

BOOK 3. OBLIGATIONS

TITLE I OBLIGATIONS IN GENERAL

CHAPTER I GENERAL PROVISIONS ON OBLIGATIONS

Article 512. General Provisions on Obligations

(1) Under an obligation relation, the creditor is entitled to claim performance from the debtor. Performance may consist in conveyance, a certain action or debtor's refraining from action.

(2) The obligation may be pure and simple or contingent on certain circumstances.

(3) The performance must be possible and determined or determinable, in compliance with the law, public order and moral values.

Article 513. Good Faith and Diligence

(1) The debtor and the creditor must act in good faith and with diligence upon rise of obligation, during its existence and upon extinction.

(2) Clauses derogating from provisions of par.(1) are deemed void.

Article 514. Grounds for Rise of Obligation

Obligations arise from contract, illicit conduct (delict) and from any other act or circumstance susceptible to produce such effects, in accordance with the law.

Article 515. Rise of Obligation from Contract Negotiation

(1) An obligation may arise by initiation and carrying out negotiations for concluding contract.

(2) The negotiating party may demand from the other party compensation for costs incurred owing to the justified certitude of contract conclusion, which has not been concluded due to the fault of the latter.

Article 516. Right to Information

(1) The right to information may arise from an obligation, without express stipulation. Information provision includes the duty to furnish relevant documents.

(2) The right to information appears especially in cases where information is important for determining obligation substance and the other party can supply such information without any infringement upon his rights.

(3) The solicitor of information must compensate the person liable for expenses incurred on providing the information. The latter may request guaranties.

Article 517. Natural Obligation

(1) The obligation shall be deemed natural where enforcement of that obligation cannot be requested.

(2) Obligations are natural, where:

a) the law or transaction do not provide for enforcement;

b) the person has a moral obligation towards another person, of such nature that although enforcement may not be claimed, its performance must, according to the general opinion, be deemed as performance of an obligation owed to another person.

(3) Natural obligations shall be governed by rules concerning obligations, unless it follows from the text or the spirit of the law that certain rules are not applicable to unenforceable obligations.

(4) The natural obligation may turn into a perfect civil obligation by agreement between the debtor and the creditor.

CHAPTER II PLURALITY OF SUBJECTS AND OBJECTS WITHIN AN OBLIGATION

SECTION 1 DIVISIBLE AND INDIVISIBLE OBLIGATIONS

Article 518. Divisible Obligation with Several Debtors

- (1) The obligation is divisible among several debtors where they are liable with the same obligation towards the creditor, but each debtor may be pursued separately in the amount of his part of the debt.
- (2) Debtors are liable in equal shares, unless it follows otherwise from law, contract or the nature of the obligation.

Article 519. Divisible Obligation with Several Creditors

- (1) The obligation is divisible among several creditors where they are entitled to the same performance from the part of the debtor, but each creditor may demand only his part of the claim.
- (2) Creditors are entitled to equal shares, unless it follows otherwise from law, contract or the nature of the obligation.

Article 520. Presumption of Divisibility

The obligation shall be divisible *ipso jure*, unless there is an express stipulation on its indivisibility or unless the object of the obligation is indivisible by nature.

Article 521. Effect of Indivisibility

- (1) The indivisible obligation may not be divided either among debtors, creditors or among their successors.
- (2) Each debtor and his successors may be forced to perform the obligation in its entirety and each creditor and his successors may claim performance of the entire obligation, even if it is not joint and several.
- (3) The obligation does not become indivisible only due to the fact that there is a stipulation regarding its joint and several characters.
- (4) The divisible obligation that has only one creditor and one debtor must be performed by them as an indivisible obligation, but it shall remain divisible among their successors.

SECTION 2
JOINT AND SEVERAL CREDITORS

Article 522. Joint and Several Claims

Where two or more creditors are entitled to demand an act of performance in such a manner that each of them can demand whole performance, while the act of performance towards one of the creditors exonerates the debtor from his obligation, their claim shall be deemed joint and several.

Article 523. Grounds for Joint and Several Claims

Joint and several claims are not presumed, but rise by virtue of transaction, by law or when the obligation is indivisible.

Article 524. Performance of Obligation in Favor of Any Creditor

The debtor may perform in favor of any of the creditors at his choice, until one of the creditors raises a claim for performance.

Article 525. Effects of Performance in Favor of One of the Creditors

Complete fulfillment of an obligation in favor of one of the creditors releases the debtor from performance to the other creditors.

Article 526. Remission of Debt by One of the Joint and Several Creditors

Remission of debt agreed between the debtor and one of the joint and several creditors is effective only in what regards the part pertaining to that creditor. This rule shall also apply where the obligation is extinguished on grounds other than performance.

Article 527. Inadmissibility of Defenses Related to Another Creditor

The debtor may not rely against one of the joint and several creditors on defenses based on debtor's relations with another joint and several creditors, to which the first creditor is not a party.

Article 528. Duties of Joint and Several Creditor that Received Performance towards Other Creditors

(1) A joint and several creditors who have received complete performance are bound to share it with the other co-creditors, unless he proves that the obligation was agreed only in his favor.

(2) In relations among themselves, joint and several creditors shall be entitled to equal shares, unless it is otherwise agreed.

Article 529. Representation of Joint and Several Creditors

The joint and several creditors shall act as an agent for all co-creditors with regard to all acts aiming at preservation of obligation.

SECTION 3 JOINT AND SEVERAL DEBTORS

Article 530. Joins and Several Obligations

Where two or more debtors are liable to one performance in such manner that each is bound to provide entire performance, while the creditor may demand performance from each of the debtors, the latter are jointly and severally liable.

Article 531. Grounds for Rise of Joint and Several Obligations

A joint and several obligations shall not be presumed, but shall arise by virtue of transaction, law, or where the object of obligation is indivisible.

Article 532. Contingent Joint and Several Obligations

Joint and several debtors may be bound differently: some – by pure and simple obligations, others – by obligations under condition, others – by fixed-date obligations.

Article 533. Creditor's Right to Demand Performance from Any of Joint and Several Debtor

The creditor may demand performance from any of the debtors at his choice, in whole or in part. Until complete performance has been accomplished, all debtors remain bound.

Article 534. Defenses of Joint and Several Debtor against Creditor

A joint and several debtor who has been requested to perform the obligation is entitled to raise against the creditor all defenses, either pertaining only to him or those which belong to all the joint and several debtors.

Article 535. Duty of Joint and Several Creditors to Compensate for Damage

(1) Where the owed asset perished due to the fault of one or several joint and several debtors, the other debtors shall not be exonerated from the obligation to pay asset's price, but shall not be liable for other damage.

(2) The damage caused by delay shall be compensated only by the debtors in delay.

Article 536. Effect of Performance or Compensation of Joint and Several Obligation

Obligation performance by one of the joint and several debtors shall also produce effects with regard to the other debtors. The same applies to the compensation made by one debtor.

Article 537. Reduction of Joint and Several Obligation

If the same person embodies at the same time qualities of joint and several creditor and debtor, the debt pertaining to the remaining debtors shall be reduced by the part of that joint and several debtor.

Article 538. Effects of Receipt of Partial Performance

(1) The creditor who separately received partial performance from one of the debtors, without reserving the joint and several character or his rights in general in the acceptance receipt, relinquishes the joint and several character only in relation to the joint and several debtor.

(2) Creditor's relinquishment of joint and several character in favor of a debtor shall not be presumed where the former receives from the debtor an amount equal to the share which the debtor owes to him, unless the acceptance receipt states that this amount is received on account of the share of that debtor.

Article 539. Impermissibility to Invoke Defenses against Joint and Several Debtors

Facts relating only to one of the joint and several debtors shall produce effects only with respect to him, unless it appears otherwise from the substance of the obligation.

Article 540. Relinquishment of Joint and Several Character in Relation to One of the Debtors

The creditor, who relinquished the joint and several characters in relation to one of the debtors, maintains joint and several actions against the other debtors, subject to deduction of share of the debtor that has been liberated from the joint and several obligation.

Article 541. Filing of Action against Joint and Several Debtor

(1) Where the creditor files an action against one of the joint and several debtors in regard of his share, relinquishment of joint and several characters in favor of that debtor shall not be presumed, unless that debtor acknowledged the action or unless a definitive judgment admitting the action was issued.

(2) Bringing an action against one of the joint and several debtors does not bar creditor's right to bring actions against other debtors.

Article 542. Effect of Delay from the Part of Joint and Several Creditor or Debtor

(1) The delay from the part of the creditor towards one of the joint and several debtors also produces effects in favor of the other debtors.

(2) Effects of delay from the part of one of the joint and several debtors shall not produce effects against the other joint and several debtors.

Article 543. Obligations of Heirs of Joint and Several Debtors

Where one of the joint and several debtors have several heirs, these heirs shall be bound to perform in proportion to their shares in the inheritance. This rule shall not apply where the obligation is indivisible.

Article 544. Recourse action in Case of Obligation Performance by One of the Joint and Several Debtors

(1) The joint and several debtors that performed the obligation is entitled to file a recourse action against the other joint and several debtors in regard of their shares in the obligation.

(2) Where it is impossible to determine shares of the joint and several debtors, they shall be bound between themselves in equal shares.

Article 545. Compensation to a Joint and Several Debtors

Where one of the joint and several debtors obtained a benefit from a joint and several obligation, the joint and several co-debtor that did not obtain benefits may request, if he performed the obligation, reimbursement of what he has paid, without deducting his share in the obligation.

Article 546. Effect of Insolvency of Joint and Several Debtor

Where performance may not be obtained from one of the joint and several debtors for reasons of his insolvency, performance share owed by him shall be borne in equal shares by the other debtors, including the one in relation to which the creditor relinquished joint and several character, unless otherwise provided by law or contract.

Article 547. Defenses Opposed to Co-Debtor

The joint and several debtors may oppose to the co-debtor, who performed the obligation, the common defenses, which the latter did not oppose to the creditor.

Article 548. Suspension, Discontinuation or Expiry of Period of limitation in Relation to Joint and Several Debtors

Suspension, discontinuation or expiry of period of limitation in relation to one of the joint and several debtors is ineffective as against the other debtors.

Article 549. Representation of Joint and Several Co-Debtors

The joint and several debtor acts as agent for co-debtors in what regards the extinction or reduction of the obligation.

SECTION 4
ALTERNATIVE OBLIGATIONS
AND OPTIONAL OBLIGATIONS

Article 550. Alternative Obligation

An obligation shall be deemed alternative if its object comprises two or more principal performance options and execution of either of them completely liberates the debtor from his obligation.

Article 551. Right to Performance Option

(1) The right to select the option of performance belongs to the debtor, unless it was expressly attributed to the creditor.

(2) If the party entitled to choose performance did not make the choice within the additional term accorded after notification of delay, the right to choose passes to the other party.

(3) The choice shall be made by declaration to the other party or by performance. The option chosen shall be deemed to have been owed from the outset.

Article 552. Prohibition of Partial Performance

The debtor may not and cannot be forced to fulfill a part of one performance option and a part of another.

Article 553. Effect of Impossibility to Perform where Debtor Is Entitled to Choose

(1) Where the debtor is entitled to choose the option and one of the options cannot be fulfilled, the debtor must perform the remaining option.

