meeting for confirmation and the general meeting may confirm their appointments or appoint other directors in their place. The acts done by persons appointed under sub-art. (1) shall be valid notwithstanding that the appointment of such persons is not confirmed by the general meeting.
- (3) Where the surviving directors are less than half of the board of directors, they may not appoint directors under sub-art. (1) but shall convene a general meeting to appoint other directors.
- (4) Where there are no surviving directors, the auditors shall convene a general meeting without delay for directors to be elected.

- (5) During the period prior to the calling of the general meeting under sub-art. (4), the auditors may carry on the management of the company.

Art. 352. — *Rights of a minority.*

Where there are several groups of shareholders with a different legal status, the articles of association shall provide for each group to elect at least one representative on the board of directors.

Art. 353. — *Remuneration.*

- (1) Directors may receive a fixed annual remuneration, the amount of which shall be determined by a general meeting and charged against general expenses.
- (2) The articles of association may provide that the directors may receive a specified share in the net profits of a financial year.
- (3) The fixed remuneration and share in the profits to be allocated to the board of directors shall be allocated in one sum. The board shall arrange the distribution among its members in such proportion as it deems fit.
- (4) The amount of the share in the net profits may not exceed 10%. This share is calculated after deduction of:
- (a) amounts allocated to reserve funds provided by law or the articles of association;
 - (b) the statutory dividend, where provided in the articles of association or where not provided, a sum representing 5% of the paid up value of shares which have not been redeemed;
 - (c) amounts allocated to reserve funds established by resolution of a general meeting;
 - (d) amounts carried forward.
- (5) In fixing the share under sub-art. (4) regard may be had to amounts distributed or capitalised and charged in a previous balance sheet, with the exception of those arising in a financial year closed before the coming into force of this Code.
- (6) The director's share in the net profits shall not be paid where no dividend has been distributed to the shareholders.
- (7) The Ministry of Commerce and Industry, taking into account the special benefits which have been provided to directors having the status of founders and having regard to the position of the company and to

the salaries and benefits of its employees, may, on the position of shareholders representing not less than 10% of the capital, order the reduction of the remuneration of the directors where it considers it excessive.

Art. 354. — *Removal.*

Notwithstanding any provision to the contrary, directors may be removed at any time by a general meeting: provided that a director who was removed without good cause may claim compensation.

Art. 355. — *Restrictions on private trade.*

Unless authorised by a general meeting, directors may not be partners with joint and several liability in rival companies nor compete against the company either on their own behalf or on behalf of third parties.

Art. 356. — *Dealings between a company and its directors.*

- (1) Any dealings made directly or indirectly between a company and a director shall receive the prior approval of the board of directors and notice shall be given to the auditors.
- (2) Approval and notice under sub-art. (1) shall be required in respect of any dealings made between a company and another concern where one of the directors of the company is owner, partner, agent, director or manager of such concern.
- (3) The auditors shall submit a special report to the general meeting relating to dealings approved by the board of directors. The meeting may take any action it thinks fit.
- (4) Dealings approved by the meeting may only be set aside on the ground of fraud.
- (5) Dealings not approved shall remain in force but the director concerned shall be liable for damages arising from fraud and if he fails to meet his liability the board of directors shall be liable.
- (6) The provisions of this Article shall not apply to normal agreements between the company and its clients.

Art. 357. — *Directors may not contract loans with the company.*

- (1) Directors of a company other than bodies corporate may not borrow money from the company, obtain an overdraft in current account or have any obligation guaranteed in respect of business transacted with third parties.
- (2) The provisions of sub-art. (1) shall not apply in respect of day to day business of a company which carries on banking business.

Art. 358. — *Decisions of the board of directors.*

- (1) No decision may be taken by the board of directors unless a majority of directors is present. Decisions shall be taken by an absolute majority. Voting may be by proxy.
- (2) An absent director may be represented at a board meeting only by another director who acts as proxy for the absent director only.
- (3) Decisions of the board shall be drawn up as minutes and shall be signed by the chairman and a secretary. The minutes shall be kept in a minute book.
- (4) Copies of decisions shall be signed by the chairman and a secretary.

Art. 359. — *Register of directors.*

- (1) Every company shall keep at its head office a register of its directors and managers with particulars as to their civil status, profession, and any directorship held in other companies and, where the director is a company, the name of the company and the address of its head office.
- (2) All particulars entered in the register and any amendments thereto shall be sent to the Ministry of Commerce and Industry within fifteen days from the making of the entry or amendment.
- (3) The register shall be open to inspection in accordance with Art. 331 (3).

Art. 360. — *Register of shares and debentures held by the directors.*

- (1) Every company shall keep at its head office a register showing the number and value of shares or debentures held by each director:
 - (a) in the company;
 - (b) in subsidiary companies;
 - (c) in any holding company of which the company is a subsidiary.
- (2) The register and any documents to be submitted at the general meeting shall be open to inspection by any share or debenture holder before the annual general meeting.
- (3) The register shall be open to inspection by a representative of the Ministry of Commerce and Industry at any time and extracts or a copy of the register may be taken.
- (4) The register of directors shall be available at the annual general meeting for inspection by any member attending the meeting.

Art. 361. — *Statements to be provided concerning remuneration of directors.*

- (1) The balance sheet submitted to the annual general meeting shall show

the total amount of remuneration, allowances, annuities, retirement benefits and benefits in kind given to the directors.

- (2) Loans or guarantees to directors shall also be shown.

Art. 362. — *Duties of directors.*

In addition to their duties under Art. 364, directors shall be responsible for:

- (a) keeping regular records of the management and of meetings;
- (b) keeping accounts and books;
- (c) submitting the accounts to the auditors and an annual report of the company's operations including a financial statement to the meetings;
- (d) convening meetings as provided in the articles of association;
- (e) convening a general meeting without delay where three quarters of the capital are lost;
- (f) setting up the reserve funds required by law or the articles of association;
- (g) applying to the court where the company stops payments with a view either to a composition with creditors or the winding-up of the company.

Art. 363. — *Powers of directors.*

- (1) The directors shall have such powers as are given to them by law, the memorandum or articles of association and resolutions passed at meetings of shareholders.
- (2) The articles of association shall specify whether the directors are jointly responsible as managers or agents of the company or whether one only of the directors is responsible.
- (3) Persons authorised to act as agents for the company may exercise in its name their powers as agents. Any restriction on their powers shall not affect third parties acting in good faith.

Art. 364. — *Liability of directors to the company.*

- (1) Directors shall be responsible for exercising the duties imposed on them by law, the memorandum or articles of association and resolutions of meetings, with the care due from an agent.
- (2) Directors shall be jointly and severally liable to the company for damage caused by failure to carry out their duties.
- (3) Directors who are jointly and severally liable shall have a general duty to act with due care in relation to the general management.

- (4) Directors shall be jointly and severally liable when they fail to take all steps within their power to prevent or to mitigate acts prejudicial to the company which are within their knowledge.
- (5) Directors shall be responsible for showing that they have exercised due care and diligence.
- (6) A director shall not be liable where he is not at fault and has caused a minute dissenting from the action which has been taken by the board to be entered forthwith in the directors' minute book and sent to the auditors.

Art. 365. — *Proceedings to enforce directors liability.*

- (1) No proceedings shall be instituted against the directors without a resolution of a general meeting to this effect. Such a resolution may be moved and adopted although not on the agenda.
- (2) Where a resolution to institute proceedings or to compromise the claim is adopted by a vote of shareholders representing at least one fifth of the capital, the director concerned shall be removed. The same meeting shall appoint a director to replace the director who has been removed.
- (3) A resolution not to institute proceedings and to compromise shall not be adopted where shareholders representing one fifth of the capital vote against the resolution.
- (4) Where a resolution under sub-art. (2) is adopted but the company fails to institute proceedings within three months, the shareholders who voted for the resolution may jointly institute proceedings.

Art. 366. — *Liability to creditors.*

- (1) Directors shall be liable to the company's creditors where they fail to preserve intact the company's assets.
- (2) Proceedings may be instituted by the creditors against the directors where the company's assets are insufficient to meet its liabilities.
- (3) A resolution of the general meeting not to institute proceedings against the directors shall not affect the creditor's rights.
- (4) Creditors may not apply to set aside a resolution to compromise except on the grounds available to them under civil law.

Art. 367. — *Proceedings instituted by shareholders and third parties.*

Nothing in this Section shall affect the rights of shareholders or third parties who have been injured by the fault or fraud of the directors.

Section 2. Auditors

Art. 368. — *Appointment of auditors.*

- (1) The general meeting of every company limited by shares shall elect one or more auditors and one or more assistant auditors.
- (2) Shareholders representing not less than 20% of the capital may appoint an auditor selected by them.
- (3) Where there is more than one auditor, they may exercise their duties jointly or separately.
- (4) A body corporate may act as auditor.

Art. 369. — *Nomination and term of appointment.*

- (1) Auditors shall be elected by the meeting of subscribers and thereafter by the annual general meeting.
- (2) Auditors elected by the meeting of subscribers shall hold office until the first annual general meeting. Auditors elected at an annual general meeting may hold office for three years.
- (3) When signing as auditor, an auditor shall add the name of the company whose accounts he is auditing.

Art. 370. — *Persons not competent.*

- (1) The following persons may not be elected as auditors:
 - (a) founders, contributors in kind, beneficiaries holding special benefits, directors of the company or of one of its subsidiaries or of its holdings company;
 - (b) spouses or relatives by consanguinity of affinity to the fourth degree inclusive, of the persons mentioned in sub-art. (1) (a);
 - (c) persons who receive from the persons mentioned in sub-art. (1)
 - (a) a salary or periodical remuneration in connection with duties other than those of an auditor.
- (2) Auditors may not be appointed directors or managers of the company which they audit, nor of one of its subsidiaries or its holding company within three years from the date of the termination of their functions.
- (3) Reports submitted by an auditor and adopted by the annual general meeting shall not, save in the case of fraud, be invalid merely by reason of the fact that the provisions of this Article have not been observed.

Art. 371. — *Revocation of the appointment of an auditor.*

A general meeting may at any time revoke the appointment of any auditor without prejudice to any claim he may have for wrongful dismissal.

Art. 372. — *Remuneration.*

- (1) The remuneration of auditors shall be fixed by the general meeting on their appointment.
- (2) Where the general meeting fails to agree on the remuneration of the auditors, the Ministry of Commerce and Industry may on the application of any interested party fix the remuneration.

Art. 373. — *Professional secrecy.*

Auditors shall be liable to the penalties prescribed in Art. 407 of the Penal Code for breaches of professional secrecy.

Art. 374. — *Duties of the auditors.*

The auditors shall have the following duties:

- (a) to audit the books and securities of the company;
- (b) to verify the correctness and accuracy of the inventories, balance sheets and profit and loss accounts;
- (c) to certify that the report of the board of directors reflects the correct state of the company's affairs;
- (d) to carry out such special duties as may be assigned to them.

Art. 375. — *Report to general meetings.*

- (1) The auditors shall submit to the annual general meeting a written report on the manner in which they have carried out their duties and their comments on the report of the board of directors.
- (2) They shall recommend approval of the accounts and make such comments thereon as they think fit or refuse to recommend approval, giving reasons for referring the matter back to the directors.
- (3) They may comment on the proposed distribution of profits.
- (4) The general meeting shall not consider the balance sheet in the absence of a report under sub-art.(1).

Art. 376. — *Auditors to inform directors of irregularities.*

- (1) Where the auditors find irregularities or breaches of legal or statutory requirements, they shall inform the directors and, where grave irregularities or breaches have occurred, they shall inform the general meeting.
- (2) The auditors shall inform the public prosecutor of any matters which would appear to disclose the commission of an offence.

Art. 377. — *Calling of general meetings.*

- (1) The auditors shall call a general meeting where the directors fail to do so under the law or in accordance with the memorandum or articles of association.
- (2) They shall call a general meeting where shareholders representing at least 20% of the capital so request.
- (3) Where there are several auditors, they may jointly call a meeting in accordance with the articles of association and may, where they think fit, fix for the meeting a place other than the company's head office or other place laid down in the articles of association, but in the same locality.
- (4) The auditors shall prepare the agenda and a report to be read at the meeting giving the reasons for calling the meeting. One of the auditors shall preside over the meeting.
- (5) Where the auditors disagree, one of them may move the court having jurisdiction in the area in which the head office is situate for an order appointing an officer of the court to exercise the powers under sub-art. (3) and (4).
- (6) Expenses incurred under this Article shall be borne by the company.

Art. 378. — *Powers.*

- (1) The auditors may at any time make on the spot such audits and checks as they think necessary and may call for any information, agreements, books, accounts, minute books and such other documents as may be required for the proper execution of their duties.
- (2) Auditors shall be present at shareholders' meetings and at the annual general meeting.

Art. 379. — *Audit of the accounts of a holding company.*

Auditors shall exercise their powers under Art. 378 in respect of the accounts of holding companies under Art. 451.

Art. 380. — *Liability of auditors.*

- (1) Auditors shall be civilly liable to the company and third parties for any fault in the exercise of their duties which occasioned loss.
- (2) An auditor who knowingly gives or confirms an untrue report concerning the position of a company or fails to inform the public prosecutor of an offence which he knows to have been committed shall be punished under Art. 438 or Art. 664 of the Penal Code, as the case may be.

Art. 381. — *Investigation into the position of a company on the request of shareholders.*

- (1) Shareholders representing at least one tenth of the shares issued may ask the Ministry of Commerce and Industry to appoint one or more qualified inspectors to make an investigation and report on the company's state of affairs.
- (2) The petition shall contain such evidence as the Ministry deems necessary and the petitioners may be required to guarantee up to a maximum of 500 Ethiopian dollars the expenses of the investigation.

Art. 382. — *Investigation compulsory.*

The Ministry shall appoint one or more qualified inspectors to act under Art. 381 where there has been a resolution of a general meeting or an order of the court.

Art. 383. — *Investigation ordered by the Ministry of Commerce and Industry.*

The Ministry of Commerce and Industry may appoint inspectors to conduct an investigation where it has good reason to believe that the operations of the company are such as may reveal:

- (a) fraud on creditors; or
- (b) acts prejudicial to a class of shareholders; or
- (c) illegal or fraudulent activities; or
- (d) acts which constitute offences against the law.

Art. 384. — *Investigations may be extended to the affairs of holding companies and subsidiaries.*

Where inspectors have been appointed under Art. 381, 382 or 383 to investigate into the affairs of a company and they are of the opinion that a full investigation into the affairs of such company cannot properly be carried out without an investigation into the affairs of the holding or subsidiary company of such company, they shall report their opinion to the Ministry of Commerce and Industry which may order that the investigation be extended to the affairs of the holding or subsidiary company.

Art. 385. — *Duties of companies under investigation.*

- (1) The directors and authorised agents of any company under investigation shall produce to the inspectors all books and documents required by them and furnish all information necessary for the investigation.

- (2) Any director or authorised agent who obstructs the inspectors in the course of the investigation shall be reported to the Ministry of Commerce and Industry which may cause proceedings to be instituted under Art. 433 of the Penal Code.

Art. 386. — *Inspectors' Report.*

On receipt of the inspectors' report, the Ministry of Commerce and Industry shall send a copy thereof:

- (a) to the companies whose affairs have been investigated;
- (b) to the shareholders who petitioned for investigation;
- (c) to the court which ordered an investigation.

Art. 387. — *Investigation regarding nominees.*

- (1) Where the Ministry of Commerce and Industry has good reason to believe that registered shareholders are only nominees of the persons who exercise effective control of a company, the Ministry may appoint inspectors to ascertain the real owners of the shares under Art. 383.
- (2) The Ministry may order an investigation under sub-art. (1) at the request of shareholders representing not less than one tenth of the shares issued.

Section 3. Shareholders' Meetings
Paragraph 1. — General provisions

Art. 388. — *General rules.*

- (1) A general meeting of shareholders, properly established and conducting its business in accordance with the law, acts on behalf of all shareholders. Decisions of a general meeting bind all shareholders whether absent, dissenting, incapable or having no right to vote.
- (2) The provisions of sub-art. (1) shall apply *mutatis mutandis* to special meetings.

Art. 389. — *Rights proper to shareholders.*

- (1) Notwithstanding the provisions of Art. 388, no shareholder may be deprived without his consent of the rights inherent in membership.
- (2) Rights inherent in membership are rights which, under the law or the memorandum or articles of association, do not depend upon decisions of the general meeting or board of directors or which are connected with the right to take part in meetings, such as the right to be a

member, to vote, to challenge a decision of the company or to receive dividends and a share in a winding-up.

Art. 390. — *Classes of meetings*

- (1) Shareholders' meetings may be general or special.
- (2) General meetings are ordinary or extraordinary and comprise shareholders of all classes.
- (3) Special meetings comprise only shareholders of a specific class.

Art. 391. — *Calling meetings.*

- (1) General meetings are called by the directors, the auditors, the liquidators or, where appropriate, by an officer of the court.
- (2) The court of the place where the head-office is situate may appoint an officer of the court to call a meeting and to draw up the agenda for consideration where shareholders representing one tenth of the share capital show that such an appointment is necessary.

Art. 392. — *Mode of calling.*

- (1) Notices calling meetings shall be issued in accordance with the articles of association and shall be published in the Official Commercial Gazette and in one newspaper authorised to publish legal notices and circulating in the area where the head office is situate.
- (2) The provisions of sub-art. (1) shall not apply where all the shareholders are registered and are notified of meetings by registered letter at the company's expense.
- (3) Any registered shareholder may, by registered letter, require the company to notify him of meetings by registered letter at his own expense.
- (4) The calling of meetings made necessary in the absence of a quorum is prescribed in the provisions relating to each class of meeting.

Art. 393. — *Ordinary meetings called by reason of lack of quorum.*

Where an ordinary general meeting has been unable to function for lack of the quorum provided in Art. 421, a second meeting shall be called in the same manner and within the same period of time as the first meeting.

Art. 394. — *Extraordinary or special meetings called by reason of lack of quorum.*

Where for lack of the quorum provided in Articles 425 and 428 an extraordinary or special meeting has been unable to function, a second and a third meeting, if necessary, shall be called by two notices published at one week's

interval in the Official Commercial Gazette and in a newspaper authorised to publish legal notices, or under the provisions of Art. 392 (2), where appropriate.

Art. 395. — *Time of notice of meetings.*

Notice to be given for a first meeting shall be fifteen full days and for a second or subsequent meeting called for lack of a quorum at the first meeting, eight full days, irrespective of the mode of calling.

Art. 396. — *Contents of notices of meetings.*

- (1) Notices of meetings shall give the company's name, the nature, capital and head office of the company and the place where and time within which bearer shares (if any) are to be deposited.
- (2) Notices of subsequent meetings made necessary by lack of quorum shall give the dates of the abortive meetings.

Art. 397. — *Agenda.*

- (1) Save as is provided in Art. 391 (2), the agenda shall be prepared by the person calling the meeting.
- (2) Unless otherwise provided, only items on the agenda may be discussed. However, the meeting may at any time revoke the appointment of directors and appoint new directors in their place.
- (3) Only items on the agenda of the first meeting may be discussed at subsequent meetings made necessary by lack of quorum (Art. 393 and 394).

Art. 398. — *Proxies.*

- (1) A shareholder may nominate one proxy only. Where a shareholder has appointed a proxy, he may not vote in person.
- (2) The representation of joint holders of shares, of reversioners and of pledgees is provided for in Art. 328 and 329.

Art. 399. — *Requirements in respect of conduct of business.*

- (1) A meeting is not legally constituted for taking decisions where there is not a quorum and a majority.
- (2) The quorum in relation to the capital is as laid down for each class of meeting. For all meetings the quorum shall be calculated on all the shares making up the capital, less these shares which carry no voting rights under the law or the articles of association.
- (3) The memorandum and the articles of association may not vary the provisions of this Code relating to majority and quorum.

Art. 400. — *Shares redeemed by the company carry no voting rights.*

A company may not vote with shares which it has redeemed under Art. 332.

Art. 401. — *Period of time for registration of shares.*

The articles of association shall determine the period of time within which the holders of registered shares shall be entered in the company's register and bearer shares deposited. This period of time shall not expire more than five full days before the date of the meeting. This period may be shortened in the articles of association.

Art. 402. — *Proxy.*

The form of proxy, the place where and the time within which they shall be deposited shall be determined by the directors: Provided that such period of time may not expire more than three full days before the meeting.

Art. 403. — *Attendance sheet.*

- (1) An attendance sheet shall be kept for each meeting. It shall show the names and address of shareholders present or represented by proxy and the number of shares and votes held by each shareholder.
- (2) The attendance sheet shall be initialled by the shareholders or their proxies, and shall be certified as correct by the bureau of the meeting.

Art. 404. — *Chairman.*

- (1) The chairman of the board of directors or, in his absence, the senior director shall preside at all meetings. In the absence of both such persons, the person named in the articles of association or appointed by the meeting shall preside.
- (2) Where the meeting has been called by the auditors, an officer of the court or a liquidator, the person calling the meeting shall preside.

Art. 405. — *Tellers and secretary.*

- (1) The two members of the meeting who hold or represent the greater number of shares shall be appointed tellers, where they are willing to accept such appointment.
- (2) The bureau shall appoint a secretary who, unless otherwise provided, need not be a shareholder.

Art. 406. — *Right to inspect documents.*

- (1) Every shareholder may at all times, at the head office, inspect and take copies of:
 - (a) balance sheets and profit and loss accounts;

- (b) reports submitted by the directors and by the auditors to general meetings relating to the three preceding financial years;
 - (c) minutes and attendance sheets of these meetings.
- (2) Where a company refuses to give a shareholder access to any of the documents specified in sub-art. (1), the Ministry of Commerce and Industry shall be informed.
- (3) The rights under this Article are enjoyed by joint holders of shares, reversioners and usufructuaries, and pledgees.

Art. 407. — *Voting rights attached to shares.*

- (1) The voting rights attached to ordinary or dividend shares shall be in proportion to the amount of capital represented.
- (2) Every share carries at least one vote.

Art. 408. — *Limitation of votes.*

The memorandum or articles of association may limit the number of votes which shareholders may exercise at meetings so long as such limitation is equal for all shares without distinction of class.

Art. 409. — *Conflicts of interest.*

- (1) Where the interests of a member, acting on his own behalf or on behalf of a third party, conflict with the interests of the company, such member may not exercise his right to vote.
- (2) Where failure to comply with the provisions of sub-art. (1) results in a resolution being adopted prejudicial to the company, such resolution may be set aside in accordance with the provisions of Art. 416.
- (3) Directors may not vote on resolutions relating to their duties and liabilities.
- (4) Shares which are deprived of voting rights under this Article shall be taken into account in calculating the quorum.

Art. 410. — *Provisions restricting the free exercise of voting rights invalid.*

Any provision restricting the free exercise of voting rights in shareholders' meetings shall be of no effect.

Art. 411. — *Minutes.*

- (1) Discussions at meetings shall be reduced to minutes entered in a minute book and signed by a majority of the members of the bureau. Such entry shall be certified as correct by the chairman of the board of directors of the company or by two directors.
- (2) The minutes of a meeting shall include:

- (a) the manner in which the meeting was called; and
- (b) the place and date of the meeting; and
- (c) the agenda; and
- (d) the members of the bureau; and
- (e) the number of shares represented and the quorum; and
- (f) the documents laid before the meeting; and
- (g) a summary of the discussions; and
- (h) the results of votes taken; and
- (i) the texts of resolutions adopted.

Art. 412. — *Minute where there is no quorum.*

Where a meeting lacks a quorum, the chairman shall record this fact in the minute book.

Art. 413. — *Copies or extracts of the minutes.*

Copies or extracts of the minutes shall be certified by the chairman of the board of directors or by two directors.

Art. 414. — *Adjournment of meetings.*

- (1) Where shareholders representing one third of the capital represented at a meeting consider that they have insufficient information upon the matters to be discussed, they may require the meeting to be adjourned for a period not exceeding three days.
- (2) This right may be exercised once in respect of one matter.

Art. 415. — *Informal meeting of all shareholders.*

- (1) Shareholders or proxies representing all the shares may by agreement hold a general meeting without further formality.
- (2) Where shareholders or proxies representing all the shares are present, the meeting may take any decision and adopt any resolution as in a general meeting.

Art. 416. — *Effect of resolutions.*

- (1) Resolutions adopted by a meeting in accordance with the law, the memorandum or articles of association shall bind all members, including those who were not present or dissented.
- (2) Resolutions adopted contrary to the law, the memorandum or articles of association may be challenged within three months from the resolution but in no case after three months from the entry of the resolution in the commercial register.

- (3) Applications to set aside resolutions shall be made to the court within whose area of jurisdiction the head office is situate. The court may require the claimant to provide security for costs.
- (4) On the request of the claimant and after hearing the directors and auditors, the court may, where good reasons are disclosed, suspend the execution of the resolution challenged pending the court's decision.
- (5) Where a resolution is set aside, the decision of the court shall bind all members and the directors shall be responsible for taking all measures necessary to implement such decision.
- (6) Nothing in this Article shall affect rights of third parties acquired in good faith while the resolution was effective.

PARAGRAPH 2. — ORDINARY MEETINGS

Art. 417. — *Right to inspect documents.*

In addition to his rights under Art. 406, any shareholder may, during the fifteen days which precede an annual ordinary general meeting, inspect and take copies at the head office of the balance sheet, the profit and loss account and the directors' and auditors' reports to be submitted at the annual general meeting.

Art. 418. — *Meetings.*

- (1) Within four months from the end of each financial year, an ordinary annual general meeting shall be called by the directors.
- (2) This period of time may be extended to six months by the articles of association.
- (3) Where necessary, other ordinary general meetings may be held.

Art. 419. — *Business conducted at the meeting.*

- (1) The balance sheet, the profit and loss account and the directors' and auditors' reports shall be read out at the ordinary general meeting. After discussion it shall approve or reject the accounts for the past financial year. It shall decide, where necessary, on the allocation and distribution of profits and on all questions arising out of the accounts for the past financial year.
- (2) The meeting may appoint or remove directors and auditors, decide the amount of their remuneration, amend where necessary the accounts after considering the report required under Art. 375, approve the issue of debentures as well as the guarantees attached thereto and decide all matters other than those reserved to extraordinary general meetings.

Art. 420. — *Taking part in meetings.*

- (1) Notwithstanding any provision to the contrary, any shareholder has the right to take part in ordinary meetings without regard to the number of shares held.
- (2) Unless otherwise provided in the articles of association, any person may be represented by a third party, whether a shareholder or not.

Art. 421. — *Majority and quorum in ordinary general meetings.*

- (1) When first called, general meetings shall be composed of that number of shareholders which represents either in person or by proxy at least one-quarter of the voting shares.
- (2) When called for a second time, the meeting may be held and discussions made without regard to the number of voting shares represented.
- (3) Decisions are taken by a simple majority, abstentions and blank ballots (if any) being disregarded.

PARAGRAPH 3. — EXTRAORDINARY MEETINGS

Art. 422. — *Right to inspect documents.*

- (1) Any shareholder may, during the fifteen days which precede an extraordinary meeting, inspect and take copies at the head office of the text of resolutions to be proposed or of the auditors' report to be submitted.
- (2) A shareholder may require the company in writing to send him copies at his own expense.

Art. 423. — *Business.*

Unless otherwise provided by law, only extraordinary meetings may amend the memorandum or articles of association.

Art. 424. — *Admission.*

Any shareholder, including preference shareholders, may take part in an extraordinary meeting without regard to the number of shares held.

Art. 525. — *Majority and quorum in extraordinary meetings.*

- (1) Not less than a two-thirds majority is required for a resolution to be adopted in an extraordinary meeting, abstentions and blank ballots being disregarded.
- (2) Resolutions to:
 - (a) change the nationality of the company; or
 - (b) require shareholders to increase their investments in the company,

shall only be adopted where the holders of all shares having voting rights are present or represented and the vote is unanimous.

- (3) Resolutions other than resolutions under sub-art. (2) may only be adopted:
- (a) at a first meeting, where not less than one half of the holders of all shares having voting rights are present or represented;
 - (b) at a second meeting, where not less than one third of the holders of all shares having voting rights are present or represented;
 - (c) at a third meeting, where not less than one tenth of the holders of all shares having voting rights are present or represented.
- (4) Nothing in this Article shall affect the provisions of Art. 463.

PARAGRAPH 4. — SPECIAL MEETINGS

Art. 426. — *Cases where special meetings are to be called.*

A resolution of a general meeting to modify the rights of a class of shareholders becomes effective only when confirmed by a special meeting of the shareholders in the class concerned.

Art. 427. — *Right to inspect documents.*

The provisions of Art. 422 shall apply mutatis mutandis to special meetings.

Art. 428. — *Quorum and majority in special meetings.*

- (1) Special meetings shall be composed:
- (a) at a first meeting, of shareholders holding not less than one half of all voting shares;
 - (b) at a second meeting, of shareholders holding not less than one third of all voting shares;
 - (c) at a third meeting, of shareholders holding not less than one quarter of all voting shares.
- Shareholders may be represented by proxies.
- (2) The majority in special meetings shall be as provided in Art. 425 (1).

Chapter 5. Debentures

Art. 429. — *Cases where issue is prohibited.*

No negotiable debentures shall be issued by:

- (1) individuals;
- (2) companies whose capital is not fully paid;

- (3) companies which have not issued a balance sheet in respect of their first financial year.

Art. 430. — *Maximum amount of the issue.*

- (1) Debentures issued by a company may not exceed the amount of paid up capital shown in the last adopted balance sheet. This amount may be exceeded:
 - (a) where the company's immovable property is mortgaged and the debentures issued do not exceed two thirds of the value of the mortgage; or
 - (b) where the excess over the paid-up capital is guaranteed:
 - (i) by registered securities or securities issued or guaranteed by the State and the date of redemption is not earlier than that of the debentures; or
 - (ii) by government or public authorities annuities.
- (2) Such securities shall be deposited in a bank and such part of the annuities shall be blocked in a bank upto the time of repayment as is necessary to meet payments of interest and amortisation.
- (3) The provisions of sub-art. (1) shall not apply to real estate loan or agricultural mortgage companies.

Art. 431. — *Reduction of capital where there are debentures.*

A company which has issued debentures may only reduce its capital in proportion to the debentures redeemed. Where a reduction of capital is necessary owing to losses, the amount of the legal reserve shall continue to be calculated on the basis of the capital existing at the time of issue for so long as the capital and the legal reserve are less than the value of the unredeemed debentures.

Art. 432. — *Premium bonds and bonds at a discount.*

- (1) Bonds may be issued at a price greater than their par value.
- (2) Bonds may not be issued at a price lower than their par value except in accordance with special laws.

Art. 433. — *Contents of debenture certificates.*

Debenture certificates shall be issued from a counterfoil register and shall show:

- (a) the company's name, its objects, the head office of the company, and the place where the company was registered;
- (b) when the company was formed and for how long;

- (c) the paid-up capital on the date of issue;
- (d) the date of resolution of the general meeting and its entry in the register;
- (e) the serial number and nominal value of the certificate, the rate and date of interest payments and the terms for redemption;
- (f) the amount of the issue and the special guarantees attaching to the debentures and the date of the deed setting up such guarantees;
- (g) the amount of debentures or loan stock issued previously and not amortised, indicating the guarantees attaching thereto;
- (h) where appropriate, the period or periods of time within which debenture holders may convert their debentures into shares, and the provisions for such conversion.

Art. 434. — *Application of provisions relating to shares.*

The provisions of Art. 318, 319, 325, 328, 329, 340 and 341 of this Code shall apply *mutatis mutandis* to debentures.

Art. 435. — *Debenture holders' meetings.*

- (1) Holders of debentures of a given issue may combine as a legal personality to protect their common interests as provided hereinafter.
- (2) Notwithstanding any provision to the contrary, debenture holders who have combined under sub-art. (1) may at any time meet in general meeting.

Art. 436. — *Calling of debenture holders' meetings.*

- (1) A meeting of debenture holders may be called by the company or by the representative of the debenture holders, if any.
- (2) A meeting may also be called by debenture holders representing one twentieth of the issued and unredeemed debentures.
- (3) The provisions of Art. 388 *et seq.* relating to the calling and holding of shareholders' meetings shall apply *mutatis mutandis* to the calling and holding of debenture holders' meetings.
- (4) Directors, auditors or employees of the company having issued debentures or of companies having guaranteed such issue may not represent debenture holders in general meetings.
- (5) Holders of debentures which have been amortised and redeemed may not take part in meetings.
- (6) The company which has redeemed debentures may not take part in the debenture holders' meeting by reason of the debentures it has redeemed.

A company which holds more than 30 per cent of the capital of the company which has issued the debentures may not take part in the debenture holders' meeting.

- (7) The calling and holding of general meetings of debenture holders shall be at the expense of the debtor company.

Art. 437. — *Business of debentures holders' meetings.*

- (1) Resolutions adopted by debenture holders' meetings bind all debenture holders, whether absent, dissenting or incapable.
- (2) Meetings may adopt resolutions to protect the interests of debenture holders, to enforce the loan agreement and to provide for all necessary expenses in connection therewith.

Art. 438. — *Decisions on proposals by the company.*

- (1) The meeting may also consider proposals of the debtor company relating to:
 - (a) modifications in the structure of the company;
 - (b) amalgamation with another company;
 - (c) issue of debentures having priority over existing debenture.
- (2) The company may enforce proposals under sub-art. (1) notwithstanding that the debenture holders' meeting does not approve such proposals: Provided that the company shall in such a case redeem within three months from such proposals having become effective the debentures of such debenture holders as may so request.
- (3) The meeting may also consider proposals relating to variations in the terms of the loan.
- (4) The meeting may not increase the liability of the debenture holders by imposing additional payments or agree to the conversion of debentures into shares, except by an unanimous vote, nor provide for differential treatment amongst the debenture holders.

Art. 439. — *Conditions for the validity of decisions. Quorum.*

- (1) A meeting may take decisions where its members represent not less than one-third of the debentures which may be represented.
- (2) For matters to be decided under Art. 438, the quorum shall be three-quarters.
- (3) Where the quorum under sub-art. (1) and (2) is not attained at the first meeting, a second meeting shall be called in the same manner and within the same period of time. The notice of calling shall contain

the same agenda, showing the date of the abortive meeting. The second meeting may make decisions regardless of the quorum present.

- (4) For matters to be decided under Art. 438, where a quorum of one-half is not attained at the second meeting, a further meeting shall be called in the same manner and within the same period of time. Such meeting may make decisions where one-quarter of the debentures are present or represented.

Art. 440. — *Majority.*

- (1) Resolutions shall be adopted by simple majority.
- (2) Resolutions under Art. 438 shall be adopted by a two-thirds majority.
- (3) The voting rights of debentures shall be in proportion to the share of the loan which they represent respectively, each debenture giving the right to not less than one vote.

Art. 441. — *Confirmation of certain decisions.*

- (1) A resolution adopted under Art. 438 shall be submitted to the court for confirmation within fifteen days from the meeting by the company, the representative of the debenture holders or by a debenture holder. In default of submission, the resolution shall be of no effect.
- (2) Debenture holders who dissented or were absent may oppose the confirmation of the resolution.

Art. 442. — *Agent of debenture holders.*

- (1) Debenture holders may be represented by one or more agents who shall be nominated or removed by a general meeting of debenture holders having the quorum specified in Art. 439 (1) and (3) and a majority as specified in Art. 440 (1).
- (2) The same quorum and majority shall be required for a decision on their remuneration and powers. Remuneration shall be borne by the debtor company.
- (3) The agents of the debenture holders may, in case of urgency, be appointed or replaced by the court on the application of the debtor company in the absence of appointments made by a properly constituted general meeting, or on the application of one or more debenture holders holding not less than one twentieth of the debentures issued.
- (4) The provisions of Art. 436 (4) shall apply to the appointment of an agent of the debenture holders.

Art. 443. — *Powers of agents.*

- (1) Unless otherwise provided by the general meeting of debenture holders, agents of the debenture holders may do all things necessary in the interest of the debenture holders, and in particular accept and preserve securities guaranteeing the loan.
- (2) They shall represent the debenture holders in all legal proceedings.
- (3) They may take part in shareholders' general meetings.
- (4) They shall be present at the drawing of debentures for redemption.

Art. 444. — *Duties in the event of the bankruptcy of the debtor company.*

- (1) Where the debtor company is adjudged bankrupt or enters into a scheme of arrangement, the agent of the debenture holders, if any, shall prove for all debenture holders thereof. He shall receive on their behalf all notices of meetings.
- (2) The agent of the debenture holders may, if so authorised by the general meeting of debenture holders, vote at creditors' meetings on behalf of all the debenture holders. In calculating the quorum and majority, all debentures issued on the same date shall be deemed to constitute one debt.

Chapter 6. Accounts of companies

Art. 445. — *General provisions.*

Unless otherwise expressly provided by law, the provisions of this Code relating to commercial books and book-keeping shall apply to the accounts of share companies.

Art. 446. — *Accounts. Annual report.*

- (1) At the end of each financial year, the directors shall prepare a detailed inventory and valuation of assets and liabilities.
- (2) They shall draw up a balance sheet and a profit and loss account and prepare a report on the state of the company's activities and affairs during the last financial year.
- (3) The report shall give detailed information on the profit and loss account, an exact statement of the total amount of remuneration of the directors and auditors, and proposals for the distribution of dividends, if any.