(2) If under the same circumstances both performance options become impossible to fulfill due to debtor's fault, the latter shall be liable to compensate the creditor up to the amount of the last remaining performance option.

Article 554. Effect of Impossibility to Perform where Creditor Is Entitled to Choose

(1) Where the right to choose belongs to the creditor and one of the options becomes impossible to perform, the creditor must accept the remaining performance option, except for cases where the impossibility to perform is due to debtor's fault.

(2) Where the impossibility to perform is due to debtor's fault, the creditor is entitled to demand either performance in kind of the remaining option, or compensation for damage caused by nonperformance of the option that became impossible.

(3) If both options become impossible to perform due to debtor's fault, the creditor may claim compensation for damage caused by nonperformance of either option.

Article 555. Optional Obligation

(1) An obligation shall be deemed optional where it has one principal object, of which the debtor may be liberated by another performance act.

(2) The debtor is liberated where performance of the principal obligation becomes impossible, for reasons other than debtor's fault.

CHAPTER III
ASSIGNMENT OF CLAIMS AND ASSUMPTION OF DEBTS

SECTION 1
ASSIGNMENT OF CLAIMS

Article 556. General provisions regarding assignment of claims

(1) A transmissible and enforceable claim may be assigned by the creditor (assignor) to a third party (assignee), by virtue of contract. From the moment of conclusion of such a contract, the assignor shall be replaced by the assignee in what regards the rights originating in the claim.

(2) The assignment of claim may not prejudice debtor's rights and may not render the obligation of the latter more onerous.

(3) The assignor is bound to convey to the assignee documents pertaining to the claim and to provide information necessary for its realization.

(4) Claims regarding collection of alimony, compensation for damage caused to life and health, as well as claims tied to the personality of the creditor are non-assignable.

(5) The assignment of claim should be made in the form required for the transaction act, form which the claim raised.

Article 557. Debtor's Consent

The holder of the claim may assign it to a third party without debtor's consent, where this does not contravene to the substance of the obligation, to the agreement between the parties or to the law. The agreement with the debtor regarding claim's non-assignable character produces effects only if the debtor has a legitimate interest in this regard.

Article 558. Scope of Rights Transferred to Assignee

- (1) The claim is transferred to the assignee in the condition as of the moment of transfer.
- (2) Guaranties and other accessory rights pass to the assignee at the same time with the claim.

Article 559. Securing Claim Validity

(1) The assignor shall be held liable towards the assignee for validity of the claim and its guaranties, but shall not be responsible for nonperformance of the claim from the part of the debtor, except for cases when the assignor provides security for the debtor towards the assignee.

(2) In case of assignment of claim originating in securities at order, the assignor shall be also held liable for the performance of claim by the debtor.

Article 560. Defenses Opposed to Assignee by Debtor

The debtor is entitled to oppose to the assignee all defenses, which he could have opposed to the assignor at the moment of assignment notification.

Article 561. Opposability of Performances

The debtor may oppose to the assignee performance made towards the assignor after the assignment, as well as any transaction concluded after the assignment between the debtor and the assignor in regard of the assigned claim, if the debtor was not aware of the existence of assignment at the moment of performance or conclusion of transaction.

Article 562. Priority in Case of Multiple Assignments

Where a claim is assigned several times by the same holder, the earliest assignee shall be deemed creditor of the obligation.

Article 563. Deed concerning Amount of Debt

Where the debtor has drawn up a deed regarding the amount of debt, the assignee may oppose the deed against the debtor, if, at the date of assignment, the former was not and should not have been aware that the deed did not represent the facts.

Article 564. Notification of Assignment

(1) Where the assignor notifies the debtor about the assignment of claim or submits to him a deed regarding the assignment, the debtor may oppose the assignment against the assignor, even when it did not take place or when it proved to be void.

- (2) The assignment notification may be retracted only with the consent of the person designated as the new creditor.

Article 565. Assignment of Other Rights

Rules governing assignment of claims apply accordingly in the case of assignment of other rights.

Article 566. Transfer of Claims Otherwise than by Parties' Will

This section shall apply accordingly where a claim is assigned by virtue of law, court judgment or decision of a public authority.

SECTION 2 ASSUMPTION OF DEBT

Article 567. Assumption of Debt by Agreement with Creditor

- (1) A debt may be assumed by a third party by agreement with the creditor. In such case, the third party replaces the debtor.
- (2) The initial debtor is entitled to oppose to the agreement and perform himself the obligation.

Article 568. Assumption of Debt by Agreement with Debtor

Where the assumption of debt was agreed upon between the third party and the debtor, transfer validity depends on its ratification by the creditor.

Article 569. Form of Debt Assumption

The assumption of debt must take the form required for the transaction based on which the debt has arisen.

Article 570. Defenses Opposed by New Debtor

The new debtor may raise against the creditor all defenses arising from the legal relation between the creditor and the former debtor, but may not set off a claim belonging to the former debtor.

Article 571. Extinction of Guaranties

In consequence of a debt assumption, the guaranty rights granted on the claim are terminated to the extent that the one that granted such rights does not approve of their maintenance.

CHAPTER IV
PERFORMANCE OF OBLIGATIONS

SECTION 1
GENERAL PROVISIONS ON OBLIGATION PERFORMANCE

Article 572. General Conditions for Obligation Performance

- (1) Grounds for performance derive in the existence of an obligation.
- (2) Obligations must be performed properly, in good faith, in the agreed place, and at the stipulated time.

Article 573. Place of Obligation Performance

Unless the place of obligation performance is agreed upon or appears from the essence of the obligation, the performance shall be offered:

- a) at creditor's domicile or premises as of the moment of obligation rise – for pecuniary obligations;
- b) at asset's location as of the moment of obligation rise – for obligations to convey individually-determined assets;
- c) at the place where the debtor carries out activity in connection with the obligation or, in the absence of such a place, at debtor's domicile or premises – for other obligations.

Article 574. Change of Domicile, Premises, Seat of Activity of Creditor or Debtor

(1) If the debtor or the creditor changed his domicile, premises or seat of activity before obligation performance and notified the other party about this, the obligation shall be performed at the new domicile, premises or seat of activity.

(2) Additional costs and risks due to change of domicile, premises or seat of activity shall be borne by the party that performed the change.

Article 575. Term of Performance

(1) If the term of performance has not been specified or does not appear from the substance of the obligation, the creditor may demand performance anytime, while the debtor may forthwith provide performance. If the duty to perform immediately does not follow from law, contract or the substance of the obligation, the debtor must perform the obligation within 7 days from the moment of creditor's demand.

(2) If the term has been specified, it shall be deemed that the creditor may not demand performance ahead of the fixed time. However, the debtor is entitled to early performance, if the creditor has no substantial reason to reject such performance. If the creditor rejects early performance, he must immediately notify the debtor about this and take all measures necessary for avoiding damage to the debtor.

Article 576. Creditor's Right to Demand Early Performance

Even if there is a term of performance fixed in favor of the debtor, the creditor may demand forthwith fulfillment of obligation, if the debtor has become insolvent or has diminished the value of the set guaranty, or could not produce such guaranty at all, as well as in other cases provided by law.

Article 577. Debtor's Right to Adjourn Performance

The debtor is entitled to adjourn obligation performance in the case and to the extent that he cannot determine in good faith that does performance pertain to.

Article 578. Performance of Conditional Obligations

Where effects of a transaction depend on fulfillment of a condition, the obligation shall become due on the day of condition fulfillment.

Article 579. Persons Entitled to Receive Performance

(1) The debtor must perform the obligation towards the creditor or the person empowered by the latter or to the person empowered by virtue of law or court judgment.

(2) Where performance has been offered to an unauthorized person, the obligation shall be deemed performed if the creditor confirmed it or benefited of that performance in any other way.

Article 580. Performance towards an Incapable Creditor

Where the creditor is incapable, performance offered to him personally is invalid, unless the debtor proves that it benefited the creditor.

Article 581. Obligation Performance by Third Party

(1) Unless it follows from the law or from the nature of the obligation that the debtor is bound to perform the obligation in person, the obligation may be performed by a third party. In such cases, the creditor is bound to accept performance proposed by the third party instead of the debtor. The performance offer tendered by the third party must be done in the interest of the debtor and not only with the aim to replace the creditor.

(2) The creditor may refuse performance tendered by the third party if the debtor objects to it.

Article 582. Satisfaction of Creditor's Claims by Third Party

If the creditor undertakes enforcement over an asset that belongs to the debtor, anyone, who is at risk of forfeiture of certain rights over that asset, is entitled to satisfy the creditor without debtor's consent. By such act, the third party shall replace the creditor.

Article 583. Performance of Pecuniary Obligation

(1) The pecuniary obligation is to be expressed in national currency. The parties may agree on pecuniary obligations in foreign currency to the extent that law does not prohibit this.

(2) If the pecuniary obligation expressed in foreign currency must be performed within country's territory, performance may be offered in home currency, except for cases when performance in foreign currency has been expressly stipulated. The National Bank exchange rate as of the moment of obligation performance shall be taken into account.

Article 584. Performance in Case of Modification of Exchange Rate

(1) Where the exchange rate of the payment currency changed in relation to the account currency before the pecuniary obligation became due, the debtor shall be bound to make the payment according to the exchange rate as of the date of performance, unless the contract provides otherwise. In the event of a monetary reform, the exchange rate as of the date of monetary reform shall apply.

(2) The party in delay bears the risk of exchange rate modification of the payment currency.

Article 585. Rate of Interest

When, according to law or contract, the obligation bears interest, the interest shall be calculated at the National Bank refinancing rate, unless it is otherwise stipulated by law or contract.

Article 586. Priority of Payments Made by Debtor

(1) Where the debtor owes several similar performances, and the amount paid is not enough to cover all the debts, the obligation chosen by the debtor at the moment of payment is to be extinguished first. If the debtor has not made the specification, the debt with the earliest maturity date has precedence.

(2) If several claims become due at the same time, the claim which is the most burdensome for the debtor is the first to be settled. If the claims are equally burdensome, the least secured one is the first to be settled.

(3) If neither of the criteria proposed at par.(1) and (2) is applicable, the payment shall account for all obligations proportionately.

(4) If the money paid by the debtor is not enough to extinguish the entire debt due, court costs shall be paid for in the first place, interest payments shall follow, and at last the principal sum will be covered.

Article 587. Obligation Performance in Installments

(1) Unless it follows otherwise from law, contract or the substance of the obligation, the debtor may perform the obligation in installments only with creditor's consent.

(2) If there is a dispute regarding a part of the obligation, the creditor may not reject performance of the incontentious part tendered by the debtor, save for the case when due to non-performance or inadequate performance of the contentious part of the obligation, the creditor lost interest in the entire performance.

Article 588. Rejection of Another Performance

The creditor is not bound to accept performance other than the owed one. This rule applies even if the tendered fulfillment has greater value.

Article 589. Standard of Quality

Where the quality of performance is not expressly determined by contract, the debtor must provide an average quality performance.

Article 590. Performance in Case of Generic Assets

Where the asset owed is of generic type, the debtor shall be bound as long as performance with assets of the same genre is possible, even if non-performance is not due to his fault.

Article 591. Contract of Consumer Credit

(1) The contract of sale and purchase and the credit contract shall constitute a single (interrelated) transaction, where the credit is used to cover the purchase price and both contracts are regarded as an economic unity. An economic unity is deemed to exist especially when the person granting credit relies on seller's assistance in preparing or concluding the credit contract.

(2) Under a consumer credit contract, the debtor may refuse reimbursement of credit, if defenses originating in the onerous contract related to the credit contract entitle him to refuse performance of obligation towards the seller.

Article 592. Performance Costs

Performance costs shall be borne by the debtor, unless otherwise provided by law or contract.

SECTION 2 DEFAULT BY CREDITOR

Article 593. General Provisions on Default by Creditor

(1) The creditor is in default if he rejects without legal grounds due performance offered to him.

(2) If performance of the obligation requires an action from his part, the creditor is in default where he does not undertake the required action, although the debtor tenders performance.

(3) The debtor shall not be in default as long as the creditor is in default.

Article 594. Temporary Impossibility to Receive Performance

Where the term of performance is not stipulated or the debtor is entitled to early performance, the creditor shall not be deemed in default if he is deprived of the possibility to accept the tendered performance for a period of 7 days, save for the case when the debtor notified him beforehand about the performance.

Article 595. Creditor's Duty to Make Compensation

The creditor must compensate for damage caused to the debtor in consequence of default in accepting performance.

Article 596. Debtor's Responsibility in Case of Default by Creditor

In the event of creditor's default, the debtor shall be liable for non-performance only in case of willful conduct or gross negligence.

Article 597. Effects of Default by Creditor

- (1) Irrespective of his culpability for default, the creditor:
- a) is bound to compensate the debtor for extra costs incurred on preservation of the object of contract and performance tendering;
 - b) bears the risk of accidental deterioration or loss of the asset;
 - c) may not receive interest on monetary obligation.
- (2) Where the debtor is under the obligation to convey asset's fruits or to compensate for their value, this obligation shall not extend on fruits obtained during creditor's default.

**SECTION 3
PROTECTION OF RIGHT TO PERFORMANCE OF OBLIGATION**

Article 598. Creditor's Right to Preservation of Claim

The creditor, who has a serious and legitimate interest, may undertake all measures for preservation of his rights.

Article 599. Oblique Action

- (1) The creditor, who has a certain, liquidated and matured claim, is entitled to exercise on behalf of his debtor rights and actions belonging to the latter, where the debtor refuses or omits to exercise such rights to the detriment of the creditor.
- (2) The creditor may not exercise debtor's rights and actions of exclusive personal character.
- (3) The claim must be liquidated and matured the latest at the moment of examination of the action.

Article 600. Defenses Raised against Creditor who Filed Oblique Action

The person, against whom the oblique action is filed, may raise against the creditor all defenses opposable to his own creditor.

Article 601. Effects of Oblique Action

All assets obtained by virtue of an oblique action shall enter into debtor's property and shall benefit to all his creditors.

**CHAPTER V
EFFECTS OF NON-PERFORMANCE OF OBLIGATION**

Article 602. Liability for Non-Performance of Obligation

- (1) Where the debtor breaks his obligation, he is liable to compensate the creditor for damage caused thereby, unless the debtor proves that he bears no liability for non-performance.
- (2) Non-performance comprises any breach of obligation, including inadequate or belated performance.
- (3) Reparation of damage caused by delay or other inadequate performance of the obligation does not release the debtor from performing the obligation in kind, save for cases when, due to objective circumstances, the creditor loses interest in performance.
- (4) Creditor's right to claim compensation instead of performance is exercised as prescribed by art. 609. The creditor may claim compensation for delay in obligation performance only if additional conditions regarding delay, shown at art.617, are fulfilled. In the case of a reciprocal contract, the creditor may claim compensation for non-performance only after rescission of contract according to art.737.

Article 603. Debtor's Fault

- (1) The debtor shall be liable only for willful or negligent conduct, unless the law or contract provides otherwise or it follows otherwise from the nature of the relation.
- (2) Any stipulation releasing the debtor beforehand from liability in case of willful conduct or gross negligence shall be void.

Article 604. Responsibility for Acts of Legal Representative and Agent

The debtor is liable for the acts of his legal representative, and those of persons to whom he has entrusted contractual performance of his obligations, as if those were his own culpable acts, unless the law provides for liability of the third party. Provisions of art.603 par.(2) shall not apply.

Article 605. Responsibility in Case of Impossibility of Asset's Purchase

Where the debtor must purchase the asset due, he shall be liable for impossibility of purchase even if it is not imputable to him, unless it appears otherwise from law or contract.

Article 606. Force Majeure

(1) Non-performance of obligation shall not be imputable to the debtor if it is due to a circumstance of force majeure, and the debtor could not have been aware at the moment of obligation arising about the occurrence or effects of such an event, or the debtor could not prevent or remove the occurrence of force majeure or of its consequences,

(2) If temporary, the force majeure circumstance may be invoked only within the period when it has an effect on obligation performance.

(3) If the obligation may not be performed for reasons of force majeure, the debtor must notify the creditor about the circumstances and their effects on obligation performance. If the creditor did not receive notification within a reasonable time from the date when the debtor became or should have become aware of the force majeure, the latter shall be held liable for damage caused due to absence of notification.

(4) The provisions of this article do not prevent the creditor from demanding rescission of contract, performance of obligation or payment of interest.

Article 607. Restoration of Initial State (Restitutio ad integrum)

(1) The person bound to compensate for damage must restore the situation that would have existed if the event that caused the damage had not taken place.

(2) If, after a bodily injury or other health injury, the work capacity disappears or diminishes or additional needs appear, the injured person must be compensated through payment of a monthly pecuniary allowance. The amount of the allowance is established based on the predictable evolution of the earnings of the injured person, according to reasonable expectations.

(3) The injured person is entitled to claim in advance compensation for medical treatment costs. The same applies in case of the need of professional retraining.

(4) Instead of the allowance, the injured person may claim lump sum compensation, provided that there is a justified reason for this.

Article 608. Impossibility to Perform in Kind

If restoration of the initial state as provided by art.607 para.(1) is impossible or its costs are disproportionately high, the creditor shall be compensated in money.

Article 609. Compensation Instead of Performance

(1) The creditor may claim compensation instead of performance only if he previously established to the debtor a reasonable term for performance. Where such term has not been established or the term established is unreasonably short, a reasonable term shall be deemed accorded.

(2) There is no need for warning, where it is obvious that it cannot be fulfilled, especially if the term provided at art.617 par.(4) has expired and the obligation has not been performed or if there are special circumstances that justify immediate exercise of the right to compensation, having regard of the interests of both parties.

(3) Where the creditor has a right to compensation for non-performance of the entire obligation, he may demand compensation instead of the entire performance, if he does not have any interest in partial performance. Art.738 shall apply accordingly in what regards restitution of performance.

(4) The right to obligation performance shall be lost as of the moment when the creditor demanded compensation instead of performance.

(5) Compensation shall be accorded in the form of a lump sum. Compensation under the form of periodical payments may be accorded contingent on the nature of damage. Periodic payment compensation shall be indexed contingent on the inflation rate.

Article 610. Scope of Compensation

(1) Compensation owed by debtor for non-performance shall cover both damages actually caused to the creditor, as well as lost profit.

(2) Lost profit is the profit that could have been obtained under normal circumstances and contingent on the proper conduct of the author of damage.

(3) Only damage that represents the immediate (direct) consequence of non-performance is subject to reparation.

(4) Compensation shall not cover damage, which, as expected from debtor's experience, could not be reasonably foreseen under an objective assessment.

(5) If non-performance is caused by willful conduct, the debtor shall be also liable for the unforeseeable damage.

Article 611. Determination of Damage Extent

Upon determining the extent of the damage, account shall be taken of the interest the creditor had in adequate performance of obligation. The time and the place established for obligation performance shall be determinant for this assessment.

Article 612. Culpability of Person Entitled to Compensation

(1) If the person entitled to compensation or reparation culpably contributed to the causation of damage or to the rise of another obligation for compensation, the existence and extent of the obligation for compensation or reparation shall depend on the circumstances, and especially on the extent to which the damage was caused by either of the parties.

(2) Para.(1) shall also apply when the fault of the damaged persons consists only in that he failed to prevent or to diminish the damage.

Article 613. Reimbursement of Savings in Case of Exoneration from Liability

Where the debtor proves that non-performance is not imputable to him, the debtor shall reimburse to the creditor all savings due to non-performance.

Article 614. Reimbursement of Compensation

(1) Where the debtor exercises his right to refuse performance of obligation and obtains compensation or has a right of compensation for the owed object, the creditor, if the situation justifying his right to objection arises, may request reimbursement of the accorded compensation or relinquishment of the right to compensation.

(2) Where the creditor may request compensation instead of obligation performance, compensation shall be reduced by the value of already obtained compensation or shall be reduced in accordance with the right to compensation, if the creditor exercised his right provided at par.(1).

Article 615. Assignment of Claim for Damage Compensation

The person liable to compensate for the damage caused by loss of an asset shall be obliged to compensate only in exchange for assignment of the claim, which the injured person, as owner or other legitimate possessor of the asset, holds against a third party.

Article 616. Compensation for Non-Material Damage

(1) Compensation in money may be claimed for non-material damage in cases expressly provided by law.

(2) In case of bodily injury or other damage to health, as well as in case of illegal deprivation of liberty, the injured person may also claim compensation in money for non-material damage, established based on an assessment according to the principle of fairness.

Article 617. Warning of Default

(1) Where the debtor does not perform the obligation after receiving creditor's warning upon maturity, the debtor shall be deemed in default provided the submittal of the warning.

(2) There is no need for warning if:

- a) a calendar date is established for obligation performance;
- b) an event must occur before obligation performance, and the period for obligation performance is established in such a manner that it may be calculated by calendar from event occurrence;
- c) the parties expressly agreed that the debtor shall be deemed in default, without observance of any formalities, upon expiry of the term within which he should have performed the obligation;
- d) the obligation, by its nature, may only be performed within a fixed term, and the debtor did not provide performance within that term;
- e) the debtor of a long-term obligation repeatedly refuses or omits to effect performance;
- f) the obligation to refrain from an act is not being complied with;
- g) it is obvious that the warning will be useless;
- h) the default has substantial reasons, taking into account the interests of both parties;

i) the debtor has declared in writing that he does not intend to perform the obligation.

(3) In the cases mentioned at par.(2) let.a) and b), any agreement regarding establishment of a term that would seriously affect one of the parties shall be void.

(4) The debtor shall be deemed in default if he does not perform the obligation within 30 days from maturity and from the submittal of a payment bill or of another similar request for payment. This provision shall apply to the consumer debtor only if the payment bill or the similar payment request expressly specifies the mentioned effects.

(5) The debtor shall not be deemed in default as long as performance did not take place for reasons that cannot be imputed to the debtor.

Article 618. Liability during Default

The debtor bears responsibility for any negligence or imprudence during default, even if his liability is limited by law or contract. He is also liable for accidental impossibility of performance, except when the losses would have taken place even if the obligation were performed in time.