Art. 447. — *Submission of accounts and report to the auditors.*

The inventory, balance sheet, profit and loss account and the directors' report shall be submitted to the auditors and the Ministry of Commerce and

Industry not less than forty days before the notices calling the annual general meeting are despatched.

Art. 448. — *Drawing-up of the balance sheet and profit and loss account.*

- (1) The balance sheet and profit and loss account shall be prepared each year in the same form as in preceding years and the methods of valuation shall remain the same, unless the general meeting adopts variations in the mode of presentation of the accounts or the methods of valuation on the reasoned advice of the auditors.
- (2) The profit and loss account shall show under separate heads losses or profits arising out of the company's various activities.

Art. 449. — *Annexures.*

A return of liabilities which do not appear in the balance sheet, such as guarantees, shall be annexed to the balance sheet.

Art. 450. — *Amortisation and allowances.*

- (1) Provisions for amortisation shall be made each year so that the item to be amortised be written off at the end of its period of use. Where, during the period of amortisation, the rate proves insufficient, such rate shall be increased so that the amortisation corresponds to the depreciation.
- (2) Provisions shall be made for amortisation and allowances for depreciation of assets at the end of each financial year, even where there are no profits.
- (3) The costs of capital issues and increases shall be amortised not later than on the expiry of the fifth financial year following that during which such issue or increase was made.

Art. 451. — *Accounts of holding companies.*

- (1) Where a company is a holding company, the accounts of its subsidiaries shall be submitted to the annual general meeting at the same time and in the same manner as its own accounts.
- (2) A consolidated balance sheet and profit and loss account shall be prepared in respect of the holding company and its subsidiaries.
- (3) The provisions of sub-art. (2) shall not apply where the directors are of opinion that the drawing up of such balance sheet would be impracticable or too onerous, or of little concern to the shareholders on account of the small financial interests involved.
- (4) The provisions of sub-art. (2) shall not apply if the Ministry of Commerce and Industry approves, where the directors of the holding com-

pany are of opinion that the drawing up of such balance sheet could prejudice the company or its subsidiaries, or that the company and its subsidiaries carry out business of such a differing nature that they may not reasonably be deemed to form a single enterprise.

Art. 452. — *Profits.*

- (1) The net profits comprise the net receipts for the financial year after deduction of general costs and other charges, and of amortisation and allowances.
- (2) The profit for distribution is the profit for the financial year less previous losses and plus additional revenue and any distribution from the reserve funds specially approved by the general meeting.
- (3) The general meeting shall specify the reserve funds from which profit for distribution may be taken.

Art. 453. — *Reserve funds.*

- (1) Transfers to reserve funds shall be made from the net profits shown in the profit and loss account.
- (2) Reserve funds shall be as follows:
 - (a) the legal reserve required by law;
 - (b) the supplementary reserve created by an ordinary general meeting in accordance with the articles of association;
 - (c) optional reserve created by an ordinary general meeting in accordance with the articles of association;
 - (d) free reserve created by an ordinary general meeting there being no special provision in the law or articles of association.
- (3) Unless otherwise provided in the articles of association, reserve funds shall not bear interest.

Art. 454. — *Legal reserve fund.*

- (1) Not less than one twentieth of the net profits shall be transferred each year to the legal reserve fund until it amounts to one-fifth of the capital.
- (2) Transfers shall be made to the legal reserve fund where it has fallen below the amount fixed in sub-art. (1).

Art. 455. — *Reserve created by issue premiums.*

- (1) Where an extraordinary general meeting has approved an increase in capital, the issue premiums may be transferred to a reserve fund.

- (2) Only former and new shareholders may share in the distribution of such reserve.

Art. 456. — *Allocation and distribution of profits.*

- (1) Distribution of profits shall be effected after transfer to the legal reserve as provided in Art. 454.
- (2) Unless otherwise provided by law, the balance shall be distributed in accordance with the articles of association.
- (3) Payments to directors shall be made in accordance with the provisions of Art. 353.

Art. 457. — *Fixed or interim interests.*

- (1) The articles of association may provide that a fixed or interim interest shall be paid to shareholders even where there are no profits.
- (2) Such interest, in a fixed amount, shall be carried to the debit of the installation account. It may only be provided for during the period of preparatory works and construction of the enterprise and shall cease to be payable as soon as normal business begins. The articles of association shall, within these limits, specify the date when such interest shall cease to be paid.
- (3) Where the articles of association provide for a fixed or interim interest as defined in sub-art. (1) and (2), such interest shall not be paid unless the articles of association have been published.

Art. 458. — *Payment of dividends. Rights of shareholders.*

- (1) Dividends may only be paid to shareholders from net profit shown in the approved balance sheet.
- (2) Dividends distributed contrary to the provisions of sub-art. (1) shall be treated as fictitious dividends and the persons making the distribution shall be criminally and civilly liable.
- (3) The date and methods of payment of dividends shall be decided by the general meeting.
- (4) Up to the date fixed for payment, the general meeting may for good reason vary or cancel decisions of a preceding general meeting concerning the distribution of dividends or reserves.
- (5) A shareholder shall become a creditor of the company for the amount of the dividend from the date fixed for payment.

Art. 459. — *Claiming back of dividends.*

Dividends distributed contrary to the provisions of Art. 458 may not be claimed back from the shareholders, except in the case of family companies

or where distribution was made in the absence of a balance sheet or not in accordance with the approved balance sheet.

Art. 460. — *Effect of approval of the balance sheet.*

The approval of the balance sheet by the meeting shall not affect the liability of directors, auditors or general managers in respect of their management.

Art. 461. — *Publication of the balance sheet.*

Within thirty days of the approval of the balance sheet, a copy thereof together with the relevant minute of approval by the meeting shall be sent by the directors to the Ministry of Commerce and Industry for publication in the Official Commercial Gazette.

Chapter 7

Amendments to the memorandum or articles of association

Art. 462. — *Application of general rules.*

- (1) **Extraordinary meetings called to vote on amendments to the memorandum or articles of association shall conduct their business in accordance with the provision of Art. 388-416 and 422-425.**
- (2) **Resolutions shall be published in accordance with the provisions of Art. 224.**

Art. 463. — *Right of withdrawal from the company.*

- (1) **Shareholders who dissent from resolutions concerning any change in the objects or nature of the company or the transfer of the head office abroad may withdraw from the company and have their shares redeemed, at the average price on the stock exchange over the last six months. Where the shares are not quoted on the stock exchange, they shall be redeemed at a price proportionate to the company's assets as shown in the balance sheet for the last financial year.**
- (2) **Where shareholders wish to withdraw under sub-art. (1), they shall notify the company by registered letter:**
 - (a) **within three days from the meeting, where they have taken part in such meeting; or**
 - (b) **where they were not present at the meeting, within fifteen days from the publication of the resolution in the Official Commercial Gazette.**
- (3) **The provisions of this Article shall apply notwithstanding any provision to the contrary in the articles of association.**

Art. 464. — *Increase of capital. Procedure.*

- (1) The capital may be increased by the issue of new shares or by an increase in the par value of existing shares.
- (2) New shares issued may either be paid up:
 - (a) in cash;
 - (b) by paying off current debts with shares; or
 - (c) by capitalisation of reserves or other funds at the disposal of the company; or
 - (d) by conversion of debentures into shares.
- (3) An increase of capital by increasing the par value of shares may only be effected under Art. 425 (2) where such increase is not paid up by capitalisation of reserves or other funds.

Art. 465. — *Delegation of powers to directors.*

- (1) An extraordinary general meeting may by resolution delegate to the directors all powers to effect the increase of capital approved by the meeting.
- (2) Any provision in the memorandum or articles of association delegating such powers in advance to the directors shall be of no effect.

Art. 466. — *Period for effecting an increase of capital.*

A resolution of a general meeting to increase the capital under Art. 465 shall become of no effect if not carried out within five years unless the increase is by conversion of debentures.

Art. 467. — *Capital to be fully paid before a new issue.*

Where a company whose capital is not fully paid increases its capital by a new issue of shares to be paid up in cash or of convertible debentures, such issue shall be null and void.

Art. 468. — *Conditions for the issue of new shares.*

Unless otherwise provided by law, a company may only issue new shares in accordance with the provisions relating to the formation of share companies.

Art. 469. — *Subscription with offer to the public.*

Where new shares are offered for public subscription, the offer to the subscribers shall be by prospectus signed by a representative of the company.

The prospectus shall show:

- (1) the date of registration of the company in the commercial register;
- (2) the company's name and head office;

- (3) the existing amount and composition of the capital, showing the various kinds and classes of shares, their par value and preferences attaching thereto;
- (4) the managers and auditors;
- (5) the last profit and loss account, balance sheet and auditors' report;
- (6) dividends paid during the last five years or since formation;
- (7) debenture loans issued;
- (8) the decision of the general meeting regarding the new shares, showing in particular the total amount, their number, par value, nature and issue price;
- (9) contributions in kind and special benefits allocated;
- (10) the period from which the new shares will give the right to a dividend and any restrictions regarding such right, as well as any preference accorded;
- (11) the date up to which the subscriber is bound.

Art. 470. — *Preferred right of subscription.*

- (1) Shareholders shall have a preferred right of subscription of new cash shares, in proportion to the number of shares held.
- (2) This right may be transferred or assigned under the same conditions as the share itself, during the period of subscription.
- (3) This right may not be exercised in the event of conversion of debentures into shares. Shareholders shall renounce such right under the provisions of Art. 474, at the time of issue of debentures convertible into shares at the will of the holders.

Art. 471. — *Rights of reduced subscription.*

Where any shareholders have not subscribed shares in respect of which they had a preferred right, the shares shall be allocated to those shareholders having applied for a greater number of shares than they would have been entitled to under their preferred right, such allocation being proportional to their share in the capital and within the limits of their applications.

Art. 472. — *Allocation of the remainder.*

Where preferred allocations and the reduced allocations provided in Art. 471 have not taken up the whole of the increase of capital, the balance shall be allocated in accordance with the decisions of the general meeting.

Art. 473. — *Exceptions to the preferred right.*

- (1) The general meeting which resolves an increase of capital may also resolve that the provisions of Art. 470, 471 and 472 shall not apply, whole or in part, but after considering:
 - (a) a directors' report giving reasons for the increase of capital and the setting aside of the preferred right of subscription, the allottees of the new shares, the number of shares allocated to each, the issue price and the basis for determining such price; and
 - (b) an auditors' report certifying the correctness of the directors' report.
- (2) Any allottees of new shares may not vote in person or by proxy at a meeting which sets aside in their favour the application of the provisions of Art. 470, 471 and 472.
- (3) The quorum and majority required for such decision shall be calculated on the whole of the shares making up the share capital but to the exclusion of the shares held or represented by such allottees.

Art. 474. — *Issue of convertible debentures.*

- (1) The issue of convertible debentures is subject to the prior approval of an extraordinary general meeting.
- (2) Such approval requires express renunciation by the shareholders of the preferred right of subscription of the shares to be issued under such conversion, for the benefit of the holders of the convertible debentures.
- (3) The directors' report required under Art. 437 (1) (a) shall give reasons for the issue and the period of time within which the option granted to the debenture holders shall be exercised, and the manner of conversion.
- (4) The auditors shall prepare a special report on the proposals submitted to the meeting as regards the manner of conversion.

Art. 475. — *Documents conferring special preferred rights prohibited.*

No documents conferring a preferred right of subscription may be issued.

Art. 476. — *Periods of time for the exercise of the right of subscription.*

The period of time within which shareholders may exercise their right of subscription may not be less than thirty days from the opening of the subscription.

Art. 477. — *Publication of notices of subscription.*

- (1) The date of opening of a subscription shall be notified to shareholders by a notice published in the Official Commercial Gazette and in a newspaper empowered to publish legal notices circulating at the place where the head office is situate, ten days before the subscription list opens. Such notice shall indicate to shareholders their preferred right, the dates of opening and closing of the subscription list and the issue price of the shares and the amount to be paid-up.
- (2) Where all the shares are registered shares, the shareholders may be notified by registered letter ten days before the subscription list opens.

Art. 478. — *Subscription of new shares.*

- (1) An application to subscribe is not effective unless accompanied by the amount to be paid on subscription.
- (2) Where increases of capital are effected by the issue of cash shares, the provisions of Art. 312 (3) and 319-324 shall apply.

Art. 479. — *Declaration of subscription.*

The directors shall keep a record showing that:

- (a) the new shares have been fully subscribed;
- (b) the amounts to be paid up have been paid;
- (c) the authorised increase of capital has taken place; and
- (d) the necessary amendments to the articles of association have been effected.

Art. 480. — *Increase of capital by contribution in kind.*

The provisions of Art. 315, 321 and 322 of this Code shall apply to increases of capital effected by contributions in kind or which carry special benefits.

Art. 481. — *Payment by set off.*

- (1) New cash shares which form the whole or part of an increase of capital may be used to pay off the current liquid debts of the company at the date the subscription list opens.
- (2) An account showing the settlement of the debt shall be drawn up by the directors and certified as correct by the auditors who shall prepare a report showing the value of the debt so settled.

Art. 482. — *Capitalisation of reserves.*

Subject to the provisions of Art. 454 (2), an extraordinary general meeting

may decide to increase the capital by transferring thereto the whole or part of the reserves and to vary the articles of association accordingly: Provided that, where the legal reserve is so transferred, no distribution to shareholders may be made until the legal reserve is restored.

Art. 483. — *Amortisation of capital.*

- (1) Only the articles of association or a resolution of an extraordinary general meeting may authorise amortisation of capital.
- (2) Only profits and reserves other than the legal reserve may be used for such amortisation.
- (3) Amortisation is effected by the redemption of shares within the same class. The date on which shares shall be redeemed may be selected by drawings.
- (4) Reduction of capital shall not result from amortisation.

Art. 484. — *Reduction of capital.*

Proposals for a reduction of capital shall be sent to the auditors not less than fifteen days before calling the meeting to approve such reduction. The auditors shall report to the meeting their opinion and the reasons therefor on the proposals.

Art. 485. — *Reduction of capital to be published.*

Where a reduction of capital has been effected, an entry shall be made in the commercial register and published in accordance with the provisions of Art. 224.

Art. 486. — *Reduction of capital following losses.*

The provisions of Art. 487-490 shall apply when losses are the reason for a reduction of capital.

Art. 487. — *Manner of reduction.*

- (1) A reduction of capital shall be effected;
 - (a) by reducing the par value of shares; or
 - (b) by exchanging old shares for a lesser number of new shares.
- (2) Where a general meeting resolves that a reduction of capital shall be effected as provided in (b), the shareholders holding an insufficient number of shares to be exchanged shall within the period fixed by the meeting make up the number of shares to a number which can be exchanged or dispose of their shares to another shareholder.

Art. 488. — *Preservation or conferral of rights on shareholders.*

A general meeting may in a resolution authorising a reduction provide that

the shareholders shall be paid as a compensation for the reduction of the number of their shares or of the par value thereof an amount corresponding to the reduction, before any distribution of profits is made in any financial year.

Art. 489. — *Rights of creditors.*

Where the claim of a creditor holding rights prior to the publication of the reduction of capital is not paid or such creditor is not given adequate guarantees for the payment of his claim, he may oppose the adoption of a resolution under Art. 488 or any distribution of profits until the capital is restored to the amount existing at the time when the claim originated.

Art. 490. — *Reduction of capital below the minimum required by law.*

- (1) Where, by reason of losses, the capital is reduced below the minimum permitted in Art. 306 (1), the capital shall be increased to the minimum required in Art. 306 (1) within a period of one year from the date of publication in the official commercial gazette in accordance with the provisions of Art. 485.
- (2) Nothing in this Article shall affect the rights of creditors under Art. 489.
- (3) Where the increase of capital required by sub-art. (1) is not effected or the company is not reorganised, the dissolution of the company may be ordered by the court upon the application of any interested person.

Art. 491. — *Reduction of capital not motivated by losses.*

The provisions of Art. 492-494 shall apply where losses are not the reason for a reduction of capital.

Art. 492. — *Equality of shareholders.*

The equality of shareholders shall not be affected by a reduction of capital.

Art. 493. — *Rights of creditors.*

- (1) Any creditor holding rights prior to the publication in the official commercial gazette under Art. 485 may, where the reduction of capital is in an amount exceeding 10%, object to the resolution within three months from such publication.
- (2) The court may disallow such objection or order the company to pay the claimant or to provide adequate guarantees for payment.

- (3) No reduction of capital may be effected until the period specified in sub-art. (1) has expired.

Art. 494. — Minute recording reduction.

- (1) Where a reduction of capital has been effected, a minute shall be prepared by the directors within one month and not later than one year from the date of publication in the official commercial gazette as provided in Art. 485.
- (2) The minute shall be published in the same time and manner as decisions of general meetings amending the articles of association.

Chapter 8. Dissolution and Winding-up

Art. 495. — Grounds for dissolution.

- (1) A share company may be dissolved for one of the following reasons:
- (a) expiry of the life of the company as fixed in the memorandum of association, unless extended by a decision of an extraordinary general meeting;
 - (b) completion of the venture for which the company was formed;
 - (c) failure of the purpose or impossibility of performance;
 - (d) voluntary dissolution resolved by an extraordinary general meeting;
 - (e) dissolution by order of the court for good cause on the application of a member;
 - (f) subject to the provisions of Art. 311, acquisition of all the shares by a member;
 - (g) institution of bankruptcy proceedings;
 - (h) loss of three-quarters of the capital.
- (2) An extraordinary general meeting shall be called to consider voluntary dissolution or the continuation of the company where three-quarters of the capital have been lost as provided in sub-art. (1) (h).
- (3) Where the directors or auditors fail to call a general meeting or a general meeting cannot be regularly held, the court may, on the application of any interested party, order dissolution.

Art. 496. — Appointment and removal of liquidators.

- (1) Where the appointment of liquidators is not provided for in the memorandum or articles of association, they shall be appointed by the general meeting which resolved dissolution.

- (2) Where liquidators are not appointed under sub-art. (1), they may be appointed by the court on the application of the members, directors or auditors.
- (3) The appointment of liquidators may be revoked by the general meeting or by the court for good cause on the application of members or auditors.
- (4) Appointment of new liquidators shall be made as provided in sub-art. (1) and (2).

Art. 497. — *Survival of the company during winding-up.*

- (1) Until winding-up is completed, the company shall retain its legal personality and name, to which the words “in liquidation” shall be added.
- (2) During winding-up, the organs of the company shall restrict their activities to acts necessary to facilitate the winding-up and which are not acts within the scope of the liquidators.

Art. 498. — *Bankruptcy and winding-up.*

- (1) Where a company is declared bankrupt, the winding-up shall proceed under the provisions of Book V of this Code.
- (2) The directors’ powers shall be restricted to representing the company if necessary.

Art. 499. — *Duties and liability of liquidators.*

- (1) Unless otherwise provided by law or the articles of association, the liquidators shall have the same duties and liabilities as directors.
- (2) The liquidators shall take possession of the property and books of the company. The directors shall prepare a report for the liquidators on the management of the company from the end of the last financial year to the date of the winding-up.
- (3) The liquidators and directors shall jointly prepare and sign an inventory of assets and liabilities.
- (4) Where the assets appear to be insufficient to cover the debts of the company, the liquidators shall call upon the members to pay according to their share holding such instalments as may be due on their shares.

Art. 500. — *Powers of liquidators.*

- (1) Subject to any limitations imposed by the articles of association or by the meeting appointing them, liquidators shall have full powers.

liquidators may sell the property of the company as whole, compromise and arbitrate and shall represent the company in legal proceedings.

- (2) They may not undertake new business, unless required for the execution of contracts still running or where the interests of the winding-up so require. They shall be personally, jointly and severally liable in respect of any business undertaken outside the limits provided in this Article.

Art. 501. — *Prohibition from distributing assets among members before full payment of debts.*

Until the creditors of the company have been paid or provisions for payment made, the liquidators may not distribute any part of the assets among the members.

Art. 502. — *Calling on creditors.*

- (1) Creditors shall be paid on the basis of a balance sheet prepared by the liquidators as soon as they are appointed.
- (2) Creditors shall be informed of the dissolution of the company and required to file their claims with supporting vouchers.
- (3) Creditors appearing in the company's books or who are otherwise known shall be notified by registered letter. Notice to other creditors shall be given by notice, published in three successive monthly issues of the official commercial gazette and in the form laid down in the articles of association.

Art. 503. — *Protection of creditors.*

- (1) Where known creditors have failed to file their claims, the amounts owing to them shall be paid into court.
- (2) Sums shall be set aside to meet claims in respect of undertakings of the company which are not completed or disputed claims where the creditors have not been guaranteed or distribution of assets has not been postponed until such undertakings are completed.

Art. 504. — *Final balance sheet.*

- (1) After paying the company's liabilities, the liquidators shall prepare a final balance sheet, showing what percentage of the surplus assets is available for distribution on each share.
- (2) Subject to the provisions of the articles of association, the liquidators shall calculate the percentage under sub-art. (1) having regard to whe-

ther shares have been fully paid up and to preferential rights attaching to shares.

- (3) The balance sheet signed by the liquidators and the auditors's report shall be deposited in the Ministry of Commerce and Industry.
- (4) Any shareholder may, within three months from the deposit of the final balance sheet under sub-art. (3), apply to the court to set aside the final balance sheet. Such application shall be heard after the period of three months has expired and, where there are several applications, they shall be heard together. The court's decision shall be binding on all members and shareholders of the company.
- (5) Where no application has been made within three months, the final balance sheet shall be deemed to be approved.

Art. 505.— *Suspension of distribution.*

The surplus assets shall not be distributed to the shareholders until one year from the third publication specified in Art. 502 (3) in the official commercial gazette:

Provided that the court may order the distribution of the surplus assets before the expiry of this period when satisfied that the creditors will not suffer.

Art. 506. — *Deposit of amounts uncollected.*

Where a shareholder has not collected the percentage of the surplus assets due to him within three months from the deposit mentioned in Art. 504 (3), the liquidators shall deposit such sum in a special account in the State Bank of Ethiopia together with the name of the shareholder or the numbers of the shares, if they are to bearer.

Art. 507. — *Striking off the commercial register.*

When the final balance sheet has been approved, the liquidators shall make an application for the registration of the company to be cancelled in accordance with the provisions of Art. 226.

Art. 508. — *Rights of creditors.*

- (1) After action has been taken under Art. 507, creditors who have not been paid may claim against the shareholders in person to the extent of their shares in the surplus assets.
- (2) Creditors may claim against the liquidators, where they have not been paid owing to the liquidators' negligence.

Art. 509. — *Preservation of the books.*

- (1) The books of a company which has been dissolved shall be deposited

with the Ministry of Commerce and Industry where they shall be kept for ten years.

- (2) They shall be open to inspection after payment of the prescribed fee.

TITLE VII. PRIVATE LIMITED COMPANIES

Chapter I. Formation and General Provisions

Art. 510. — *Definitions. Nature.*

- (1) A private limited company is a company whose members are liable only to the extent of their contributions.
- (2) A private limited company shall not have less than two or more than fifty members and is always commercial in form.
- (3) The company shall not issue transferable securities in any form.

Art. 511. — *Reduction of the number of members below the legal minimum.*

Where the number of members is reduced below two, or where the organs of the company cease to exist, the court may, on the application of a member or a creditor, order the dissolution of the company and make such provisional orders as are necessary unless the company makes arrangements to comply with the law within a reasonable time.

Art. 512. — *Capital.*

- (1) The capital of a private limited liability company shall not be less than 15,000 Ethiopian dollars.
- (2) The amount of a share shall not be less than 10 Ethiopian dollars.
- (3) All shares shall be of equal value and a member may hold more than one share.

Art. 513. — *Prohibited transactions.*

A private limited company shall not undertake banking, insurance or any business of a similar nature.

Art. 514. — *Designation.*

- (1) A private limited company may have a firm-name which may indicate the nature of its business.
- (2) The firm-name shall be followed by the words "Private Limited Company."

Art. 515. — *Particulars required on company papers.*

The firm-name as defined in Art. 514 (2) and the amount of the capital of the company shall appear on all company documents, invoices, publications and other papers.

Art. 516. — Formation.

The company is instituted when the deed, in the form of a memorandum of association, setting up the company is signed by all the members or by persons acting on their behalf and is authenticated.

Art. 517. — Terms of the memorandum of association.

The memorandum of association shall show:

- (a) the names, nationality and addresses of the members;
- (b) the company name, head office, and branches if any;
- (c) the business purposes of the company;
- (d) the amount of the capital;
- (e) the value of contributions made by each member;
- (f) the valuation of contributions in kind;
- (g) a statement that the capital is fully paid;
- (h) the number of shares held by each member;
- (i) the procedure for distribution of profits;
- (j) the number of managers, their powers and the agents, if any;
- (k) the number of auditors, if any;
- (l) the period of time for which the company is established.

Art. 518. — Articles of association.

The provisions of Art. 314 shall apply to private limited companies.

Art. 519. — Contributions in kind.

- (1) Where a member makes a contribution in kind, the memorandum of association shall show the nature and the value of the contribution, the price accepted by the other members and the share in the capital allocated to the member.
- (2) The method of valuation shall be determined by the members.
- (3) Members shall be jointly and severally liable to third persons for the valuation fixed.
- (4) Where it is shown that a contribution has been overvalued, the contributing member shall make good the overvaluation in cash. Members shall be jointly and severally liable for such payment, notwithstanding that they were not aware of the overvaluation.

Art. 520. — Publicity.

- (1) The company shall be made known to third parties in accordance with the provisions of Art. 219-224 of this Code. The memorandum of asso-

- ciation and the articles of association, if any, shall be deposited.
- (2) The notice to be published and the application for registration in the commercial register shall contain the particulars specified in Art. 517 (a) - (h) and (j) - (l).
 - (3) The provisions of Art. 324 shall apply.

Chapter 2. Shares

Art. 521. — *Share register.*

- (1) All shares shall be entered in a register which shall show:
 - (a) the names of the members;
 - (b) the value of all contributions made by the members;
 - (c) all transfers of shares;
 - (d) all amendments to these particulars.
- (2) At the beginning of each calendar year a list containing the particulars under (a) and (b) of sub-art. (1) shall be signed by the managers and sent to the Ministry of Commerce and Industry, unless the managers declare that there has been no change since the last list was deposited.
- (3) The managers shall be jointly and severally liable for any loss occasioned by inaccuracy in the keeping of the share register or lists. The lists shall be open for inspection by the public.

Art. 522. — *Assignment of shares.*

Assignments of shares shall be in writing and shall be of no effect in relation to the company or third parties unless they have been entered in the share register.

Art. 523. — *Assignment of shares outside the company.*

- (1) Unless otherwise provided in the articles of association, there shall be no restriction on the transfer of shares between members.
- (2) A transfer of shares outside the company shall be approved by a majority of the members representing at least three-quarters of the capital, unless a larger majority or unanimity is fixed in the articles of association.
- (3) Such approval shall be entered in the commercial register.
- (4) The provisions of sub-art. (2) shall apply even where the company is in liquidation.

- (5) Where execution is levied on a member's share, the purchaser shall obtain the consent of the other members.

Art. 524. — *Devolution of shares by way of succession.*

- (1) Unless otherwise provided in the articles of association, the shares of a deceased member devolve upon his heirs.
- (2) The articles of association may provide that a member has the right to leave his shares to the heir he wishes.

Chapter 3. Organisation of the Company

Art. 525. — *Management.*

- (1) A private limited company shall be managed by one or more managers.
- (2) Where there are more than twenty members, decisions shall be taken at meetings of the members and auditors shall be appointed.
- (3) Where there are twenty or less members, the members shall not be bound by the provisions of sub-art. (2).

Art. 526. — *Appointment of managers.*

Managers, other than members, may be appointed by the members or by the memorandum or articles of association for such period as is considered desirable.

Art. 527. — *Dismissal of managers.*

- (1) A manager appointed by the memorandum of association may only be dismissed by the members under a decision taken in accordance with the provisions of Art. 536.
- (2) A manager appointed by the members may be dismissed in accordance with the provisions of Art. 535.
- (3) Dismissal shall only be for good cause acceptable to a court. A manager who has been dismissed shall forthwith and for ever cease to function. Where the court is of opinion that a dismissal was without good cause, it may grant damages to the manager who has been dismissed.
- (4) Notwithstanding the provisions of sub-art. (3), the articles of association may stipulate that managers may be removed at the pleasure of the members, irrespective of the form of appointment.
- (5) Revocatory proceedings for due cause may be brought by any member individually.

Art. 528. — *Powers of managers.*

- (1) Within the limits of the objects of the company, managers shall have full powers.
- (2) Provisions in the articles of association restricting the powers of the managers shall be binding only as between members and managers. They shall not bind third parties, even if properly published.

Art. 529. — *Manager's remuneration.*

The manager's remuneration shall be fixed by the members. It may consist either of a fixed salary, or of a share in the profits, or both.

Art. 530. — *Liability of managers.*

In accordance with civil law, managers shall be liable individually or jointly and severally, as the case may be, to the company and third parties for any breach of their duties under this Code or the articles of association.

Art. 531. — *Bankruptcy of the company.*

- (1) Where in a bankruptcy the assets are shown to be inadequate, the court may, on the application of the trustee in bankruptcy, order that the company's debts or part of them shall be paid by the managers or by the members or by both or some of them, with or without joint liability.
- (2) An order under sub-art. (1) shall not be made in respect of members who have not acted as managers, nor shall it be made where the managers and members show that they have acted with due care and diligence.

Art. 532. — *Meetings.*

- (1) A company consisting of more than twenty members shall hold a general meeting each year at the date fixed by the articles of association.
- (2) Other meetings may be called by the manager or, in his absence, by the auditors, if any, and in their absence by members representing more than one-half of the capital.

Art. 533. — *Decisions taken without a meeting.*

Where the holding of a meeting is not required by the law or by the articles of association, the managers shall send to each member the text of resolutions or decisions to be taken and ask for the members written vote thereon.

Art. 534. — *Votes held by members.*

- (1) Notwithstanding any provision to the contrary in the memorandum of association, every member may take part in the meetings.
- (2) Each member shall be entitled to a number of votes equal to the number of shares held by him.

Art. 535. — *Majority and quorum.*

- (1) Decisions under Art. 532 (1) and Art. 533 shall be taken by a majority of members representing more than one half of the capital.
- (2) Where such majority is not obtained, the members shall be called again by registered letter, and decisions shall be taken by a simple majority without regard to the capital represented.

Art. 536. — *Modification of the articles of association.*

- (1) Change in the nationality of the company requires the unanimous decision of the members.
- (2) All other amendments to the articles of association require a majority vote of the members representing three-quarters of the capital, unless a larger majority is provided in the articles of association. No member may be required to increase his contribution without his consent.
- (3) Amendments shall be published in accordance with the law.

Art. 537. — *Right to inspect documents.*

- (1) Where there are twenty or less members, every member may at any time, in person or through his agent, inspect and take a copy of the inventory, the balance sheet and the auditors' report, if any, at the head office.
- (2) Where there are more than twenty members, the rights under sub-art (1) may only be exercised during the fifteen days preceding the general meeting.

Art. 538. — *Auditors.*

- (1) Where a company consists of more than twenty members, not less than three auditors shall be appointed in the memorandum of association.
- (2) Auditors may be re-elected at such periods and under such conditions as may be provided in the articles of association.
- (3) Auditors may be dismissed as provided in the articles of association.

Failing such provision, they may be dismissed as provided in Art. 535.

- (4) The provisions of Art. 374 and 378 shall apply to auditors.
- (5) Auditors shall be liable, individually or jointly and severally, to the company and third parties for any fault or negligence in the execution of their duties.
- (6) Auditors shall not be civilly liable for offences committed by the managers, unless they were aware of such offences and failed to report them to the meeting.

Chapter 4. Accounts

Art. 539. — *Legal reserve.*

Not less than one-twentieth of the profits shall be transferred each year to the legal reserve fund until such fund amounts to one-tenth of the capital.

Art. 540. — *Fictitious dividends.*

- (1) Members may be required to repay dividends which have been paid out of sums which are not actual profits.
- (2) Claims for repayment shall be barred after five years from the date the dividends were paid.

Art. 541. — *Fixed interest.*

- (1) The memorandum of association may provide that a fixed interest shall be paid to members, even where there are no profits, during the period when works are being constructed prior to business operations. Such period shall be fixed in the memorandum of association.
- (2) Such provision shall be of no effect unless published in the official commercial gazette.
- (3) Such interest shall be carried to the debit of the installation account and spread over the years where profits are made, in accordance with the articles of association.

Chapter 5. Dissolution

Art. 542. — *Grounds of dissolution.*

- (1) A private limited company may be dissolved on the grounds applicable to all business organizations, including dissolution by the court for good cause and dissolution at the request of any member where the term of the company has not been fixed.

- (2) Provision may be included in the articles of association permitting redemption of the members' shares for a fixed sum.
- (3) A judicial interdiction, bankruptcy or insolvency of a member shall not cause dissolution of a company, nor shall the death of a member, unless otherwise expressly provided in the articles of association.
- (4) The articles of association may provide that the heirs of a deceased member may, at their option, join the company or be repaid the deceased member's shares at a rate based on the last inventory.

Art. 543. — *Loss of three-quarters of the capital.*

- (1) Where three-quarters of the capital are lost, the managers shall consult with the members and decide whether the company should be dissolved.
- (2) Where the managers fail to consult the members or no valid decision is taken, any interested person may apply to the court for dissolution.

TITLE VIII. CONVERSION AND AMALGAMATION

Art. 544. — *General provisions.*

- (1) The conversion of one form of business organization into another form does not necessarily cause the creation of a new legal person.
- (2) The members may unanimously or by the majority required by law or the articles of association decide on conversion. In no case shall the decision increase the liabilities of a member without his consent.
- (3) A member may not be deprived, in whole or in part, of the rights of membership without his consent in cases of conversion.
- (4) Such decisions shall be by a duly authenticated deed and shall be published in accordance with the provisions of Art. 224.
- (5) The rules relating to the formation of the relevant business organisation shall apply without prejudice to the rights of third parties.

Art. 545. — *Conversion of a general partnership, a limited partnership or a share company into a private limited company.*

- (1) Any general or limited partnership and company limited by share may be converted into private limited companies.
- (2) In the case of a company limited by shares, the decision shall be taken by an extraordinary general meeting held under the provisions of Art. 425.
- (3) Members who dissent may withdraw as provided in Art. 463.

Art. 546. — *Rights of creditors.*

- (1) The assets of the former firm shall pass automatically to the new business organisation as from the date of registration in the Commercial Register.
- (2) On registration, creditors of the former firm shall be required to establish their claims within a reasonable time and shall be informed that, unless they object thereto, they shall be deemed to be creditors of the new firm.
- (3) The provisions of Art. 502 shall apply to calls to creditors under sub-art. (2).
- (4) Creditors who do not accept the new firm shall be paid off or guaranteed. No payment out of the assets shall be made to shareholders until all creditors have been paid or guaranteed.
- (5) Managers shall be jointly and severally responsible for carrying out the provisions of sub-art. (2)-(4) inclusive.
- (6) Managers shall cause the conversion of the former firm to be published. They shall cause the registration of the former firm to be cancelled where the provisions of sub-art. (4) have been complied with.

Art. 547. — *Conversion of a private limited company into a company limited by shares.*

- (1) Private limited company may be converted into share companies under the provisions of Art. 536.
- (2) The names of the members taking the decision shall be written in the minutes and such members shall become founders of the new share company.
- (3) Members who dissent and whose dissent is recorded in the minutes may withdraw under the provisions of Art. 463.

Art. 548. — *Liability of members.*

- (1) The conversion of a firm shall not discharge members with unlimited liability of their liability for undertakings made prior to the registration of the decision of conversion in the commercial register, unless such registration indicates that the creditors have approved the conversion.
- (2) Approval shall be presumed where creditors have been informed of the decision of conversion by registered letter and have not expressly

dissented therefrom within thirty days from the date of such notification.

Art. 549. — *Amalgamation.*

- (1) Two or more firms may amalgamate, either by taking over or by the formation of a new firm.
- (2) The provisions of sub-art. (1) shall apply to firms in liquidation.

Art. 550. — *Decision to amalgamate.*

A decision to amalgamate shall be taken by each of the firms concerned. Special meetings of shareholders of different classes or meetings of debenture holders shall approve the taking over or being taken over.

Art. 551. — *Deed of amalgamation.*

- (1) The terms of the amalgamation shall be drawn up by a deed which shall be published in accordance with the provisions of Art. 224.
- (2) Notices of the amalgamation shall be published at the head office of the firm taking over or of the new firm resulting from the amalgamation, as well as at the head offices of firms ceasing to exist on amalgamation.
- (3) The claims and liabilities of the firm ceasing to exist shall pass to the firm taking over or to the new firm.

Art. 552. — *Rights of creditors.*

- (1) Creditors of the firm or firms taken over or the firms constituting a new firm, whose claims came into being before the publication of the deed of amalgamation in the official commercial gazette may object to the amalgamation within three months from the date of such publication.
- (2) The court shall reject such objection where it is satisfied that all the creditors have agreed to amalgamation and that those who dissented have been paid or that sums corresponding to their debts have been paid into a special account in the State Bank of Ethiopia.
- (3) The court may reject such objection and order that the deed of amalgamation shall be confirmed and that the firm taking over or the new firm resulting from the amalgamation shall pay the debts or provide adequate guarantees.

Art. 553. — *Rights of debenture holders.*

- (1) Where amalgamation is not approved by a meeting of the debenture holders of the firm being taken over, the debtor firm shall redeem the

debentures of holders who so require, not later than three months from the date of publication of the deed of amalgamation in the official commercial gazette.