Article 619. Default Interest

(1) Monetary obligations shall bear interest during default. The default rate shall constitute 5% over the interest rate provided at art.585, unless otherwise provided by law or contract. The arguing of a lesser damage is allowed.

(2) In the case of non-consumer transactions, the interest rate shall be 9% over the interest rate provided at art.585, unless the law or contract provide otherwise. The arguing of a lesser damage is not allowed.

(3) Where the creditor is entitled on other legal grounds to claim higher interest, such interest must be paid. The possibility to invoke the right to compensation for other damage is not excluded.

(4) Default interest shall not be applied to interest amounts.

Article 620. Breach of Obligation to Perform Action

Where the debtor does not fulfill the obligation to perform a certain action, the creditor is entitled to fulfill it by himself or to entrust performance to a third party, while the costs shall be borne by the debtor or compensation shall be claimed on him, unless it follows otherwise from law, contract or the substance of the obligation.

Article 621. Breach of Obligation to Refrain from Action

(1) Where the debtor breaches the obligation to refrain from an action, he shall pay a compensation for the mere fact of infringement.

(2) The creditor may demand demolition of all that has been done with the breach of the obligation to refrain from action or authorization to demolish it by him, while the costs shall be borne by the debtor.

Article 622. Non-Performance of Obligation to Convey Asset

(1) Where the debtor does not fulfill the obligation to convey an asset, the creditor is entitled to claim that the asset be taken from the debtor and transmitted to him or to demand payment of compensation.

(2) Creditor's right to claim conveyance of the asset ceases where the asset has already been conveyed to a third party based on a similar right. In the event that the asset has not yet been conveyed, the right of preference belongs to the creditor whose claim arose earlier, whilst if it is impossible to establish this, the right of preference shall belong to the creditor who filed suit first.

Article 623. Adjustment of Contract to Altered Circumstances

(1) If the circumstances which served as basis for entering into the contract substantially altered after its conclusion to the extent that the parties would not have entered into the contract or would have concluded it on other conditions, had they foreseen those changes, adjustment of the contract to the changed circumstances may be demanded, inasmuch as maintenance of the unchanged contract cannot be required from either of the parties, taking into account all circumstances of the case, and especially the legal or contractual distribution of risks.

(2) First of all, the parties must make effort to adjust the contract to the changed circumstances, based on amicable agreement.

(3) The entitled party shall request adjustment of contract without delay, being under the obligation to indicate grounds for adjustment. The adjustment request shall be void if the party expressly assumed the risk of change in circumstances.

(4) Submittal of the request for contract adjustment shall not serve as grounds to refuse performance of obligation.

(5) If it is impossible to adjust the contract to the changed circumstances or if the other party does not assent to it, the party whose interests have been infringed upon may rescind the contract. With regard to contracts with long-term execution, rescission of contract shall be replaced by cancellation of contract, as provided for in art.748.

CHAPTER VI
MEANS TO SECURE OBLIGATION PERFORMANCE

SECTION 1
CONTRACTUAL PENALTY

Article 624. General Provisions on Contractual Penalty

(1) Contractual penalty (penalty) is a contractual clause by which the parties assess the damage prior to its occurrence, stipulating that in the event of nonperformance of the obligation, the debtor shall be bound to pay to the creditor a sum of money or another asset.

(2) Only a valid claim may be secured by penalty.

(3) The contractual penalty may be established in fixed amount or as a share in the value of the obligation secured by penalty or in its unperformed part.

(4) The parties may agree on a penalty that exceeds damage.

(5) The debtor is not bound to pay penalty where non-performance is not imputable to him.

Article 625. Form of Contractual Penalty

(1) Contractual penalty shall be drawn up in writing.

(2) Non-compliance with the written form requirement shall render the contractual penalty void.

Article 626. Right to Claim Additional Compensation

(1) The creditor may not claim concomitantly performance of obligation and payment of contractual penalty, unless penalties are also established for the case of inadequate performance, especially for delay in performance.

(2) The creditor is entitled to claim reparation of damage in the part that has not been covered by the contractual penalty (inclusive contractual penalty). Where provided by law or contract, the creditor may claim compensation, or payment of penalty (alternative contractual penalty), claim reparation of damage in addition to the penalty (punitive contractual penalty) or payment of the penalty only (exclusive contractual penalty).

(3) Where the creditor accepted performance, he may claim penalty only if this right was expressly stated upon acceptance of performance.

Article 627. Contractual Penalty in Case of Indivisible Obligation

Where the contractual penalty secures an indivisible obligation and its nonperformance is owed to the fault of one debtor, the penalty may be claimed either entirely from the culpable debtor, or from each co-debtor in accordance with his share. In the last case, each co-debtor shall have right of action against the one who caused the arising of contractual penalty.

Article 628. Contractual Penalty in Case of Divisible Obligation

(1) Where the contractual penalty secures a divisible obligation, penalty is divisible as well and accrues only against the co-debtor who did not perform the obligation and only for the part of the obligation that pertains to him.

(2) The provisions of para.(1) shall not apply to joint and several obligations. They shall not apply as well where the contractual penalty has been established in order to prevent partial payment, while one of the co-debtors obstructed entire performance of the obligation. In such a case, the respective co-debtor shall be held liable for the entire penalty, and the other co-debtors – in proportion to their shares in the obligation. In this last case, each co-debtor has a right of action against the debtor who caused the arising of contractual penalty.

Article 629. Legal Penalty

Penalty established by law may not be excluded or reduced by parties' agreement.

Article 630. Reduction of Contractual Penalty

(1) In exceptional cases, taking into account all circumstances, the court may order reduction of a disproportionately high contractual penalty. Upon the reduction of contractual penalty, there account must be held not only of the material interests of the creditor, but also of his other interests protected by law.

(2) Where the contractual penalty has been paid already, reduction is inadmissible.

SECTION 2
EARNEST MONEY

Article 631. General Provisions on Earnest Money

(1) Earnest is a sum of money or another asset, which one party gives to the other to confirm conclusion of the contract and to secure its performance. In case of doubt, the sum paid shall be considered advance payment.

(2) The agreement regarding earnest money shall be drawn up in writing.

Article 632. Earnest set-off against Payment

The earnest is taken into account at obligation performance, and if not taken into account, it is reimbursed.

Article 633. Retention or Reimbursement of Earnest

(1) If the person that granted the earnest money is liable for breach of contract, the holder is entitled to retain the earnest money. If the holder of the earnest is responsible for nonperformance of contract, he must return the double of the earnest amount.

(2) Without prejudice to the provisions of par.(1), the party liable for nonperformance of contract must compensate the other party for damage that is not covered by earnest payments, unless the contract provides otherwise.

SECTION 3
DEBTOR'S WARRANTY

Article 634. Essence

Debtor's warranty is deemed to be an obligation whereby the debtor binds himself to perform an unconditional act or an act going beyond the subject matter of the contract.

Article 635. Validity of Warranty

Acceptance of warranty is deemed valid if it does not contradict legal provisions and does not impose too onerous charges on the debtor.

Article 636. Form of Warranty

The warranty shall produce effects only when drawn up in writing.

SECTION 3
RETENTION

Article 637. General Provisions on Retention

(1) The person under liability to deliver or return an asset may retain it, in cases provided by law, as long as the creditor does not compensate for the necessary and useful costs, incurred by the debtor in relation to that asset, and for the damage that the asset has caused.

(2) Retention may also secure a claim, which although not linked directly to the asset under question, is based on an obligation between entrepreneurs.

(3) The right of retention ceases where the creditor offers a real security deemed sufficient by court, or where the sum claimed has been deposited.

(4) Provisions of para.(1) and (2) shall apply, unless the contract provides otherwise.

Article 638. Exclusion of Right of Retention

(1) The right of retention may not be exercised if the possession of the asset resulted from an illicit act, is abusive or illegal or if the asset is not enforceable upon.

(2) The right of retention may not be invoked by possessor in bad faith, save for cases expressly provided by law.

Article 639. Opposability of Right of Retention

(1) The right of retention is opposable to third parties without any formality of publicity being necessary.

(2) In any case, the right of retention may not be opposed to creditors, who have started an enforcement procedure against the debtor.

(3) Deprivation of possession contrary to the will of the possessor does not extinguish the right of retention. The party that is the holder of this right may claim the asset, subject to the period of limitation provisions.

Article 640. Duty to Preserve Asset and to Collect Fruits

The party exercising the right of retention must preserve the asset with the diligence of a good owner. The party shall collect the fruits, being under the obligation to include them on account of his claim.

Article 641. Cease of Right of Retention

The right of retention ceases where the asset comes into the possession of the creditor or of the holder of the right, unless the party retaining the asset does not acquire the asset once again based on the same legal grounds.

CHAPTER VII EXTINCTION OF OBLIGATIONS

Article 642. Effects of Obligation Extinction

- (1) Parties' legal relation ceases its existence upon extinction of the obligation to which the relation refers.
- (2) If the obligation is extinguished, the debtor is not bound to pay interest and penalty or to compensate for damage.

SECTION 1 EXTINCTION OF OBLIGATIONS BY PERFORMANCE

Article 643. Effects of Extinction

- (1) The obligation shall be deemed extinguished by performance, where performance has been properly provided.
- (2) The obligation shall be deemed extinguished where the creditor accepts another performance instead of the owed one (replacement performance). In such case, the debtor is liable for defects of performance as prescribed by the rules regarding seller's liability.
- (3) If performance has been accepted, the burden of proof regarding nonperformance shall lay on the creditor.
- (4) Where the principal obligation is extinguished, personal guaranty, pledge and other accessory rights shall cease to the extent that justified interests of third parties do not subsist.

Article 644. Right to Receive Acceptance Receipt and Original Document

- (1) The debtor, who fulfilled the obligation, is entitled to demand acceptance receipt and the original document of indebtedness, on which the claim is based. Where it is impossible to demand acceptance from creditor, the debtor shall prove the payment with any means of proof.
- (2) Where the return of the original document is impossible, the debtor is entitled to demand from the creditor a certified acknowledgement of obligation extinction. In such case, all costs shall be borne by the creditor.
- (3) Where the creditor refuses to issue acceptance and to return the original document, the debtor is entitled to refuse performance. In such case, the creditor shall be deemed in default.
- (4) Where the creditor issued acceptance of principal debt payment, it is presumed that interest and expenditures have been paid as well.

Section 2 EXTINCTION OF OBLIGATION BY REGISTERED DEPOSIT

Article 645. General Provisions on Registered Deposit

- (1) Where the creditor is in default or the debtor, for reasons he is not responsible of, is not aware of creditor's identity or domicile, the debtor may deposit the money, securities or other documents, as well as jewelry, at a bank or at the notary's office.
- (2) If assets that have to be registered in deposit are submitted to the post office, they shall be considered registered from the moment of deposit.
- (3) Conveyance into registered deposit extinguishes the obligation even in cases when the assets or their equivalent cannot be transferred to the creditor any more.
- (4) From the moment of deposit registration, the risks pass on the creditor, while the debtor is not bound to pay interest or penalties or to compensate for damage.

Article 646. Simultaneous Performance of Obligations

Where obligation performance by the debtor is contingent on simultaneous performance of an obligation by the creditor, the debtor is entitled to condition the giving out of the assets in registered deposit by performance of creditor's obligation.

Article 647. Place of Deposit Registration

(1) The debtor must deposit the assets at the place of obligation performance. If the debtor deposited the assets in another place, the debtor is liable for damage thus caused.

(2) The debtor is under the obligation to notify the creditor immediately about the registered deposit, except for cases when performance of this duty is impossible. The debtor must compensate for damage caused to the creditor by omitting to notify him about the registered deposit.

Article 648. Debtor's Right to Demand Return of Deposited Asset

(1) The debtor is entitled to demand return of the asset in registered deposit.

(2) The return of the asset in registered deposit is not allowed, if:

- a) The debtor has expressly relinquished the right to demand return, upon registering the deposit;
 - b) The creditor has submitted declaration of acceptance to the institution where the assets are deposited;
 - c) A final court judgment has been served on the institution where the goods are placed, acknowledging deposit registration as legal;
 - d) An insolvency suit has been commenced against the debtor.
- (3) Where the asset in registered deposit is returned to the debtor, the registered deposit shall be cancelled retroactively (is deemed to have not existed).

Article 649. Costs of Registered Deposit

Costs of registered deposit shall be borne by the creditor, except for cases when the debtor has taken over the deposited asset.

Article 650. Cease of Registered Deposit upon Expiry of Period of Limitation

Upon the expiry of three years from the moment when the creditor became or should have become aware about the registered deposit, creditor's right to receive the asset shall cease. In such a case, the debtor is entitled to demand the asset even if abandoned this right.

SECTION 3 EXTINCTION OF OBLIGATION BY SET-OFF

Article 651. General Provisions on Set-Off

(1) Set-off consists in mutual extinction of an obligation and an opposed claim, which are both certain, liquidated, of the same nature and have both become mature.

(2) The grace period granted for payment of a claim shall not prevent the set-off.

(3) Set-off is also possible when the claims have not matured yet, but the holders of the claims agree to it.

(4) The set-off is made by declaration to the other party. A conditional declaration shall be deemed void.

Article 652. Set-Off of Non-Equivalent Claims

Where the claims subject to set-off are not equivalent, only the claim that is entirely covered shall be extinguished.

Article 653. Set-off of Public Claims

Claims held by the state or territorial-administrative units, except for fiscal claims, may be extinguished by set-off only if the obligation must be performed towards the budget which is to fulfill the claim of the solicitor of set-off.

Article 654. Set-off of Claims with Different Places of Performance

Where claims subject to set-off have different places of performance, the solicitor of set-off shall be bound to compensate for damage caused to the other party due to the fact that he cannot receive performance or perform the obligation in the established place.

Article 655. Set-off of Several Claims

Where one party has several claims fit for set-off, the solicitor of set-off may establish the claims that will be subject to set-off. If the claims subject to set-off are not indicated in the set-off request or if the other party objects without delay, rules regarding priority of payments shall apply.

Article 656. Set-off in Case of assignment of claim or assumption of debt

(1) In case of assignment of claim, the debtor is entitled to oppose to the new creditor his claim against the previous creditor, if either maturity of this claim occurred before receiving notification of assignment, the date of maturity is not specified or performance may be demanded anytime.

(2) In case of assumption of debt, the debtor may not raise claims belonging to the previous debtor.

Article 657. Set-Off of Joint and Several Obligations

(1) The joint and several debtors may not set-off creditor's debt towards another co-debtor, save for the part of the latter in the joint and several debts.

(2) The debtor, including joint and several debtor, may not rely against the joint and several creditor on set-off of a debt of a co-debtor in relation to himself, except for the part of the latter in the joint and several debt.

Article 658. Set-Off in Case of Personal Guaranty

The guarantor may rely on set-off of what the creditor owed to the debtor, while the debtor may not rely in relation to the creditor on the set-off of creditor's debt towards the guarantor.

Article 659. Impermissibility of Set-Off

(1) It is prohibited to set-off claims:

- a) for which the period of limitation has expired. This rule shall not apply where the statute of limitation expired after the date when the respective claim could have been subject to set-off;
- b) regarding compensation of damage caused by health injury or decease;
- c) regarding alimony;
- d) regarding lifelong maintenance;
- e) where the object of performance is an unenforceable asset;
- f) where the obligation arose from a willful illegal act;
- g) in other cases provided by law.

(2) Set-off is inadmissible where it has been excluded by contract.

SECTION 4 OTHER GROUNDS FOR EXTINCTION OF OBLIGATIONS

Article 660. Coincidence

An obligation is extinguished if a single person combines both the quality of debtor and creditor (coincidence). In some cases, when coincidence ceases, its effects cease as well.

Article 661. Effect of Coincidence on Personal Guaranty

The coincidence that occurs through combining the qualities of creditor and debtor in a single person benefits the personal guarantor. The principal obligation shall not be extinguished by coincidence of the qualities of guarantor and creditor in the same person.

Article 662. Remission of Debt

(1) The obligation shall be extinguished if the creditor, by virtue of an agreement with the debtor, shall liberate him from obligation performance (remission of debt). Remission of debt shall be deemed complete if there is no express stipulation that it is partial.

(2) The obligation may be also extinguished by a contract in which the creditor acknowledges the obligation as non-existent.

(3) Remission of debt in relation to the main debtor produces similar effects in relation to the guarantor.

(4) Creditor's relinquishment of a means to secure the obligation does not lead to the presumption of relinquishment of the entire claim.

(5) Remission of debt in relation to a guarantor produces similar effects in relation to all other guarantors.

(6) Remission of debt is prohibited where it prejudices third parties' rights of claim towards the creditor.

Article 663. Accidental Impossibility to Perform

- (1) The obligation shall be extinguished through impossibility to perform, if such impossibility is due to a circumstance that is not imputable to the debtor.
- (2) The burden of proving the impossibility to perform lies with the debtor.
- (3) The debtor, who cannot fulfill his obligation, shall not be entitled to claim performance of correlative obligation from the creditor. If the creditor has already performed his obligation, the debtor shall be bound to return all that has been received, unless the debtor proves that the impossibility to perform is imputable to the creditor.
- (4) Where the debtor partially performed the obligation that became impossible to perform, the creditor shall be bound to performance of the correlative obligation to the limit of the value of his enrichment.

Article 664. Decease of Natural Person or Liquidation of Legal Entity

- (1) Debtor's decease extinguishes the obligation in the event the performance is impossible without his personal participation or if it is linked in another way to debtor's personality.
- (2) Creditor's decease extinguishes the obligation if performance was personally intended for the creditor or if it is linked in another way to creditor's personality.
- (3) The obligation shall be extinguished by liquidation of a legal entity (debtor or creditor), unless the obligation or claim of the legal entity is transferred by law to another person.

Article 665. Novation

- (1) An obligation is also extinguished based on parties' agreement to replace it with another obligation (novation).
- (2) The will to replace an obligation with another must be expressly stipulated.
- (3) Extinction of the principal obligation by novation shall also extinguish accessory obligations, unless the parties expressly provide otherwise.

TITLE II ABOUT CONTRACTS IN GENERAL

CHAPTER II GENERAL PROVISIONS ON CONTRACT AND CONTENT OF CONTRACT

Article 666. General Provisions on Contract

- (1) The contract is an agreement between two or more persons, which establishes, modifies or extinguishes legal relations.
- (2) Rules on transactions are applicable to contracts.
- (3) The contract may be negotiated or adhered to, reciprocal or unilateral (generates obligations only for one of the parties), determined or aleatory, with one-time or successive execution, and may also belong to the category of consumer contracts.

Article 667. Freedom of Contract

- (1) Contracting parties are free to conclude contracts and to determine their content insofar as they are not contrary to peremptory legal norms. If, with a view to protect the priority interests of the society or of a person, the validity of a contract depends on authorization from a state authority, such limitations and conditions must be regulated by law.
- (2) It is prohibited to force somebody to conclude a contract, save for cases when the obligation to conclude a contract is provided by this Code, by law or if it arises from a voluntarily assumed obligation.
- (3) Parties may conclude contracts that are not provided by law (unnamed contracts), as well as contracts containing elements of different contracts regulated by law (complex contracts).

Article 668. Mandatory Nature of Contract

- (1) A legally concluded contract binds the parties not only to what they expressly provided for, but to everything that results from the substance of contract, in accordance with the law, usages or the principle of fairness.
- (2) The contract produces effects only between the parties, unless the law provides otherwise. The contract also produces effects on the universal successors and successors with universal title, unless it follows otherwise from law, contract or the essence of the obligation.
- (3) The contract may be amended or rescinded only in accordance with its own provisions or by parties' agreement, unless the law provides otherwise.

Article 669. Obligation to Conclude Contract

(1) Where one of the parties holds a dominant position on the market, it shall be under the obligation to conclude contract in the respective field. It cannot impose to the other party disproportionate contractual terms, without serious reasons.

(2) The conclusion of a contract may not be refused without serious reasons to persons, who obtain or use assets or services for non-commercial purposes, as well as to persons, who intend to satisfy an existential need, where the other party acts in view of exercising its profession or carries out entrepreneurial activity.

Article 670. Impossibility of Performance

The contract the performance of which is impossible shall be deemed void.

Article 671. Compensation for Damage in Case of Impossibility of Performance

(1) The party, who was or should have been aware of impossibility of performance upon conclusion of contract, shall be bound towards the other party, who considered the contract valid in good faith, to compensate for damage caused, in an amount not greater than the income the party would have received if the contract were valid.

(2) Provisions of para.(1) also apply where performance is impossible only in part and the contract is valid in regard of the other party, or one of several alternative performances is impossible.

Article 672. Temporary Impossibility

(1) The impossibility of performance shall not render the contract void, where the impossibility may be removed and the contract is concluded for the case when performance becomes possible.

(2) Where an impossible performance is provided for under suspensive condition or term, the contract shall be valid if impossibility were removed before the fulfillment of the condition or expiry of term.

Article 673. Contract on Existent Property

The contract by which a person undertakes to convey integrally or partially its existent property or to encumber it by usufruct requires notary certification.

Article 674. Contract on Future Property

The contract by which a person undertakes to convey its future property or a portion of it or to encumber it by usufruct shall be void.

Article 675. Contract concerning Legacy of Living Party

(1) A contract concerning the legacy of a living third party is void. The same applies to a contract relating to the statutory share in the legacy or the testamentary gift concerning a still living third party.

(2) These provisions do not apply to a contract concluded among future statutory heirs concerning the statutory share. Such contract requires notary certification.

Article 676. Determination of Performance by Contracting Party or by Third Party

(1) Where performance is to be determined by one of the contracting parties or by a third party, when in doubt it is deemed that determination is to be based on a fair appraisal.

(2) Determination of performance shall be done by declaration towards the other party.

(3) Where determination of performance must be effected by several third parties, their unanimous consent is needed. If a sum must be determined from several named sums, the average sum shall be taken into account.

(4) If performance is not in compliance with the principle of fairness, the determination shall be effected by court judgment. In case of protraction or refusal, the determination shall be done by court judgment as well.