- (2) These provisions shall apply to debenture holders of firms amalgamating on the creation of a new firm.

Art. 554. — *Publication of the rights of creditors and debenture holders.*

Entries made in the commercial register shall expressly refer to the rights of creditors under Art. 552 and of debenture holders under Art. 553.

TITLE IX BUSINESS ORGANISATIONS INCORPORATED ABROAD OR OPERATING ABROAD

Art. 555. — *Firms incorporated abroad having their head office in Ethiopia.*

Firms incorporated abroad and whose head office or principal place of business is in Ethiopia shall be subject to all the provisions of this Code and regulations made thereunder, including provisions relating to memoranda of association.

Art. 556. — *Firms incorporated abroad having a subsidiary office or branches in Ethiopia.*

- (1) Firms incorporated abroad and which have subsidiary offices or branches in Ethiopia, with permanent representation, shall be subject in respect of each office or branch to the provisions of this Code relating to deposit and publication of the memorandum of association and publication of balance sheets.
- (2) Such firms shall publish the names of persons representing them permanently in Ethiopia, and shall furnish their signatures.
- (3) Such firms shall be subject as regards their branches or subsidiaries to the provisions governing the operation of the enterprise and imposing special conditions.

Art. 557. — *Foreign firms which differ from the forms of Ethiopian business organizations.*

Firms incorporated abroad, which differ from those provided for and covered by this Code, shall be subject to those provisions of this Code concerning share companies, which relate to the publication of the acts of the firm and the liability of directors.

Art. 558. — *Liability arising out of failure to comply with requirements.*

Persons acting in the name of the firm who have not complied with the

provisions of Art. 555-557 **inclusive** shall in full be jointly **and severally** liable in respect of the firm's **undertakings**.

Art. 559. — *Firms incorporated in Ethiopia and operating abroad.*

The provisions of Ethiopian laws shall apply to firms which are incorporated in Ethiopia for the purpose of business activity abroad.

Art. 560. — *Firms in which foreign interests are represented.*

Nothing in this Code shall affect the provisions of special prohibiting, or subjecting to special conditions, the exercise of certain activities by firms in which foreign interests are represented.

BOOK III. CARRIAGE AND INSURANCE

TITLE I. CARRIAGE BY LAND

Chapter I. General Provisions

Art. 561. — *Contract of carriage.*

A contract of carriage is a contract whereby a person, called the carrier, undertakes for reward to carry persons, baggage or goods and to convey them to a specified place.

Art. 562. — *Baggage.*

- (1) Objects which a passenger causes to be carried with him, such as objects contained in trunks, baskets, hand-bags or other packages of a similar nature, shall be deemed to be baggage.
- (2) Objects which a passenger is allowed to carry with him and which are not registered by the carrier shall be deemed to be hand-baggage.
- (3) Objects which are entrusted to and taken over by the carrier shall be deemed to the registered baggage.

Art. 563. — *Carriage by land.*

The provisions of this Title shall apply to any person who undertakes for reward to carry persons, baggage or goods by land, in particular by road, railway or inland waterways such as rivers, canals or lakes.

Art. 564. — *Carriage by air.*

The provisions of Title II of this Book shall apply to the carriage by air of persons, baggage or goods.

Art. 565. — *Carriage by sea.*

The relevant provisions of the Maritime Code shall apply to the carriage by sea of persons, baggage or goods.

Art. 566. — *Contract of carriage made by agent.*

The provisions of Art. 2251 of the Civil Code shall apply to contracts of carriage made by agents.

Chapter 2. Transport Titles

Section 1. Passenger's Ticket

Art. 567. — *Ticket may be required.*

- (1) A contract of carriage of persons shall come into being where the parties agree. The carrier may require the passenger to procure for himself and to preserve until completion of the voyage a transport title such as a bill, ticket or season ticket.
- (2) Provisions may be made to the effect that a person who travels without a ticket shall be liable to pay a surcharge in addition to the cost of the journey.
- (3) The cost of transportation and the time of departure and arrival shall be specified on the passenger's ticket.

Section 2. Luggage - Tickets

Art. 568. — *Right of passenger.*

The passenger may require the carrier to deliver to him in respect of registered baggage a luggage-ticket showing the date and place of issue, the place from and to which the baggage is to be carried, the number of pieces and the weight of the baggage, and the cost of transport unless it is included in the cost of the passenger's transport.

Art. 569. — *Purpose of luggage-ticket.*

- (1) Unless the contrary is proved, a luggage-ticket shall be proof of the registration and conditions of transport of the baggage.
- (2) The provisions of this Title shall apply and the contract of carriage shall be valid and remain in force notwithstanding that there is no luggage-ticket or no valid ticket or the ticket has been lost. The carrier shall not hand the baggage to the person who requires it without a luggage-ticket unless such person can show that he is entitled to the baggage.

Section 3. Transport titles in respect of goods

Art. 570. — *Transport title not issued, not valid or lost.*

The provisions of this Title shall apply and the contract of carriage of

goods shall be valid and remain in force notwithstanding that there is no valid ticket or the title has been lost.

Art. 571. — *Issue of consignment note.*

Any carrier of goods may require the sender to prepare and to hand to him a document called a consignment note. Any sender may require the carrier to accept such consignment note.

Art. 572. — *Copies of consignment note.*

- (1) Three copies of the consignment note shall be made.
- (2) The first copy shall be signed by the sender and shall remain with the carrier.
- (3) The second copy shall be signed by the sender and the carrier and shall remain with the goods.
- (4) The third copy shall be signed by the carrier and handed by the carrier to the sender after the goods have been accepted.

Art. 573. — *Particulars in consignment note.*

The consignment note shall show:

- (1) the date and place of issue;
- (2) the place from and to which the goods are to be carried;
- (3) the names and addresses of the sender and addressee;
- (4) the name of the carrier;
- (5) the means of transport;
- (6) the nature, number, volume or weight of the goods;
- (7) the distinguishing marks or numbers affixed on the parcels, if any;
- (8) the cost of transport, the time within which and the route whereby the goods are to be carried.

Art. 574. — *Consignment note to order.*

A consignment note may be made to order where the sender and the carrier agree.

Art. 575. — *Other documents.*

Where the sender and the carrier agree, a consignment note may be replaced by any other document, such as a receipt delivered by the carrier on the sender having made all appropriate statements.

Art. 576. — *Effect of transport titles.*

Unless the contrary is proved, a consignment note or receipt delivered by

the carrier shall be proof of the making of the contract, of the receipt of the goods and of the nature, number, volume or weight of the goods.

Chapter 3. Rights and Duties of parties to a contract of carriage

Section 1. Rights and duties of sender and addressee

Art. 577. — *Statements by sender.*

- (1) Each piece of the consignment shall show:
 - (a) the name and address of the sender and the addressee;
 - (b) the place from and to which the goods are to be carried;
 - (c) the nature, number, value or weight, of the goods;
 - (d) the distinguishing marks or numbers affixed on the parcels, if any.
- (2) The sender shall be liable for any damage caused to the carrier or to a person for whom the carrier is responsible arising out of irregular, inaccurate or incomplete statements relating to the consignment.

Art. 578. — *Packing.*

- (1) Where the nature of the goods is such that packing is needed, the sender shall pack the goods so that they be not lost nor damaged nor likely to damage persons, baggage or other goods carried.
- (2) The sender shall be liable for any damage arising out of defective packing. The carrier shall be liable for such damage where he accepted to carry the goods and he knew that they were not packed or the packing was defective.

Art. 579. — *Right of sender to dispose of the goods.*

- (1) Where he carries out all his duties under the contract of carriage, the sender may dispose of the goods, either by taking them back from the carrier or by stopping them during their transport or by causing them to be delivered during the transport before they arrive at the place of destination to a person other than the addressee named in the contract.
- (2) Where a transport title has been delivered to the sender, he may not dispose of the goods unless he produces the title to the carrier.

Art. 580. — *When sender may not dispose of the goods.*

The sender may not dispose of the goods after the transport title has been handed to the addressee or where the goods have been carried to their destination and the addressee has required the carrier to deliver them to him.

Art. 581. — *Rights of addressee.*

Without prejudice to the provisions of Art. 579 and 580, the addressee may exercise all the rights and shall incur all the liabilities arising out of a contract of carriage to which he has agreed.

Art. 582. — *Cost of transport.*

- (1) The cost of transport and all incidental expenses shall be met by the sender.
- (2) Where the goods have been sent carriage forward, the sender and the addressee who accepted the consignment shall be jointly and severally liable for the cost of transport and all incidental expenses.

Section 2. Duties of carrier of goods or registered baggage

Art. 583. — *Conveyance of goods and baggage.*

- (1) The carrier shall, within the agreed time, convey the goods to the agreed place with all customary care and deliver them to the addressee.
- (2) He shall in the same manner convey registered baggage and deliver it to the addressee or the person acting on his behalf.

Art. 584. — *Notice to addressee.*

Where the goods cannot be delivered at the addressee's domicile or are not taken away by the addressee, the carrier shall without delay inform the addressee of the arrival of the goods and of the time when and place where they are available.

Art. 585. — *Goods which cannot be delivered.*

- (1) Where goods cannot be delivered, the carrier shall without delay inform the sender and require him to give instructions. Where the carrier cannot keep the goods in his custody, he shall move the court to order that the goods be deposited with a third party.
- (2) Where goods which cannot be delivered are of a perishable nature and the carrier cannot receive the sender's instructions in due time, he shall cause the goods to be sold.

Art. 586. — *Baggage which cannot be delivered.*

- (1) Where registered baggage cannot be delivered at the addressee's domicile and is not taken away on arrival by the passenger or the person acting on his behalf, the carrier shall where possible require the passenger to give instructions.

- (2) Where the carrier cannot keep the registered baggage in his custody or such baggage is of a perishable nature, the provisions of Art. 585 shall apply.

Section 3. Duties of parties to a contract of carriage of persons

Art. 587. — *Duties of passenger.*

The passenger shall pay the fare agreed in the contract, present himself at the time and place of departure and comply during the journey with the instructions given by the carrier or prescribed by law.

Art. 588. — *Duties of carrier.*

The carrier shall carry the passenger safely to his destination and shall comply with the terms of the contract as to time and comfort.

Chapter 4. Liability of the carrier

Art. 589. — *Hand baggage.*

Hand baggage shall remain in the passenger's custody and the carrier shall not be liable for the loss of or damage to such baggage.

Art. 590. — *Loss of or damage to goods or registered baggage.*

Without prejudice to the provisions of the following articles, the carrier shall be liable for the loss, whether total or partial, of goods or registered baggage or for any damage thereto or delay in the conveyance thereof.

Art. 591. — *Liability excluded in certain cases.*

The carrier shall be relieved in whole or in part of his liability under Art. 590 where he can show that the loss, damage or delay was due in whole or in part to force majeure, an inherent defect in the object carried or the fault of the sender or addressee.

Art. 592. — *Wear and tear.*

The loss of weight or volume which goods or registered baggage suffer by reason of the transport shall be regarded as an inherent defect and the carrier shall be liable for such loss only as exceeds customary limits.

Art. 593. — *Provisions excluding liability.*

- (1) The carrier may by agreement relieve himself of liability for delay in the conveyance of goods or registered baggage.
- (2) Any provision relieving the carrier of liability for loss of or damage to goods or registered baggage shall be of no effect.

Art. 594. — *Limitation of liability.*

The carrier may by agreement limit his liability for any total or partial loss of or damage to goods or registered baggage. Any such limitation shall be of no effect where the agreed compensation is so disproportionate to the value of the object carried as to make the carrier's liability negligible.

Art. 595. — *Liability of carrier of passengers.*

Without prejudice to the provisions of the following articles, a person who carries passengers shall be liable for any delay in the carriage and for the death of or bodily injury to a passenger due to an accident occurring during the journey or whilst the passenger was mounting or alighting.

Art. 596. — *Liability excluded in certain cases.*

The carrier shall be relieved in whole or in part of his liability for death or bodily injury under Art. 595 where he can show that the accident was due in whole or in part to force majeure, the act of a third party or the fault of the passenger himself.

Art. 597. — *Limitation of liability.*

- (1) The carrier's liability shall not exceed Eth. \$ 40,000 per passenger, whoever the passenger may be.
- (2) Where compensation is to be paid by way of annuity, the capital of the annuity shall not exceed Eth. \$ 40,000.

Art. 598. — *Provisions excluding liability.*

- (1) The carrier may by agreement relieve himself of liability for any delay in the carrying.
- (2) Any provision relieving the carrier of liability for death or bodily injury or limiting the carrier's liability to less than Eth. \$ 40,000 shall be of no effect.

Art. 599. — *Liability not limited in certain cases.*

The provisions of Art. 594 and 597 shall not apply where it is proved that the damage is due to the carrier's act or omission and the carrier knew that such act or omission would or could cause damage.

Art. 600. — *Liability of successive carriers.*

- (1) Where a contract of carriage is performed by more than one carrier, the passenger or those having rights from him may only claim against the carrier in charge of that part of the journey during which the

- accident or delay occurred unless it has been expressly specified that the liability of the first carrier would extend to the whole journey.
- (2) In respect of goods or registered baggage, the sender may claim against the first carrier and the addressee may claim against the last carrier. The sender and addressee may in addition claim against the carrier in charge of that part of the carrying during which the loss, whether total or partial, the damage or the delay occurred.
 - (3) The carriers mentioned in sub-art. (2) shall be jointly and severally liable to the sender and addressee.

Chapter 5. Legal proceedings

Art. 601. — *Expert opinion, deposit and sale.*

- (1) Where a dispute arises as to goods or registered baggage, the court within whose area of jurisdiction the goods or baggage are, may on application allow the calling of expert evidence. The applicant shall give notice thereof to all interested parties except in cases of urgency where notice may be waived by the court.
- (2) The court may order the goods or baggage to be deposited with a third party.
- (3) The court may order the goods or baggage to be sold on having checked the condition thereof.

Art. 602. — *Acceptance and protest.*

- (1) Unconditional acceptance of goods or registered baggage shall be a bar to any claim for total or partial loss, damage or delay being brought against the carrier, unless there has been fraud on the carrier's part.
- (2) The carrier shall be liable for any non-apparent damage where the addressee enters a protest against the carrier as soon as he is aware of such damage or within not more than seven days from the delivery of the goods or baggage.

Art. 603. — *Limitation.*

- (1) Any claim arising out of a contract of carriage shall be barred after two years from the day when the passengers, goods or registered baggage have or should have arrived at their destination or when their carrying was abandoned.
- (2) Where a claim is barred, the creditor may not set up his claim by way of counter claim nor by way of defence.

TITLE II. CARRIAGE BY AIR

Chapter 1. General provisions

Art. 604. — *Scope of application.*

The provisions of this Title shall apply to the carriage of persons, baggage or goods by aircraft whether for reward or free of charge.

Art. 605. — *Definition of aircraft.*

Any apparatus capable of raising or circulating in the air shall be deemed to be an aircraft within the meaning of Art. 604.

Chapter 2. Transport titles

Section 1. Passenger's ticket

Art. 606. — *Issue of ticket.*

- (1) A ticket shall be delivered to any person to be carried by air.
- (2) The ticket shall show:
 - (a) the place and date of issue;
 - (b) the name and address of the carrier;
 - (c) the place from and to which the passenger is to be carried and the places of call, if any;
 - (d) the fare of transport.
- (3) The ticket shall contain a notice informing the passenger that the carrier's liability is limited for death or bodily injury and for the loss of or damage to baggage .

Art. 607. — *Purpose of ticket.*

- (1) Unless the contrary is proved, the ticket shall be proof of the making and conditions of the contract of carriage.
- (2) The provisions of this Title shall apply and the contract of carriage shall be valid and remain in force notwithstanding that there is no ticket or no valid ticket or the ticket has been lost. Where the carrier agrees to a passenger embarking without a ticket or where the ticket does not contain the notice provided in Art. 606 (3), the provisions of Art. 636, 637 and 638 regarding the carrier's limited liability shall not apply.

Section 2. Luggage - Ticket

Art. 608. — *Issue of luggage-ticket.*

- (1) A luggage-ticket shall be issued where registered baggage is to be carried by air.

- (2) The luggage-ticket shall show:
 - (a) the place and date of issue;
 - (b) the name and address of the carrier;
 - (c) the number of the passenger's ticket;
 - (d) the place from and to which the baggage is to be carried;
 - (e) the number and weight of the pieces.
- (3) Where the luggage-ticket is not connected with a passenger's ticket under Art. 606 or is not included therein, it shall show that the carrier's liability is limited in respect of the loss of or damage to the baggage.

Art. 609. — *Purpose of luggage-ticket.*

- (1) Unless the contrary is proved, the luggage-ticket shall be proof of the registration of the baggage and of the conditions of the contract of carriage.
- (2) The provisions of this Title shall apply and the contract of carriage shall be valid and remain in force notwithstanding that there is no luggage-ticket or no valid ticket or the ticket has been lost. Where the carrier accepts the baggage without a luggage-ticket or where a luggage-ticket is not connected with or included in a passenger's ticket and does not contain the notice provided in Art. 608 (3), the provisions of Art. 637 regarding the carrier's limited liability shall not apply.

Section 3. Bill of lading

Art. 610. — *Issue of bill of lading.*

Any carrier of goods may require the sender to prepare and to hand to him a document called a bill of lading. Any sender may require the carrier to accept such bill of lading.

Art. 611. — *Bill of lading not issued, not valid or lost.*

The provisions of this Title shall apply and the contract of carriage shall be valid and remain in force notwithstanding that there is no bill of lading or no valid bill or the bill has been lost.

Art. 612. — *Copies of bill of lading.*

- (1) Three copies of the bill of lading shall be prepared by the sender and delivered to the carrier together with the goods.
- (2) The first copy shall bear the words: "for the carrier" and shall be signed by the sender.

- (3) The second copy shall bear the words: "for the addressee." It shall be signed by the sender and the carrier and shall remain with the goods.
- (4) The third copy shall be signed by the carrier and handed to the sender after the goods have been accepted by the carrier.

Art. 613. — *Signatures.*

- (1) The carrier shall sign the bill of lading before the goods are loaded.
- (2) The carrier's signature may be replaced by a stamp. The sender's signature may be printed or replaced by a stamp.
- (3) Unless the contrary is proved, the carrier shall be deemed to act on behalf of the sender where he prepares the bill of lading at the request of the sender.

Art. 614. — *More than one parcel.*

Where more than one parcel is to be carried, the carrier may require the sender to prepare separate bills of lading.

Art. 615. — *Particulars in the bill of lading.*

- (1) The bill of lading shall show:
 - (a) the place and date of issue;
 - (b) the place from and to which the goods are to be carried;
 - (c) the name and addresses of the sender, the addressee and the first carrier;
 - (d) the nature, number of pieces, volume or weight of the goods;
 - (e) the distinguishing marks or numbers affixed on the parcels, if any;
 - (f) the condition of the goods and the nature and condition of packing, if any;
 - (g) the cost of transport;
 - (h) the time within which and the route whereby the goods are to be carried.
- (2) The bill of lading shall contain a notice informing the sender of the carrier's limited liability for loss of or damage to the goods.

Art. 616. — *Bill of lading to order.*

Where the sender and carrier agree, the bill of lading may be to order.

Art. 617. — *Bill of lading not issued or incomplete.*

Where the carrier accepts goods to be loaded without a bill of lading

having been prepared or containing the notice provided in Art. 615 (2), the provisions of Art. 637 regarding the carrier's limited liability shall not apply.

- (1) The sender shall be liable for the accuracy of the statements he makes in the bill of lading.
- (2) He shall be liable for any damage caused to the carrier or to a person for whom the carrier is responsible arising out of irregular, inaccurate or incomplete statements in the bill of lading.

Art. 619. — *Effect of bill of lading.*

- (1) Unless the contrary is proved, a bill of lading shall be proof of the making of the contract, of the receipt of the goods and of the conditions of transport.
- (2) Statements as to the weight, size and packing of the goods and to the number of parcels shall be deemed to be correct unless the contrary is proved.
- (3) Statements as to the quantity, volume or condition of the goods may be proved against the carrier only where the accuracy of the bill of lading has been checked by the carrier in the presence of the sender and the result of the check certified on the bill of lading, or where such statements relate to the apparent condition of the goods.

Chapter 3. Rights and duties of sender and addressee

Art. 620. — *Right of sender to dispose of the goods.*

- (1) Where he carries out all his duties under the contract of carriage, the sender may dispose of the goods, either by withdrawing them from the airport at the place of departure or destination, or by stopping them at a place of call or by causing them to be delivered during the carrying or on completion of the carrying to a person other than the addressee named in the bill of lading or by requiring them to be flown back to the airport at the place of departure.
- (2) The sender may exercise his rights under sub-art. (1) where no damage is caused thereby to the carrier or other senders. He shall be liable for all expenses arising out of the exercise of such rights.
- (3) The carrier shall forthwith inform the sender where instructions given by the sender under sub-art. (1) cannot be carried out.

Art. 621. — *Failure to produce bill of lading.*

- (1) A carrier who complies with instructions given by the sender without

requiring the sender to produce his copy of the bill of lading shall be liable for any damage caused thereby to any person who may have regularly obtained the bill of lading.

- (2) A carrier who has paid compensation for damages under sub-art. (1) may claim against the sender for the reimbursement of such compensation.

Art. 622. — *When sender may not dispose of the goods.*

The sender may not exercise his rights under Art. 620 as from the date when the addressee may exercise his rights under Art. 623, unless the addressee cannot be found or refuses to accept the goods or the bill of lading.

Art. 623. — *Rights of addressee.*

- (1) Unless the sender exercises his right under Art. 620, the addressee may on the arrival of the goods at their destination require the carrier to hand to him the copy of the bill of lading and to deliver the goods to him.
- (2) The provisions of sub-art. (1) shall not apply unless the addressee carries out his duties as to payment and transport under the bill of lading.

Art. 624. — *Notice to addressee.*

Unless otherwise agreed, the carrier shall forthwith inform the addressee of the arrival of the goods.

Art. 625. — *Loss of the goods.*

Where the carrier admits that goods have been lost or where the goods have not arrived within seven days from the date on which they were due, the addressee may require the carrier to discharge his liabilities under the contract of carriage.

Art. 626. — *Rights exercised on behalf of a third party.*

Where they comply with the conditions laid down in the contract of carriage, the sender and addressee may exercise all their rights under the preceding articles in their own name, whether on their own behalf or on behalf of a third party.

Art. 627. — *Relations between sender and addressee.*

Nothing in Art. 620-626 shall affect the relations between the sender and the addressee nor the relations between third parties who have rights from the sender or addressee.

Art. 628. — *Art. 620-626 not applicable in certain cases.*

Any provision contrary to the provisions of Art. 620-626 shall be of no effect unless it is laid down in the bill of lading.

Art. 629. — *Information to be given by sender.*

- (1) The sender shall give all information and annex to the bill of lading all documents necessary for complying with customs, dues or control regulations before the goods can be delivered to the addressee.
- (2) The sender shall be liable for any damage caused to the carrier where he does not give such information or documents or gives inaccurate or incomplete information or documents.
- (3) The provisions of sub-art. (2) shall not apply where a fault has been committed by the carrier or his agent.
- (4) The carrier shall not be bound to examine whether the information or documents given to him are accurate or sufficient.

Chapter 4. Liability of the Carrier

Art. 630. — *Injury to the person.*

The carrier shall be liable for the death of or bodily injury to a passenger due to an accident occurring aboard an aircraft or whilst the passenger was embarking or disembarking.

Art. 631. — *Loss of or damage to baggage or goods.*

The carrier shall be liable for the loss of or damage to registered baggage or goods due to an occurrence having taken place whilst such baggage or goods were carried by air.

Art. 632. — *Carrying by air.*

- (1) Carrying by air within the meaning of Art. 631 shall include the time within which the baggage or goods are in the carrier's custody, whether at the airport or in the aircraft or in any other place not being an airport where the aircraft may have to land.
- (2) Carrying by air shall not include any carrying by land, sea or river taking place outside an airport. In cases of carrying by land, sea or river taking place with a view to loading, delivering or transhipping, any loss or damage shall be deemed to have occurred while the baggage or goods were carried by air, unless the contrary is proved.

Art. 633. — *Delay.*

The carrier shall be liable for any delay in carrying passengers, baggage or goods.

Art. 634. — *Proof of care by carrier.*

The carrier shall not be liable where he can show that he and his agents have taken all measures necessary for averting the damage or that such measures could not be taken.

Art. 635. — *Injured party at fault.*

The court may reduce or waive the carrier's liability where the carrier can show that the damage was caused in whole or in part by the injured party himself.

Art. 636. — *Limitation of liability for damage to the person.*

- (1) The carrier's liability shall not exceed Eth. \$ 40,000 per passenger. Where compensation is to be paid by way of annuity, the capital of the annuity shall not exceed Eth. \$ 40,000.
- (2) The provisions of sub-art. (1) shall apply only where no higher limit has been agreed by the passenger and the carrier.

Art. 637. — *Limitation of liability for baggage or goods.*

- (1) In respect of goods and registered baggage, the carrier's liability shall not exceed Eth. \$ 40 per kg.
- (2) The provisions of sub-art. (1) shall not apply where the sender on handing the goods or baggage to the carrier, expressly specifies that he has a special interest in their delivery and pays such surcharge as may be required.
- (3) In the case provided in sub-art. (2) the carrier shall pay the agreed compensation unless he can show that such compensation exceeds the sender's actual interest in the delivery.
- (4) In the event of loss, damage or delay affecting part only of the registered baggage or goods or any object forming part thereof, the carrier's limited liability shall be determined having regard to the total weight of the baggage, goods or object concerned.
- (5) Where a loss, damage or delay under sub-art. (4) affects other goods carried under the same luggage-ticket or bill of lading, the carrier's limited liability shall be determined having regard to the total weight of the goods concerned.

Art. 638. — *Objects in the passenger's custody.*

In respect of objects in the passenger's custody, the carrier's liability shall not exceed Eth. \$ 800 per passenger.

Art. 639. — *Cases where the limits are exceeded.*

- (1) The limits laid down in Art. 636-638 shall not prevent the court from granting such additional compensation as may be required to cover all or part of the expenses incurred by the plaintiff in bringing his suit.
- (2) The provisions of sub-art. (1) shall not apply where the compensation granted, not including expenses incurred by the plaintiff, does not exceed the sum offered in writing by the carrier to the plaintiff within six months from the occurrence of the damage or before the suit was brought, where it was brought more than six months after the occurrence of the damage.

Art. 640. — *Provisions excluding liability.*

Any provision relieving the carrier from liability or fixing limits lower than those provided in the preceding Articles shall be of no effect, and the provisions of this Title shall apply and the contract shall remain in force.

Art. 641. — *Inherent defect in the goods.*

Notwithstanding the provisions of Art. 640, the carrier may relieve himself of liability for any loss or damage arising out of an inherent defect in the goods carried.

Art. 642. — *Legal proceedings.*

- (1) An action for damages under Art. 631-633 may only be brought on the conditions and subject to the limits provided in this Title.
- (2) The provisions of sub-art. (1) shall also apply to claims under Art. 630, without prejudice to the persons who are entitled to claim and to their respective rights.

Art. 643. — *Liability not limited in certain cases.*

- (1) The provisions of Art. 636, 637 and 638 shall not apply where it is proved that the damage is due to an act or omission of the carrier or his agent, where the carrier or agent knew that such act or omission would or could cause damage.
- (2) Where the act or omission is due to an agent, it shall have to be proved that the agent was acting in the discharge of his duties.

Art. 644. — *Claim against the carrier's agent.*

- (1) Where a claim for damages under this Title is brought against the

carrier's agent, the provisions of Art. 636, 637 and 638 shall apply to the agent, provided he acted in the discharge of his duties.

- (2) The total compensation due from the carrier and the agent shall not exceed the limits laid down in Art. 636, 637 and 638.
- (3) The provisions of sub-art. (1) and (2) shall not apply where it is proved that the damage is due to the agent's act or omission and the agent knew that such act or omission would or would be likely to cause damage.

Art. 645. — *Acceptance and protest.*

- (1) Unless the contrary is proved, unconditional acceptance of baggage or goods by the addressee shall be proof that the goods have been delivered in good condition and in accordance with the bill of lading.
- (2) In cases of damage, the addressee shall enter a protest against the carrier as soon as he is aware of the damage or within not more than seven days from the delivery of the baggage and not more than fourteen days from the delivery of the goods.
- (3) In cases of delay, protest shall be entered within not more than twenty-one days from the date on which the baggage or goods were delivered to the addressee.
- (4) Protest under this Article shall be entered by a notice on the bill of lading or by any other document sent to the carrier within the periods provided in this Article.
- (5) Where protest is not entered in due time, no claim may be brought against the carrier, unless there has been fraud on the carrier's part.

Art. 646. — *Death of debtor.*

Where the debtor dies, claims for damages under this Title shall be brought against those having rights from him.

Art. 647. — *Jurisdiction.*

- (1) Any claim for damages under this Title may be brought, in the discretion of the plaintiff, either before the court of the place where the carrier is domiciled, has his principal place of business or has an agent who made the contract or before the court of the place of destination.
- (2) Any provision contrary to the provisions of sub-art. (1) shall be of no effect.
- (3) In respect of carriage of goods, provisions may be made with a view to arbitration, provided such arbitration is to take place in any of the places mentioned in sub-art. (1).

Art. 648. — *Limitation.*

Any claim for damages under this Title shall be barred after two years from the day when the aircraft arrived or should have arrived or when the carrying was abandoned.

Art. 649. — *Definition of days.*

For the purpose of this Title "days" shall include all days, whether working days or holidays.

Chapter 5. Provisions applicable to certain forms of transport

Art. 650. — *Extraordinary circumstances.*

The provisions of Art. 606-617 of this Code relating to transport titles shall not apply to carriage taking place in extraordinary circumstances outside normal operation of the transport undertaking.

Art. 651. — *Successive carriers.*

For the purpose of this Title, carriage by air undertaken by successive carriers shall be deemed to be one carriage where it has been regarded by the parties as a single operation and whether it was provided in one or more contracts.

Art. 652. — *Liability of successive carriers.*

- (1) In cases of carriage by air undertaken by successive carriers, the provisions of this Title shall apply to each carrier who carries passengers, baggage or goods and the carrier shall be deemed to be a party to the contract of carriage where such contract relates to that part of carrying to be effected under that carrier's responsibility.
- (2) In cases of carriage as defined in sub-art. (1), the passenger or those having rights from him may only claim against the carrier in charge of that part of the journey during which the accident or delay occurred, unless it has been expressly specified that the liability of the first carrier would extend to the whole journey.
- (3) In respect of goods or registered baggage, the sender may claim against the first carrier and the addressee may claim against the last carrier. The sender and addressee may in addition claim against the carrier in charge of that part of the carrying during which the loss, whether total or partial, the damage or the delay occurred.
- (4) The carriers mentioned in sub-art. (3) shall be jointly and severally liable to the sender and addressee.

Art. 653. — *Combined carriage.*

- (1) In cases of combined carriage effected partly by air and partly by other means of transport, the provisions of this Title shall apply to the carrying by air only.
- (2) The parties may make provisions on other means of transport in the provisions of this Title regarding carrying by air.

TITLE III. INSURANCE

Chapter 1. General Provisions

Art. 654. — *Definition.*

- (1) An insurance policy is a contract whereby a person, called the insurer, undertakes against payment of one or more premiums to pay to a person, called the beneficiary, a sum of money where a specified risk materialises.
- (2) Where damages are insured, the insurance policy shall extend to the risks affecting property or arising out of the insured person's civil liability.
- (3) Where persons are insured, the insurance policy shall extend to risks arising out of death or life, or to risks arising out of injury to the person or illness.

Art. 655. — *Scope of application of this Title.*

- (1) The provisions of this Title shall apply to insurance of risks arising on land, on rivers or in the air.
- (2) They shall not apply to marine insurance which shall be subject to the relevant provisions of the Maritime Code, nor to State insurance.

Art. 656. — *Insurance companies.*

The conditions on which physical persons or business organisations may carry on insurance business shall be provided by law.

Chapter 2. Provisions applicable to all forms of insurance

Section 1. Insurance Policy

Art. 657. — *Proof of contract of insurance.*

- (1) The contract of insurance shall be supported by a document called an insurance policy.
- (2) The policy may only be varied in writing by documents called endorsements.

- (3) The insurer and beneficiary shall be bound where, prior to the signature of the policy or endorsements, the insurer hands to the beneficiary a document setting up a provisional guarantee until the policy or endorsement is signed.

Art. 658. — *Particulars in the policy.*

The insurance policy shall show:

- (a) the place and date of the contract;
- (b) the names and addresses of the parties;
- (c) the item, liability or person insured;
- (d) the nature of the risks insured;
- (e) the amount of the guarantee;
- (f) the amount of the premium;
- (g) the term for which the contract is made.

Art. 659. — *Entry into force of insurance policy.*

- (1) Unless otherwise expressly specified, the insurance policy shall come into force on the day when the policy is signed.
- (2) Provisions may be made to the effect that the policy shall only come into force after the first premium has been paid.

Art. 660. — *Policy to order.*

- (1) The policy may be in the name of a specified person or to order.
- (2) The insurer may set up against the assignee or endorsee the defences which he could have set up against the original beneficiary.

Art. 661. — *Policy made on behalf of a third party.*

- (1) An insurance policy may be made by an accredited agent.
- (2) An insurance policy may be made on behalf of a third party even where the subscriber is not an agent. The beneficiary may avail himself of the insurance policy where he accepted it. Such acceptance may be given even after the risk insured has materialised. The subscriber shall incur all liabilities under the contract until the policy is accepted by the beneficiary.

Art. 662. — *Policy made for an unspecified third party.*

- (1) A contract of insurance may be made for an unspecified third party who may eventually have an interest. It shall be deemed to be made on behalf of the prospective beneficiary.

- (2) The subscriber of a policy under sub-art. (1) shall be liable to pay the premiums. The insurer may set up against the beneficiary the defences which he could have set up against the subscriber.

Section 2. Rights and duties of the parties

Art. 663. — *Risks insured.*

- (1) The insurer shall guarantee the beneficiary against the risks specified in the policy.
- (2) Unless otherwise agreed, risks arising out of unforeseen events or the negligence of the beneficiary shall be covered by the insurance.
- (3) Notwithstanding any provision to the contrary, risks arising out of the intentional default of the beneficiary shall not be covered by the insurance.

Art. 664. — *Faults committed by persons for whom the beneficiary is responsible.*

- (1) The insurer shall guarantee the beneficiary against losses or damages due to the fault of persons for whom the beneficiary is responsible.
- (2) The provisions of sub-art. (1) shall apply regardless of the nature or gravity of the fault committed.

Art. 665. — *Duties of insurer.*

- (1) The insurer shall pay the agreed sum within the time specified in the policy or when the risk insured against occurs or at the time specified in the policy.
- (2) The insurer's liability shall not exceed the amount specified in the policy.

Art. 666. — *Payment of premiums.*

- (1) The beneficiary shall pay the agreed premium at the time specified in the policy.
- (2) Notwithstanding any provision to the contrary, the policy shall not terminate as of right when the premium is not paid in due time. The insurer shall demand payment.
- (3) Notwithstanding any provision to the contrary, the policy shall be suspended after one month from a demand under sub-art. (2) where the premium is not paid.
- (4) Where the period of one month has expired, the insurer may claim payment of the premium or require the termination of the policy.

- (5) Where the premium is paid, the policy shall re-enter into force on the day of payment.
- (6) The provisions of this Article shall not apply to life insurance.

Art 667. — *Statements on making proposals for a policy.*

On making proposals for a policy, the beneficiary shall state exactly all the circumstances within his knowledge and which are likely to assist the insurer to appreciate fully the risks he undertakes to insure.

Art. 668. — *Facts concealed and false statements.*

- (1) The policy shall be of no effect where the beneficiary intentionally concealed facts or made false statements and such concealment or false statements cause the insurer wrongly to appreciate the risks to be insured so that, had he been aware of the truth, the insurer would not have entered into the policy or would have imposed terms less favourable to the beneficiary. The insurer shall retain all premiums paid.
- (2) Notwithstanding any provision to the contrary, the policy shall remain in force where concealment or false statements are not deliberate and it cannot be shown that the beneficiary acted in bad faith.
 - (a) Where concealment or false statements are discovered before the risk materialises, the insurer may terminate the policy by giving one month's notice or may maintain the policy and increase the premium.
 - (b) Where concealment or false statements are discovered after the risk has materialised, the sum to be paid by the insurer shall be reduced having regard to the difference between the premiums actually paid and the premiums which ought to have been paid, had the beneficiary not concealed the facts or made no false statements.

Art. 669. — *Increase of risks.*

- (1) Where the risks increase in such a manner that the insurer, had he known the facts at the time when the policy was made, would not have entered into the policy or would have imposed terms less favourable to the beneficiary, the beneficiary shall inform the insurer within fifteen days from the occurrence increasing the risks, where such occurrence is due to the beneficiary, or within fifteen days from the beneficiary being aware of such occurrence. These periods may not be shortened in the policy.

- (2) The insurer may terminate the policy or maintain it and increase the premium.
- (3) The provisions of Art. 668 shall apply where the beneficiary does not inform the insurer under sub-art. (1) or gives false information.
- (4) The provisions of this Article shall not apply to life insurance.