Article 677. Determination of Counter-Performance

Where the extent of counter-performance is not determined, when in doubt the determination shall be effected by the party that claims counter-performance. Provisions of art.676 par.(4) shall apply accordingly.

Article 678. Application of Provisions on Contract to Other Obligations

Without prejudice to other regulations, the provisions regarding contractual obligations shall be applicable to other property obligations as well, if this is possible taking into account the substance of the obligation.

CHAPTER II CONCLUSION OF CONTRACT

Article 679. Agreement on Essential Provisions of Contract

- (1) The contract is deemed concluded if the parties have reached an agreement on all its essential provisions.
- (2) Those contractual provisions are deemed essential, which are considered as such by law, which follow from the nature of the contract or on which agreement must be reached upon the request of either of the parties.
- (3) A contract can entail the obligation to conclude a subsequent contract. The form established for such a contract also extends to the preliminary contract.

Article 680. Form of Contract

If the law makes the validity of a contract conditional on a certain form or if the parties have provided for a certain form, the contract shall be deemed concluded only after the requirement of such form has been satisfied.

Article 681. Offer

- (1) The offer to conclude a contract consists in a proposal, addressed to one or more persons, that contains all essential elements of the future contract and reflects offeror's readiness to be bound by acceptance of offer.
- (2) An offer shall take effect only if it reached the addressee before being revoked.
- (3) A proposal made to an undetermined range of persons (public offer) is only an invitation to tender offers, unless it contains an express declaration of the will to be bound by acceptance.
- (4) The offer must be firm, unambiguous, serious and complete.

Article 682. Validity of Offer

- (1) The validity of offer is not contingent on the form in which it was made.
- (2) Offer's validity, voidance or defeasibility shall be governed by the provisions applicable to the transaction.

Article 683. Revocation of Offer

- (1) An offer may be revoked unless it contains a term for acceptance or it is irrevocable on other grounds.
- (2) An offer, even an irrevocable one, may be revoked if revocation reaches the addressee to the latest at the same time with the offer.
- (3) The offer received by the addressee may not be revoked within the acceptance term established in the offer or, if there is no such term or it is unjustifiably short, within the term necessary for the addressee to express acceptance and for the reply to reach the offeror, judging from the circumstances of the case, practices established between the parties and from usages.

Article 684. Irrevocable Offer

A stipulation by which a party undertakes to enter a contract with another party upon the request of the latter shall be deemed an irrevocable offer.

Article 685. Validity in Case of Decease or Loss of Civil Capability

The offer shall not become invalid by decease or loss of civil capability of one party or either through deprivation of one party of the right to conclude contracts as a result of conveyance of its property in the management of another person.

Article 686. Unavailing Offer

The offer becomes unavailing if it has not been accepted or it has been rejected.

Article 687. Acceptance

- (1) Acceptance shall consist in the declaration by offer's addressee or another action confirming that the offer is accepted. Acceptance shall take effect when it reaches the offeror.
- (2) If based on the offer, practice established between parties and on usages, the acceptor may express his consent by performing certain actions without notifying the offeror, the acceptance shall take effect from the moment of action performance.

Article 688. Acceptance of Offer without Term

(1) The offer made to a present person may be accepted only immediately. This rule also applies where the offer is made from person to person (instantly) through telecommunication means.

(2) The offer made to an absent person may be accepted only until the offeror is entitled to expect receipt of acceptance under normal circumstances, taking into account the communication means employed by the offeror.

Article 689. Acceptance of Timed Offer

Where the offeror established a term for acceptance, it may be expressed only within this term.

Article 690. Commencement of Term Running for Offer Acceptance

The term for acceptance of offer established by the offeror by telegram or letter shall commence running as of the date the telegram was handed for sending or from the date specified in the letter or, absent such date, from the date indicated on the envelop. The term for accepting the offer established by instant communication means shall start running from the date the addressee received the offer.

Article 691. Late or Altered Acceptance

(1) Late acceptance shall be deemed a new offer.

(2) An acceptance made with alteration of offer's terms shall be deemed a new offer and rejection of the original offer.

(3) The answer by which the offer is accepted, containing additional or different conditions that do not materially affect the terms of the offer shall be deemed an acceptance unless the offeror rejects it without unduly delay. If the offeror does not object, the contract shall be concluded under the terms of the offer, as amended by the acceptance.

Article 692. Validity of Late Acceptance

(1) Late acceptance shall be valid if the offeror notifies the acceptor without delay that he considers that the acceptance was received on time.

(2) Where acceptance reaches the offeror late and it follows from the acceptance that it was sent on time, the acceptance is deemed late only if the offeror immediately notifies the acceptor of the delay.

Article 693. Altered Acceptance in Commercial Relations

When an altered or broadened acceptance is submitted in commercial relations, the contract is deemed concluded when the acceptor was entitled to rely on offeror's assent and the latter does not forthwith notify his refusal.

Article 694. Tacit Acceptance

(1) Silence and inaction do not stand for acceptance, unless it follows otherwise from law, practices established between the parties and from usages.

(2) If an entrepreneur, whose activity consists in sale of certain assets, receives an offer regarding those assets from a person with whom he has commercial relations, he is bound to respond to that offer without delay, as his silence may be deemed acceptance. Even if the entrepreneur rejects the offer, he is bound to ensure temporary preservation of the assets sent by the offeror, at the expense of the latter, to the extent that the former is able to bear the necessary costs and does not suffer any disadvantages.

Article 695. Revocation of Acceptance

The acceptance of the offer shall be deemed revoked if the revocation notification reaches the offeror before or together with the acceptance.

Article 696. Document confirming Conclusion of Contract

Additional or different conditions contained in a document sent within a reasonable time from the date of contract conclusion between entrepreneurs, designed to confirm the conclusion of contract, become part of the contract, except for cases when such conditions materially alter the contract or when the receiving party rejects them without unduly delay.

Article 697. Traveling Salesmen

(1) The contract between a consumer and a person that acts in exercise of a profession, concluded under circumstances specific to traveling salesman activity, shall be effective only if the consumer does not revoke it in writing within a week, save for cases when the contract is performed immediately by both parties.

(2) Provisions of para.(1) also apply to consumer contracts concluded on credit and to insurance contracts.

(3) The revocation term provided by par.(1) and (2) begins to run only from the moment of consumer's written notification about his right of revocation.

Article 698. Conclusion of Contract at Auction

At the auction, the contract shall be concluded by adjudication. The offer expires at the moment a super-offer is issued or the auction ends without adjudication.

Article 699. Moment and Place of Contract Conclusion

(1) The contract is deemed concluded when the offeror receives the acceptance.

(2) Where the contract does not contain the place of conclusion, it shall be deemed concluded at offeror's domicile or seat.

Article 700. Acknowledgement of Obligation

(1) In order for a contract by which an obligation is acknowledged to be valid the declaration of acknowledgement must be done in writing.

(2) Where notary certification is required for the arising of the obligation subject to acknowledgement, the declaration of acknowledgement must be done in the same form.

(3) Where the obligation is acknowledged based on a settlement or set-off, compliance with the required form is not mandatory.

Article 701. Duty of Confidentiality

(1) Where during negotiations a party communicates certain information to the other party, the latter shall be bound not to disclose or use it inadequately for his own purposes, regardless of contract conclusion.

(2) The one who breaches the duty of confidentiality is bound to compensate for the damage caused. The indemnity for breach of duty of confidentiality may be compensated from the benefit obtained by the other party.

Article 702. Integrity Clause and Clause of Written Modification

(1) A written contract providing that the document contains all terms on which the parties agreed, may not be amended or supplemented by proof of previous declarations or agreements. Such declarations and agreements may be used, however, at construing the document.

(2) A written contract providing that all amendments and contract rescission shall be made in writing, may not be amended or rescinded otherwise. Nevertheless, a party may be deprived, due to his own conduct, of its right to rely on this clause, if the other party acted in correspondence with this conduct.

Article 702. Non-Fulfillment of Promise to Conclude Contract

The contract concluded by breaching the promise towards another party to conclude contract is opposable to the beneficiary of promise, without depriving him of the right to claim compensation for damage from the promisor and from the third party that concluded contract in bad faith.

CHAPTER III RECIPROCAL CONTRACT

Article 704. General Provisions on Reciprocal Contract

(1) A contract is reciprocal where each of the parties undertakes obligations, in such manner that the obligation of one party is correlative to the obligation of the other.

(2) The provisions of this chapter also apply to other legal relations with a view to reciprocal performance of obligations, to the extent that these provisions do not contradict the nature of those relations.

Article 705. Suspension of Performance of Obligation arising from Reciprocal Contract

(1) The person bound under a reciprocal contract is entitled to refuse performance of his own obligation to the extent that the other party does not perform his correlative obligation, unless the former undertook to perform first or this follows from the law or the nature of the obligation. Where the obligation must be performed towards several persons, of performance of the part owed to one of those persons may be refused until complete performance of correlative obligation.

(2) Where one of the parties has performed its obligation only partially, nonperformance of the correlative obligation is admissible to the extent that this would be unfair, under the circumstances of the case, and especially where the part performed is insignificant.

Article 706. Right to Refuse Performance of Obligation under Reciprocal Contract

(1) The party bound to perform first may refuse performance of obligation if, after concluding the contract, signs appeared that its right to counter-performance is imperiled by the impossibility of performance of other party's obligation. Performance may not be refused if the counter-performance has been provided or the other party has offered surety for obligation performance.

(2) The party bound to perform may set a reasonable term, within which the other party shall gradually provide counter-performance or shall offer surety for performance. Where the term expired without performance being provided or surety offered, the person bound to perform first is entitled to cancel the contract.

Article 707. Impossibility to Perform Not Imputable to Parties

(1) Where performance under a reciprocal contract becomes impossible for reasons not imputable to the parties, the party that must provide the impossible performance loses the right to claim performance of the correlative obligation. Where the impossibility is partial, the correlative obligation shall diminish accordingly.

(2) Where the other party claims transmittal of compensation received for the object of contract or assignment of the right to compensation, it shall not be liberated from performance of its obligation, which shall diminish to the extent that the compensation or the right to compensation are lower in value than the owed performance.

(3) Where a correlative non-mandatory obligation is performed, according to para.(1) and (2), the reimbursement of what has been performed may be claimed in accordance with rules on unjust enrichment.

Article 708. Impossibility of Performance Imputable to Creditor

Where performance of obligation of one party under reciprocal contract becomes impossible due to the fault of the other party, the latter shall be bound to fulfill his obligation. The counter-performance shall be reduced by the amount of all benefits obtained by the liberated party due to liberation or which he omitted to obtain in bad faith.

Article 709. Nonperformance of Obligations under Reciprocal Contract

(1) Where a party does not perform or inadequately performs a due performance under a reciprocal contract, the other party may rescind contract, after useless expiry of a reasonable term set for performance or compensation and contingent on the fact that the debtor should have been aware, based on the grace period, about the imminence of contract rescission. Where the term is not set or it is unreasonably short, it shall be deemed that a reasonable term has been set.

(2) Where due to the nature of nonperformance, a term cannot be set, a warning shall be submitted.

(3) If nonperformance refers only to a part of the obligation, the creditor may rescind the contract entirely only if he is not interested in partial performance of the obligation.

(4) The creditor is entitled to rescind contract even before maturity date, if it is sure that the premises for the right of rescission will arise.

Article 710. Non-Mandatory Character of Grace Term Setting

(1) Notwithstanding art. 709, it is not necessary to establish a grace term or to issue a warning, if:

- a) The debtor refused performance firmly and definitively;
 - b) The breach of obligation consists in that performance did not occur within a certain term set by contract and the creditor expressed in the contract his interest for timely performance of the obligation;
 - c) Due to special circumstances, taking into account the interests of both parties, immediate cancellation is justified;
 - d) The term provided at art.617 par.(4) expired and performance of obligation has not been provided.
- (2) Where the warning is not necessary or the uselessness of performance term protraction is obvious, the creditor may rescind the contract immediately.

Article 711. Impermissibility of Rescission of Reciprocal Contract

(1) Rescission of reciprocal contract is not allowed, if:

- a) the breach of obligation is insignificant;
- b) an obligation as under art.512 is not performed, while maintenance of contract may be required from the creditor;
- c) the creditor is entirely or substantially liable for nonperformance of the obligation, or the nonperformance, which is not imputable to the debtor, occurred when the creditor was in default of acceptance;
- d) the claim is opposed by a defense, which the debtor has already risen or will raise it after rescission.

CHAPTER VI STANDARD CLAUSES IN CONTRACT

Article 712. General Provisions on Standard Clauses in Contract

(1) Standard contractual clauses are all clauses drafted in advance and intended for use in a multitude of contracts, which one party (user) presents to the other party upon conclusion of contract. Such clauses shall be deemed standard clauses regardless of whether they constitute a separate document or are part of the contract, and also regardless of the number of terms and form of contract.

(2) Inasmuch as the terms of contract were negotiated, they may be not deemed standard contractual clauses.

(3) Standard contractual clauses shall become part of contract only when the party, which presented them, expressly notified them to the other party at the moment of contract conclusion, or otherwise ensured the possibility of the other party to familiarize himself with their content, taking account of that party's disabilities, and the other party agreed on accepting such clauses.

(4) With regard to certain types of contracts, the law may provide for inclusion of standard contractual clauses even without complying with provisions of para. (3).

(5) The contracting parties may agree on the validity of a certain set of standard contractual clauses in regard of a type of contracts, taking into account the requirements of para.(3).

Article 713. Inclusion of Standard Contractual Clauses in Special Cases

With regard to certain types of contracts, standard contractual clauses established by law may be included even without observance of the provisions of art.712 para. (3).

Article 714. Priority of Negotiated Contractual Terms

Negotiated contractual terms shall have priority over standard contractual clauses.

Article 715. Surprising Provisions of Standard Contractual Clauses

Those provisions of standard contractual clauses, which, under the given circumstances and especially in relation to contract's external appearance are so unusual that the contracting party is not supposed to expect their existence in the contract, do not become part of the contract.

Article 716. Non-Mandatory Character of Unfair Standard Contractual Clauses

(1) A standard contractual clause shall be deemed void where it causes disproportionate harm to the other party, in contradiction with the principle of good faith. The content of contract, circumstances under which the clause was inserted into the contract, mutual interests and other circumstances shall be taken account of in this regard.

(2) In case of doubt, the unfair character of standard contractual clauses shall be presumed, if the clause:

a) is not in compliance with the essential (basic) principles of the regulation it derogates from;

b) Restricts essential rights or liabilities that follow from the nature of contract in a manner that imperils the goal of the contract;

c) is unclear.

(3) Assessment of the unfair character of standard contractual clauses shall regard neither the definition of the subject matter of the contract, nor the adequacy of price and remuneration, on one hand, nor services or goods supplied, on the other hand, insofar as these clauses are clear and precise.

Article 717. Effects of Non-Inclusion or Voidance of Standard Contractual Clauses

(1) Where standard contractual clauses have not become an integral part of the contract or are void in total or in part, the contract shall be valid in the remaining part.

(2) To the extent that the standard contractual clauses have not become an integral part of the contract or are void, the contract shall be governed by legal provisions.

(3) The contract shall be void where its observance, even taking into account provisions of para.(2), would be unreasonably burdensome on one of the parties.

Article 718. Prohibition of Standard Contractual Clauses Susceptible of Assessment

In case of standard contractual clauses, there shall be void especially:

a) Clauses by which the user reserves himself the right to unjustifiably long or insufficiently determined terms for acceptance or rejection of an offer or for performance of an obligation. This provision shall not apply to the clause by which the user reserves him the right to perform an obligation only after the expiry of the term for revocation or reimbursement;

b) clauses by which the user, in derogation from legal provisions, reserves himself the right to unjustified protraction of the term set for performance of his obligation;

c) Clauses regarding user's right to exonerate himself from his obligation, without an objectively justified reason shown in the contract. This provision shall not apply to contracts with long-term execution;

d) clauses regarding user's right to change the promised performance or to deviate from it, if the change or deviation may not be claimed from the other party, taking into account user's rights;

e) clauses according to which a declaration of user's contracting partner shall be considered as made or not made, where he performs or omits to perform an action, except for cases when the contracting partner is granted an according term for issuing an express declaration and the user undertakes to expressly notify the partner, at the beginning of the term, regarding the predictable significance of his conduct;

f) Clauses according to which a declaration of utter importance from the part of the user is deemed to be submitted to the other contracting party;

g) Clauses by which, in case of revocation or rescission of contract by one of the parties, the user may claim a disproportionately big payment for use of an asset or right or for obligations performed, or a groundlessly big compensation for costs;

h) clauses provided as exception from let.c), according to which the user may reserve the right to liberate himself from performance of contract, in case of unavailability of performance, if the user does not undertake to notify the contracting partner forthwith about the unavailability and to return the counter-performances.

Article 719. Prohibition of Standard Contractual Clauses Non-Susceptible of Assessment

In case of standard contractual clauses and without prejudice to the provisions excluding the possibility of derogating from legal norms, to the detriment of the consumer, there shall be void:

a) the clause regarding the increase in price to assets or services that must be delivered within 4 months from the moment of contract conclusion. This clause shall not be applicable to goods and services that are delivered as long-term obligations;

b) the clause that excludes or limits the right of user's contracting partner to refuse performance of obligation according to art.705, or that excludes or limits the right of retention of user's contracting partner, to the extent that it is based on the same contractual relation, especially if the right of retention is made contingent on the acknowledgement of some defects from the part of the user;

c) the clause by which user's contracting partner is not allowed to set-off against an unchallengeable and mature claim;

d) the clause by which the user is exonerated from the legal obligation to issue warning or to set a term for obligation fulfillment to his contracting partner;

e) the clause regarding global assessment of user's right to compensation for damage or for diminution of value, if in the cases provided the global compensation exceeds the damage or diminution of value, expectable under ordinary circumstances, or if user's contracting partner is not allowed to prove that no damage or no diminution of value has been caused or that these are substantially smaller than the global value;

f) the clause by which the user is promised payment of a penalty if the obligation is not performed or performance is delayed, in case of delayed payment or in case of contract cancellation by the contracting partner;

g) the clause that excludes liability in case of bodily injury, other injury to health and in case of gross fault;

h) the clause by which, in case of liability for nonperformance of the main obligation of the user:

- contracting partner's right to cancel the contract is excluded or limited;

- contracting partner's right to claim compensation instead of performance is excluded or limited in contradiction with let.g).

The provisions of this letter shall not apply to means of transport and tariff conditions mentioned at let.g) if the passenger is not put in disadvantage;

i) in contracts of asset delivery or contracts for work, the clause by which:

- in case of asset's defect, rights towards the user are entirely excluded, rights towards third parties are limited or the exercise of rights is made contingent on preliminary summoning to court of the third parties;

- rights towards the user are limited only to a right in case of partial or total nonperformance, if the contracting partner is not expressly guaranteed the right to claim reduction of payment or cancellation of contract in case of an unsuccessful reparation (where the object of liability for defect is other than a construction work);

- User's liability to bear the costs of reparation, especially transportation and work costs and costs of materials, is limited or excluded;

- the user conditions reparation by advance payment of the entire sum or a considerable part of it, which is unjustifiably big taking into account the existence of the defect;

- the user sets to his contracting partner a term for notification about asset's hidden flaws and the term is shorter than that admitted in the following subparagraph;

- the period of limitation is reduced to less than a year for rights arising from asset's defects or period of limitation provided for in art.269 is reduced, or period of limitation shorter than those mentioned for the right of cancellation is reduced, without reduction of term;

- j) in case of contractual relations of periodical delivery of assets or periodical service rendering, the clause, by which:
- user's contractual partner is bound for more than two years;
 - the contract is subject to tacit prolongation for a term exceeding one year;
 - a term for cancellation, exceeding 3 months before contract expiry, is established for user's contractual partner.

The provisions of this letter shall not apply in the case of contracts for delivery of purchased goods, insurance contracts and contracts between the holder of copyrights and user commercial societies;

k) in contracts of sale and purchase, contracts for service rendering and contracts for work, clauses by which a third party subrogates or may subrogate in the contractual rights and obligations of the user, except for cases when the clause:

- contains the name of the third party;
- stipulates the right of its contracting partner to cancel the contract;

l) the clause by which the user imposes on the agent, who concludes the contract on behalf of the contracting partner:

- agent's own liability or surety obligation without any express and autonomous declaration in this regard;
- liability, which, in case of representation without empowerment, exceeds the limits set in art.250;

m) the clause by which the user alters the duty of proof to the detriment of the contracting party, especially when the user:

- imposes on the partner the duty of proof pertaining to his own liability;
- leaves to the partner confirmation of certain facts. This provision does not apply to confirmations of acceptance signed separately or signed by electronic registration;

n) the clause by which the notifications or declarations to the user or a third party are conditioned by a form more strict than the written one or are dependent on special access conditions.

Article 720. Special Provisions on Application of This Chapter

(1) Provisions of art.712 para.(1) and (2), as well as provisions of art.718 and 719 shall not apply in case of standard contracts used in relation to an entrepreneur, a public domain legal entity or in relation to property with special public legal regime.

(2) Provisions of art.716 para.(1) and (2) shall apply in cases provided in par.(1) of this article, to the extent that this results in the voidance of contractual provisions mentioned at art.718 and 719. In such a case, commercial circuit usages shall be taken into account accordingly.

(3) Provisions of art.718 and 719 shall not apply to contracts, a party to which are enterprises delivering electric energy, gas, thermal energy and water and which regard purveyance of separate users with electric energy, gas, thermal energy and water from distribution systems, if the terms of delivery do not derogate to the detriment of the users from the terms set by the state body for regulation in the field of electric energy, gas, thermal energy and water. This provision shall also apply to contracts for collection of residual water.