Art. 670. — *Occurrence of risk to be notified.*

- (1) Unless he is prevented by force majeure, the beneficiary shall inform the insurer of any occurrence likely to render the insurer liable as soon as he knows of such occurrence or within not more than five days.
- (2) This period may not be shortened in the policy.

Art. 671. — *Bankruptcy.*

- (1) The insurance policy shall not terminate as of right where the beneficiary is declared bankrupt. The trustees in bankruptcy shall benefit by the policy and shall be liable for the unpaid premiums.
- (2) The trustees in bankruptcy and the insurer may terminate the policy within three months from the judgment in bankruptcy.
- (3) The policy shall terminate within one month from the insurer being declared bankrupt.

Art. 672. — *Death of beneficiary.*

- (1) Notwithstanding any provision to the contrary, the policy shall continue with the heirs where the beneficiary dies.
- (2) The heirs and the insurer may terminate the policy within three months from the beneficiary's death.

Art. 673. — *Assignment of object insured.*

- (1) Notwithstanding any provision to the contrary, the policy shall continue with the assignee where the object insured is assigned.
- (2) The assignee and the insurer may terminate the policy within three months from the assignment.

Section 3. Limitation

Art. 674. — *Limitation.*

- (1) Any claim arising out of a contract of insurance shall be barred after two years from the occurrence giving rise to the claim or from the day when the parties knew of the occurrence.
- (2) In case of concealment or false statements, the period of limitation shall run from the day when the insurer knew of the concealment or false statement.

- (3) The periods provided in this Article may not be shortened in the policy.

Chapter 3. Insurance against damages

Section 1. Insurance of objects

Art. 675. — *Insurance permitted.*

- (1) Any person interested in the preservation of an object may insure it.
- (2) Any direct or indirect interest in a risk may be insured.

Art. 676. — *Risks excluded.*

- (1) Unless otherwise agreed, the insurer shall not be liable for losses or damages due to international or civil war.
- (2) The insurer shall establish that the loss or damage occurred as provided in sub-art. (1).

Art. 677. — *Loss of object insured.*

The policy shall terminate as of right where the object insured is lost for a reason not specified in the policy.

Art. 678. — *Compensation.*

A contract for the insurance of an object is a contract for compensation. The compensation shall not exceed the value of the object insured on the day of the occurrence.

Art. 679. — *Object underinsured.*

Where on the day of the occurrence the object insured is of a value greater than the amount for which it is insured, the insured person shall be deemed to be his own insurer for the difference and shall share proportionately in the damage, unless otherwise provided in the policy.

Art. 680. — *Object overinsured.*

- (1) Where the compensation provided in the policy exceeds the value of the object insured and there has been fraud on the part of either party, the other party may require the policy to terminate and may in addition claim damages.
- (2) Where there has been no fraud, the policy shall remain in force but to the extent only of the actual value of the object insured.
- (3) Where the beneficiary requires the insurance to be reduced, the insured shall be entitled to reduced premiums but he shall retain all premiums paid prior to the reduction.

Art. 681. — *Cumulative insurance.*

- (1) Where several insurers insure the same object against the same risk so that the object is overinsured, each insurer may, where there has been fraud on the part of the beneficiary, require the termination of the policy and may in addition claim damages.
- (2) Where the beneficiary is in good faith, each insurer shall, where the risk materialises, pay compensation in proportion to the value insured by him.

Art. 682. — *Loss of object insured.*

- (1) The policy shall be of no effect where, at the time when it is made, the object is already lost or no longer exposed to a risk. The premiums paid shall be refunded to the beneficiary.

Art. 683. — *Substitution of insurer.*

- (1) The insurer who has paid the agreed compensation shall substitute himself to the extent of the amount paid by him for the beneficiary for the purpose of claiming against third parties who caused the damage.
- (2) Where the beneficiary makes substitution under sub-art. (1) impossible, the insurer may be relieved in whole or in part of his liabilities to the beneficiary.
- (3) Notwithstanding any provision to the contrary, the insurer may not claim against the ascendants, descendants, agents or employees of the insured person nor against persons living with him, unless such persons have acted maliciously.

Art. 684. — *Rights of privileged and secured creditors.*

- (1) Notwithstanding any provision to the contrary, where a mortgaged object is insured, compensation shall be paid to the mortgagee. The mortgagee may claim directly from the insurer who may set up the defences which he could have set up against the beneficiary.
- (2) Payments made in good faith by the insurer to the insured in ignorance of the mortgage shall be valid.

Section 2. Insurance of liability for damages

Art. 685. — *Insurer when liable.*

The insurer who insured a liability for damages shall not pay compensation until a claim is made against the insured person with a view to amicable or judicial settlement.

Art. 686. — *Liability admitted.*

- (1) Provisions may be made to the effect that admission of liability or compromise made without the insurer's consent may not be set up against the insurer.
- (2) Admission of a fact does not amount to admission of liability.

Art. 687. — *Direction of the case.*

- (1) Provisions may be made to the effect that the insurer shall have the direction of any civil case originating from a claim brought by the injured party.
- (2) Any provision to the effect that the insurer shall have the direction of any criminal case originating from criminal proceedings instituted against the beneficiary shall be of no effect. The beneficiary may, in particular, exercise or refuse to exercise his right of recourse.

Art. 688. — *Compensation to be paid to injured party.*

- (1) No insured person shall receive compensation until the third party injured has been paid to the extent of the amount insured.
- (2) Any stipulation contrary to the provisions of this Article shall be of no effect.

Chapter 4. Insurance of persons

Section 1. General provisions

Art. 689. — *Amount insured freely fixed.*

A contract for the insurance of persons shall not be deemed to be a contract for compensation. The amount insured may be freely fixed and shall be due regardless of the damage suffered by the insured person.

Art. 690. — *Substitution not possible.*

Notwithstanding any provision to the contrary, the insured who has paid the agreed amount may not substitute himself for the subscriber or beneficiary for the purpose of claiming against third parties who caused the damage.

Section 2. Life insurance

Art. 691. — *Definition.*

A life insurance is a contract whereby the insurer undertakes against the payment of one or more premiums to pay to the subscriber or to the beneficiary a specified sum on certain conditions dependent upon the life or death of the subscriber or third party insured.

Art. 692. — *Life insurance.*

- (1) The insurer who enters into a life insurance undertakes to pay a

specified capital or life interest provided the insured person is alive at a date fixed in the policy.

- (2) The insurer who enters into an insurance for the event of death undertakes to pay, on the death of the insured person a specified capital or life interest to those having rights from the insured person or to the beneficiary named in the policy.
- (3) A combined policy may be made where the insurer undertakes to pay both under sub-art. (1) and sub-art. (2).

Art. 693. — *Life insurance made by third party.*

An insurance policy for the event of death may be made by a third party. Such policy shall be of no effect unless the insured person agrees in writing and indicates the amount insured. Where the insured person is married, the consent of his spouse shall be required.

Art. 694. — *Incapable person insured.*

An insurance policy made for the event of the death of an incapable person shall be of no effect notwithstanding that the incapable person or his legal representative agreed to the insurance. The policy may be cancelled on the application of any interested party and all premiums paid shall be refunded.

Art. 695. — *Particulars in life insurance policy.*

In addition to the particulars required under Art. 658, a life insurance policy shall show:

- (a) the name, surname and the date of birth of the insured person;
- (b) the name and surname of the beneficiary, if he is known;
- (c) the occurrence on which the payment of the agreed amount depends;
- (d) the manner of calculating any reduction in the value of the policy or its redemption value.

Art. 696. — *Policy to order.*

Where the policy is to order, the endorsement of the policy shall be of no effect unless it is dated and shows the name of the beneficiary.

Art. 697. — *Pledge.*

A life insurance policy may be pledged by annexing a schedule to this effect to the policy or by endorsing a policy to order or in accordance with Art. 2866 of the Civil Code.

Art. 698. — *Insured person to agree to assignment or pledge.*

The assignment, endorsement or pledge of the policy or the changing of the beneficiary named in the policy shall be of no effect unless the insured person agrees in writing.

Art. 699. — *Suicide.*

- (1) Notwithstanding any provision to the contrary, an insurance policy for the event of death shall be of no effect where the insured person knowingly commits suicide. The insurer shall establish that suicide was committed knowingly.
- (2) The policy shall be effective where the beneficiary can show that suicide was not committed knowingly.

Art. 700. — *Murder of beneficiary.*

An insurance policy for the event of death shall be of no effect where the beneficiary intentionally kills the insured person and is convicted thereof by a criminal court.

Art. 701. — *Beneficiary of insurance policy.*

- (1) An insurance policy for the event of death may be made to the benefit of specified beneficiaries.
- (2) The following persons shall be deemed to be specified beneficiaries notwithstanding that they are not mentioned by name:
 - (a) the subscriber's spouse, even where the marriage took place after the policy was entered into;
 - (b) the subscriber's children, whether or not born at the time when the policy is entered into.
- (3) Where the beneficiary is not specified in the policy or the beneficiary specified in the policy does not agree, the subscriber may name a beneficiary or substitute a beneficiary for another by will, schedule or endorsement.

Art. 702. — *Beneficiary must be alive.*

Unless otherwise agreed, the benefit shall be deemed to be payable only on the condition that the beneficiary be alive on the day when the capital or life interest is to be paid.

Art. 703. — *Agreement of beneficiary.*

- (1) The allocation of the benefit of a policy to a specified beneficiary may not be revoked after the beneficiary has agreed to the policy.

- (2) The allocation of the benefit of a policy to a specified beneficiary may be revoked until such time as the beneficiary has agreed to the policy.

Art. 704. — *Effect on insurer.*

The agreement of the beneficiary or the revocation of the beneficiary may not be pleaded against the insurer unless he was aware thereof.

Art. 705. — *Beneficiary not specified.*

Where no beneficiary has been specified or he has been revoked or is not alive, the capital to be paid by the insurer shall be paid into the subscriber's estate.

Art. 706. — *Rights of beneficiary.*

- (1) The beneficiary may claim directly against the insurer.
- (2) The sums to be paid to a specified beneficiary shall not form part of the insured person's estate. The beneficiary shall be deemed to be entitled thereto as from the day when the policy was entered into, notwithstanding that he agreed to the policy after the death of the insured person.
- (3) The sums to be paid to the subscriber's spouse shall be regarded as the personal property of that spouse.

Art. 707. — *No refund.*

The sums paid to the beneficiary shall not have to be refunded to the inheritance.

Art. 708. — *Rights of creditors.*

- (1) The creditors of the insured person have no right on the sums to be paid to the beneficiary.
- (2) The provisions of Art. 1029 (a) of this Code shall not apply where the insured person is declared bankrupt.

Art. 709. — *Premiums not paid.*

- (1) The insurer may not bring an action for the payment of premiums due in respect of a life insurance.
- (2) If a premium has not been paid at the due date on a policy on which less than three annual premiums have been paid, the insurer may demand payment. If payment is not made within one month from the date of the demand, the insurer may terminate the policy. This period may not be shortened in the policy.

- (3) If a premium has not been paid at the due date on a policy on which at least three annual premiums have been paid and payment is not made within one month from the date of a demand for payment, the policy shall not lapse. The insurer may issue a paid up policy or otherwise reduce the capital or life interest of the policy according to regulations made under Art. 656.

Art. 710. — *Redeeming.*

- (1) Notwithstanding any provision to the contrary, the insured person may, at any time after three annual premiums have been paid, ask to redeem an insurance policy made for the event of his death.
- (2) The manner of calculating the price of redeeming shall be specified in the policy according to regulations made under Art. 656.
- (3) The provisions of this Article shall not apply to provisional insurance policies for the event of death.

Section 3. Insurance against accidents and illness

Art. 711. — *Risks insured.*

- (1) An insurance policy against accidents is a contract whereby the insurer undertakes to pay a specified sum to the insured person where the insured person is the victim of an accident during the period specified in the policy, or to the beneficiary named in the policy, where the insured person dies.
- (2) The insurer may limit his guarantee to specified accidents or specified consequences of an accident.
- (3) Accident includes any bodily injury arising out of unexpected extraneous occurrences.
- (4) The insurer may insure against illness.

Art. 712. — *Provisions relating to life insurance not applicable.*

The provisions of Section 2 of this Chapter relating to life insurance shall not apply to insurance against accidents or illness.

TITLE IV. GAMES AND GAMBLING

Art. 713. — *Games and gambling.*

- (1) The provisions relating to insurance shall not apply to operations which are in the nature of games or gambling.
- (2) Without prejudice to the provisions of Art. 714, games and gambling shall not give rise to valid claims for payment.

- (3) Where a person capable under civil law has spontaneously paid a debt arising out of a game or gambling in which no fraud has been committed, such person cannot claim back the sum paid.

Art. 714. — *Defence based on game not admissible.*

- (1) A defence based on game shall not be admissible in respect of stock exchange speculations, even where such speculations are liquidated by paying the differences, and regardless of the profession and intention of the parties and of the importance of the speculations.
- (2) A defence based on game shall not be admissible in respect of games or gambling connected with sporting activities but the court may reduce the amount claimed where it thinks it to be excessive.
- (3) A defence based on game shall not be admissible in respect of any lottery or betting authorised by the government.

BOOK IV

NEGOTIABLE INSTRUMENTS AND BANKING TRANSACTIONS TITLE I. GENERAL PROVISIONS

Art. 715. — *Definitions.*

- (1) A negotiable instrument is any document incorporating a right to an entitlement in such manner that it be not possible to enforce or transfer the right separately from the instrument.
- (2) The law recognises in particular as negotiable instruments commercial instruments, transferable securities, documents of title to goods.

Art. 716. — *Obligations arising out of negotiable instruments.*

- (1) The possessor of a negotiable instrument has a right to the entitlement as expressed in the instrument against presentment of the said instrument to the debtor, on condition that he establishes that he is a lawful possessor in the manner provided by law.
- (2) The debtor shall only pay against delivery of the instrument.
- (3) Except in case of fraud or gross negligence on his part, the debtor shall be released by payment at maturity to the person to whom the instrument gives the capacity of creditor, notwithstanding that the said person is not the holder of the right.

Art. 717. — *Defences.*

- (1) The debtor may only set up against the holder of the instrument defences based on their personal relations, defences of form and those based on the text of the instrument.

- (2) He may set up defences based on falsification of signature, lack of capacity or power of representation at the time of issue of the instrument, or on the absence of the necessary conditions for bringing the proceedings.
- (3) The debtor may not set up against the holder of the instrument defences based on his personal relations with preceding holders, unless the holder, in acquiring the instrument, has knowingly acted to the detriment of the debtor.

Art. 718. — *Holder in due course.*

No claim for recovery may be made against a person who has acquired a negotiable instrument in due course, in accordance with the rules applying to negotiation.

Art. 719. — *Forms of transfer.*

According to the forms provided for their transfer, negotiable instruments may be to bearer, in a specified name or to order.

Art. 720. — *Conversion of instruments.*

- (1) Negotiable instruments to bearer may be converted into instruments in a specified name by the person issuing them, on the request and at the expense of the possessor.
- (2) Except where conversion is forbidden by law or expressly by the person issuing the instruments, instruments in a specified name may be converted into instruments to bearer, on the request and at the expense of the holder, the latter establishing his identity and his capacity in accordance with the provisions of Art. 723 (2).

Art. 721. — *Instruments to bearer. Transfer and establishment of right by holder.*

- (1) An instrument to bearer shall be transferred by delivery of the instrument.
- (2) The holder of an instrument to bearer establishes his right to the entitlement as expressed in the instrument by the sole fact of presentation of the said instrument.

Art. 722. — *Instruments in a specified name. Establishment of right by holder.*

The holder of an instrument in a specified name establishes his right to the entitlement as expressed in the instrument by the fact of his designation as beneficiary therein and in the register held by the person issuing the said instrument.

Art. 723. — *Instruments in a specified name. Transfer.*

- (1) Instruments in a specified name may be transferred by the entry of the name of the transferee in the instrument and in the register held by the person issuing the said instrument. They may also be transferred by delivery of a new instrument in the name of the new holder. Such delivery shall be entered in the register.
- (2) A person requesting registration of an instrument in favour of another person, or delivery of a new instrument registered in the name of the latter shall establish his identity and his capacity to dispose thereof under the law. If any of these formalities is required by the transferee, the said transferee shall produce the instrument and establish his rights by deed drawn up by a public officer.
- (3) The person issuing the instrument shall be liable for making the necessary entries in the register and the instrument.
- (4) A person who issues and transfers an instrument under this Article shall be liable only for fault.

Art. 724. — *Instruments to order. Transfer and establishment of right by holder.*

- (1) Instruments to order may be transferred by endorsement, followed by delivery of the instrument to the beneficiary under the transfer.
- (2) The holder of an instrument to order establishes his right to the entitlement as expressed in the instrument by an uninterrupted series of endorsements, even if the last endorsement is in blank. Cancelled endorsements shall be deemed not to be written. Where an endorsement in blank is followed by another endorsement, the signatory of this last endorsement shall be deemed to have acquired the instrument by the endorsement in blank.

Art. 725. — *Forms of endorsement.*

- (1) An endorsement shall be written on the instrument and signed by the endorser.
- (2) An endorsement not containing the name of the endorsee shall be valid.
- (3) An endorsement "to bearer" shall be equivalent to an endorsement in blank.
- (4) An endorsement shall be unconditional. Any condition to which it is made subject shall be of no effect.
- (5) A partial endorsement shall be null and void.

Art. 726. — *Effects of endorsement.*

- (1) An endorsement transfers all the rights arising out of the instrument.
- (2) If the endorsement is in blank, the holder may:
 - (a) fill up the blank either with his own name or that of another person; or
 - (b) re-endorse the instrument in blank or to another person; or
 - (c) transfer the instrument to a third person, without filling up the blank and without endorsing it.

Art. 727. — *Obligations of endorser.*

Unless otherwise provided by law or by the instrument, the endorser shall not be liable where the person issuing the instrument fails to carry out his obligations.

Art. 728. — *Endorsement for collection or by attorney.*

- (1) Where the endorsement contains the words "value in collection," "for collection," "by attorney" or any other similar words implying agency, the holder may exercise all the rights arising out of the instrument, but he can only endorse it in his capacity as agent.
- (2) The person issuing the instrument may only set up against the agent such defences as could be set up against the principal.
- (3) The agency granted by power of attorney shall not terminate by reason of the death of the principal or his becoming legally incapable.

Art. 729. — *Endorsement in pledge.*

- (1) Where the endorsement contains the words "value in security," "value in pledge" or any other similar words implying pledge, the holder may exercise all the rights arising out of the instrument, but his endorsement has the effects only of an endorsement by an agent.
- (2) The person issuing the instrument may only set up against the endorsee in pledge such defences as are based on his personal relations with the endorser, unless the endorsee, in receiving the instruments, knowingly acted to the detriment of the debtor.

Art. 730. — *Assignment of instruments to order.*

Acquisition of an instrument to order by means other than endorsement gives rise to the effects of an ordinary assignment only.

Art. 731. — *Negotiable instruments damaged, destroyed, lost or stolen.*

The procedure to be followed in the case of negotiable instruments damaged, destroyed, lost or stolen shall be prescribed.

TITLE II. COMMERCIAL INSTRUMENTS
Chapter 1. General Provisions

Art. 732. — Definitions.

- (1) Commercial instruments are negotiable instruments setting out an entitlement consisting in the payment of a sum of money.
- (2) Bills of exchange, promissory notes, cheques, travellers cheques and warehouse goods deposit certificates shall be deemed to be commercial instruments under this Code.
- (3) The provisions of Art. 2813-2824 of the Civil Code shall apply to warehouse goods deposit certificates.

Art. 733. — Legal capacity.

Any person having contractual capacity may bind himself by commercial instrument.

Art. 734. — Signature.

- (1) Declarations made by commercial instruments shall bear the signature of the person making them.
- (2) Nevertheless, signature may be apposed by a handwritten mark or by mechanical process such as a stamp.
- (3) When a physical person is unable to sign, his consent shall be evidenced by an authentic declaration on the instrument.

Chapter 2. Bills of Exchange

Section 1. Establishment and form of bills of exchange

Art. 735. — Requirements.

A bill of exchange shall contain:

- (a) the term "bill of exchange" inserted in the body of the instrument and expressed in the language employed in drawing up the instrument;
- (b) an unconditional order to pay a sum certain in money;
- (c) the name of the person who is to pay (drawee);
- (d) the time of payment;
- (e) the place of payment;
- (f) the name of the person to whom or to whose order payment is to be made or an indication that it shall be payable to bearer;
- (g) the date when and place where the bill is issued;
- (h) the signature of the person who issues the bill (drawer).

Art. 736. — *Requirements absent.*

Where any of the requirements provided in Art. 735 is absent the instrument shall not be valid as a bill of exchange, except in the cases specified in sub-art. (a), (b) and (c) hereunder:

- (a) a bill of exchange in which the time of payment is not specified shall be deemed to be payable at sight;
- (b) unless otherwise expressly specified, the place mentioned beside the name of the drawee shall be deemed to be the place of payment, and at the same time the place of the domicile of the drawee;
- (c) a bill of exchange which does not mention the place of its issue shall be deemed to have been drawn in the place mentioned beside the name of the drawer.

Art. 737. — *Special cases.*

- (1) A bill of exchange may be drawn payable to drawer's order.
- (2) It may be drawn on the drawer himself.
- (3) It may be drawn for account of a third person.

Art. 738. — *Domiciled bill.*

A bill of exchange may be payable at the domicile of a third party, either in the locality where the drawee has his domicile or in another locality.

Art. 739. — *Stipulation as to interest.*

- (1) In a bill of exchange payable at sight or at a fixed period after sight, payment of interest may be provided. A provision as to interest inserted in any other bill of exchange shall be of no effect.
- (2) The provision for interest shall be of no effect unless the rate is specified.
- (3) Interest shall run from the date of the bill of exchange, unless some other date is specified.

Art. 740. — *Discrepancy in the sum payable.*

- (1) Where the sum payable by a bill of exchange is expressed both in words and figures and there is a discrepancy, the sum expressed in words shall prevail.
- (2) Where the sum payable by a bill of exchange is expressed more than once in words or more than once in figures and there is a discrepancy, the smaller sum shall prevail.

Art. 741. — *Signature of persons incapable of binding themselves.*

If a bill of exchange bears signatures of persons incapable of binding themselves by a bill of exchange, forged signatures, signatures of fictitious persons or signatures which for any other reason cannot bind the persons who signed the bill of exchange or on whose behalf it was signed, the obligations of the other persons who have signed it shall be valid.

Art. 742. — *Signature without power to act.*

Whosoever signs a bill of exchange on behalf of person for whom the had no power to act shall be bound himself as a party to the bill and, if he pays, shall have the same rights as the person for whom he purported to act. The same rule shall apply to an agent who exceeded his powers.

Art. 743. — *Liability of drawer.*

The drawer guarantees both acceptance and payment. He may release himself from guaranteeing acceptance. Any provision by which he releases himself from the guarantee of payment shall be of no effect.

Art. 744. — *Bill of exchange in blank.*

If a bill of exchange, which was incomplete when issued, has been completed otherwise than in accordance with the agreements entered into, the non-observance of such agreements may not be set up against the holder unless he has acquired the bill of exchange in bad faith or, in acquiring it, has committed a fault.

Art. 745. — *Ante or post dated bill of exchange.*

- (1) A bill of exchange shall not be null and void for the sole reason that it has been antedated or postdated, provided that there is no fraud or illegality.
- (2) A person to whom an instrument so dated is delivered is deemed to have acquired it at the date of delivery.

Section 2. Negotiation of bills of exchange

Art. 746. — *Negotiability.*

- (1) A bill of exchange to bearer may be transferred by simple delivery of the instrument.
- (2) Any other bill of exchange, even if not expressly drawn to order, may be transferred by endorsement. When the drawer has inserted in a bill of exchange the words "not to order" or similar words,

the instrument can only be transferred according to the form, and with the effects, of an ordinary assignment.

- (3) The bill may be endorsed even in favour of the drawee, whether he has accepted it or not, or of the drawer, or of any other party to the bill.
- (4) These persons may re-endorse the bill.

Art. 747. — *Elements of endorsement.*

- (1) An endorsement shall be unconditional. Any condition to which it is made subject shall be of no effect.
- (2) A partial endorsement shall be null and void.
- (3) An endorsement "to bearer" is equivalent to an endorsement in blank.

Art. 748. — *Forms of endorsement.*

- (1) An endorsement shall be written on the bill of exchange or on a slip affixed thereto (allonge). It shall be signed by the endorser.
- (2) The endorsement may leave the beneficiary unspecified or may consist simply of the signature of the endorser (endorsement in blank). In the latter case, the endorsement to be valid shall be written on the back of the bill of exchange or on the slip affixed thereto (allonge).

Art. 749. — *Effects of endorsement.*

- (1) An endorsement transfers all the rights arising out of a bill of exchange.
- (2) If the instrument is in blank, the holder may:
 - (a) fill up the blank either with his own name or with the name of some other person;
 - (b) re-endorse the bill in blank, or to some other person;
 - (c) transfer the bill to a third person without filling up the blank and without endorsing it.

Art. 750. — *Guarantee.*

- (1) In the absence of any provision to the contrary, the endorser guarantees both acceptance and payment.
- (2) He may prohibit any further endorsement; in this case he gives no guarantee to the persons to whom the bill is subsequently endorsed.

Art. 751. — *Establishment of title by holder.*

- (1) The possessor of a bill of exchange shall be deemed to be the lawful holder if he establishes his title to the bill through an uninterrupted series of endorsements, even if the last endorsement is in blank. Cancelled endorsements shall be deemed not to be written. Where an endorsement in blank is followed by another endorsement, the person who signed this last endorsement shall be deemed to have acquired the bill by the endorsement in blank.
- (2) Where a person has been dispossessed of a bill of exchange, in any manner whatsoever, the holder who establishes his right thereto as provided in sub-art. (1) shall not be bound to give up the bill unless he has acquired it in bad faith or unless in acquiring it he has committed a fault.

Art. 752. — *Defences.*

Persons sued on a bill of exchange cannot set up against the holder defences based on their personal relations with the drawer or with previous holders, unless the holder, in acquiring the bill, has knowingly acted to the detriment of the debtor.

Art. 753. — *Endorsement by attorney.*

- (1) Where an endorsement contains the words "value in collection," "for collection," "by attorney" or any other similar words implying agency, the holder may exercise all the rights arising out of the bill of exchange, but he can only endorse it in his capacity as agent.
- (2) The parties liable can only set up against the agent defences which could be set up against the principal.
- (3) The agency granted by power of attorney shall not terminate by reason of the death of the principal or his becoming legally incapable.

Art. 754. — *Endorsement in pledge.*

- (1) Where an endorsement contains the words "value in security," "value in pledge" or any other similar words implying a pledge, the holder may exercise all the rights arising out of the bill of exchange, but an endorsement by him has the effects only of an endorsement by an agent.
- (2) The persons sued on the bill may not set up against the holder defences based on their personal relations with the endorser unless the holder, in acquiring the bill, has knowingly acted to the detriment of the debtor.

Art. 755 — *Endorsement after maturity or after protest.*

- (1) An endorsement after maturity shall have the same effect as an endorsement before maturity. An endorsement after protest for non-payment, or after the expiration of the limit of time fixed for drawing up the protest, shall operate only as an ordinary assignment.
- (2) Unless the contrary is proved, an endorsement without date shall be deemed to have been written on the bill before the expiration of the limit of time fixed for drawing up the protest.
- (3) Where a refusal to pay has been evidenced by a declaration of the drawee in accordance with Art. 781 (2), an endorsement without date shall be deemed to have been made before the protest.

Art. 756. — *Presumption as to the place of endorsement.*

Unless the contrary is proved, an endorsement shall be deemed to have been written on the bill at the place where the endorsement is dated.

Section 3. Acceptance

Art. 757. — *Presentment for acceptance.*

Until maturity a bill of exchange may be presented to the drawee for acceptance at his domicile, either by the holder or by a person who is merely in possession of the bill.

Art. 758. — *Order or prohibition as to presentment.*

- (1) In any bill of exchange the drawer may stipulate that it be presented for acceptance with or without fixing a limit of time for presentment.
- (2) Except in the case of a bill payable at the address of a third party or in a locality other than that of the domicile of the drawee or of a bill drawn payable at a fixed period after sight, the drawer may prohibit presentment for acceptance.
- (3) He may also stipulate that presentment for acceptance shall not take place before a fixed date.
- (4) Unless the drawer has prohibited acceptance, every endorser may stipulate that the bill shall be presented for acceptance with or without fixing a limit of time for presentment.

Art. 759. — *Obligation to present for acceptance bills of exchange payable at a fixed period after sight.*

- (1) Bills of exchange payable at a fixed period after sight shall be presented for acceptance within one year of their date.

- (2) The drawer may shorten or extend this period.
- (3) These periods may be shortened by the endorsers.

Art. 760. — *Presentment a second time.*

- (1) The drawee to whom a bill is presented may demand that such bill be presented again to him on the following day. Parties interested may not set up that this demand has not been complied with unless such demand is mentioned in the protest.
- (2) The holder shall not be bound to surrender to the drawee a bill presented for acceptance.

Art. 761. — *Form of acceptance.*

- (1) An acceptance shall be written on the bill of exchange and expressed by the word "accepted" or any other similar words. It shall be signed by the drawee. The simple signature of the drawee on the face of the bill constitute an acceptance.
- (2) When the bill is payable at a certain time after sight or when it is to be presented for acceptance within a certain limit of time in accordance with a special stipulation, the acceptance shall be dated as of the day when the acceptance is given, unless the holder requires that it shall be dated as of the day of presentment. If it is undated, the holder in order to preserve his right of recourse against the endorsers and the drawer shall authenticate the omission by a protest drawn up within the proper time.

Art. 762. — *Restrictive acceptance.*

- (1) An acceptance is unconditional but the drawee may restrict it to part of the sum payable.
- (2) Any other modification introduced by an acceptance in the terms of the bill of exchange shall be deemed to be a refusal to accept. The acceptor shall be bound according to the terms of his acceptance.

Art. 763. — *Domiciliation and place of payment.*

- (1) Where the drawer of a bill has indicated a place of payment other than the domicile of the drawee without specifying a third party at whose address payment is to be made, the drawee may name such third party at the time of acceptance. In default of this indication, the acceptor shall be deemed to have undertaken to pay the bill himself at the place of payment.

- (2) If a bill is payable at the domicile of the drawee, the latter may in his acceptance indicate an address in the same place where payment is to be made.

Art. 764. — *Effect of acceptance.*

- (1) By accepting the drawee undertakes to pay the bill of exchange at its maturity.
- (2) In default of payment the holder, notwithstanding that he is the drawer, may claim under the bill of exchange against the acceptor for all that can be demanded in accordance with Art. 791 and 792.

Art. 765. — *Cancelled acceptance.*

- (1) Where the drawee who has written his acceptance on a bill has cancelled it before restoring the bill, acceptance shall be deemed to be refused. Unless the contrary is proved the cancellation shall be deemed to have taken place before the bill was restored.
- (2) If the drawee has notified his acceptance in writing to the holder or to any party who has signed the bill, he is liable to such parties according to the terms of his acceptance.

Section 4. Acceptance for honour

Art. 766. — *Acceptor for honour.*

- (1) Payment of a bill of exchange may be guaranteed by an acceptance for honour as to the whole or part of its amount.
- (2) This guarantee may be given by a third person or even by a person who has signed as a party to the bill.

Art. 767. — *Forms of acceptance for honour.*

- (1) The acceptance for honour shall be given either on the bill itself or on an allonge, or by separate act showing the place where it is made.
- (2) It shall be expressed by the words "good as acceptance for honour" or any other similar words followed by the signature of the acceptor for honour.
- (3) It shall be effective on the signature of the acceptor for honour placed as provided in sub-art. (2).
- (4) An acceptance for honour shall specify for whose account it is given. In default of this, it shall be deemed to be given for the drawer.

Art. 768. — *Effects of acceptance for honour.*

- (1) The acceptor for honour shall be bound in the same manner as the person for whom he has become guarantor.

- (2) His undertaking shall be valid even when the liability which he has guaranteed is inoperative for any reason other than defect of form.
- (3) Where he pays a bill of exchange, he may exercise the rights arising out of the bill of exchange against the person guaranteed and against those who are liable to the latter on the bill of exchange.

Section 5. Maturity

Art. 769. — *Categories of maturities.*

- (1) A bill of exchange may be drawn payable:
 - (a) at sight;
 - (b) at a fixed period after sight;
 - (c) at a fixed period after date;
 - (d) at a fixed date.
- (2) Bills of exchange at other maturities or payable by instalments shall be null and void.

Art. 770. — *Bills of exchange at sight.*

- (1) A bill of exchange at sight is payable on presentment. It shall be presented for payment within a year of its date. The drawer may shorten or extend this period. These periods may be shortened by the endorsers.
- (2) The drawer may stipulate that a bill of exchange payable at sight shall not be presented for payment before a fixed date. In this case the period for presentment shall run from the said date.

Art. 771. — *Bills of exchange payable at a fixed period after sight.*

- (1) The maturity of a bill of exchange payable at a fixed period after sight shall be determined either by the date of the acceptance or by the date of the protest.
- (2) In the absence of the protest, an undated acceptance shall be deemed, so far as regards the acceptor, to have been given on the last day of the limit of time for presentment for acceptance.

Art. 772. — *Calculation of periods.*

- (1) Where a bill of exchange is drawn at one or more months after date or after sight, the bill shall mature on the corresponding date of the month when payment shall be made. If there be no corresponding date, the bill shall mature on the last day of this month.
- (2) When a bill of exchange is drawn at one or more months, and a half after date or sight, entire months shall first be calculated.

- (3) If the maturity is fixed at the beginning, in the middle or at the end of a month, this shall mean the first, fifteenth or last day of the month respectively.
- (4) The words "eight days" or "fifteen days" shall indicate not one or two weeks but an actual period of eight or fifteen days.
- (5) The words "half month" shall mean a period of fifteen days.

Art. 773. — *Differences in calendars.*

- (1) Where a bill of exchange is payable on a fixed day in a place where the calendar is different from the calendar in the place of issue, the day of maturity shall be deemed to be fixed to the calendar of the place of payment.
- (2) Where a bill of exchange drawn between two places having different calendars is payable at a fixed period after date, the day of issue shall be referred to the equivalent day of the calendar in the place of payment and the maturity shall be fixed accordingly.
- (3) The time for presenting bills of exchange shall be calculated as provided in sub-art. (1) and (2).
- (4) This Article shall not apply if a different form of calculation has been expressly provided in the instrument or results from the particulars entered therein.

Section 6. Payment

Art. 774. — *Presentment for payment.*

- (1) The holder of a bill of exchange payable on a fixed day or at a fixed period after date or after sight shall present the bill for payment either on the day on which it is payable or on one of the two business days which follow.
- (2) The presentment of a bill of exchange at a financial institution approved by the Government shall amount to presentment for payment.

Art. 775. — *Receipts. Partial payment.*

- (1) The drawee who pays a bill of exchange may require that it be surrendered to him receipted by the holder.
- (2) The holder may not refuse partial payment.
- (3) In case of partial payment, the drawee may require that mention of this payment be made on the bill and that a receipt therefor be given to him.
- (4) Payments made on account on the sum expressed in a bill of exchange shall discharge the drawer and the endorser.

(5) The holder shall protest the bill of exchange for the remainder.

Art. 776. — *Payment in advance and payment at maturity.*

- (1) The holder of a bill of exchange cannot be compelled to receive payment thereof before maturity.
- (2) The drawee who pays before maturity does so at his own risk and peril.
- (3) He who pays at maturity is validly discharged, unless he has been guilty of fraud or committed a fault. He shall be bound to verify the regularity of the series of endorsements but not the signature of the endorsers.

Art. 777. — *Payment in a foreign currency.*

- (1) When a bill of exchange is drawn payable in a currency which is not that of the place of payment, the sum payable may be paid in the currency of the place of payment, according to its value on the date of maturity. If the debtor is in default, the holder may at his option demand that the amount of the bill be paid in the currency of the place of payment according to the rate on the day of maturity or the day of payment.
- (2) The drawer may specify that the sum payable shall be calculated according to a rate expressed in the bill.
- (3) The foregoing rules shall not apply to the case in which the drawer has stipulated that payment shall be made in a certain specified currency (provision for payment in foreign currency).
- (4) If the amount of the bill of exchange is specified in a currency having the same denomination, but a different value in the country of issue and the country of payment, reference shall be deemed to be made to the currency of the place of payment.

Art. 778. — *Deposit.*

When a bill or exchange is not presented for payment within the limit of time fixed by Art. 774, any debtor is authorised to deposit the amount with a financial institution approved by the Government at the charge, risk and peril of the holder.

Art. 779. — *Opposition to payment.*

Payment may only be opposed in the case of loss of the bill of exchange or the bankruptcy of the holder.

Section 7. Recourse for non-acceptance or non-payment

Art. 780. --- *Recourse of the holder.*

The holder may exercise his right of recourse against the endorsers, the drawer and other parties liable:

- (1) at maturity, where payment has not been made; or
- (2) before maturity:
 - (a) if there has been total or partial refusal to accept; or
 - (b) in the event of bankruptcy of the drawee, whether he has accepted or not, or in the event of a stoppage of payment on his part even when not declared by a judgment, or where execution has been levied on his goods without result; or
 - (c) in the event of bankruptcy of the drawer of a non - acceptable bill.

Art. 781. --- *Protest. Conditions and periods.*

- (1) Default of acceptance or of payment shall be evidenced by a deed drawn up by a public officer (protest for non-acceptance or non-payment).
- (2) A dated declaration written on the bill itself may replace this deed, except where the drawer, in the text of the bill itself, stipulates for a protest by deed drawn up by a public officer.
- (3) Protest for non-acceptance shall be made within the limit of time fixed for presentment for acceptance. Where, in the case provided in Art. 760 (1), the first presentment takes place on the last day of that time, the protest may be drawn up on the next day.
- (4) Protest for non-payment of a bill of exchange payable on a fixed day or at a fixed period after sight shall be made on one of the two working days following the day on which the bill is payable. In the case of a bill payable at sight, the protest shall be made as provided in sub-art. (3).
- (5) Presentment for payment and protest for non-payment shall not be necessary where protest for non-acceptance is made.
- (6) Where the drawee, whether he has accepted or not, has suspended payment or where execution on his goods has been unsuccessful, the holder may not exercise his right of recourse until after presentment of the bill to the drawee for payment and after the protest has been drawn up.
- (7) Where the drawee, whether he has accepted or not, is declared bankrupt, or where the drawer of a non-acceptable bill is declared bank-

rupt, the production of the judgment in bankruptcy shall enable the holder to exercise his right of recourse.

Art. 782. — *Responsible public officer.*

A protest shall be drawn up by a notary or by a court registrar.

Art. 783. — *Place of drawing-up of the protest.*

A protest shall be drawn up in one document:

- (a) at the domicile of the person on whom the bill of exchange was payable or at his last known domicile;
- (b) at the domicile of the persons specified on the bill of exchange as paying it in need;
- (c) at the domicile of the third party having accepted by intervention.

Art. 784. — *Requirements.*

(1) A protest shall contain:

- (a) the name of the person or business organisation for and against whom it is drawn up;
 - (b) a statement that the person or business organisation against which the protest is drawn up have been unsuccessfully summoned to satisfy the entitlement arising out of the bill of exchange, or that they cannot be found;
 - (c) the place and day on which the summons was made or unsuccessfully presented;
 - (d) the signature of the person who has drawn up the protest.
- (2) Any partial payment shall be stated in the protest.
- (3) Where the drawee to whom a bill of exchange is presented for acceptance requires that a second presentment be made on the day after, this request shall be entered in the protest.

Art. 785. — *Form of the protest.*

- (1) A protest shall be drawn up by separate act and attached to the bill of exchange.
- (2) Where the protest is drawn up on presentment of identical parts of the same bill of exchange or of the original and a copy of the bill, it shall be attached to any of the parts or to the original bill.
- (3) A note to this effect shall be made on the other parts or on the copy.

Art. 786. — *Partial acceptance.*

Where acceptance is limited to a part of the amount and a protest is drawn up to this effect, a copy of the bill shall be made and the protest written on this copy.

Art. 737. — *Copy of the protest.*

The public officer who has drawn up the protest shall make a copy thereof which shall contain:

- (a) the amount payable;
- (b) the date of maturity;
- (c) the place and date of issue of the bill of exchange;
- (d) the drawer, the drawee, and the person of business organisation to whom or to whose order payment should be made;
- (e) the person or business organisation required to pay, if not the drawee;
- (f) those persons designated as having to pay in case of need and persons accepting by intervention.

Art. 788. — *Notice.*

- (1) The holder shall give notice of non-acceptance or non-payment to his endorser and to the drawer within the four working days which follow the day of protest or, in case of a provision "retour sans frais," the day of presentment.
- (2) The public officer who has drawn up the protest shall inform in writing the persons bound by the bill of exchange whose addresses are either specified on the bill of exchange or known to the public officer or specified by the persons having required the protest. The expenses arising out of such notice shall be added to the costs of the protest.
- (3) Every endorser shall within the two working days following the day on which he receives notice, notify his endorser of the notice he has received, mentioning the names and addresses of those who have given the previous notices, and so on through the series until the drawer is reached. The periods mentioned above shall run from the receipt of the preceding notice.
- (4) Where in accordance with sub-art. (3) notice is given to a person who has signed a bill of exchange, the same notice shall be given within the same limit of time to his acceptor for honour.
- (5) Where an endorser either has not specified his address or has specified it in an illegible manner, notice shall be given to the preceding endorser.
- (6) A person required to give notice may give it in any form or by returning the bill of exchange.
- (7) He shall show that he has given notice within the prescribed time. This time-limit shall be deemed to have been observed if a letter giving the notice has been posted within the prescribed time.

- (8) A person who does not give notice within the prescribed time shall not forfeit his rights. He shall be liable for the damage, if any, caused by his negligence, but the damages shall not exceed the amount of the bill of exchange. .

Art. 789. — *Provision "sans protet"*.

- (1) The drawer, an endorser or acceptor for honour may, by the provision "retour sans frais," "sans protet" or any other similar words written on the instrument and signed, release the holder from having a protest of non-acceptance or non-payment drawn up in order to exercise his right of recourse.
- (2) This provision shall not release the holder from presenting the bill within the prescribed time, nor from the notices he is required to give. The burden of proving the non-observance of the limits of time lies on the person who seeks to set it up against the holder.
- (3) Where the provision is written by the drawer, it shall be effective against all persons who have signed the bill; where it is written by an endorser or acceptor for honour, it shall be effective against such endorser or acceptor for honour.
- (4) Where, in spite of the provision written by the drawer, the holder has the protest drawn up, he shall bear the expenses thereof. Where the provision has been written by an endorser or acceptor for honour, the costs of the protest, if any, may be recovered from all the persons who have signed the bill.

Art. 790. — *Joint and several guarantee of persons bound by bill.*

- (1) All drawers, acceptors, endorsers or acceptors for honour of a bill of exchange shall be jointly and severally liable to the holder.
- (2) The holder may claim against all these persons individually or collectively without being required to observe the order in which they have become liable.
- (3) Any person signing the bill who has taken it up and paid it has the same right.
- (4) Proceedings against one of the parties liable shall not bar proceedings against the others, even though they may be subsequent to the party first proceeded against.

Art. 791. — *Extent of the right of recourse of the holder.*

- (1) The holder may recover from the person against whom he exercises his right of recourse:

- (a) the amount of the unaccepted or unpaid bill of exchange with interest, if interest has been provided for;
 - (b) interest at the legal rate from the date of maturity;
 - (c) the expenses of protest and of the notices given as well as other expenses;
 - (d) a commission not exceeding one third per cent.
- (2) Where the right of recourse is exercised before maturity, the amount of the bill shall be subject to a discount which shall be calculated according to the official rate of discount ruling on the date when recourse is exercised at the place of domicile of the holder.

Art. 792. — *Extent of the right of recourse of a person who takes up and pays.*

A party who takes up and pays a bill of exchange can recover from the parties liable to him:

- (a) the entire sum which he has paid;
- (b) interest on the said sum calculated at the legal rate, starting from the day when he made payment;
- (c) any expenses which he has incurred;
- (d) a commission not exceeding two per mille.

Art. 793. — *Right to surrender of the bill, to the protest and a receipted account.*

- (1) Any party against whom a right of recourse is or may be exercised may require against payment that the bill be surrendered to him with the protest and a receipted account.
- (2) Any endorser who has taken up and paid a bill of exchange may cancel his own endorsement and those of subsequent endorsers.

Art. 794. — *Right of recourse after partial acceptance.*

- (1) Where the right of recourse is exercised after a partial acceptance the party who pays the sum in respect of which the bill has not been accepted may require that this payment be specified on the bill and that he be given a receipt therefor.
- (2) The holder shall give him a certified copy of the bill, together with the protest, in order to permit subsequent recourse to be exercised.

Art. 795. — *Redraft.*

- (1) Any person having the right of recourse may, in the absence of agreement to the contrary, reimburse himself by means of a fresh bill (redraft) to be drawn at sight on one of the parties liable to him and payable at the domicile of that party.

- (2) The redraft shall include, in addition to the sums mentioned in Art. 791 and 792, brokerage and stamp duty to be paid on the redraft.
- (3) If the redraft is drawn by the holder, the sum payable shall be fixed according to the rate for a sight bill drawn at the place where the original bill was payable upon the party liable at the place of his domicile.
- (4) If the redraft is drawn by an endorser, the sum payable shall be fixed according to the rate for a sight bill drawn at the place where the drawer of the redraft is domiciled upon the place of domicile of the party liable.

Art. 796. — *Loss of rights of recourse.*

- (1) After the expiration of the limits of time fixed for the presentment of a bill of exchange drawn at sight or at a fixed period after sight or for drawing up the protest for **non-acceptance or non payment or for presentment for payment in the case of a provision "retour sans frais,"** the holder loses his rights of recourse against endorsers, against the drawer and against the other parties liable, with the exception of the acceptor.
- (2) In default of presentment for acceptance within the limit of time stipulated by the drawer the holder loses his right of recourse for **non-payment**, as well as for non-acceptance, unless it appears from the terms of the provision that the drawer only meant to release himself from the guarantee of acceptance.
- (3) Where the provision for a limit of time for presentment is contained in an endorsement, the endorser alone can avail himself thereof.

Art. 797. — *Force majeure.*

- (1) Where the presentment of the bill of exchange or the drawing up of the protest within the prescribed time is absolutely prevented (legal prohibition by any State or other cases of force majeure), these limits of time shall be extended.
- (2) The holder shall give notice without delay of the case of force majeure to his endorser and specify this notice, which he shall date and sign, on the bill or on an allonge; in other respects the provisions of Art. 788 shall apply.
- (3) Where force majeure has terminated, the holder shall without delay present the bill of exchange for acceptance or payment and, where necessary, draw up the protest.

- (4) Where force majeure continues to operate beyond thirty days after maturity, recourse may be exercised, and neither presentment nor the drawing up of a protest shall be necessary.
- (5) In the case of bills of exchange drawn at sight or at a fixed period after sight, the time limit of thirty days shall run from the date on which the holder, even before the expiration of the time for presentment, has given notice of force majeure to his endorser. In the case of bills of exchange drawn at a certain time after sight, the above time-limit of thirty days shall be added to the period after sight specified in the bill of exchange.
- (6) Facts which are purely personal to the holder or to the person entrusted with the presentment of the bill or drawing up of the protest shall not be deemed to constitute cases of force majeure.

Art. 798. — *Sequestration of the movable property of parties bound by bill.*

Apart from the conditions prescribed for the bringing of proceedings for guarantee, the holder of a bill of exchange who has protested for non-payment may, with the permission of the court, attach the movable property of the drawers, acceptors and endorsers.

Art. 799. — *Proceedings for unlawful enrichment.*

- (1) The drawer and the acceptor shall be liable to the holder up to the amount of the sum by which they have unlawfully enriched themselves at his expense, even where their obligations under the bill of exchange have terminated by reason of extinctive prescription or limitation of actions.
- (2) Proceedings for unlawful enrichment may be brought against the drawee, the third party at whose domicile the bill is payable and the person or business organisation on whose behalf the bill was drawn.
- (3) Endorsers whose obligations have terminated cannot be made the subject of these proceedings.
- (4) These proceedings may not be brought unless the holder cannot bring causal proceedings.

Art. 800. — *Reservation of causal proceedings.*

- (1) The proceedings arising out of the legal relations on which the issue or transfer of the bill of exchange is based shall subsist, unless it is proved that there has been novation.

- 2) These proceedings can only be brought if non-acceptance or non-payment has been evidenced by a protest.
- 3) The holder may not bring causal proceedings unless he offers to restore to the debtor the bill of exchange, at the same time depositing in with the court registrar, after satisfying the necessary formalities for preserving to the debtor such proceedings by way of recourse which the latter may be entitled to bring.

Art. 801. — *Cover for a bill and its transfer to succeeding holders.*

- 1) A bill of exchange is covered when at maturity the drawee is in possession of securities or guarantees sufficient to fully cover the bill and which are intended by the drawer or the principal to secure the payment of the bill.
- 2) Where the drawer is bankrupt, the civil proceedings which he could have brought against the drawee for restitution of the cover or repayment of the amounts by which the latter was credited devolve upon the holder of the bill of exchange. The right to bring these proceedings is transmitted to succeeding holders by way of endorsement.
- 3) Where a drawer declared bankrupt has endorsed the bill of exchange and has set up the cover during the suspected period, the provisions of sub-art. (2) shall not apply.
- 4) The debt arising out of the cover in the hands of the drawee at the time that a claim can be made on the bill of exchange is preferred as regards the creditors of the drawer.
- 5) The drawee may not release himself from the cover where the holder prohibits him from doing so. This prohibition may be made by registered letter followed by the bringing of proceeding within fifteen days from the date of maturity. A protest for non-payment is equivalent to a prohibition under this Article.

Section 8. Intervention for honour

Art. 802. — *General provisions.*

- 1) The drawer, an endorser or an acceptor for honour may specify a person who is to accept or pay in case of need.
- 2) A bill of exchange may, subject as hereinafter mentioned, be accepted or paid by a person who intervenes for the honour of any debtor against whom a right of recourse exists.
- 3) The person intervening may be a third party, even the drawee, or, save the acceptor, a party already liable on the bill of exchange.

- (4) The person intervening is bound to give, within two working days, notice of his intervention to the party for whose honour he has intervened. In default, he shall be liable for the damage, if any, due to his negligence, but the damages shall not exceed the amount of the bill of exchange.

Art. 803. — *Acceptance by intervention. Conditions. Position of the holder.*

- (1) Acceptance by intervention may be given in all cases where the holder has a right of recourse before maturity on a bill which is capable of acceptance.
- (2) Where the bill of exchange specifies a person who is designated to accept or pay it in case of need at the place of payment, the holder may not exercise his rights of recourse before maturity against the person naming such referee in case of need and against subsequent signatories, unless he has presented the bill of exchange to the referee in case of need and until, if acceptance is refused by the latter, this refusal has been authenticated by a protest.
- (3) In other cases of intervention the holder may refuse an acceptance by intervention. Where he allows it, he loses his right of recourse before maturity against the person on whose behalf such acceptance was given and against subsequent signatories.

Art. 804. — *Forms.*

Acceptance by intervention shall be specified on the bill of exchange. It shall be signed by the person intervening. It shall mention the person for whose honour it has been given. In default of such mention, the acceptance shall be deemed to have been given for the honour of the drawer.

Art. 805. — *Obligations of the acceptor. Position as to right of recourse.*

- (1) The acceptor by intervention is liable to the holder and to the endorsers, subsequent to the party for whose honour he intervened, in the same manner as such party.
- (2) Notwithstanding an acceptance by intervention, the person for whom it has been given and the acceptors for honour may require the holder, in exchange for payment of the sum mentioned in Art. 792, to deliver the bill, the protest and a receipted account, if any.

Art. 806. — *Payment by intervention. Conditions.*

- (1) Payment by intervention may take place in all cases where, either at maturity or before maturity, the holder has a right of recourse on the bill.

- (2) Payment shall include the whole amount payable by the party for whose honour it is made.
- (3) It shall be made at the latest on the day following the last day allowed for drawing up the protest for non-payment.

Art. 807. — *Obligations of the holder.*

- (1) Where a bill of exchange has been accepted by persons intervening who are domiciled in the place of payment, or where persons domiciled there have been named as referees in case of need, the holder shall present the bill to all these persons and, where necessary, have a protest for non-payment drawn up at the latest on the day following the last day allowed for drawing up the protest.
- (2) In default of protest within this limit of time, the party who has named the referee in case of need or for whose account the bill has been accepted, and the subsequent endorsers, shall be discharged.

Art. 808. — *Consequences of refusal.*

The holder who refuses payment by intervention shall lose his right of recourse against any person who would have been discharged thereby.

Art. 809. — *Right to delivery of the bill, the protest and the receipt.*

- (1) Payment by intervention shall be authenticated by a receipt given on the bill of exchange mentioning the person for whose honour payment has been made. In default of such mention, payment shall be deemed to have been made for the honour of the drawer.
- (2) The bill of exchange and the protest, if any, shall be surrendered to the person paying by intervention.

Art. 810. — *Transfer of rights of the holder. Competition for payment by intervention.*

- (1) The person paying by intervention shall acquire the rights arising out of the bill of exchange against the party for whose honour he has paid and against persons who are liable to the latter on the bill of exchange. He may not re-endorse the bill of exchange.
- (2) Endorsers subsequent to the party for whose honour payment has been made shall be discharged.
- (3) In the case of competition for payment by intervention, the payment which effects the greater number of releases has the preference. Any person who, with knowledge of the facts, intervenes in a manner contrary to this rule shall lose his right of recourse against those who would have been discharged.

Section 9. Parts of a set and copies

Art. 811. — *Parts of a set. Right to several parts.*

- (1) A bill of exchange may be drawn in several identical parts.
- (2) These parts shall be numbered in the body of the instrument itself or each part shall be regarded as a separate bill of exchange.
- (3) Every holder of a bill which does not specify that it has been drawn as a sole bill may, at his own expense, require the delivery of several parts. For this purpose, he shall apply to his immediate endorser who shall assist him in proceeding against his own endorser, and so on in the series until the drawer is reached. The endorsers shall reproduce their endorsements on the new parts of the set.

Art. 812. — *Relation between parts of a set.*

- (1) Payment made on one part of a set operates as a discharge, even though there is no provision that this payment annuls the effect of the other parts. The drawee shall be liable on each accepted part which he has not recovered.
- (2) An endorser who has transferred parts of a set to different persons, as well as subsequent endorsers, shall be liable on all the parts bearing their signature which have not been restored.

Art. 813. — *Statement as to acceptance.*

- (1) A party who has sent one part for acceptance shall specify on the other parts the name of the person in whose hands this part is to be found. That person shall surrender it to the lawful holder of another part.
- (2) Where he refuses, the holder may not exercise his right of recourse until he has had a protest drawn up specifying:
 - (a) that the part sent for acceptance has not been surrendered to him on his demand;
 - (b) that acceptance or payment could not be obtained of another part.

Art. 814. — *Form and effects.*

- (1) Every holder of a bill of exchange has the right to make copies of it.
- (2) A copy shall reproduce the original exactly with the endorsements and all other statements therein. It shall specify where the copy ends.
- (3) It may be endorsed and guaranteed by acceptance for honour in the same manner and with the same effects as the original.

Art. 815. — *Delivery of the original.*

- (1) A copy shall specify the person in possession of the original instrument. The latter shall hand over the said instrument to the lawful holder of the copy.
- (2) Where he refuses, the holder may not exercise his right of recourse against the persons who have endorsed the copy or guaranteed it by acceptance for honour until he has had a protest drawn up specifying that the original has not been surrendered to him on his demand.
- (3) Where the original instrument, after the last endorsement before the making of the copy, contains a provision "commencing from here an endorsement is only valid if made on the copy" or any other similar words, a subsequent endorsement on the original shall be null and void.

Section 10. Alterations

Art. 816. — *Extent of the obligations of signatories.*

In case of alteration of the text of a bill of exchange, parties who have signed subsequent to the alteration shall be bound by the terms of the altered text; parties who have signed before the alteration shall be bound by the terms of the original text.

Section 11. Limitation of actions

Art. 817. — *Periods.*

- (1) All actions arising out of a bill of exchange against the acceptor shall be barred after three years from the date of maturity.
- (2) Actions by the holder against the endorers and against the drawer shall be barred after one year from the date of a protest drawn up within proper time, or from the date of maturity where there is a provision "retour sans frais."
- (3) Actions by endorers against each other and against the drawer shall be barred after six months from the day when the endorser took up and paid the bill or from the day when he himself was sued.
- (4) Limitation shall run, in the case of legal proceedings, from the date of the conclusion of the last proceedings.
- (5) Limitation shall not apply where judgment has been pronounced or if the debt has been acknowledged by separate act.

Art. 818. — *Interruption.*

- (1) The period of limitation shall be interrupted by the bringing of an action, by notice being given of a third party action or by lodging a claim in bankruptcy.
- (2) Interruption of the period of limitation is only effective against the person in respect of whom the period has been interrupted.
- (3) Where the period of limitation is interrupted, a further period of the same duration shall begin to run.

Section 12. General provisions

Art. 819. — *Time limits. Holidays.*

- (1) Payment of a bill of exchange which falls due on a public holiday cannot be demanded until the next working day. Any other proceedings relating to bill of exchange, in particular presentment for acceptance and protest, can only be taken on a working day.
- (2) Where any of these proceedings must be taken within a certain limit of time the last day of which is a public holiday, the limit of time is extended until the first working day which follows the expiration of that time. Holidays which occur during the period shall be included in calculating limits of time.

Art. 820. — *Days regarded as official holidays.*

Days on which, under the provision of the laws in force, no payment can be required nor any protest drawn up, shall be deemed to be public holidays.

Art. 821. — *Calculation of time limits.*

Legal or contractual limits of time shall not include the day on which the period begins to run.

Art. 822. — *Prohibition of days of grace.*

No day of grace may be granted.

Chapter 3. Promissory Notes

Art. 823. — *Requirements.*

A promissory note shall contain:

- (a) the term "promissory note" inserted in the body of the instrument and expressed in the language employed in drawing up the instrument;

- (b) an unconditional promise to pay a sum certain in money;
- (c) the time of payment;
- (d) the place of payment;
- (e) the name of the person to whom or to whose order payment is to be made or a statement that the note is payable to bearer;
- (f) the date when and place where the note is issued;
- (g) the signature of the person who issues the instrument (maker).

Art. 824. — *Requirements absent.*

Where any of the requirements provided in Art. 823 is absent, the instrument shall not be valid as a promissory note except in the cases specified in sub-art. (a), (b) and (c) hereunder:

- (a) a promissory note in which the time of payment is not specified shall be deemed to be payable at sight;
- (b) unless otherwise expressly specified, the place where the instrument is made shall be deemed to be both the place of payment and the place of the domicile of the maker;
- (c) a promissory note which does not mention the place where it was made shall be deemed to have been made in the place mentioned beside the name of the maker.

Art. 825. — *Reference to provisions relating to bills of exchange.*

- (1) The following provisions relating to bills of exchange shall apply to promissory notes insofar as they are not inconsistent with the nature of these instruments:
 - (a) endorsement (Art. 746-756);
 - (b) time of payment (Art. 769-773);
 - (c) recourse in case of non-payment (Art. 780-793, 795-797);
 - (d) protests (Art. 781-791);
 - (e) redrafts (Art. 795);
 - (f) payment by intervention (Art. 802, 806-810);
 - (g) copies (Art. 814 and 815);
 - (h) alterations (Art. 816);
 - (i) limitation of actions (Art. 817 and 818);
 - (j) holidays, calculation of time limits and prohibition of days of grace (Art. 819-822).
- (2) The following provisions shall also apply to promissory notes: the provisions concerning a bill of exchange payable at the address of a third party or in a locality other than that of the domicile of the drawee (Art. 738 and 763); stipulation for interest (Art. 739); discre-

pancies as regards the sum payable (Art. 740); the consequences of signature under the conditions mentioned in Art. 741; the consequences of signature by a person who acts without authority or who exceeds his authority (Art. 742); and the provisions regarding bills of exchange in blank (Art. 744).

- (3) The following provisions shall also apply to promissory notes: provisions relating to acceptance for honour (Art. 766-768); in the case provided for in Art. 767 (4), where the acceptance for honour does not specify on whose behalf it has been given, it shall be deemed to have been given on behalf of the maker of the promissory note.

Art. 826. — *Liability of maker. Presentment and time after sight.*

- (1) The maker of a promissory note shall be bound in the same manner as an acceptor of a bill of exchange.
- (2) Promissory notes payable at a certain time after sight shall be presented for the visa of the maker within the limits of time fixed by Art. 759. The limit of time shall run from the date of the visa signed by the maker on the note. The refusal of the maker to give his visa with the date thereon shall be authenticated by a protest (Art. 761), the date of which marks the beginning of the period of time after sight.

Chapter 4. Cheques

Section 1. Drawing and form of a cheque

Art. 827. — *Requirements.*

A cheque shall contain:

- (a) an unconditional order to pay a sum certain in money;
- (b) the name of the person who is to pay (drawee);
- (c) the place of payment;
- (d) the date when and the place where the cheque is drawn;
- (e) the signature of the person who draws the cheque (drawer).

Art. 828. — *Requirements absent.*

Where any of the requirements mentioned in Art. 827 is absent, the instrument shall not be valid as a cheque except in the cases provided in sub-art. (a) and (b) hereunder:

- (a) unless otherwise expressly provided, the place mentioned under the name of the drawee shall be deemed to be, the place of payment. If several places are mentioned under the name of the drawee, the cheque shall be payable at the first place mentioned;

- (b) in the absence of these statements, and of any other indication, the cheque shall be payable at the place where the drawee has his principal establishment.

Art. 829. — *Specification of the drawee.*

A cheque may only be drawn on a banker or on an institution or establishment regarded by law as a banker.

Art. 830. — *Previous cover.*

- (1) A cheque may only be issued if the drawer has funds with the drawee and in accordance with an express or implied agreement under which the drawer has the right to dispose of these funds by cheque. The validity of the cheque shall not be affected if these provisions are not complied with.
- (2) In case of refusal the drawer shall prove that the drawee held cover at the time of issue of the instrument. If not, he shall guarantee it irrespective of whether the protest was made after the limits of time fixed.

Art. 831. — *Prohibition as to acceptance.*

A cheque cannot be accepted. A statement of acceptance on a cheque shall be disregarded.

Art. 832. — *Certification of a cheque.*

- (1) Notwithstanding any provision to the contrary, a cheque in respect of which cover is available to the drawer may be certified by the drawee if the drawer so requests.
- (2) The cover in respect of a certified cheque shall remain blocked in a separate account for the benefit of the holder until the expiry of the period of time for presentment provided in Art. 855.
- (3) Certification is effected by the signature of the drawee on the face of the cheque.

Art. 833. — *Designation of payee.*

- (1) A cheque may be made payable to:
 - (a) a specified person with or without the express clause "to order"; or
 - (b) a specified person with a clause "not to order" or any similar clause; or
 - (c) bearer.
- (2) A cheque made payable to a specified person with the words "or to bearer" or any similar words shall be deemed to be a cheque to bearer.

(3) A cheque which does not specify the payee shall be deemed to be a cheque to bearer.

Art. 834. — *Cheque to drawer's order and cheque drawn on the drawer.*

- (1) A cheque may be drawn to the drawer's own order.
- (2) A cheque may be drawn for account of a third person.
- (3) A cheque drawn by a banker on himself may not be to bearer.

Art. 835. — *Provision for interest.*

A cheque may be payable at the domicile of a third party in the locality where the drawee has his domicile or in another locality provided that such third party is a banker.

Art. 837. — *Discrepancy in the sum payable.*

- (1) Where the amount of a cheque is expressed both in words and figures and there is a discrepancy, the amount expressed in words shall be paid.
- (2) Where the amount of a cheque is expressed more than once in words or more than once in figures and there is a discrepancy, the smaller sum shall be paid.

Art. 838. — *Signature of persons incapable of binding themselves.*

Where a cheque bears signatures of persons incapable of binding themselves by a cheque, forged signatures or signatures of fictitious persons who signed the cheque or on whose behalf it was signed, the obligations of the other persons who have signed it shall be valid.

Art. 839. — *Signature without power to act.*

Whosoever signs a cheque on behalf of a person for whom he has no power to act shall bind himself as a party to the cheque and, if he pays, shall have the same rights as the person for whom he purported to act. The same rule shall apply to an agent who has exceeded his powers.

Art. 840. — *Responsibility of the drawer.*

The drawer guarantees payment. Any provision by which the drawer releases himself from his guarantee shall be of no effect.

Art. 841. — *Cheque incomplete at issue.*

If a cheque which was incomplete when issued has been completed otherwise than in accordance with the agreements entered into, the non-obs-

vance of such agreements may not be set up against the holder unless he has acquired the cheque in bad faith or, in acquiring it, he has committed a fault.

Section 2. Negotiation

Art. 842. — *Negotiability.*

- (1) A cheque made payable to a specified person, with or without the express clause "to order," may be transferred by means of endorsement.
- (2) A cheque made payable to a specified person in which the words "not to order" or any similar words have been inserted, can only be transferred according to the form and with the effects of an ordinary assignment.
- (3) A cheque may be endorsed even to the drawer or to any person liable under the cheque, who may re-endorse the cheque.

Art. 843. — *Elements of endorsement.*

- (1) An endorsement shall be unconditional. Any condition to which it is made subject shall be of no effect.
- (2) A partial endorsement or an endorsement by the drawee shall be null and void.
- (3) An endorsement "to bearer" shall amount to an endorsement in blank.
- (4) An endorsement to the drawee has the effect of a receipt, unless the drawee has several establishments and the endorsement is made in favour of an establishment other than on which the cheque has been drawn.

Art. 844. — *Forms.*

- (1) An endorsement shall be written on the cheque or on a slip affixed thereto (allonge). It shall be signed by the endorser.
- (2) The endorsement may leave the beneficiary unspecified or may consist simply of the signature of the endorser (endorsement in blank). In the latter case the endorsement to be valid shall be written on the back of the cheque or on the slip attached thereto (allonge).

Art. 845. — *Effects.*

- (1) An endorsement shall transfer all the rights arising out of a cheque in particular the rights in respect of cover as set forth in Art. 801.
- (2) Where the endorsement is in blank, the holder may:
 - (a) fill up the blank either with his own name or with the name of some other person; or

- (b) re-endorse the cheque in blank or to some other person; or
- (c) transfer the cheque to third party without filling up the blank and without endorsing it.

Art. 846. — *Guarantee.*

- (1) Unless otherwise expressly provided, the endorser guarantees payment.
- (2) He may prohibit any further endorsement; in this case he gives no guarantee to the persons to whom the cheque is subsequently endorsed.

Art. 847. — *Establishment of title by the holder.*

The possessor of an endorsable cheque shall be deemed to be the lawful holder if he establishes his title to the cheque through an uninterrupted series of endorsements, even if the last endorsement is in blank. Cancelled endorsements shall be disregarded. Where an endorsement in blank is followed by another endorsement the person who signed this last endorsement shall be deemed to have acquired the cheque by the endorsement in blank.

Art. 848. — *Cheque to bearer.*

An endorsement on a cheque to bearer shall render the endorser liable in accordance with the provisions regarding the right of recourse but shall not convert the instrument into a cheque to order.

Art. 849. — *Dispossession.*

Where a person has, in any manner whatsoever, been disposed of a cheque (whether it is a cheque to bearer or an endorsable cheque to which the holder establishes his right in the manner mentioned in Art. 847), the holder into whose possession the cheque has come shall not surrender the cheque unless he has acquired it in bad faith or unless in acquiring it he has committed a fault.

Art. 850. — *Defences.*

Persons sued on a cheque cannot set up against the holder defences founded on their personal relations with the drawer or with previous holder, unless the holder in acquiring the cheque has knowingly acted to the detriment of the debtor.

Art. 851. — *Endorsement by attorney.*

- (1) Where an endorsement contains the words "value in collection," "for collection," "by attorney" or any other similar words implying

agency, the holder may exercise all rights arising out of the cheque, but he can endorse it only in his capacity as agent.

- (2) In this case the parties liable can only set up against the holder defences which could be set up against the endorser.
- (3) The agency granted by power of attorney shall not terminate by reason of the death of the principal or his becoming incapable.

Art. 852. — *Endorsement after maturity or after protest.*

- (1) An endorsement after protest or after an equivalent declaration or after the expiration of the limit of time for presentment shall have the effect of an ordinary assignment.
- (2) Unless the contrary is proved, an undated endorsement is deemed to have been placed on the cheque prior to the protest or equivalent declaration or prior to the expiration of the limit of time referred to in sub-art. (1).

Section 3. Acceptance for Honour (Aval)

Art. 853. — *General provisions applicable.*

The provisions of Art. 766-768 of this Code relating to acceptance for honour shall apply to cheques.

Section 4. Presentment and payment

Art. 854. — *Maturity.*

A cheque is payable at sight.

Art. 855. — *Presentment for payment.*

A cheque shall be presented for payment within six months of the date thereof, regardless of when the cheque was issued.

Art. 856. — *Difference in calendars.*

Where a cheque is drawn in one place and is payable in another having a different calendar, the day of issue shall be construed as being the equivalent day of the calendar of the place of payment.

Art. 857. — *Stopping payment of cheque.*

The stopping of the payment of a cheque by the drawer is sufficient authority for a bank to refuse payment.

Art. 858. — *Death of drawer after issue of a cheque.*

Neither the death of the drawer nor his incapacity taking place after the issue of the cheque shall have any effect as regards the cheque.

Art. 859. — *Receipts. Partial payment.*

- (1) The drawee who pays a cheque may require that it be given to him receipted by the holder.
- (2) The holder may not refuse partial payment.
- (3) Where the cover is less than the amount of the cheque, the holder may require payment up to the amount of the cover.
- (4) In case of partial payment, the drawee may require that the partial payment be mentioned on the cheque and a receipt given to him.
- (5) Partial payments on the amount of a cheque shall discharge the drawer and endorsers.
- (6) The holder shall protest the cheque for the remainder.

Art. 860. — *Verification of endorsements.*

The drawee who pays an endorsable cheque shall not be bound to verify the signature of the endorsers and shall only verify the signature of the drawer and of the last endorsee.

Art. 861. — *Discharge of the drawee.*

A drawee who in the absence of objection pay a cheque in good faith and in accordance with normal business practice shall be deemed to be validly discharged.

Art. 862. — *Payment in a foreign currency.*

- (1) Where a cheque is drawn payable in a currency which is not that of the place of payment, the sum payable may, within the limit of time for the presentment of the cheque, be paid in the currency of the place of payment according to its value on the date of payment. Where payment has not been made on presentment, the holder may demand that payment of the amount of the cheque in the currency of the place of payment be made according to the rate on the day of presentment or day of payment.
- (2) The drawer may provide that the sum payable shall be calculated according to a rate expressed in the cheque.
- (3) The provisions of sub-art. (1) and (2) shall not apply where the drawer has provided that payment shall be made in a specified currency (stipulation for effective payment in a foreign currency).
- (4) Where the amount of the cheque is specified in a currency having the same denomination but a different value in the country of issue and the country of payment, reference shall be deemed to be made to the currency of the place of payment.

Section 5. Crossed cheques and cheques payable in account

Art. 863. — *Crossed cheque. Definition.*

- (1) The drawer or holder of a cheque may cross it to cause the effects set out in Art. 864.
- (2) A crossing is effected by two parallel lines drawn on the face of the cheque. The crossing may be general or special.
- (3) The crossing is general if it consists of the two lines only or if between the lines the term “banker” or some equivalent term is inserted; it is special if the name of a banker is written between the lines.
- (4) A general crossing may be converted into a special crossing, but a special crossing may not be converted into a general crossing.
- (5) The obliteration either of a crossing or of the name of the banker shall be regarded as not having taken place.

Art. 864. — *Effects.*

- (1) A cheque which is crossed generally can be paid by the drawee only to a banker or to a customer of the drawee.
- (2) A cheque which is crossed specially can be paid by the drawer only to the named banker or, where the latter is the drawee, to a customer of the drawee. The named banker may have the cheque collected by another banker.
- (3) A banker may not acquire a crossed cheque except from one of his customers or from another banker. He may not collect it for the account of other persons than the foregoing.
- (4) A cheque bearing contradictory or irreconcilable special crossing may not be paid.

Art. 865. — *Crossed cheque bearing the words “not negotiable.”*

- (1) A crossed cheque may bear the words “not negotiable.”
- (2) Where a person takes a crossed cheque which bears on it the words “not negotiable” he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Art. 866. — *Liability of the banker.*

- (1) A banker who does not comply with the provisions of Articles 864 and 865 shall be liable for the resulting damage up to the amount of the cheque.

- (2) Where a banker pays a cheque in good faith and without negligence he shall not be liable where the crossing has been altered, struck out or modified contrary to law. He shall be deemed to have made payment to the true owner of the cheque.
- (3) A banker who receives payment of a crossed cheque for a customer's account in a good faith and without negligence shall not be liable where it is shown that the customer has no right to the instrument or that his right is subject to a disability.
- (4) The crediting in advance of a customer's account with the amount of a crossed cheque shall not deprive the banker from enjoying the provisions of this Article.

Art. 867. — *Cheque payable in account.*

- (1) The drawer or the holder of a cheque may prohibit its payment in cash by writing transversally across the face of the cheque the words "payable in account" or any similar words.
- (2) In such a case the cheque can only be settled by the drawee by means of book-entry (credit in account, transfer from one account to another, set off or clearing-house settlement). Settlement by book-entry shall amount to payment.
- (3) The deletion of the words "payable in account" shall be of no effect.
- (4) The drawee who does not observe the foregoing provisions shall be liable for resulting damage as provided in Art. 866.

Section 6. Recourse for non-payment

Art. 868. — *Rights of the holder.*

The holder may exercise his right of recourse against the endorsers, the drawer and the other parties liable where the cheque on presentment in due time is not paid and the refusal to pay is evidenced:

- (a) by a formal instrument (protest); or
- (b) by a declaration by the drawee dated and written on the cheque and specifying the day of presentment; or
- (c) by a dated declaration made by a financial institution approved by the Government stating that the cheque has been presented in due time and has not been paid.

Art. 869. — *Protest. Periods of time.*

- (1) The protest or equivalent declaration shall be made before the expiration of the limit of time for presentment.

- (2) Where the cheque is presented on the last day of the limit of time, the protest may be drawn up or the equivalent declaration made on the first working day following.

Art. 870. — *Notice.*

- (1) The holder shall give notice of non-payment to his endorser and to the drawer within the four working days following the day on which the protest is drawn up or the equivalent declaration is made or, in the case of a provision "retour sans frais," the day of presentment.
- (2) The public officer who has drawn up the protest shall inform in writing without delay the persons bound by the cheque whose addresses are specified on the cheque or known to the public officer drawing up the protest, or specified by the persons having demanded the protest. The expenses arising out of such notice shall be added to the costs of the protest.
- (3) Every endorser shall, within the two working days following the day on which he receives, inform his endorser of the notice which he has received, mentioning the names and addresses of those who have given the previous notices and so on through the series until the drawer is reached. The periods mentioned above shall run from the receipt of the preceding notice.
- (4) Where in accordance with the provisions of sub-art. (3) notice is given to a person who has signed a cheque, the same notice shall be given within the same limit of time to his acceptor for honour.
- (5) Where an endorser has not specified his address or has specified it in an illegible manner, it is sufficient if notice is given to the endorser preceding him.
- (6) The person who is required to give notice may give it in any form whatsoever, even by simply returning the cheque.
- (7) He shall show that he has given notice within the limit of time prescribed. This time-limit shall be regarded as having been observed if a letter giving the notice has been posted within the said time.
- (8) A person who does not give notice within the limit of time prescribed above does not forfeit his rights. He shall be liable for the damage, if any, caused by his negligence, but the amount of his liability shall not exceed the amount of the cheque.

Art. 871. — *Provision "sans protest."*

- (1) The drawer, an endorser or an acceptor for honour may, by the words "retour sans frais," "sans protest" or any other similar words written

on the instrument and signed, release the holder from having a protest drawn up or an equivalent declaration made in order to exercise his right of recourse.

- (2) These words shall not release the holder from presenting the cheque within the prescribed limit of time or from giving the requisite words written by the drawer, the holder has the protest drawn up or equivalent declaration made, he shall bear the expenses thereof.
- (3) Where these words are written by the drawer, they shall be effective against all persons who have signed the cheque; where they are written by an endorser or acceptor for honour, they shall be effective against such endorser or acceptor for honour. Where in spite of the word written by the drawer, the holder has the protest drawn up or equivalent declaration made, he shall bear the expenses thereof.
- (4) Where the words are written by an endorser or acceptor for honour, the costs of the protest or equivalent declaration may be recovered from all the persons who have signed the cheque.

Art. 872. — *Joint guarantee of persons bound by cheque.*

- (1) All the persons liable on a cheque shall be jointly and severally liable to the holder.
- (2) The holder may sue all these persons individually or collectively without being compelled to observe the order in which they have become bound.
- (3) Any person signing the cheque who has taken it up and paid it has the same right.
- (4) Proceedings against one of the parties liable shall be no bar to proceedings against the others, notwithstanding that such other parties may be subsequent to the party first proceeded against.

Art. 873. — *Extent of the right of recourse.*

The holder may claim from the party against whom he exercises his right of recourse:

- (a) the unpaid amount of the cheque;
- (b) interest at the legal rate as from the date of presentment;
- (c) the expenses of the protest or equivalent declaration, and of the notices given and any other expenses;
- (d) a commission not exceeding one third per cent.

Art. 874. — *Extent of the right of recourse of a party who takes up and pays.*

A party who takes up and pays a cheque can recover from the parties liable to him:

- (a) the entire sum which he has paid;
- (b) interest on the said sum calculated at the legal rate, as from the day on which he made payment;
- (c) any expenses which he has incurred;
- (d) a commission not exceeding two per mille.

Art. 875. — *Right to surrender of cheque, protest and receipt account.*

- (1) Every party liable against whom a right of recourse is or may be exercised may require against payment that the cheque be surrendered to him with the protest or equivalent declaration and a receipt.
- (2) Every endorser who has taken up and paid a cheque may cancel his own endorsement and those of subsequent endorsers.

Art. 876. — *Force majeure.*

- (1) Where the presentment of the cheque or the drawing up of the protest or the marking of the equivalent declaration within the prescribed limits of time is absolutely prevented by force majeure (legal prohibition by any State or other cases of force majeure), these limits of time shall be extended.
- (2) The holder shall give notice without delay of the case of force majeure to his endorser and make a dated and signed declaration of this notice, on the cheque or on a slip affixed thereto (allonge); in other respects, the provisions of Art. 870 shall apply.
- (3) Where force majeure has terminated the holder shall without delay present the cheque for payment and, where necessary, have a protest drawn up or an equivalent declaration made.
- (4) Where force majeure continues to operate beyond fifteen days after the date on which the holder, even before the expiration of the time limit for presentment, has given notice of force majeure to his endorser, recourse may be exercised and neither presentment nor a protest nor an equivalent declaration shall be necessary.
- (5) Facts which are purely personal to the holder or to the person entrusted with the presentment of the cheque or the drawing up of the protest or the making of an equivalent declaration shall not be deemed to constitute cases of force majeure.

Section 7. Parts of a Set

Art. 877. — *Right to several parts.*

With the exception of bearer cheques, any cheque issued in one country and payable in another, or issued and payable in the same country, may be

drawn in a set of identical part. Where a cheque is in a set of parts, each part shall be numbered in the body of the instrument, or each part shall be deemed to be a separate cheque.

Art. 873. — *Relation between parts of a set.*

- (1) Payment made on one part operates as a discharge, notwithstanding that there is no provision that such payment shall render the other parts of no effect.
- (2) An endorser who has negotiated parts of different persons and the endorsers subsequent to him shall be liable on all the parts bearing their signatures, which have not been surrendered.

Section 8. Alterations

Art. 879.— *Extent of the obligations of signatories.*

In case of alteration of the text of a cheque, parties who have signed subsequent to the alteration shall be bound according to the terms of the altered text; parties who have signed before the alteration shall be bound according to the terms of the original text.

Art. 880. — *Alteration of crossed cheque.*

- (1) In the case of a crossed cheque, any alteration of the crossing made without authorisation shall invalidate the cheque except as regards any person who has himself made or consented to the alteration, and towards later endorsers.
- (2) Where the alteration is not apparent, the lawful holder may rely on the cheque as if it had not been altered and require payment as originally provided.

Section 9. Limitation of actions

Art. 881. — *Periods of time.*

- (1) Actions of recourse by the holder against the endorsers, the drawer and the other parties liable shall be barred after six months from the expiration of the limit of time for presentment.
- (2) Actions of recourse by the different parties liable for the payment of a cheque against other such parties shall be barred after six months from the day on which the party liable has paid the cheque or the day on which he was sued thereon.
- (3) Actions by the holder of the cheque against the drawee shall be barred after three years from the expiry of the time limit for presentment.

- (4) Limitation shall run, in the case of legal proceedings, from the date of the conclusion of the last proceedings.
- (5) Limitation shall not apply where judgement has been pronounced or the debt has been acknowledged by separate act.

Art. 882. — *Interruption.*

- (1) The period of limitation shall be interrupted by bringing of an action, by notice being given of third party action or by lodging a claim in bankruptcy.
- (2) Interruption of the period of limitation shall be effective against the person in respect of whom the act interrupting such period was performed.
- (3) Where the period of limitation is interrupted, a further period of the same duration shall begin to run.

Section 10. General Provisions

Art. 883. — *Time limits. Holidays.*

- (1) The presentment or protest of a cheque may only take place on a working day.
- (2) Where the last day of the limit of time prescribed by law for performing any act relating to a cheque, and particularly for presentment or for the drawing up of a protest of the making of an equivalent declaration, is a public holiday, the limit of time shall be extended until the first working day which follows the expiration of that time. Holidays which occur during the period shall be included in calculating limits of time.
- (3) Days on which, under the provisions of the laws in force, no payment can be required nor any protest drawn up, shall be deemed to be public holidays.

Art. 884. — *Calculation of time limits.*

Legal or contractual limits of time shall not include the day on which the period begins to run.

Art. 885. — *Prohibition of days of grace.*

No day of grace may be granted.

Art. 886. — *Reference to provisions relating to bills of exchange.*

The following provisions relating to bills of exchange apply to cheques in so far as they are not inconsistent with the provisions of this Chapter:

Art. 781-785 and 788 (protest), Art. 798 (sequestration), Art. 799 (pro-

ceedings for unlawful enrichment), Art. 800 (reservation of casual proceedings) and Art. 801 (cover).

Chapter 5. Travellers Cheques

Art. 887. — *Definition.*

- (1) A travellers cheque is a document handed by a banker to his client under which an amount specified in the document is payable to the payee either at a branch of the bank issuing the document or at any other bank in correspondence.
- (2) Regulations may determine the banks authorised to issue travellers cheques.

Art. 888. — *Particulars.*

No travellers cheque shall be valid unless it contains the following particulars:

- (1) the words "travellers cheque;"
- (2) the name and signature of the banker issuing the cheque;
- (3) the name of the payee;
- (4) the promise to pay a specified amount;
- (5) the words "to order" or "not negotiable;"
- (6) the place and date of issue;
- (7) the period during which the cheque shall be valid, provided that such period shall not exceed one year.

Art. 889. — *Place and conditions of payment.*

- (1) The place where the cheque will be paid may be specified in the cheque or in any other document handed to the payee.
- (2) The conditions on which the payee may demand payment may be specified in the cheque or in any other document handed to the payee.

Art. 890. — *Provisions regarding cheques not applicable.*

- (1) The provisions relating to cheques shall not apply to travellers Cheques.
- (2) Nothing in sub-art. (1) shall affect the provisions of the Penal Code relating to false or falsified cheques.

Chapter 6. Publicity of protest

Art. 891. — *Duty to send list of protests.*

Public officials entitled to draw up protests in respect of negotiable instruments shall every month supply the registrar of the court within

whose jurisdiction they act with a list of all protests drawn up during the preceding month in respect of bills of exchange accepted and not paid, and unpaid promissory notes or cheques.

Art. 892. — *Duties of registrar.*

The registrar shall keep up to date a nominal roll for every debtor showing:

- (1) the date of the protest;
- (2) the name, profession and domicile of the payee or drawer;
- (3) the name or firm-name, profession and domicile of the maker of a promissory note, or drawer of a cheque or acceptor of a bill of exchange;
- (4) the date of maturity, if any;
- (5) the value of the instrument;
- (6) the result of the protest.

Art. 893. — *Copies.*

After one month and within two years from the protest, any person may at his own expense require the registrar to deliver to him a copy of the roll provided in the preceding Article.

Art. 394. — *Cancellation.*

- (1) Where the debtor deposits against receipt the instrument or the protest or a receipt showing payment of a cheque, the registrar shall, at the debtor's expense, strike off the notice of protest entered in the nominal roll concerning that debtor.
- (2) The registrar's liability in respect of documents deposited shall cease after three years from the protest.

Art. 895. — *Publication not permitted*

Publication in any form of lists and rolls prepared in accordance with the provisions of this Chapter is prohibited under pain of damages.

TITLE III. BANKING TRANSACTIONS

Chapter I. Bank Deposits

Section 1. Deposit of funds

Art. 896.— *Nature of the contract.*

The contract of deposit of funds renders the bank owner of the funds deposited, irrespective of the mode of deposit. The bank may dispose of these funds in respect of its professional activity, subject to their repayment under the conditions provided in the contract:

Provided that the bank shall not acquire the title to nor the right to dispose of coins or other individual monetary tokens in respect of which there is a provision that they shall be refunded in kind.

Art. 897. — *Deposit account.*

- (1) The contract of deposit of funds results in the opening of an account in which the bank enters by way of credit and debit all transactions carried out with the depositor, or on his behalf with third parties.
- (2) Transactions which the parties have agreed to exclude shall not be entered in the account.

Art. 898. — *Forms of deposit.*

- (1) Unless otherwise agreed, a deposit of funds shall be at sight and the holder of the account may dispose at any time of the whole or part of the balance.
- (2) The right of disposal as defined in sub-art. (1) may be made subject to notice or the expiry of a fixed period.

Art. 899. — *No overdrafts.*

A contract of deposit of funds shall as of right give no right to an overdraft.

Art. 900. — *Statements of account.*

A copy of the account shall be sent to the depositor once each year or more frequently, where customary or agreed, showing the balance to be carried forward.

Art. 901. — *Place of transactions.*

Unless otherwise agreed, deposits and drawings shall be effected at the office of the bank where the account was opened.

Art. 902. — *Several accounts.*

Where more than one account has been opened by the same person, at a bank or several branches of the same bank, each account shall, unless otherwise agreed, operate separately from the others.

Section 2. Bank Transfers

Art. 903. — *Definition.*

- (1) A bank transfer is a transaction by which a bank debits the account of a depositor, upon his written instructions, and credits by its entry another account with the same amount.

- (2) The conditions of the issue of transfer orders shall be as agreed by the parties. Transfers to bearer shall not be permitted.
- (3) Where the beneficiary under the transfer is required to carry the sum to the credit of a third party, the name of the third party shall appear in the transfer order.

Art. 904. — *Types of transfer.*

A transfer may be internal or external depending on whether the account to be debited and the account to be credited have been opened at the same branch of the bank or at different branches.

Art. 905. — *Sums for which the transfer order is given.*

A transfer order is valid either in respect of sums already entered in the account of the person who orders transfer or in respect of sums to be entered therein within a period determined in advance in agreement with the bank.

Art. 906. — *Transfer of title. Cancellation of transfer order.*

- (1) The beneficiary under a transfer obtains title to the sum to be transferred at the time when the bank debits the account of the person who orders transfer.
- (2) A transfer order may be cancelled until that time.
- (3) The issue of a transfer order as provided in Art. 907 (1) involves final disclaimer of the right of cancellation.

Art. 907. — *Special provisions.*

- (1) It may be provided that transfer orders shall not be notified directly to the bank but may be presented to it by the beneficiary himself.
- (2) It may be provided that certain transfers shall not be entered upon receipt of the direct orders of the person issuing the order or the presentation of the instrument of transfer, but only at the end of the day together with all transfer orders coming within the same category received during that day.

Art. 908. — *Insufficient cover.*

Where there is not sufficient cover, the bank may refuse transfer.

Art. 909. — *Subsistence of causal debt.*

The debt for the settlement of which a transfer order is issued shall subsist together with all securities and collateral until the account of the beneficiary is effectively credited with the amount of the transfer.

Art. 910. — *Opposition to transfer order.*

The person ordering transfer may validly oppose the execution of a transfer order, notwithstanding that it has been evidenced by an instrument handed to the beneficiary, from the date of a judgment declaring the bankruptcy of the beneficiary or granting him the benefit of a composition with creditors.

Art. 911. — *Transfer orders presented before the declaration of the bankruptcy of the person issuing the order.*

A bank may validly debit the account of the person issuing the order with all transfers presented before a judgment declaring his bankruptcy or granting him the benefit of a composition with creditors.

Section 3. Deposit of Securities

Art. 912. — *Prohibition of bank handling securities on its own behalf.*

Unless otherwise agreed in writing a bank may only handle securities and exercise the rights relating thereto exclusively on behalf of the depositor.

Art. 913 — *Duty to provide custody.*

- (1) A bank shall ensure the custody of the securities and act in relation thereto with the due care required of a public bailee under the civil law.
- (2) Securities may only be surrendered under a transaction requiring such surrender.

Art. 914. — *Collection of yields of securities and collateral obligations.*

- (1) Unless otherwise agreed a bank shall collect the amount of interest, dividends, capital repayments, amortisation and any other entitlements arising under the securities deposited as soon as they can be claimed.
- (2) Sums collected shall be placed at the disposal of the depositor, in particular by entry to the credit of his deposit account.
- (3) A bank shall collect free scrip issues and join them to the deposit.
- (4) It shall carry out transactions for the safe-keeping of the rights arising out of the securities, such as regrouping, exchange, renewal of coupon sheets and stamping.

Art. 915 — Notification to depositor.

- (1) Transactions which involve the exercise of an option by the owner of the securities shall be notified to the depositor by registered letter, the costs being borne by him.
- (2) Where the depositor does not give his instructions in due time, the bank shall transact, on behalf of the depositor, the rights which he has not exercised.

Art. 916. — Duty to restitute.

- (1) A bank shall restore securities at any time, upon the demand of the depositor, and within the periods of time provided in the conditions of custody and subject to any rights of retention which the bank may be entitled to claim.
- (2) Restitution shall be made at the place where the deposit was made. It shall relate to the titles deposited, unless restitution of different titles has been agreed by the parties or is permitted by law.

Art. 917. — Persons to whom restitution is to be made.

- (1) Restitution shall only be made to the depositor or those having rights from him or to the person appointed by him or them, even where the securities indicate that they are the property of third parties.
- (2) Securities in a specific name registered in the names of a usufructuary and a bare owner may be validly handed to the bare owner upon production of proof of the death of the usufructuary.

Art. 918. — Claims regarding securities.

The bank shall inform the depositor of any claim regarding deposited securities which has been made in court and of which the bank has notice.

Chapter 2. Hiring of Safes

Art. 919. — Object of contract.

The contract of hire of a safe has as its object to place at the disposal of the hirer a safe or compartment of a safe for a specified period of time on payment of a rent.

Art. 920. — Obligations of the bank.

- (1) The bank shall take all necessary measures to ensure the upkeep and custody of safes.
- (2) In the event of any potential risk to the security of the safes, the bank shall take all necessary steps to enable the hirers to empty their

safes before the risk materialises, even outside working days and hours of business. The bank is not bound to give individual notices to the hirers.

Art. 921. — *Access to safes. Keys.*

- (1) The bank shall only permit the hirer or his agent to have access to a safe.
- (2) The key of a safe shall remain the property of the bank.

Art. 922. — *Obligations of hirer.*

Where the hirer places in his safe anything which is dangerous in itself, the bank may forthwith cancel the contract of hire.

Art. 923. — *Termination for failure to pay rent.*

- (1) In default of payment of the rent for any single term, the contract shall terminate as of right one month after the bank has sent notice by registered letter and the rent has not been paid. At the expiry of this period the bank shall take possession of the safe after calling upon the hirer to be present at the safe on a day and time fixed.
- (2) Where a hirer so called upon does not present himself or refuses to give up his safe open with its contents removed and to return the key giving the combination, the said safe shall be forced in the presence of a court official who shall draw up a descriptive report which shall constitute evidence as regards all interested parties.

Art. 924. — *Execution levied on a safe.*

Execution may be levied on a safe in accordance with the provisions of the Civil Procedure Code.

Chapter 3. Contracts for current accounts

Section 1. Definition, conditions and duration of current accounts

Art. 925. — *Definition.*

- (1) A contract for a current account is a contract whereby named correspondents agree to enter in an account, by reciprocal and simultaneous remittances, debts arising out of transactions between them and thus to substitute for individual and successive settlements of these transactions a single settlement to be carried to the sole balance of the account at its closure.
- (2) Where it has been agreed that the remittances of one party shall only begin when the remittances of the other have terminated, or where an examination of the account so indicates, the rules governing current accounts shall not apply.

Art. 926. — *Debts brought into account.*

- (1) All debts arising out of the business relations between the correspondents and which are not guaranteed by security by operation of law or under agreement are the subject of remittances into current account, unless it has been agreed that certain of them shall be excluded by general or particular stipulations.
- (2) Debts guaranteed by security under agreement, accorded by one correspondent or by a third party, may be entered in current account under a special and formal agreement between the interested parties.

Art. 927. — *Debts expressed in different currencies or dealing with non-fungible things.*

- (1) Where given debts deal either with sums of money expressed in different currencies or with non-fungible things, the correspondents may enter them in current account provided that:
 - (a) they enter the remittances relating thereto under separate heads within which fungibility is required; and
 - (b) it is provided that the current account shall retain its unity, despite the material division into several heads.
- (2) In this case, all the balances under the different heads must be capable of being converted, in order to be merged so as to show a sole balance at a time fixed by the correspondents and in no case later than the closure of the current account.

Art. 928. — *Duration of current account.*

- (1) A current account which has been opened without specifying its duration may be closed at any time if a correspondent so desires, subject to the time limits for notice provided or, where not provided, customary.
- (2) A current account which has been opened for a fixed period shall be closed at the expiry of the term or earlier by agreement between the correspondents.
- (3) A current account shall be closed in any event by the death of one or other of the correspondents, or by his becoming legally incapable or bankrupt.

Art. 929. — *Effects of closure of account.*

The closure of a current account converts the statements at the date of closure into a balance and this balance is thereupon at call unless the cor-

respondents have otherwise agreed or certain transactions giving rise to remittances and not completed are of such nature as to modify the balance.

Section 2. Effects of current accounts

Art. 930. — *Disposal of the credit balance in the books.*

Unless otherwise agreed, either correspondent may freely dispose, at any time, of the credit balance shown in his favour.

Art. 931. — *Extinction or reduction of debt.*

Where a debt which has been the subject of a remittance into current account ceases to exist or is reduced by reason of an act arising after the entry of the remittance in the account, the corresponding item in the account shall be struck out or written down to the same extent and the account accordingly amended.

Art. 932. — *Carry forward of the product of security.*

- (1) Unless otherwise provided in the agreement made under Art. 926 (2), the product of the security originally relating to a debt entered in current account shall be carried forward up to the amount of the contingent balance of the account, without regard to changes which might arise in the books until closure.
- (2) Such carry forward may only be set up against third parties if it has been published in accordance with the rules of civil law for the preservation of the said security.

Art. 933. — *Prohibition of appropriation of one item to another.*

No item in a current account may be appropriated to an item on the other side.

Art. 934. — *Rules regarding prescription and interest.*

- (1) Debts entered in current account shall not be subject to the rules applying thereto in respect of prescription and interest.
- (2) The provisions of civil law shall apply to prescription of the balance after closure.
- (3) Remittances shall bear interest at the rate provided by the correspondents, or in the absence of such provision, at the rate fixed under the Civil Code.
- (4) Unless otherwise agreed and until closure of the account this interest shall itself bear interest from the day of its remittance into account, provided that this remittance shall be made in accordance with the intervals of time fixed under the Civil Code.

Art. 935. — *Different rates of interest on credit and debit items.*

Whenever the rate of interest provided in a current account is not the same for credit and debit items, interest shall be charged at the time of each remittance by calculating the interest produced from the date of the previous remittance on the balance following such remittance, and by adding this interest to that having already run on the same side, until set off against interest on the other side at the time of remittance of interest into the account.

Art. 936. — *Security established during suspected period may not be set up against the estate.*

- (1) Where one of the correspondents becomes bankrupt, any security under agreement on his property established during the period provided in Art. 1029 of this Code, by way of guarantee of the contingent debit balance of the current account, may not be set up against the estate insofar as, at the time the said security was established, the current account already showed that correspondent as a debtor.
- (2) This security may be set up against the estate as regards the surplus, if any, of the debit balance of the account on the day of closure over this debit position, subject to the provisions of Art. 1030 of this Code, if applicable.

Art. 937. — *Sequestration of current account.*

- (1) The sequestration of a current account may be effected at any time on the credit balance, in accordance with the provisions of the Civil Procedure Code.
- (2) Such sequestration shall not prejudice such rights as the debtor's correspondent may enjoy with respect to this credit under an agreement by which the debtor has relinquished the free disposal at any time of this credit balance.

Section 3. Effects of bankruptcy of remitter where commercial instruments are discounted and entered in current account

Art. 938. — *Contra transfer of instruments.*

- (1) Where the yield on discount of commercial instruments has been entered in current account and the instruments have not been paid on presentment, the receiver of the instruments may, even after the remitter is declared bankrupt, contra transfer these instruments, that is to say carry to the debit of the account a sum equal to the nominal amount of the instruments together with the costs provided in Art. 791.

- (2) In the event of the bankruptcy of the remitter, contra transfer is only permitted in respect of instruments unpaid at the date of maturity; any agreement to the contrary shall be disregarded.

Art. 939. — Disposal of contra transferred instruments.

- (1) Where, after contra transfer, the current account shows a credit balance in favour of the remitter who has become bankrupt, the receiver shall restore the contra transferred instruments.
- (2) Where, after contra transfer, the current account shows a debit balance to the remitter who has become bankrupt, the receiver may retain the instruments, irrespective of the date of maturity.
- (3) The receiver may, in the case provided in sub-art. (2), accumulate the sums collected by him from persons jointly and severally liable, as a result of his exercise of the rights and securities arising out of the contra transferred instruments, with the dividend in the bankruptcy collected by him for the balance owing to his account drawn up after contra transfer, subject however to the provisions of Art. 940.

Art. 940. — Extent of right of receiver.

- (1) The receiver may in no case take as a result of the accumulation provided in Art. 939 (3) a total amount greater than the debit balance of the current account after contra transfer, his right to a dividend in the bankruptcy of the remitter being thereby as of right reduced.
- (2) Where the status of the account is such that on the date of bankruptcy there is already a debit balance to the remitter before contra transfer of the instruments, the receiver may not take by way of accumulation a total amount greater than the sum contra transferred together with the dividend calculated on the debit balance of the account before contra transfer, his right to a dividend in the bankruptcy of the remitter being thereby as of right reduced.

Chapter 4. Discount

Art. 941. — Definition.

- (1) Discount is an agreement whereby a banker undertakes to pay in advance to the holder the value of commercial instruments or other negotiable securities having a definite time of payment, which the holder assigns to the banker subject to repayment of their value if not paid by the person principally liable.
- (2) This transaction gives to the banker the right to charge interest and further an endorsing or other commission.

(3) A special agreement may provide for a fixed discount.

Art. 942. — *Calculation of interest and commission.*

(1) Interest shall be calculated on the basis of the time remaining until maturity of the instruments, or for a shorter period in the case of so-called pawning transactions or others under which there is reimbursement before maturity by the beneficiary under the discount.

(2) Commission shall be calculated on the basis of the value of the instruments.

(3) A minimum amount of interest and of commission may be fixed.

Art. 943. — *Duties of beneficiary.*

(1) The beneficiary under a discount shall reimburse to the banker the nominal value of unpaid instruments or securities.

(2) Instruments accepted for discount for a partial amount only shall be reimbursed up to that amount.

Art. 944. — *Rights of banker.*

(1) The banker may, with regard to the principal debtors under an instrument, the beneficiary under the discount and other persons jointly liable, exercise all the rights arising out of the instruments discounted by him.

(2) The banker has in addition, as regards the beneficiary under the discount, a separate right to reimbursement of sums placed at the disposal of the beneficiary, together with interest and commission. This right may be exercised up to the amount of the unpaid instruments, irrespective of the reasons for non-payment, and, in the case of a current account between the parties, in accordance with the provisions of Art. 938-940.

Chapter 5. Credit Transactions

Section 1. Open Credits

Art. 945. — *Object.*

(1) An open credit has as its object to place directly or indirectly at the disposal of the beneficiary means of payment up to a certain sum of money.

(2) An open credit may be granted for a limited or unlimited period. An unlimited credit may be cancelled at any time by the banker.

Art. 946. — *Cancellation.*

An open credit may be cancelled by the death or incapacity of the beneficiary or suspension of payment, even where not established by

judgment, or on account of gross negligence in the use of the credit granted.

Section 2. Advances on Securities

Art. 947. — *Definition.*

An advance on securities is a transaction by which a banker grants a credit against securities belonging to the beneficiary under the credit or to a third party who has agreed to the pledge.

Art. 948. — *Forms.*

- (1) An advance on securities shall be in writing or it shall be null and void.
- (2) It shall contain :
 - (a) the designation of the securities deposited; and
 - (b) the name and domicile of the owner or other beneficiary under the credit; and
 - (c) the amount of and conditions under which the credit is granted.

Art. 949. — *Selling of securities.*

Where the borrower does not fulfil his undertaking to maintain the percentage of margin or fails to repay the loan in accordance with the terms of the contract, the banker may sell the securities.

Section 3. Pledge of Securities

Art. 950. — *Principle.*

Any transferable securities, irrespective of their form, may be pledged as provided in this Section.

Art. 951. — *Obligations guaranteed.*

- (1) Transferable securities may be pledged to guarantee the execution of any obligation even where, in the case of sums of money, the amount due is not specified.
- (2) The provisions of sub-art. (1) shall apply to a guarantee of obligations which are only contingent at the time of setting up of the pledge.

Art. 952. — *Forms.*

- (1) A guaranteed creditor who already holds the securities involved in some other manner shall be deemed to be put in possession as pledgee from the date of the contract.
- (2) Where the securities pledged are held by a third party already in possession in some other manner, the guaranteed creditor shall be deemed to be in possession from the time when the third party pos-

essor has placed the said securities in a special account which he shall open on first call.

- (3) In the case of securities in respect of which there is a certificate in a specific name constituting an entry in the register of the company issuing the securities, the guaranteed creditor shall be deemed to be in possession from the time when the transfer by way of guarantee has been entered.

Art. 953. — *Undertakings of pledger.*

Where the pledger is not personally responsible for the obligation guaranteed, he shall only be bound as a material surety.

Art. 954. — *Security set up by bare owner.*

The security set up by a bare owner on securities subject to a usufruct shall extend as of right to the full title at the termination of the usufruct.

Art. 955. — *Rights and obligations of holder of securities.*

The holder of pledged securities has the rights and is subject to the obligations set forth in Art. 897-900.

Art. 956. — *Status of a third party possessor.*

A third party agreed upon as possessor by way of pledge shall be deemed to have relinquished any right of detainer to his advantage in respect of all earlier grounds unless he has expressly reserved thereon in giving his acceptance.

Art. 957. — *Preferred rights of pledgee.*

The preferred rights of the pledgee subsist at the date thereof, both as between the parties and as regards third parties, on the proceeds, amounts reimbursed or instruments of replacement of the securities pledged.

Art. 958. — *Failure of pledger to meet his obligations.*

Where the pledger fails to meet his obligations, the debt guaranteed shall become due immediately, unless new securities of an equivalent amount are produced without delay to replace the security which does no longer exist or is imperilled.

Section 4. Documentary Credits

Art. 959. — *Definitions.*

- (1) A documentary credit is a credit opened by a bank providing for payment against presentation of specified documents to the opening bank or to its agent. Goods represented by such documents may

be held and disposed of by the bank in accordance with the terms agreed between the bank and its principal.

- (2) A documentary credit is independent of any contract of sale on which it may be based and to which a bank is not a party.

Art. 960. — *Obligations of the bank.*

The bank opening the credit shall honour the conditions as to payment, acceptance, discount or negotiation.

Art. 961. — *Revocable and irrevocable credits.*

A documentary credit may be revocable or irrevocable. Unless otherwise provided, a credit is deemed to be revocable even if it has been opened for a specific period.

Art. 962. — *Effects of revocable credit.*

Revocable credits are not legally binding undertakings between banks and beneficiaries. Such credits may be modified or cancelled at any time without notice to the beneficiary. When a credit of this nature has been transmitted to a branch, or to another bank, its modification or cancellation can take effect only upon receipt of notice thereof by such branch or other bank, prior to payment or negotiation, or the acceptance of drawing thereunder by such or other bank.

Art. 963. — *Effects of irrevocable credit.*

Irrevocable credits are definite undertakings by an issuing bank and constitute the engagement of that bank to the beneficiary or, as the case may be, to the beneficiary and bona fide holders of drafts drawn thereunder that the provisions for payment, acceptance or negotiation contained in the credit, will be duly fulfilled provided that the documents or, as the case may be, the documents and the drafts drawn thereunder comply with the terms and conditions of the credit.

Art. 964. — *Confirmation of irrevocable credit.*

- (1) When the issuing bank instructs another bank to confirm its irrevocable credit and when the latter does so, the confirmation implies a definite undertaking of the confirming bank as from the date on which it gives confirmation.
- (2) In case of credits available by negotiation of drafts, the confirmation implies only the undertaking of the confirming bank to negotiate drafts without recourse to drawer.
- (3) Such undertakings can neither be modified nor cancelled without the agreement of all persons concerned.

- (4) When a correspondent is instructed by cable or telegram to notify a letter of credit, the issuing bank must send the original of the said letter of credit to the said correspondent if it is intended to put the document itself into circulation. If any other procedure were followed, the issuing bank would be responsible for all consequences which may result therefrom.

Art. 965. — *Obligation to verify documents.*

The bank shall satisfy itself that the documents conform strictly to the instructions contained in the credit. When it refuses documents the bank shall notify the presenter within as short a time as possible and inform him of the errors found.

Art. 966. — *Liability of the bank.*

The bank shall not incur any liability where the documents are on their face in conformity with the instructions received. It shall not incur any obligation in relation to the goods which are the subject of the credit opened.

Art. 967. — *Transfer and division of credit.*

A documentary credit is only transferable or divisible where a bank is authorised to pay in whole or in part to one or more third parties on the instructions of the first beneficiary. A credit is only transferable on the express order of the bank opening the credit. It is so transferable once only, unless otherwise provided.

BOOK V. BANKRUPTCY AND SCHEMES OF ARRANGEMENT

TITLE I. GENERAL PROVISIONS

Art. 968. — *Scope of application.*

- (1) The provisions of this Book shall apply to any trader within the meaning of Art. 5 of this Code and to any commercial business organisation within the meaning of Art. 10 of this Code with the exception of joint ventures.
- (2) Without prejudice to such provisions as are applicable to physical persons only or to the provisions of Title IV applicable to business organisations only, the provisions of Titles I, II, III and V of this Book shall apply to traders and commercial business organisations.

Art. 969. — *Conditions of bankruptcy.*

Any trader who has suspended payments and has been declared bankrupt shall be deemed to be bankrupt.

Art. 970. — *Bankruptcy of fact.*

- (1) Where no judgment in bankruptcy is given, bankruptcy shall not result from mere suspension of payments.
- (2) A sentence may be passed by a criminal court in respect of bankruptcy or any offence connected with bankruptcy notwithstanding that suspension of payments has not been established by a judgment in bankruptcy.

Art. 971. — *Facts constituting suspension of payments.*

Suspension of payments shall result from any fact, act or document showing that the debtor is no longer able to meet the commitments related to his commercial activities.

Art. 972. — *Notice of suspension of payments.*

Any trader who suspends payment of his commercial debts shall within fifteen days file a notice to this effect with the registrar of the court having jurisdiction under Art. 974 or 1157, with a view to the institution of bankruptcy proceedings or the approval of a scheme of arrangement.

Art. 973. — *Documents to be annexed to the notice.*

- (1) The following documents, dated and signed, shall be annexed to the notice given under Art. 972:
 - (a) the balance sheet of the firm;
 - (b) the profit and loss account;
 - (c) a list of commercial credits and debts, with the names and address of the creditors and debtors.
- (2) Reasons shall be given in the notice where any of the documents required under sub-art. (1) cannot be provided or is incomplete.

TITLE II. BANKRUPTCY
Chapter I. Judgment in bankruptcy

Art. 974. — *Court having jurisdiction.*

- (1) The Ethiopian court having jurisdiction in bankruptcy proceedings shall be the court of the place where the business of a trader who is a person is situate or, where there is more than one business, the place where the principal business is situate.
- (2) Subject to the provisions of international conventions, the Ethiopian court shall have jurisdiction notwithstanding that the principal place of business is abroad and a foreign court has exercised bankruptcy jurisdiction.

Art. 975. — *Proceedings how instituted.*

Bankruptcy proceedings shall be instituted by way of petition made by:

- (a) the debtor; or
- (b) one or more creditors; or
- (c) the public prosecutor; or
- (d) the court itself.

Art. 976. — *Preliminary investigation.*

- (1) The court may, where it thinks fit, appoint a judge for the purpose of investigating into the affairs and activities of the debtor.
- (2) Any judge so appointed may require the assistance of a trustee.
- (3) All information collected shall be reported to the court.

Art. 977. — *Determination of the date of suspension of payments.*

- (1) At the first hearing or, where appropriate, on receiving the report under Art. 976, the court shall:
 - (a) fix the date of suspension of payments; and
 - (b) subject to the provisions relating to schemes of arrangement, declare the debtor bankrupt.
- (2) Where the date of suspension of payments is not fixed, such date, subject to the provisions of Art. 978, shall be deemed to be that of the judgment declaring the debtor bankrupt.

Art. 978. — *Extension of the date of suspension of payments.*

- (1) The date fixed under Art. 977 (2) may be extended, after the judgment in bankruptcy, by one or more judgments given on the application of:
 - (a) the trustee or any interested party; or
 - (b) the public prosecutor; or
 - (c) the court itself.
- (2) No application under sub-art. (1) may be entertained after the expiry of the period specified in Art. 1046 and the date of suspension of payments may not be altered upon the expiry of such period.
- (3) In no case may the date of suspension of payments be earlier than two years before the judgment in bankruptcy.

Art. 979. — *Bankruptcy after retirement.*

- (1) A trader who is a person may be declared bankrupt within one year from his name being struck off the commercial register where he had suspended payments prior to such striking off.
- (2) Where the trader was not registered, he may be declared bankrupt at any time after having suspended payments.

Art. 980. — *Bankruptcy after death.*

- (1) Where a trader who is a person dies after having suspended payments, he may be declared bankrupt within one year after his death.
- (2) The petition may be lodged by:
 - (a) a creditor; or
 - (b) the public prosecutor; or
 - (c) the court itself.
- (3) An heir may lodge a petition for bankruptcy in order to prevent the assets of the succession being mixed with his own property.
- (4) Adjudication of bankruptcy after death shall suspend the effect of the separation of estates obtained by the creditors of the deceased under the provisions of the Civil Code.

Art. 981. — *Judgment in bankruptcy.*

A judgment in bankruptcy shall appoint a commissioner in bankruptcy and one or more trustees in bankruptcy.

Art. 982. — *Enforcement of judgments.*

All judgments and orders in bankruptcy shall be enforced provisionally.

Art. 983. — *Publication of judgments.*

- (1) Extracts from judgments given under Art. 977, 979 and 980 shall be sent to the debtor, the trustee and the petitioning creditor or heir not later than the day following judgment. The extract shall give the names of the parties, the operative part and the date of the judgment.
- (2) An extract shall be posted by the registrar at the main entrance of the court on the day following the judgment and it shall remain so posted for a period of three months.
- (3) The registrar shall send an extract to the public prosecutor.
- (4) The registrar shall send three copies of the extract to the official in charge of the commercial register with a view to varying the entry in the register. Such variation shall be made in the local register, notified to the central register and published in the official Commercial Gazette in accordance with the provisions of Book I, Title IV, of this Code.
- (5) An extract shall be published in a newspaper empowered to publish legal notices circulating at the place where suspension of payments took place.
- (6) Publication shall also be made at the places where the debtor carries on business.

Art. 984. — Application to set aside judgment.

- (1) An application to set aside a judgment in bankruptcy shall be made within eight days from the date of such judgment. In respect of judgments subject to posting and to insertion in newspapers empowered to publish legal notices or in the official Commercial Gazette, the period of time shall run only from the date when the last requirement has been satisfied.
- (2) An application to set aside may not be lodged by the petitioner.
- (3) An application to set aside lodged by the debtor shall not suspend judgment.

Art. 985. — Judgment on application to set aside.

- (1) A judgment rejecting an application to set aside shall be notified to the person having lodged the application.
- (2) A judgment setting aside an adjudication of bankruptcy shall be notified to the trustee, the creditor having petitioned and the debtor, where the debtor has not lodged an application. The provisions of Art. 983 shall apply.

Art. 986. — Appeal against judgment.

- (1) An appeal against a judgment in bankruptcy may be lodged within fifteen days from notification.
- (2) The appeal shall be heard summarily within three months and the judgment shall be enforceable immediately.

Art. 987. — Judgments not open to applications to set aside or to appeal.

- (1) The following judgments shall not be open to applications to set aside or appeal:
 - (a) those concerning the appointment or replacement of the commissioner in bankruptcy, or the appointment or removal of trustees;
 - (b) those pronouncing as to requests for discharge and as to requests for assistance to the debtor and his family;
 - (c) those authorising the sale of property and goods forming part of assets;
 - (d) those by which the court decides upon any application to set aside orders made by the commissioner in bankruptcy within the scope of his powers;
 - (e) those authorising the operation of the business.
- (2) The commissioner in bankruptcy may not appear in proceedings under sub-art. (1) (d).

Art. 988. — *Setting aside of the adjudication.*

- (1) An adjudication shall be set aside where, between the pronouncement of the judgment and the date of the order given in respect of an application to set aside or an appeal, the bankrupt has restored his affairs by repaying his creditors or by obtaining a composition.
- (2) The effect of acts taken by persons responsible for conducting bankruptcy proceedings shall not be affected.

Chapter 2. Persons responsible for conducting Bankruptcy Proceedings

Section 1. The Court

Art. 989. — *Powers of the court.*

The court which has declared the debtor bankrupt shall supervise all bankruptcy proceedings and shall make orders on matters which are outside the powers of the commissioner. It shall hear appeals from orders of the commissioner.

Art. 990. — *Jurisdiction.*

The court which has declared the debtor bankrupt shall have jurisdiction to hear all claims arising in the bankruptcy, unless there be claims in rem concerning immovable property which remain subject to the ordinary rules relating to jurisdiction.

Section 2. Commissioner in bankruptcy

Art. 991. — *powers of the commissioner.*

- (1) The commissioner shall have power to supervise and deal with all matters concerning the bankrupt estate.
- (2) He shall refer to the court any claims which fall within the jurisdiction of the court and the court in its decisions shall mention such reference.
- (3) He shall take or cause to be taken by the competent authorities all steps and measures necessary to preserve the assets.
- (4) He shall call the creditors' committee as required by law or where he considers it to be necessary.
- (5) Where it is in the interests of the estate, he shall authorise the trustee to appoint assistant, unless such an appointment is reserved to him by law.
- (6) He shall authorise the trustee in writing to enter appearance in legal proceedings.

Art. 992. — Orders of the commissioner.

- (1) Orders of the commissioner shall be deposited without delay in the court registry. All interested parties shall be notified by registered letter.
- (2) Any interested party may apply to set aside any such order. Application shall be made by notification to the registry within ten days of the date of the sending of the registered letter.
- (3) The court shall decide on these applications at the first hearing.

Art. 993. — Replacement of commissioner.

The court may at any time of its own motion replace a commissioner by another of its members.

Section 3. Trustees

Art. 994. — Appointment of trustees.

- (1) Trustees shall be selected from a list of qualified persons of good repute resident in Ethiopia. Such list shall be prepared at the beginning of each year by the Ministry of Commerce and Industry.
- (2) The trustees shall not exceed three in number.
- (3) Where several trustees are appointed they shall act jointly and severally:
Provided that the commissioner may in certain circumstances authorise one or more of them to act individually. Trustees so authorised shall alone be liable.
- (4) The following persons may not be appointed trustees:
 - (a) a person who has been declared bankrupt; or
 - (b) a person who has been deprived of civil rights; or
 - (c) a relative by consanguinity or affinity of the debtor to the fourth degree inclusive: or
 - (d) a creditor.
- (5) The trustees may not acquire the goods of the debtor.

Art. 995 — Powers of trustee.

- (1) The trustee shall be responsible for the administration of the bankrupt estate under the supervision of the commissioner. He shall represent the universality of creditors in relation to third parties.
- (2) He may not assign his functions but may, with the approval of the commissioner, delegate them in respect of isolated transactions.

Art. 996. — *Deposit of funds.*

- (1) Any funds received by the trustee, less the amounts determined by order of the commissioner to meet legal costs and management expenses, shall be deposited without delay in the State Bank of Ethiopia in an account opened in the name of the bankrupt estate and may not be withdrawn except by written order of the commissioner.
- (2) A trustee shall be removed where he fails to comply with the provisions of this Article, without prejudice to such civil sanctions or criminal penalties as may be appropriate.

Art. 997. — *Recourse against acts of trustees.*

The bankrupt or any other interested person may object to any act of the trustees in respect of the bankrupt estate to the commissioner who shall decide on the objection within three days.

Art. 998. — *Removal of trustees.*

- (1) The commissioner may require the court to remove a trustee on the application of the debtor or the creditors' committee or of his own motion.
- (2) Where the commissioner has not dealt with such applications within five days, the applicants may move the court themselves.
- (3) The court, sitting in chambers, shall consider the report of the commissioner, the explanations of the trustee and the opinion of the public prosecutor. Judgment shall be delivered in open court.

Art. 999. — *Replacement of trustees.*

The commissioner shall move the court to appoint additional trustees or to replace existing trustees.

Art. 1000. — *Liability of trustees.*

- (1) Trustees are public officials in the exercise of their functions. They shall carry out their duties with all care and shall show, where necessary, that they have exercised the necessary care.
- (2) They shall keep a register which has been stamped free of charge by the commissioner and make therein day to day entries of acts done by them.
- (3) Until the bankruptcy proceedings are completed, claims against a trustee who has been removed shall, with the prior consent of the commissioner, be instituted by the trustee who replaces him.
- (4) A trustee who retires from office, even during bankruptcy proceedings, shall give a report on his activities under Art. 1090.

Art. 1001. — *Remuneration of trustees.*

- (1) The costs and fees of trustees shall be fixed by the commissioner.
- (2) Fees shall be paid after the submission of the report under Art. 1090. An advance may be made to the trustees with the consent of the commissioner and for good cause.
- (3) The bankrupt and the creditors may object to the court against an order made under sub-art. (1) within eight days of the making of the order. The objection shall be heard in chambers.
- (4) The trustees shall be entitled to no other payment than costs and fees. Any amounts paid in contravention of this Article shall be refunded, without prejudice to such civil sanctions or criminal penalties as may be appropriate.

Section 4. Creditors' committee

Art. 1002. — *Appointment of committee.*

- (1) The creditors' committee shall be appointed not later than ten days after the deposit with the registrar of the order showing the list of creditors provided in Art. 1044.
- (2) A provisional creditors' committee may be appointed if the commissioner thinks such a step to be desirable.
- (3) Three or five creditors chosen by the commissioner from among all the creditors shall form the creditors' committee. The commissioner shall appoint the chairman.
- (4) The members of the committee may on their request be replaced by the commissioner. They may only be removed by the court on the proposal of the commissioner.
- (5) No relative by consanguinity or affinity of the debtor, up to the fourth degree inclusive, may be a member of the creditors' committee.

Art. 1003. — *Functions of committee.*

- (1) The committee shall give its advice where such is required by law or he considers a meeting desirable.
- (2) The chairman shall call the committee whenever its advice is requested or he considers a meeting desirable.
- (3) Decisions of the committee shall be by a majority vote.
- (4) The committee shall have special regard to the verification of the accounts and the statement of affairs prepared by the debtor and to the supervision of the acts of the trustees.
- (5) The committee may at any time require information on the state of the bankruptcy proceedings and on the position of receipts and

payments. The committee shall be consulted by the trustees with regard to all legal proceedings.

- (6) **Members** of the creditors' committee shall be liable only in respect of gross negligence.
- (7) The committee is entitled to no remuneration other than the reimbursement of expenses approved in writing by the commissioner.

Chapter 3. Provisional and Conservatory Measures

Section 1. Conservatory Measures

Art. 1004. — *Closing of debtor's books.*

- (1) The trustees shall summon the debtor to be present at the writing up and closing of the books, the provisions of Art. 1011 having been complied with, where necessary.
- (2) Where the debtor does not appear, he shall be summoned by registered letter to appear within forty-eight hours and to produce his books if they are in his possession.
- (3) He may appear by his attorney if he satisfies the commissioner that there are substantial reasons preventing his personal appearance.
- (4) Where the debtor fails to appear, either in person or by his attorney, or where he absconds, the commissioner shall inform the public prosecutor who shall take the necessary steps to secure his attendance.

Art. 1005. — *Preserving debtor's rights.*

- (1) The trustees on assuming office shall take all steps to preserve the rights of the debtor in relation to his own debtors.
- (2) They shall enforce registration of mortgages where registration has not been enforced by the debtor. Registration shall be made in the name of the bankrupt estate by the trustees on proof of their status.

Art. 1006. — *Mortgage registration on immovable property of debtor.*

- (1) The trustees shall cause registration to be effected in the name of the bankrupt estate on all immovable property in the possession of the debtor or which may at a later date come into his possession.
- (2) Mortgages shall not be registered on immovable property acquired by the debtor after payment of the last dividend under a composition or, where there is no composition, after the final closure of the winding-up procedure.

Art. 1007. — *Registration of mortgage on business.*

- (1) The trustees shall register the legal mortgage provided in Art. 172 (1) (b) of this Code charging the debtor's business or businesses.

- (2) The entry shall show:
 - (a) the name and address of the debtor;
 - (b) the date of the judgment declaring the debtor bankrupt;
 - (c) the court having declared the debtor bankrupt;
 - (d) the purposes and address of the business;
 - (e) the parts of the business to which the mortgage extends;
 - (f) the address of any branch or agency mortgaged with the business, if any.
- (3) The provisions of Art. 179-193 of this Code shall apply to a mortgage under this Article.

Art. 1008. — *Report to commissioner.*

- (1) Within one month from assuming office, the trustees shall send to the commissioner a report on the affairs of the debtor stating how they have occurred.
- (2) The commissioner shall send the report to the public prosecutor and his observations thereon. Where he has not received the report within the prescribed period, he shall inform the public prosecutor, explaining the cause of the delay in the submission of the report.

Section 2. Seals

Art. 1009. — *Affixing of seals.*

- (1) The court may when declaring the debtor bankrupt order that seals be affixed to all stores, pay counters, tills, bill-cases, books, documents, papers, furniture and chattels belonging to the debtor.
- (2) Where the debtor has absconded or where there has been misappropriation of the whole or part of the debtor's assets, the competent authorities of their own motion or on an application made by a creditor may, before adjudication, affix seals to the property specified in sub-art. (1).

Art. 1010. — *Property not subject to affixing of seals.*

- (1) The commissioner may, on the application of the trustees, dispense them with affixing, or authorise them to remove seals on the property specified hereinafter:
 - (a) such movable property and chattels needed by the debtor and his family as have been set out in a list submitted to the commissioner;
 - (b) perishable goods;

- (c) property necessary for the continued operation of the business or undertaking, where such continued operation has been authorised.
- (2) All property specified in sub-art. (1) shall be listed and valued by the trustees, in the presence of the competent authorities who shall sign the list.

Art. 1011. — Property removed from under seal.

- (1) Where books and accounting documents have been sealed under Art. 1009 (1), the seals shall be removed and the books and documents handed to the trustees by the competent authorities after having been closed by the said authorities which shall report on the state of the books and documents when handed over.
- (2) The competent authorities shall remove from under seal short term bills or bills to be presented for acceptance or in respect of which conservatory steps are required, list them and hand them to the trustees for purposes of collection or otherwise. A report shall be prepared and sent to the commissioner.

Art. 1012. — Correspondence addressed to debtor.

The debtor has the right to be present when letters addressed to him are opened by the trustees.

Art. 1013. — Removal of seals.

Within five days of the affixing of seals, the trustees shall ask for the removal of the seals in order to prepare an inventory of the debtor's property.

Section 3. Inventory

Art. 1014. — Preparation and deposit of balance sheet.

Where a balance sheet has not been prepared and deposited by the debtor, the trustees shall without delay prepare and deposit with the registrar of the court a balance sheet based on the books, documents, papers and other information as are available to them.

Art. 1015. — Inventory of debtor's property.

- (1) An inventory of the debtor's property shall be prepared, the debtor having been summoned by registered letter requiring an acknowledgement.
- (2) All property of the debtor under Art. 1010 (1) shall also be verified.

- (3) The inventory shall be prepared in two originals, one being deposited in the registry of the court and the other one being retained by the trustees.
- (4) The trustees may, with the consent of the commissioner, employ suitable persons in preparing the inventory and valuation of the debtor's property.

Art. 1016. — *Inventory in the event of bankruptcy after death.*

Where the estate is declared bankrupt after the death of the debtor and no inventory has been prepared, or where the debtor has died before the inventory has been completed, the heirs shall be duly summoned to be present at the preparation or completion of the inventory.

Art. 1017. — *Rights of public prosecutor.*

The public prosecutor has the right to be present at the preparation of the inventory and to inspect at any time any documents, books or papers in bankruptcy proceedings.

Art. 1018. *Handing over to trustees of debtor's property.*

On completion of the inventory, all goods, money, securities, books, papers and documents, furniture and chattels of the debtor shall be handed to the trustees and a note of such handing over shall be made at the foot of the inventory.

Chapter 4. Effect of adjudication in bankruptcy

Section 1. Effect as regards the debtor

Art. 1019. — *Restrictions on debtor's movements.*

The debtor shall not leave the area in which he resides without the permission of the commissioner. The provisions of Art. 433 of the Penal Code shall apply where the debtor breaks any such prohibition.

Art. 1020. — *Assistance to the debtor and his family.*

The commissioner may, when requested to do so by the trustees, permit part of the bankrupt estate to be applied in supporting the debtor and his family.

Art. 1021. — *Employment of debtor by trustees.*

The debtor may be employed by the trustees on such terms and conditions as the commissioner shall fix to facilitate the winding-up.

Art. 1022. — *Prohibitions and forfeitures.*

The bankrupt may be subjected to such prohibitions or forfeitures as are

provided by law. Unless otherwise provided by law, such prohibitions or forfeitures shall cease to be effective where the convicted bankrupt is reinstated.

Art. 1023. — *Bankrupt unable to deal with his property.*

A bankrupt shall not administer or dispose of his property, however acquired, from the day he is declared bankrupt until he is discharged.

Art. 1024. — *Legal proceedings.*

After adjudication, all legal proceedings shall be instituted and all applications for execution be made by or against the trustees. The bankrupt may be authorised to intervene in any proceedings.

Art. 1025. — *Universality of creditors in bankruptcy.*

(1) As from the day of the judgment in bankruptcy, all creditors whose claims are not secured by a special privilege, a pledge or a mortgage, shall bring their claims together in the universality of creditors in bankruptcy.

(2) The universality is a legal entity. It may acquire rights or incur liabilities and shall be represented by the trustee.

Art. 1026. — *Suspension of individual suits.*

The judgment in bankruptcy shall prevent any creditor whose claim is included in the universality from bringing an individual suit. As from the day of the judgment, such creditor may not attach the debtor's property, whether movable or immovable.

Art. 1027. — *Outstanding debts rendered due.*

(1) On adjudication all debts owing to the debtor shall become due immediately.

(2) Debts expressed in foreign currencies shall be converted into local currency at the official rate of exchange on the day of adjudication.

Art. 1028. — *Interest not to run.*

Interest on debts, with the exception of debts guaranteed by security in rem, shall cease to run against the bankrupt estate as from the day of the judgment. Only sums arising from property given as security may be used to pay interest on secured debts.

Art. 1029. — *Acts prior to adjudication invalid.*

(a) Gratuitous assignments;

(b) payments of debts not due, whether in cash or by assignment, sale, set-off or otherwise;

- (c) payments of debts due otherwise than in cash, by negotiable instrument or by transfer to a bank;
- (d) securities set up on the property of the debtor in respect of debts contracted before the setting up of such securities, between fifteen days before the date of suspension of payments and the date of adjudication shall be invalid and shall not affect the creditors of the bankrupt.

Art. 1030. — *Other acts prior to adjudication may be invalidated.*

Other payments made by the debtor in respect of debts due and all acts for consideration entered into by the debtor after the date of suspension of payments may be invalidated on the request of the trustees where the parties who have received payment or have dealt with the debtor did so knowing that suspension of payments had taken place.

Art. 1031. — *Rights registered prior to adjudication invalid.*

- (1) Rights arising out of securities in rem validly set up may be registered up to the date of adjudication.
- (2) Registration effected after suspension of payments or within one month before suspension may be invalidated where more than one month has elapsed between the act creating the security and the date of registration.

Art. 1032. — *Status of secured creditor ranking after party whose secured claim is invalid.*

A creditor secured by a mortgage on an immovable or on the business who is classed after a creditor whose claim secured by mortgage has been invalidated shall substitute himself for such creditor in the distribution of the price of the immovable or of the business. He shall pay into the assets in the bankruptcy the difference between the sum distributed to him and the sum which he would have received, had the prior secured claim not been invalidated.

Art. 1033. — *Negotiable instruments paid after suspension of payments.*

- (1) Where negotiable instruments have been paid between the date of suspension of payments and that of adjudication, proceedings for reimbursement of sums so paid may only be instituted against the third party having first received the value of the instrument.
- (2) In the case of a promissory note, such proceedings may only be instituted against the first endorser.

- (3) The claimant under sub-art. (1) or (2) shall prove that the party against whom the proceedings are instituted knew of the suspension of payments at the time of payment of the instrument.

Art. 1034. — *Limitation of actions.*

Proceedings brought under Art. 1029, 1030 and 1031 shall be barred after two years from the date of adjudication.

Section 2. Management of debtor's property

Art. 1035. — *General duties of trustees.*

- (1) The trustees shall, with the permission of the commissioner, sell all depreciable or perishable goods or property the preservation of which is costly.
- (2) They shall collect debts and, where authorised, continue business operations.

Art. 1036 — *Sale of goods.*

- (1) After hearing the bankrupt, whether he presents himself of his own motion or on being summoned by registered letter, the commissioner may authorise the trustees to sell other movable property or goods.
- (2) The commissioner shall fix the conditions of sale.

Art. 1037. — *Sale of bankrupt person's business.*

The sale of a business by the trustees may only be permitted by the court and the court shall fix the conditions of the sale.

Art. 1038. — *Compromise and arbitration.*

- (1) After taking the opinion of the creditors' committee and after hearing the bankrupt, whether he presents himself of his own motion or on being summoned by registered letter, the commissioner may authorise the trustees to compromise and arbitrate in respect of any claim concerning the bankrupt estate.
- (2) Where the value of the subject matter of the compromise or arbitration is not determined or exceeds the jurisdiction of the trustees, the compromise or arbitration shall be ratified by the court.
- (3) The bankrupt shall be summoned to attend the ratification proceedings and may make an application to set aside the compromise or arbitration.

Art. 1039. — *Continuation of operation of business.*

- (1) The trustees may continue operating the business or industry where authorised by the court after a report by the commissioner and a

recommendation of the creditors' committee, and authorisation shall not be given unless it is in the public or creditors' interest.

- (2) Where the business continues to operate, creditors whose claim has arisen out of such operation shall be creditors of the universality. They shall not be subject to the provisions regarding bankruptcy and shall be paid from the assets of the bankruptcy before the creditors whose claims are included in the universality.
- (3) Instead of operating the business himself, the trustee may be authorised by the commissioner to appoint a receiver to carry on the business.

Art. 1040. — Continuation of leases.

- (1) Leases of immovable property used for the business or industrial operations of the debtor, including premises forming part thereof and occupied by him or his family, shall not be cancelled by reason of the lessee's bankruptcy.
- (2) The trustees may either cancel or continue the lease and shall give notice to the lessor of their decision within fifteen days from deposit of the inventory as provided in Art. 1044. Where the trustees continue the lease, they shall carry out the duties of a lessee.
- (3) Notice may not be given except on the recommendation of the creditors' committee and with the authorisation of the commissioner.
- (4) Until the expiry of the period mentioned in sub-art. (2), movable property used for the business or industry shall not be distrained upon nor shall leases be cancelled, without prejudice to provisional measures and the right of the lessor to take possession of the premises. Where the lessor takes possession of the premises, distraint is effected.
- (5) Where the trustee has informed the lessor of his intention to continue the lease, the lease shall continue unless the lessor applies for a cancellation of the lease within fifteen days.
- (6) A clause in the lease providing for immediate cancellation of a lease in the event of a bankruptcy shall be of no effect.
- (7) Nothing in this Article shall affect the provisions of Art. 1061 and 1062.

Chapter 5. Proving of debts
Section 1. Procedure for proving

Art. 1041. — Production of proof by creditors.

- (1) After adjudication, the creditors shall produce to the trustees proof of their debts, showing the sums claimed.

- (2) The trustees shall issue receipts for proofs produced. They shall return the proofs after the bankruptcy proceedings are closed and shall cease to be liable for such return after one year.

Art. 1042. — *Notice to creditors.*

- (1) Creditors who appear on the balance sheet and who have not produced proofs within fifteen days from the adjudication shall be requested by the trustees to produce their proofs.
- (2) Such request shall be made by notice in a newspaper empowered to receive legal notices and in the official Commercial Gazette. Such notice in the Gazette shall refer to the issue number of the newspaper containing the legal notice issued under this Article. Notice to creditors by letter shall also be sent.
- (3) Proofs shall be produced within fifteen days of the publication in the Gazette.

Art. 1043. — *Verification of debts.*

- (1) Debts shall be verified by the trustees in the presence of the creditors' committee or its representative, where such committee has already been formed, and of the debtor, whether he presents himself of his own motion or on being summoned by registered letter.
- (2) The inventory of debts when finalised shall be counter-signed by the commissioner.
- (3) Where a debt is queried by the trustees in whole or in part, the trustees shall inform the creditor by registered letter, and he shall reply to the queries orally or in writing within eight days.

Art. 1044. — *Deposit of inventory in registry.*

- (1) Where the debts have been proved, the trustees shall deposit the inventory of debts with the registry, showing the proofs admitted and the proofs rejected.
- (2) They shall also send to the commissioner a list of creditors claiming special preferences over movables.

Art. 1045. — *Notification of deposit.*

- (1) The registrar shall inform the creditors of the deposit of the inventory of debts as provided in Art. 1042 (2).
- (2) He shall give notice by registered letter of rejected debts to the creditors concerned.

Art. —1046. — *Claims.*

- (1) Any creditor who appears on the balance sheet or who has proved has the right, either in person or through his agent, to lodge a claim with the registry by way of entry on the schedule, within eight days following the notice in the official Commercial Gazette.
- (2) The bankrupt may also lodge a claim.

Art. 1047. — *Final drawing-up of inventory of debts.*

- (1) Upon the expiry of the aforementioned period of time, the commissioner shall prepare the final inventory of debts, subject to any claims lodged with the court.
- (2) The trustees shall accordingly enter on the list of uncontested proofs the admission of proof of the creditor and the amount of the debt proved.

Art. 1048. — *Judgement upon contested debts.*

Contested debts shall be referred by the registrar to the first hearing to be judged upon the report of the commissioner, after having duly notified the parties by registered letter five days prior to the hearing.

Art. 1049. — *Provisional admission.*

- (1) The court may grant an interlocutory order allowing a creditor whose claim is contested to join in bankruptcy proceedings in respect of such amount as the court may decide.
- (2) The registrar shall inform by registered letter the parties concerned within three days.

Art. 1050. — *Stay of proceedings or disallowance of objection.*

- (1) Where an objection contesting a debt is lodged and such objection may cause delay, the court shall decide whether to stay bankruptcy proceedings until the objection is decided on by the ordinary civil court having jurisdiction or to disallow the objection. Where the court disallows the objection, it may at the same time make an order under Art. 1049.
- (2) Where a debt gives rise to criminal proceedings, the court may order a stay of bankruptcy proceedings. Where the court disallows the objection, it may not make an interlocutory order and the creditor holding the contested debt may not join in the proceedings until judgement in criminal proceedings has been given.

Art. 1051. — *Creditors whose security is contested.*

Where a creditor holds a security in rem and only the security is contested, such creditor may join in the proceedings as an unsecured creditor.

Art. 1052. — *Creditors not having lodged proof within the specified period of time.*

- (1) Creditors failing to lodge their claim within the specified period of time shall not share in any distribution but they may lodge an objection until final distribution of the residue and shall bear the costs arising out of such objection.
- (2) Any such objection shall not suspend any distribution ordered by the commissioner.
- (3) Where further distributions are made, such creditors shall share therein to the extent of an amount provisionally fixed by the court and retained in reserve until adjudication upon their objection.

Art. 1053. — *Creditors subsequently admitted.*

Creditors admitted after distributions ordered by the commissioner shall have no claim in such distributions, but they may deduct from undistributed assets the dividends relating to their claims in the first distributions.

Art. 1054. — *Period of time for proving debts.*

All proceedings for proving debts shall be concluded not later than five months from the date of the judgement in bankruptcy. Such period may be extended by the commissioner in exceptional cases.

Section 2. Parties jointly and severally liable and guarantors

Art. 1055. — *Proof of claims jointly and severally guaranteed.*

A creditor whose claim has been endorsed or guaranteed jointly and severally by the bankrupt and other persons who have suspended payments may prove in all the estates for the nominal value of his claim and share in the distributions until his claim is fully satisfied.

Art. 1056. — *No claim as between bankrupt estates.*

No bankrupt guarantors, jointly and severally liable, may claim against one another in respect of dividends paid under Art. 1055, unless the total amount of the dividends paid in the several bankruptcies exceeds the total amount of the claim. Any such excess shall devolve upon the persons having the others as guarantors, in the order of their liability.

Art. 1057. — *Creditor having received payment on account before suspension of payments.*

- (1) Any amount paid prior to suspension of payments to a creditor whose claim is jointly and severally guaranteed by the bankrupt and other persons shall be deducted in paying his claim. He shall retain, for what remains due to him, his rights against such other persons or guarantors.
- (2) Any person jointly and severally liable or any guarantor who has paid any amount on account towards the claim, shall be entitled to prove his claim to the extent of the amount so paid.

Section 3. Rights of creditors secured by a guarantee on movables other than business

Art. 1058. — *Guaranteed creditors.*

Creditors whose claim is secured by pledge shall be entered in the inventory for purposes of information only. With the authorisation of the commissiner, the trustees may at any time pay for and redeem the property pledged, for the benefit of the estate.

Art. 1059. — *Sale by pledgee.*

Where the property pledged has not been redeemed by the trustees, and it is sold by the pledgee for a sum exceeding the amount of the debt, the excess shall be collected by the trustees. Where the price of sale is less than the amount of the debt, the pledgee may prove his claim for the difference, as an unsecured creditor.

Art. 1060. — *Extent of lessor's preference.*

- (1) Where a lease is terminated under Art. 1040, the lessor shall have a preference in respect of all claims arising out of the performance of the contract of lease and contingent damages for the two years of the lease prior to the adjudication of bankruptcy and for the current year.
- (2) If the lease is not terminated, the lessor who has been paid all rents due may not claim payment of any rent for the current period and of any rent to fall due, if the guarantees given on the making of the contract are still in force or if those given since the adjudication of bankruptcy are considered to be sufficient.

Art. 1061. — *Removal of movables furnishing premises leased.*

Where movables furnishing the premises leased are sold and removed, the lessor may exercise his preference as in the case of termination of a

lease as provided in Art. 1060 (1), and such preference shall extend to a further period of one year to run from the end of the current year.

Art. 1062. — *Continuation or assignment of lease by trustees.*

The trustees may continue or assign a lease for the unexpired period, provided that they or the assignee shall keep the premises furnished with movables of sufficient value and carry out at the expiry of each letting period all obligations arising out of the law or the agreement, and provided further that the purpose for which the premises are utilised may not be changed.

Art. 1063. — *Seller of movable property.*

- (1) Without prejudice to the provisions of Art. 1075-1078, the guarantees provided in the Civil Code with regard to the seller of movable property may not be set up against the bankrupt estate.
- (2) Any provision contrary to the provisions of sub-art. (1) shall be of no effect.

Art. 1064. — *Payment of creditors holding preferences over movables.*

- (1) On presentation of the list prescribed in Art. 1044 (2), the commissioner shall, in appropriate cases, authorise the payment of creditors listed therein from the funds first collected;
- (2) Any question of contestation of a preference shall be decided by the court.

Section 4. Rights of mortgagees and creditors secured by immovables

Art. 1065. — *Sale price of immovables distributed before that of movables.*

Where the distribution of the proceeds of sale of immovables takes place before or at the same time as that of the proceeds of sale of movables, preferred or secured creditors not fully paid out of the proceeds of sale of the immovables shall (provided their debts were admitted to proof in accordance with the provisions of Art. 1041 *et sq.*) rank equally with the unsecured creditors for the amounts still due to them in respect of the residue of the estate.

Art. 1066. — *Proceeds of sale of movables distributed before that of immovables.*

Where one or more distributions of the proceeds of sale of movables takes place before the distribution of the proceeds of sale of immovables, preferred and secured creditors duly admitted to proof may participate

in such distributions in proportion to the whole of their debts, subject otherwise to the appropriations set forth in Art. 1067.

Art. 1067. — *Deduction of amounts collected from estate not subject to security.*

- (1) After sale of immovables and the final establishment of the order of priority of secured and preferred creditors, creditors entitled to claim on the proceeds of sale of the immovables for the whole of their debt shall receive their secured dividend only after deduction of amounts collected by them from the estate not subject to security.
- (2) Amounts thus deducted shall not remain in the estate subject to security but shall be transferred to the estate not subject to security to the benefit of which they shall be distrained.

Art. 1068. — *Partial payment of secured creditors.*

The following procedure shall apply in respect of secured creditors who have received partial payment from the distribution of the proceeds of the sale of immovables:

- (a) the rights of such creditors with respect to the estate not subject to security shall be finally settled on the basis of the amounts for which they remain creditors after the dividend received by them from the immovables;
- (b) any residue which they have received over such amount in the prior distribution shall be withheld from the amount of their secured dividend and allocated to the estate not subject to security.

Section 5. Rights of creditors secured by a mortgage on the business

Art. 1069. — *Proceeds of sale of business distributed before proceeds of sale of other movable property.*

Where the proceeds of the sale of a business are distributed before or together with the proceeds of the sale of other movable property, the creditors secured by a mortgage on the business who have not been fully paid from the proceeds of the sale of such business shall rank together with ordinary creditors to the extent of their unpaid claim, provided their claim has been admitted in accordance with the provisions of Art. 1041 *et seq.*

Art. 1070. — *Proceeds of sale of other movable property distributed before proceeds of sale of business.*

Where the proceeds of the sale of other movable property are distributed

before the proceeds of the sale of the business, secured creditors whose claim has been admitted shall share in the distribution to the full extent of their claim, without prejudice to the provisions of Art. 1067.

Art. 1071. — *Deduction of sums paid from proceeds of sale of property not subject to security.*

- (1) After a business has been sold and the manner of distributing the proceeds of the sale has been fixed, creditors whose claim is fully secured by the business shall be paid from the proceeds of the sale of the business, subject to the deduction of sums paid to them from the proceeds of the sale of property not the subject of security.
- (2) Sums deducted under sub-art. (1) shall be repaid to the estate not subject to security to the benefit of which they shall be distrained.

Art. 1072. — *Deduction of sums paid from proceeds of sale of business.*

The following procedure shall apply to secured creditors who have been partially paid from the proceeds of the sale of the business:

- (a) the rights of such creditors in respect of the unsecured estate shall be finally settled on the basis of the amount for which they remain creditors after having shared in the distribution of the proceeds of the sale of the business;
- (b) any residue which they have received in excess of such amount in the prior distribution shall be deducted from the amount of their secured dividend and repaid to the unsecured estate.

Section 6. Recovery

Art. 1073. — *Recovery of negotiable instruments.*

Negotiable instruments or other securities which have been handed to the debtor for purposes of collection for the benefit of the owner and which, not having been collected, are in possession of the debtor at the time of adjudication of bankruptcy may be claimed by the owner. The same shall apply to remittances specially made by the owner to be appropriated to specified payments.

Art. 1074. — *Recovery of goods in deposit or handed to an agent.*

- (1) Goods consigned to the debtor for deposit or for sale on behalf of the owner may, if they exist in kind, in whole or in part, be recovered from the debtor.
- (2) The price or part of the price of the said goods may furthermore be recovered, where it has not been paid in cash, nor settled for value given, nor set off in current account between the debtor and the purchaser.

Art. 1075. — *Recovery of goods the sale of which has been cancelled before bankruptcy.*

- (1) Goods, the sale of which has been cancelled prior to adjudication either by a decision of the court or by operation of the terms of the contract, may, if they exist in kind, be recovered from the debtor.
- (2) Where the cancellation of sale has been ordered or confirmed by a court after adjudication, goods may be recovered notwithstanding that proceedings for recovery or for cancellation were brought prior to adjudication by the unpaid seller.

Art. 1076. — *Recovery of movables sold with ownership reserved.*

Movables sold to the bankrupt with reservation of ownership may be recovered where, before the judgement in bankruptcy, such reservation has been registered in accordance with the provisions of Art. 2387 of the Civil Code.

Art. 1077. — *Recovery of goods in transit.*

- (1) Possession of goods transmitted to the debtor may be recovered where such goods have not been delivered to the debtor's warehouse or to that of an agent entrusted with their sale on the debtor's behalf.
- (2) Recovery is not admissible where prior to their arrival the goods have been sold with no intent to defraud to a transferee in good faith on the basis of documents signed by the consignor.

Art. 1078. — *Right of retention.*

The seller shall be entitled to retain goods sold by him where such goods have not been delivered to the debtor or they have not been consigned either to him or to a third person on his behalf.

Art. 1079. — *Right of trustees to require delivery.*

- (1) In the cases contemplated in Art. 1077 and 1078, the trustees may, upon authorisation by the commissioner, demand delivery of goods by paying the agreed price to the seller.
- (2) Where the trustees do not exercise such right, the seller repay to the estate any instalments received by him as well as any advances received from the bankrupt in respect of freight or transport costs, commission, insurance or other expenses and to pay such amounts himself: Provided that the seller may claim damages in respect of such non-performance of the contract.

Art. 1080. — *Admission of claims for recovery.*

Claims for recovery may be admitted by the trustees with the authorisation of the commissioner.

Chapter 6. Settlement of the Bankruptcy

Section 1. Composition

Art. 1081. — *Proposal for composition.*

- (1) At any time after the expiry of the period of time provided in Art. 1046, the bankrupt may propose a composition with the creditors and submit the proposed composition to the commissioner.
- (2) The proposed composition shall specify the percentage offered to unsecured creditors and the period of time required for payment. It shall show the guarantees to cover the payment of debts, legal costs and the remuneration of the trustees.
- (3) The winding-up is suspended by a proposal for a composition.

Art. 1082. — *Examination of proposal and notification to creditors.*

- (1) On receipt of the proposal for a composition, the commissioner shall take the advice of the trustees and the creditors' committee.
- (2) Where he considers the proposal has merit, he shall cause the creditors to be notified.
- (3) Such notification shall be by registered letter sent by the registrar of the court to each creditor. If the number of creditors makes, such form of notification impractical, the court may, after hearing the trustees and the public prosecutor, order the proposal for composition to be published by the commissioner in a newspaper empowered to publish legal notices and in the official Commercial Gazette.
- (4) In addition to the proposals made by the bankrupt, the notification shall refer to the recommendations of the trustees and the creditors' committee together with a report by the trustees showing the state of the bankruptcy proceedings and what has been completed.
- (5) The notification to the creditors shall state a period not less than twenty days nor more than thirty days within which the dissenting creditors may file with the registry their refusal to accept the proposed composition.

Art. 1083. — *Creditors' vote.*

- (1) Votes shall be recorded in the minutes signed by the commissioner and the registrar of the court.
- (2) All duly admitted creditors have the right to vote, including those admitted provisionally or subject to a reservation.
- (3) Votes of creditors enjoying special securities shall not be counted in respect of their debts in the transactions relating to the composition unless they forego their guarantees. The results of such renunciation

shall cease to have effect where the composition is not finalised, or is not ratified, or is revoked or withdrawn.

- (4) The following may not vote: the debtor's spouse, his relatives by consanguinity or affinity to the fourth degree inclusive, and parties who have become assignees or purchasers with respect to these persons within less than one year before the declaration of bankruptcy.
- (5) Assignments of debts made after the declaration of bankruptcy give no voting rights.

Art. 1084. — *Approval of composition.*

- (1) The composition shall be of no effect unless it be approved by two-thirds of the creditors representing two-thirds of the debts. The claims of creditors who do not take part in the voting shall not be taken into account in calculating the majority under this Article.
- (2) Creditors who have not notified their dissent from the proposals of the bankrupt within the period of time provided in Art. 1082 (5) shall be deemed to be in agreement.
- (3) No subsequent decision regarding the number of creditors or the amount of the debts has any effect on the approval of the composition.
- (4) The provisions of Art. 1083 (1) shall apply to this Article.

Art. 1085. — *Application to set aside composition.*

- (1) All creditors who were entitled to a vote or who have been accepted as creditors subsequently may apply to set aside the composition.
- (2) Such application to be of effect shall be sent together with the reasons therefor to the debtor and trustees within eight days after the vote and shall summon them to appear at the next hearing.

Art. 1086. — *Confirmation by the court.*

- (1) Application for the confirmation by the court may be made by any interested party. The court may give no decision thereon before the expiry of the period of eight days provided in Art. 1085.
- (2) Where an application to set aside has been made during this period, the court shall decide upon both the application to set aside and the application for confirmation at the same time and shall deliver one judgement.
- (3) Before delivering judgement, the court shall consider:
 - (a) the report of the commissioner and his recommendations on the proposed composition;
 - (b) the report of the trustees provided in Art. 1082 (4);

- (c) the observations, if any, of parties jointly and severally liable with the debtor.
- (4) Where the application to set aside is sustained, an order shall be made revoking the composition and such order shall be effective as regards all interested parties.

Art. 1087. — *Refusal to confirm composition.*

The court shall not confirm the composition:

- (a) where the provisions of the proceeding Articles have not been complied with; or
- (b) where confirmation of the composition is contrary to the public interest or the interests of the creditors.

Art. 1088. — *Supervising carrying out of composition.*

- (1) After confirmation, the commissioner, the trustees and the creditors' committee shall ensure the carrying out of the composition, in accordance with the detailed instructions contained in the judgement confirming composition.
- (2) The creditors' committee may cause the mortgages on the estate to be struck out when the terms of the composition have been completed.

Art. 1089. — *Results of composition.*

- (1) Confirmation of the composition shall be binding on all creditors other than those holding security in rem which they have not relinquished and unsecured creditors whose claims have arisen during the bankruptcy proceedings.
- (2) Confirmation shall not affect the creditors' mortgage on the debtor's immovable property registered in the name of the estate under Art. 1006 and the mortgage registered on the business in the name of the estate under Art. 1007, unless the composition otherwise provides. To this effect the trustees shall register the judgement confirming the composition with the competent authority.
- (3) The composition shall not affect the creditors' rights in respect of persons jointly and severally liable with the debtor.

Art. 1090. — *Suspension of effects of bankruptcy.*

- (1) After confirmation the effects of the bankruptcy shall be suspended, subject to the provisions of Art. 1022 and 1088.
- (2) The trustees shall hand to the debtor a final account after it has been discussed and finalised in the presence of the commissioner and the creditors' committee. They shall hand to the debtor all his books,

papers and property, for which the debtor shall give a receipt. The trustees shall cease to be liable after two years from the finalising of the account where the debtor has failed to take possession of his books, papers and property.

- (3) When the provisions of this Article have been complied with the commissioner shall cause a report to be drawn up. Where there is any disagreement as to its contents, the matter shall be referred to the court for decision.

Art. 1091. — *Setting aside of composition after confirmation.*

- (1) No proceedings to set aside a composition which has been confirmed, except on grounds of fraud, founded either on a concealment of assets or an overstatement of liabilities, may be instituted by any creditor after five years from the discovery of the fraud.
- (2) Where the debtor is convicted of the offence of fraudulent bankruptcy, the composition shall be revoked and all sureties, other than those involved in the fraud, shall be discharged.

Art. 1092. — *Provisional measures on prosecution for fraudulent bankruptcy.*

- (1) Where the debtor is prosecuted for fraudulent bankruptcy after confirmation of the composition, the court may make such provisional orders as appear to be necessary.
- (2) These orders shall cease to be of effect where a nolle prosequi is entered or the debtor is discharged.

Art. 1093. — *Cancellation of composition.*

- (1) Where the debtor fails to carry out the terms of the composition, an application may be made to the court to set aside the composition, the guarantors, if any, having been duly summoned to be present at the hearing of the application.
- (2) Where the composition is set aside, the sureties shall not be discharged.

Art. 1094. — *Re-opening of bankruptcy proceedings after setting aside of composition.*

- (1) Where the composition is set aside, the trustees shall prepare without delay a fresh inventory of assets and papers on the basis of the former inventory and, if necessary, consult the authority who affixed the seals. They shall prepare, if necessary, supplementary inventories and balance sheets.

- (2) They shall publish a notice containing the operative part of the judgment and a request for new creditors to prove their claims under the conditions set forth in Art. 1043.

Art. 1095. — *Verification of new debts.*

- (1) The trustees shall verify the proofs of debts under Art. 1094.
(2) There shall not be further verification of debts admitted to proof earlier, without prejudice to the refusal or reduction of those paid in whole or in part in the meantime.

Art. 1096. — *Acts of debtor subsequent to confirmation of composition.*

Acts of the debtor between the date of the confirmation of the composition and the setting aside of the composition may only be invalidated where there has been fraud on the creditors.

Art. 1097. — *Rights of creditors prior to composition.*

Creditors prior to composition shall be restored to their original rights in respect of the debtor and of the estate:

- (a) for the whole of their debts where they have received no part of the dividend; or
(b) for that part of the debt which remains to be paid where they have received part of the dividend.

Art. 1098. — *Opening of second bankruptcy proceedings.*

Where second bankruptcy proceedings are opened at the instance of new creditors who did not share in a composition which has not been set aside or cancelled, the creditors in the first bankruptcy shall be creditors in the second bankruptcy proceedings without preferential rights over new creditors and shall be subject to the provisions of Art. 1097.

Art. 1099. — *Composition by way of surrender of assets.*

- (1) Where a composition involving total or partial surrender of assets is approved, the procedure relating to ordinary compositions shall apply including the ordinary provisions relating to the effects and setting aside of compositions.
(2) Surrendered assets shall be liquidated as provided in Art 1101 *et seq.*
(3) A composition by way of surrender of assets shall not affect any property not included in the composition and any property subsequently acquired.
(4) The composition shall not affect the rights of creditors in respect of persons jointly and severally liable with the debtor.

Art. 1100. — *Entry in commercial register.*

The registrar shall ensure that any judgment confirming, setting aside or cancelling a composition be entered in the commercial register in accordance with the provisions of Art. 983 (4).

Section 2. Compulsory winding-up

Art. 1101. — *Refusal to approve composition.*

Where a composition is not approved under Art. 1084, the bankruptcy shall continue until compulsory winding-up and complete distribution of the assets to the creditors entitled.

Art. 1102. — *Assistance to debtor.*

Where the creditors' committee agrees that assistance be given to the debtor and his family from the bankrupt estate, the commissioner shall fix the amount of assistance to be given in accordance with the proposals of the trustees.

Art. 1103. — *Sale of assets.*

- (1) The trustees shall sell the debtor's movable and immovable property in accordance with the Code of Civil Procedure without requiring the presence of the debtor.
- (2) The proceeds of the sale shall be deposited in accordance with Art. 996.
- (3) The trustees may compromise and arbitrate under Art. 1038 without requiring the presence of the debtor.

Art. 1104. — *Sale of immovables.*

Where no proceedings for expropriation of immovables have taken place before the opening of the winding-up, only the trustees shall proceed to sell within one week, with the permission of the commissioner.

Art. 1105. — *Sale of bankrupt person's business.*

Where no proceedings for expropriation of immovables have taken place before the opening of the winding-up, only the trustees shall proceed to sell with the permission of the commissioner and subject to the provisions of Art. 1106.

Art. 1106. — *Business carried on during winding-up.*

- (1) The unsecured creditors may authorise the trustees to continue business operations during the winding-up.
- (2) The commissioner shall consult each creditor by registered letter on the request of the creditors' committee. The provisions of Art. 1082
- (3) shall apply in appropriate cases.

- (3) Creditors shall be notified that within fifteen days they shall submit their vote to the court registry.
- (4) The resolution of the creditors shall specify the duration and scope of the powers of the trustees and the amount to be retained by them for costs and expenses. The resolution shall be approved by three-quarters of the creditors representing three-quarters of the debts and confirmed by order of the commissioner.

Art. 1107. — *Lump sale of assets.*

- (1) On the recommendation of the commissioner, the court may authorise the trustees to dispose of the assets, movable or immovable, by lump sale.
- (2) Such authorisation may be granted on the request of the creditors' committee or of the debtor.
- (3) The creditors shall be consulted as provided in Art. 1106 (2) and the resolution approved as provided in Art. 1106 (4).
- (4) The terms of the sale shall be confirmed by the court.
- (5) Where the sale is approved, the debtor shall be discharged of his liabilities to the creditors.

Art. 1108. — *Dealings involving liabilities in excess of the assets.*

Where dealings by the trustees involve liabilities in excess of the assets in the winding-up, creditors who approved such dealings shall be personally liable beyond their share in the assets within the limits of the authorisation given by them, and in proportion to their debts.

Art. 1109. — *Scheme of distribution.*

- (1) After the expiry of the period specified in Art. 1046, the trustees shall send to the commissioner every two months a report on the state of the bankruptcy and an inventory of the amounts deposited under Art. 996.
- (2) They shall submit to the commissioner their proposals for distribution.
- (3) On the recommendation of the creditors' committee, the commissioner shall make such changes in the proposals as he thinks fit and shall order the deposit of the amended proposals in the registry. He shall cause the creditors to be informed of such deposit.
- (4) Within ten days the creditors may submit their comments thereon. The commissioner, taking into account any observations of the creditors, shall fix the amount to be distributed.

Art. 1110. — *Distribution of proceeds of winding-up.*

After the deduction of:

- (a) costs and expenses;
- (b) sums applied for the support of the debtor or his family; and
- (c) sums paid to preferred creditors,

the net proceeds of the winding-up shall be distributed to all the creditors in proportion to their debts proved and admitted, subject to the provisions of Art. 1065, 1066 and 1068.

Art. 1111 — *Setting aside of share corresponding to contested debts.*

A share corresponding to those debts on the admission of which a final decision has not been taken shall be set aside as a reserve.

Art. 1112. — *Method of payment.*

- (1) The trustees shall send to each creditor entitled to a dividend a cheque to his order, drawn on the distribution account opened in the name of the bankruptcy under the provisions of Art. 996.
- (2) A note of the amount paid shall be made on the proof of debt. Where the proof of debt cannot be produced, the commissioner may authorise payment on sight of the minute of deposit of the inventory of debts.

Chapter 7. Bankruptcy Proceedings closed

Art. 1113. — *Grounds for closing bankruptcy proceedings.*

Subject to the provisions of Art. 1081-1100, bankruptcy proceedings are closed:

- (a) by the final distribution of the product of the winding-up;
- (b) by reason of insufficiency of assets;
- (c) by reason of absence of any claim against the estate.

Art. 1114. — *Closure by reason of insufficiency of assets.*

- (1) Where at any time the bankruptcy proceedings cannot continue owing to insufficiency of assets, the court may on a report by the commissioner or of its own motion order the closure of the proceedings.
- (2) The judgment has the effect of restoring to each creditor the exercise of his personal rights.
- (3) The bankrupt shall remain dispossessed of the administration and distribution of his property and any new debts contracted by him may not be set up against the estate in which no further creditors may prove.

Art. 1115. — *Revocation of closure order given by reason of insufficiency of assets.*

- (1) The debtor or any other interested party may at any time apply to the court for setting aside the order upon showing that there are sufficient funds to meet the costs of the proceedings, or upon depositing with the trustees a sufficient amount to meet the costs.
- (2) He shall first pay the costs arising from proceedings under Art. 1114.

Art. 1116. — *Proofs not claimed by creditors.*

The liability of trustees to hand back proofs shall be barred after five years from the adjudication of bankruptcy.

Art. 1117. — *Closure by reason of absence of claim against the estate.* *

- (1) After the deposit of the inventory of debts specified in Art. 1044, the court may on the application of the debtor order the bankruptcy proceedings to be closed, where the debtor proves that he has paid all the creditors who have proved or that he has deposited with the trustees an amount necessary to pay all the creditors having proved and all costs including the fees of the trustees. The court shall make its decision upon a report by the commissioner showing that the debtor has satisfied the above-mentioned requirements.
- (2) The judgement has the effect of bringing the bankruptcy proceedings to an end and of restoring the debtors to his full rights.

Art. 1118. — *Entry in commercial register.*

The registrar shall ensure that any judgement closing bankruptcy proceedings by reason of insufficiency of assets or of absence of any claim against the estate be entered in the commercial register in accordance with the provisions of Art. 983 (4).

TITLE III. SCHEMES OF ARRANGEMENT

Art. 1119. — *Application for scheme of arrangement.*

Any trader who has or is about to suspend payments and has not been declared bankrupt may apply to the court for the opening of a scheme of arrangement, in accordance with the provisions of this Title.

Art. 1120. — *Admissibility of application.*

- (1) The application shall not be considered unless it is prepared in the form of a declaration which shall be deposited in the court registry.
- (2) The debtor shall file the documents specified in Art. 973 together with a report giving the reasons for his suspension or impending suspension of payments, and the reasons for his proposing a scheme of arrangement.

- (3) The debtor shall also show:
- (a) that he has been registered with the commercial registry from the opening of his business or for not less than two years;
 - (b) that during this period he has kept proper accounts;
 - (c) that he has not been adjudicated bankrupt nor made a scheme of arrangement within the preceding five years;
 - (d) that he has not been convicted of offences under Art. 680-688 of the Penal Code.

Art. 1121. — *Proposals contained in application.*

- (1) The application shall contain the following requirements:
 - (a) an undertaking to pay not less than 50% of the capital value of unsecured debts within one year from the date of confirmation of the scheme, or 75% within a period of eighteen months or 100% within a period of three years;
 - (b) a promise to furnish material or personal guarantees to secure the undertakings made under paragraph (a) and giving details of the guarantees.
- (2) The debtor may propose to assign to his creditors all assets held by him at the date of the application for a scheme of arrangement where the assets are sufficient to meet payments as provided in sub-art. (1) .

Art. 1122. — *Refusal to consider application.*

After hearing the public prosecutor, the court may refuse the application where any of the conditions laid down in Art. 1120 is not present.

Art. 1123. — *Additional reasons for refusing to consider application.*

- (1) The court may refuse the application, notwithstanding that it is made in proper form, where it is of opinion that the debtor is not in a position to comply with the undertaking required under Art. 1121.
- (2) The court shall refuse the application where the debtor has absconded closing his place of business, or has misappropriated or fraudulently reduced the value of part of his estate.
- (3) Where the application is refused under Art. 1122 or under this Article, the court shall make an order for adjudication of the bankruptcy where the debtor has suspended his payments.

Art. 1124. — *Application to set aside.*

- (1) No application shall be made to set aside judgments given under Art. 1122 and Art. 1123 (1) and (2).
- (2) An application to set aside an order under Art. 1123 (3) may be entertained in accordance with the relevant provisions of Art. 984-988.

Art. 1125. — *Judgment opening proceedings under scheme of arrangement.*

- (1) Where the court considers that there are merits in the application, it shall order the scheme of arrangement to be opened and no application to set aside such an order shall be made.
- (2) In the decision on the application, the court shall;
 - (a) appoint a delegate judge and a commissioner in accordance with Art. 994 (1), (4) and (5);
 - (b) order the calling of the creditors' meeting within not more than thirty days from the judgment and determine the period within which the judgment shall be published and notified to the creditors;
 - (c) determine a period of time not exceeding eight days within which the debtor shall complete the list of his creditors where the debtor has given reasons in his application for not having submitted such list;
 - (d) fix a period of time not exceeding eight days within which the debtor shall deposit in the court registry an amount sufficient to cover the costs.
- (3) Where the debtor fails to comply with the provisions of paragraphs (c) and (d), the provision of Art. 1123 (3) shall apply.

Art. 1126. — *Orders of delegate judge.*

Any interested party may apply to set aside orders of the delegate judge in accordance with Art. 992.

Art. 1127. — *Commissioner.*

The provisions of Art. 997-1001 shall apply to the commissioner carrying out a scheme of arrangement.

Art. 1128. — *Publication of judgment.*

- (1) The judgment shall be published by the registrar by means of notices posted at the entrance of the court and by an extract published in a newspaper empowered to publish legal notices.
- (2) The registrar shall ensure that the judgment be entered in the commercial register in accordance with the provisions of Art. 983 (4).
- (3) The delegate judge and the registrar shall enter and sign a note of the judgment at the end of the entries in the debtor's books, and the books shall be handed back to the debtor.

Art. 1129. — *Notice to creditors.*

- (1) The delegate judge shall fix the place and time for the creditors' meeting.

- (2) Within the period of time fixed by the court under Art. 1125 (2) (b), the registrar shall send to each creditor, by registered letter or cable as appropriate, a notice containing:
 - (a) the names of the debtor, the delegate judge and the commissioner;
 - (b) the date of the judgment calling the creditors and the place, date and time of the meeting; and
 - (c) a summary of the proposals of the debtor.

Art. 1130. — *Documentary evidence.*

Documentary evidence showing that the publications required have been made and that notice has been given to the creditors shall be inserted in the application file of the proceedings.

Art. 1131. — *Effect of application for scheme of arrangement.*

- (1) After the application has been made and until final confirmation of the scheme, no creditor holding a claim arising prior to judgment may distrain, acquire a preferred right over the debtor's property or register a mortgage.
- (2) Prescriptions, peremptions and forfeitures shall be suspended.
- (3) Unsecured debts enjoying no preferred rights shall be deemed to be due but interest shall be suspended as regards the creditors.
- (4) Amounts due in respect of taxes are not subject to the provisions of this Article.

Art. 1132. — *Administration of debtor's property.*

During the course of proceedings under a scheme of arrangement, the debtor shall retain the administration of his property and the management of his business under the supervision of the commissioner and the guidance of the delegate judge. The commissioner and judge may at any time inspect the books and accounts.

Art. 1133. — *Acts of debtor not to affect creditors.*

- (1) Gifts and other gratuitous acts or acts by way of guarantee done by the debtor during the proceedings shall not be set up against the creditors.
- (2) Acts by which the debtor has contracted loans, even by bill of exchange, or compromised or arbitrated, or agreed to assignments not falling within the exercise of the business, or to mortgages or the setting up of pledges, without the written approval of the delegate judge, who shall not give approval unless the necessity is clear, shall not be set up against the creditors.

Art. 1134. — *Adjudication bankruptcy during proceedings under scheme of arrangement.*

Where the debtor fails to comply with the provisions of Art. 1132 and 1133, or he is shown to have concealed part of his assets, fraudulently omitted certain creditors, increased his liabilities or committed fraudulent acts, the delegate judge shall refer the matter to the court on the recommendation of the commissioner and the court shall adjudge the debtor bankrupt, without prejudice to such criminal penalties as may be appropriate.

Art. 1135. — *Duties of commissioner.*

The commissioner shall prepare an inventory of the debtor's estate. He shall check the list of creditors and debtors and prepare a detailed report on the affairs and conduct of the debtor, on the proposed scheme and the guarantees offered to creditors. Such report shall be deposited in the registry not less than five days before the creditors' meeting convenes.

Art. 1136. — *Creditors' meeting.*

- (1) The delegate judge shall preside at creditors' meetings.
- (2) Any creditor may be represented by an attorney appointed by an entry made on the notice calling the creditor to the meeting.
- (3) The debtor or his attorney shall appear in person. The debtor may be represented by a special agent where it is proved to the delegate judge that he cannot be present.
- (4) After the commissioner's report has been read, the debtor shall submit his final proposals.

Art. 1137. — *Consideration of proposals for scheme.*

- (1) Any creditor may give reasons for not accepting the scheme and discuss the concurrence of debts.
- (2) The debtor may reply and discuss the debts. He shall give such information as may be required.
- (3) The discussion shall be summarily recorded in the minutes and the documents, if any, shall be annexed thereto.

Art. 1138. — *Extension of meeting.*

Where the business of the meeting cannot be finished on the day fixed, it shall be adjourned to the next working day without further notice to creditors, even though not present at the meeting.

Art. 1139. — *Provisional admission of debts in dispute.*

- (1) The delegate judge may grant provisional admission of debts in dispute in whole or in part, for the purpose of voting and calculation of the majority, but such admission shall not affect the final decision on the standing of such debts.
- (2) Creditors who have not been admitted may, at the time of confirmation of the scheme, appeal against their not having been admitted, where the majority would have been different, had they been admitted.

Art. 1140. — *Majority required for approval of scheme.*

- (1) The scheme of arrangement shall be approved by a majority of creditors representing not less than two-thirds of all non-preferred or unsecured debts.
- (2) Secured creditors may not vote, unless they give up their security. Such surrender may be partial but shall not be less than one-third of the full value of the debt.
- (3) Where a secured creditor has voted without having made a partial surrender under sub-art. (2), he shall be deemed to have made a full surrender where he accepts the scheme under Art. 1141.
- (4) The court, when confirming the scheme, shall take into account the increase in the debtor's assets which has occurred under sub-art. (2) and (3).
- (5) Where a scheme is not completed or confirmed or is set aside or cancelled, the surrender of a security, even though partial, shall cease to have effect.
- (6) The provisions of Art. 1083 (4) and (5) shall apply to voting under this Article.

Art. 1141. — *Acceptance of scheme.*

- (1) The names of the creditors, the value of their debts and the way each of them voted shall be recovered in the minutes of the meeting, which shall be signed by the delegate judge, the commissioner and the registrar.
- (2) Creditors notifying their acceptance of the scheme by cable or letter within ten days after the minutes have been prepared shall be entered in the margin of the minutes by the registrar and included in the calculation of the majority.

Art. 1142. — *Non-approval of scheme.*

Where the scheme of arrangement is not approved in accordance with Art. 1140 and 1141, the delegate judge shall without delay inform the court, which shall of its own motion adjudge the debtor bankrupt.

Art. 1143. — *Procedure for confirming scheme.*

The delegate judge shall in the minutes and before such minutes are signed, make an order in writing for the parties to appear before the court within the next twenty days when the scheme will be confirmed.

- (2) The commissioner shall deposit his reasoned order in the registry not less than three days before the application for confirmation of the scheme is heard by the court and the delegate judge shall submit a report at the hearing.
- (3) The debtor and the creditors may be heard on the hearing of the application.

Art. 1144. — *Confirmation of scheme by the court.*

- (1) When the court is satisfied that the provisions of this Title have been complied with, it shall:
 - (a) consider the financial advisability of the scheme with respect to the creditors, having regard to the existing activities and potentialities of the firm; and
 - (b) seek the majorities required by law. To this effect, the court shall provisionally estimate the importance and amount of the debts declared with a view to establishing whether there is a majority, without prejudice to the final judgments to be given; and
 - (c) examine whether the securities offered are sufficient to guarantee the enforcement of the scheme and, in the case provided in Art. 1121 (2), whether the property assigned by the debtor is sufficient to meet the claims to the extent prescribed by Art. 1121 (1); and
 - (d) consider whether the debtor deserves to be granted approval of the scheme, taking into account the reasons for his failure.
- (2) The court shall adjudge the debtor bankrupt where it does not confirm the scheme.
- (3) In its judgment confirming the scheme, the court shall make an order for:
 - (a) the deposit of the dividend due in respect of declared debts;
 - (b) the amount to be set aside to cover debts in dispute; and

- (c) the procedure for payment of amounts due at successive intervals under the scheme, unless this matter is referred to the delegate judge.

Art. 1145. — *Assignment of property.*

Where the scheme provides for the assignment of the debtor's property under Art. 1121 (2) and subject to different stipulations, the court shall in its judgment:

- (a) appoint liquidators and a committee of the three or five creditors to supervise the winding-up; and
- (b) fix the details thereof.

Art. 1146. — *Prohibitions as regards debtor.*

- (1) Unless otherwise provided in the scheme or in a resolution adopted under this Title and confirmed by the court, the debtor shall not dispose of or charge his immovable property, agree to rights of pledge or set aside any part of his assets otherwise than as required by the nature of his business, until he has fully carried out in duties under the scheme.
- (2) Any act done in violation of the provisions of sub-art. (1) shall not be set up against creditors prior to the confirmation of the scheme of arrangement.

Art. 1147. — *Publication of judgement.*

Judgments confirming or refusing confirmation of a scheme shall be published in accordance with the relevant provisions of Art. 983.

Art. 1148. — *Application to set aside judgment confirming the scheme.*

- (1) The creditors who dissent and any interested party may apply to the court to set aside the judgment confirming the scheme within five days after the minutes have been prepared.
- (2) The reasons for the application shall be given and the application notified to the debtor and the commissioner.

Art. 1149. — *Appeals against judgment confirming or refusing to confirm the scheme.*

The debtor and the creditors who have made an application under Art. 1148 may appeal against the judgment confirming or refusing to confirm the scheme within fifteen days from the publication of the judgment, notice of appeal being served on the debtor, the commissioner and all parties to the proceedings.

Art. 1150. — *Effect of judgment confirming the scheme.*

- (1) The judgment confirming the scheme of arrangement shall bind all creditors prior to the opening of the proceedings for the scheme, but their rights against persons jointly and severally liable with the debtor, sureties and assignees, shall not be affected.
- (2) Such persons may be heard on the hearing of the application for confirming the scheme.

Art. 1151. — *Supervision of carrying out of scheme.*

- (1) The carrying out of a scheme which has been confirmed shall be supervised by the commissioner, in accordance with the procedure laid down in the judgment.
- (2) The commissioner shall inform the delegate judge of any fact likely to prejudice the creditors.
- (3) The delegate judge shall pay the costs and fees due to the commissioner during his term of office, notwithstanding any provision to the contrary.

Art. 1152. — *Setting aside of scheme of arrangement.*

- (1) The provisions of Art. 1091 and 1093 shall apply where a scheme of arrangement is set aside but the duties of the trustee shall be carried out by the commissioner.
- (2) Where a scheme of arrangement provides for an assignment of property under Art. 1121 (2), the scheme shall not be set aside where the proceeds of the assignment are sufficient to meet 50% of the debts.

Art. 1153. — *Clause of return to good fortune.*

The application of a clause in a scheme of arrangement providing that the debtor shall only be discharged where his fortune remains bad shall be limited to a period of five years and to cases where the debtor's assets exceed his liabilities by not less than 25%.

TITLE IV. SPECIAL RULES CONCERNING BANKRUPTCY AND SCHEMES OF ARRANGEMENT WITH RESPECT TO BUSINESS ORGANISATIONS

Art. 1154. — *Application of general provisions.*

Save as is otherwise provided in the preceding Titles, the provisions of this Title shall apply to business organisations.

Art. 1155. — *Business organisations which may be adjudged bankrupt.*

- (1) All commercial business organisations, other than a joint venture, may be adjudged bankrupt or be granted a scheme of arrangement.

- (2) A business organisation in liquidation may be adjudged bankrupt.
- (3) The provisions of this Article shall apply to business organisations which have been declared null and void but which exist in fact.

Art. 1156. — *Notice of suspension of payments.*

Notice of suspension of payments by a business organization under Art. 972 shall be made by the firm's legal representatives and, in the case of a firm in liquidation, by the liquidator.

Art. 1157. — *Court having jurisdiction.*

- (1) The Ethiopian court in whose area of jurisdiction the head office of the business organisation is situate shall have jurisdiction in bankruptcy proceedings.
- (2) Without prejudice to the provisions of international conventions, such court shall have jurisdiction notwithstanding that the head office is abroad and a foreign court has exercised bankruptcy jurisdiction.

Art. 1158. — *Bankruptcy of business organisation comprising partners jointly, severally and fully liable.*

- (1) Each partner in a general partnership and general partners in a limited partnership shall make the notice under Art. 1156 within twenty days after the company having suspended payments.
- (2) The bankruptcy of a firm comprising partners jointly, severally and fully liable shall cause the bankruptcy of such partners.

Art. 1159. — *Institution of liability proceedings.*

Proceedings under Art. 365 and 366 of this Code shall be instituted by the trustee with the permission of the commissioner, the creditors' committee having been heard.

Art. 1160. — *Adjudication of bankruptcy in common.*

- (1) Where a share company or private limited company is declared bankrupt, the adjudication may declare bankrupt any person who has carried out commercial operations on his own behalf and disposed of company funds as though they were his own and concealed his activities under the cover of such company.
- (2) The provisions of sub-art. (1) shall apply to limited partners who have carried out acts of management in a limited partnership.

Art. 1161. — *Retired partner with joint and several liability.*

- (1) On request, a partner jointly and severally liable may be declared bankrupt within one year following his name being struck off the

commercial register where payments were suspended by the partnership prior to the striking off.

- (2) Where the partner was not registered, he may be declared bankrupt at any time after his retirement.

Art. 1162. — *Claim for payment of contributions.*

The trustee may order the members or partners of any business organisation to complete the payment of their contributions, without regard to the time fixed by the articles of association.

Art. 1163. — *Bankruptcy proceedings in respect of partners jointly and severally liable.*

- (1) The court shall in one judgement declare both the firm and partners jointly and severally liable bankrupt and shall normally appoint one commissioner and trustee. The assets of the firm and of the partners shall be dealt with separately and the bankruptcy proceedings of the two, kept separate.
- (2) Debts proved in the firm's bankruptcy by the creditors of the firm shall be deemed to be proved in each of the partner's bankruptcy.
- (3) The firm's creditors may participate in all distributions until they are fully paid, without prejudice to claims as between the various bankrupt estates regarding over payment of contributions.
- (4) Personal creditors of the partners may only claim in the estate of their debtors.
- (5) Any creditor may contest priority with other creditors.

Art. 1164. — *Proposal for composition.*

- (1) A proposal for a composition by a bankrupt firm shall be signed by the legal representatives of such firm.
- (2) In the case of a general or limited partnership, the proposals for and the terms of the composition shall be approved by partners representing an absolute majority of the capital.
- (3) In the case of a share company or private limited company, proposals for a composition shall be approved by an extraordinary general meeting, unless such approval has been delegated to the directors.

Art. 1165. — *Composition in respect of firm with partners jointly and severally liable.*

- (1) Where a firm comprising partners jointly, severally and fully liable requests a composition, the creditors may approve such composition in favour of one or more partners.

- (2) In such cases, all the firm's assets shall remain subject to a compulsory winding-up. The personal property of partners with whom the composition has been approved shall be excluded therefrom and the composition shall only contain an undertaking to pay a dividend on those securities which are outside the firm's assets.
- (3) Where a composition with one partner is approved, he shall be discharged from joint and several liability.

TITLE V. SUMMARY PROCEDURE

Art. 1166. — *Terms of application when applied.*

- (1) Where the balance sheet submitted by the debtor or subsequent information shows that the assets in the bankruptcy do not exceed one thousand Ethiopian dollars, or where the dividend to be distributed cannot exceed ten per cent, the court may, either of its own motion or on the application of the creditors, order that the bankruptcy proceedings shall be by way of summary procedure.
- (2) Where in the course of such proceedings it is shown that the assets in the bankruptcy exceed one thousand Ethiopian dollars or the dividend exceeds ten per cent, the court shall order that the proceedings in bankruptcy shall continue under the normal procedure, but such order shall not affect the validity of any act already done.
- (3) The normal bankruptcy rules shall be applied where they are applicable to summary procedure.

Art. 1167. — *Special rules applicable in summary procedure.*

In a summary procedure:

- (1) seals shall not be fixed;
- (2) the appointment of a creditors' committee shall be optional;
- (3) the commissioner shall decide on debts in dispute unless an application is made to the court;
- (4) the commissioner may authorise any negotiations;
- (5) there shall be one distribution only;
- (6) differences relating to the trustee's accounts and his remuneration shall be decided by the commissioner.

Art. 1168. — *Proof of debts.*

- (1) The trustees shall prepare the list of creditors on the basis of the accounts, the statements of the debtor and any other information available.

- (2) The list, together with documentary evidence, shall be sent to the commissioner who shall ascertain the liabilities and order enforcement. The list of debts and the decree shall be deposited in the registry and shall be open to inspection by any interested party.
- (3) Within three days from such deposit, the trustee shall inform each creditor by registered letter of the decision taken regarding his debt.
- (4) Within fifteen days from such deposit, creditors not admitted may lodge a claim with the commissioner. Within the same period of time, objections with regard to creditors having proved may be lodged by other creditors.
- (5) The commissioner shall fix the date for hearing objections and, where they cannot be settled by agreement he shall make his final decision thereon.

Art. 1169. — *Demands for recovery.*

The provisions of Art. 1168 shall apply to demands for recovery and restitution of movable property in the debtor's possession.

Art. 1170. — *Composition.*

- (1) A proposal for a composition shall be approved by a majority vote of the creditors representing a majority of the debts.
- (2) The commissioner shall approve the composition where there is the required majority and the composition is acceptable. He shall enforce the composition against which there is no appeal of any kind.

BOOK VI. TRANSITORY PROVISIONS

Chapter I. General provisions

Art. 1171. — *Periods of time.*

- (1) Where periods of time have expired prior to the coming into force of this Code, nothing in this Code shall revive them.
- (2) Where this code lays down periods of time for the doing of acts or the fulfilment of formalities in respect of which no periods of time were laid down prior to the coming into force of this Code, such periods shall run from the coming into force of this Code.
- (3) Where periods of time have been extended by this Code, the provisions of this Code shall apply and the period which has run prior to the coming into force of this Code shall be deducted.
- (4) Where periods of time have been shortened by this Code, the period provided by the law repealed by this Code shall apply and the period which has run prior to the coming into force of this Code shall be deducted.

Art. 1172. *Vested rights.*

Unless otherwise expressly provided, any legal situation created prior to the **ments** for the creation of the situation concerned as are laid down in this Code modifies the conditions governing the creation of such situation.

Art. 1173. — *Legal situations not finally created.*

Unless otherwise expressly provided, legal situations not finally created on the coming into force of this Code shall be governed by such further requirements for the creation of the situation concerned as are laid down in this Code.

Charter 2. Traders: Businesses. Business Organisations**Art. 1174. — *Commercial Register.***

- (1) The provisions of Art. 86-122 of this Code shall come into force on such a day as shall be notified by Order published in the Negarit Gazette.
- (2) Whenever a provision of this Code imposes the obligation to make entries in the Commercial Register, such entries shall be made in accordance with the practice followed prior to the coming into force of this Code.
- (3) On the coming into force of this Code, the Ministry of Commerce shall serve on every business organisation registered in the Ministry of Commerce a form requiring them to supply the particulars required under Art. 105 and 108 of this Code and on receipt of the completed form shall enter such particulars in the Register.

Art. 1175. — *Register of mortgage on businesses.*

- (1) The provisions of Art. 179 of this Code shall come into force on such day and on such conditions as shall be notified by Order published in the Negarit Gazette.
- (2) Whenever a provision of this Code imposes the obligation to register a mortgage on a business, the particulars required by this Code shall be filed in the Awraja Guezat court in whose jurisdiction the business concerned is situate.

Art. 1176. — *Official Commercial Gazette.*

- (1) The official Commercial Gazette shall be established on such day as shall be notified by Order published in the Negarit Gazette.
- (2) Whenever a provision of this Code imposes the obligation to make publication in the official Commercial Gazette only, such publication shall be made in a newspaper entitled to publish legal notices.
- (3) Whenever a provision of this Code imposes the obligation to make publication in the official Commercial Gazette and in a newspaper entitled

to publish legal notices, publication made in such newspaper shall be sufficient.

Art. 1177. — *Business organisations.*

Business organisations created prior to the coming into force of this Code shall comply with the provisions of this Code within not more than six months from its coming into force.

Chapter 3. Negotiable instruments and banking transactions

Art. 1178. — *Principle.*

Negotiable instruments issued prior to the coming into force of this Code shall remain valid notwithstanding that they do not conform to the requirements of this Code.

Art. 1179. — *Protest.*

Where a protest requires to be drawn up under the provisions of this Code and there is no court registrar readily available, such protest shall be drawn up in the presence of two witnesses in the manner provided by this Code by any person having capacity under the Civil Code.

Chapter 4. Bankruptcy

Art. 1180. — *Principle.*

- (1) Bankruptcy proceedings opened prior to the coming into force of this Code shall continue in accordance with the provisions of this Code.
- (2) Commissioners and trustees appointed prior to the coming into force of this Code shall remain in office notwithstanding that they would not be eligible for appointment under this Code.

Art. 1181. — *Acts of bankruptcy.*

Acts of bankruptcy committed prior to the coming into force of this Code shall be deemed to have been committed under this Code.

Art. 1182. — *Certificates.*

Nothing shall affect the validity of certificates issued when, prior to the coming into force of this Code, bankruptcy proceedings have been closed by reason of insufficiency of assets.