(4) In case of contract between entrepreneur and consumer, the provisions of this chapter shall apply taking account of the following conditions:

- a) Standard contractual clauses are deemed to be set by the entrepreneur, unless they have been set by the consumer;
- b) art.715-719 shall apply to reformulated contractual clauses, also in cases when they are intended for one-time use and to the extent that the consumer could not influence the content of the provisions because of their reformulation;
- c) upon assessing the unduly infringement of interests according to art.716 par.(1) and (2), circumstances existing upon conclusion of contract shall be also taken into account;

5) The provisions of this chapter do not apply in case of labor contracts and contracts in the sphere of family law, inheritance and commercial societies.

CHAPTER V CONTRACT FOR BENEFIT OF THIRD PARTY

Article 721. Contract for Benefit of Third Party

(1) The parties to a contract may agree that the debtor (promisor) provides performance not to the creditor (stipulator), but to a third party (beneficiary), specified or not specified in the contract, that obtains the right to directly claim performance to his own benefit.

(2) It is mandatory that the beneficiary exists or be determined at the moment of stipulation. It is sufficient that he is determinable and existent at the date of contract performance.

(3) Until notification by beneficiary of the acceptance of stipulation to the stipulator or the promisor, it may be revoked or altered by the stipulator. Stipulator's successors or creditors are not entitled to revoke or alter the stipulation.

Article 722. Demand of Performance

In case of a contract for the benefit of a third party, both the creditor and the beneficiary are entitled to demand performance, unless otherwise stipulated by law or contract, or unless it appears otherwise from the essence of the obligation.

Article 723. Performance in Favor of Stipulator

In case of revocation of stipulation, of beneficiary's waiver from the right conferred by the stipulation, and in cases when the stipulation to the benefit of a third party is not effective as against the beneficiary, the stipulator may demand performance in his own favor, unless it follows otherwise from contract or the essence of the obligation.

Article 724. Exceptions Opposable to Beneficiary

The promisor may oppose to the beneficiary defenses based on the contract from which beneficiary's right arose, but not the defenses based on other relations between the promisor and the stipulator.

CHAPTER VI INTERPRETATION OF CONTRACT

Article 725. Principles of Contract Interpretation

- (1) The contract must be interpreted in accordance with the principle of good-faith.
- (2) The contract shall be interpreted according to the common intent of the parties, without confining to the literal meaning of the terms used.

Article 726. Factors Influencing Interpretation of Contract

Upon interpretation of contract, there shall be taken into account its nature, circumstances of conclusion, parties' interpretation of the contract or interpretation that may be deduced from their conduct before and after conclusion of contract, as well as from usages.

Article 727. Non-Stipulated Effects of Contract

The contract shall produce not only effects stipulated by the parties, but also effects that, according to the nature of the contract, follow from law, usages or the principle of fairness.

Article 728. Coordinated Interpretation of Clauses

Contractual clauses shall be interpreted in the context of the entire contract.

Article 729. Interpretation of Polysemous Clauses and Terms

- (1) Contractual clauses shall be interpreted so as to produce effects, and not as having no effect at all.
- (2) Polysemous terms shall be interpreted so as to correspond to a greater extent to the nature of the contract.

Article 730. Contractual Clauses and Inserted Examples

Where the parties include into the contract an example for facilitating the understanding of certain clauses, the extent of the obligation shall not be confined to the example only.

Article 731. Limitation of Interpretation of Contractual Clauses

Contractual clauses refer only to the object of that contract, regardless of the degree of generality of the terms used.

Article 732. Interpretation of Contract to the Benefit of Disadvantaged Party

- (1) Unclear standard contractual terms shall be interpreted to the disadvantage of the party that formulated them.
- (2) When in doubt, the contract shall be interpreted to the benefit of the one who undertook the obligation. In all cases, the contract shall be interpreted in favor of the adherer or of the consumer.

CHAPTER VII RESCISSION, CANCELLATION AND REVOCATION OF CONTRACT

SECTION 1 GENERAL PROVISIONS ON RESCISSION, CANCELLATION AND REVOCATION OF CONTRACT

Article 733. Grounds for Rescission, Cancellation or Revocation

The contract may not be rescinded, cancelled or revoked otherwise than by law or parties' agreement.

Article 734. Rescission Clause

- (1) The parties may expressly state in the contract the right to rescind contract.
- (2) The rescission agreement must be drawn in the form required for the contract, unless it follows otherwise from law, contract or usages.

Article 735. Rescission in Case of Essential Non-Fulfillment

- (1) A party may rescind contract where there is essential non-performance from the other party.
- (2) In order to determine whether there is an essential nonperformance, in particular the following circumstances shall be taken into account:
 - a) the nonperformance deprives the creditor substantially from what he could have expected from performance of contract, unless the debtor proves that he did not and could not reasonably foresee the result of the nonperformance;
 - b) the exact performance of obligations follows from the substance of contract;
 - c) the nonperformance results from willful conduct or gross negligence;
 - d) the nonperformance offers to the creditor grounds to suppose that he may not reckon on future performance of contract.

Article 736. Securing Adequate Performance

The party that, judging from the circumstances of the case, reasonably considers that the other party will commit essential nonperformance may demand sufficient surety of adequate performance and may suspend performance of his own obligation for this period. Where the surety is not issued within a reasonable time, the party demanding surety may rescind contract.

Article 737. Exercise of Rescission

- (1) Rescission shall be made by written declaration towards the other party.
- (2) Where performance is made with delay or does not correspond in any other manner to contract provisions, the creditor shall be deprived of the right of rescission, if he does not notify the other party within a reasonable term from the date when he became or should have become aware of the inadequate offer or performance.

Article 738. Effects of Rescission

- (1) In case of the exercise of the right of rescission, the contract ceases and the parties are exonerated from the duty to perform, while bound to reimburse performances provided and benefits obtained.
- (2) The debtor shall compensate in money, instead of restitution in kind, if:
 - a) contingent on the nature of performance, the restitution in kind is impossible;
 - b) the object received has been consumed, alienated, encumbered, processed or transformed;
 - c) the object received has perished or is deteriorated; asset's wear and tear due to its use according to its destination shall not be taken into account.
- (3) Where the contract provides for counter-performance, this will replace compensation in money.
- (4) The obligation to compensate in money shall not arise:
 - a) where the flaw that entitles to rescission becomes obvious only upon processing or transformation of the asset;
 - b) to the extent that the creditor is liable for the loss or deterioration of the asset;
 - c) where the deterioration or loss would have also occurred if the asset were at the creditor;
 - d) in case of a right of rescission offered by law, if the loss or deterioration occurred at the one entitled to demand rescission, though he demonstrated diligence of a good owner. Enrichment amounts obtained must be restituted.
- (5) After rescission, the creditor may demand compensation for damage caused by nonperformance of contract, save for cases when the cause for rescission is not imputable to the debtor.
- (6) Rescission does not affect contractual clauses regarding dispute settlement and other provisions designated to produce effects after rescission as well.

Article 739. Absence of Benefit and Compensation for Damage

- (1) If, contrary to the rules of good management, the debtor does not obtain benefit from the asset, although this was possible, he shall be bound towards the creditor to compensate for the value of lost benefits. However, in relation to these benefits, the debtor must prove only that diligence, which he usually employs in his own business.
- (2) Where the debtor returns the asset and compensates for the value of the asset or where compensation is not allowed by virtue of art.738 par.(4) let.a)-c), he shall be reimbursed necessary costs made in connection with the asset. Such expenditures shall be reimbursed only to the extent that the creditor obtains enrichment as a consequence of such costs.

Article 740. Fulfillment of Obligations Arising from Rescission

Parties' obligations arising from rescission shall be fulfilled simultaneously.

Article 741. Term for Contract Rescission

If the parties did not agree upon a term of contract rescission, the entitled one may be established a reasonable term for rescission by the other party. If the entitled party does not exercise this right before the term expires, the creditor may rescind contract only upon the expiration without result of a reasonable grace term, established by him, or after a warning that remained without effect.

Article 742. Rescission in Case of Plurality of Parties

(1) In case of plurality of debtors or creditors, the right of rescission may be exercised by all creditors or all debtors against all debtors or all creditors.

(2) Where the right of rescission is extinguished for one of the entitled persons, it shall be also extinguished for the rest of them.

Article 743. Rescission without Effects

Where one of the parties reserved the right to rescission in case that the other party does not perform its obligations, the rescission shall not produce effects when the other party may exonerate himself from obligation by compensation and declares compensation immediately after the receipt of the declaration on rescission.

Article 744. Clause on Loss of Rights by Debtor

Where a contract is concluded conditioning loss of rights by the debtor in case of nonperformance of his obligations, if such a case occurs, the creditor shall be entitled to rescind the contract.

Article 745. Rescission under Condition to Pay Penalty

Where the right for rescission of contract is conditioned by payment of a penalty, the rescission shall have no effect if the penalty hasn't been paid before the declaration of rescission or at the same time with it, and the other party rejected the declaration immediately for this reason. The rescission shall produce effects if, after its rejection, the penalty has been paid without delay.

Article 746. Creditor's Right to Reduction of Correlative Obligation

(1) Where the creditor is not entitled to demand rescission of contract, he shall be entitled to proportionate reduction of the correlative obligation.

(2) The proportionate reduction of the correlative obligation shall be determined taking into account all relevant circumstances.

(3) Where the correlative obligation may not be reduced, the creditor is entitled to compensation for damage only.

Article 747. Cancellation of Contract

(1) Cancellation produces effects only for the future. Only contracts with long-term execution may be cancelled.

(2) Upon cancellation articles 734, 735, 737, 741-746 shall apply accordingly.

Article 748. Cancellation of Contracts with Long-Term Execution for Well-Grounded Reasons

(1) Where the reason for cancellation consists in nonperformance of a contractual obligation, cancellation is admissible only after the expiry of the remedy term (grace term) without any results or after a warning that remained without effect. Provisions of art.709-711 shall apply accordingly.

(2) Contracts with long-term execution may be cancelled by either party for well-grounded reasons, without observance of a grace or a warning term. There is a well-grounded reason when, taking into account all circumstances of the case and the interests of both parties, the continuation of contractual relations until the expiry of the grace or warning term may not be demanded from neither of them.

(3) The party entitled may cancel the contract only within a reasonable term, after he became or should have become aware of the reason for cancellation.

(4) If, after cancellation, the provided performances aren't of any interest to the party entitled to cancel, that party may extend cancellation over those performances. In case of restitution of provided performances, art.731 and 738 shall apply accordingly.

SECTION 2 RIGHT OF REVOCATION AND RESTITUTION IN CONSUMER CONTRACTS

Article 749. Right of Revocation in Consumer Contracts

(1) Where the consumer has a right of revocation in accordance with this Code or another law, the consumer is no longer bound by the declaration of will in connection with the conclusion of contract with an entrepreneur, if the consumer revoked this declaration in due time.

(2) The revocation does not have to contain any justification. It must be done in written, formulated on another durable information bearer or may be effected by sending the asset within a term of 2 weeks.

(3) The term provided at para.(2) starts running from the moment when the consumer was presented, on a durable information bearer, clearly formulated explanations regarding his right of revocation. The information bearer shall also contain the name or denomination, address of revocation addressee, and a specification of commencement of term running and provisions of par.(2).

Article 750. Right of Restitution in Consumer Contracts

(1) To the extent that the law expressly provides, the right of revocation under art.749 may be replaced, upon conclusion of contract based on the sale prospectus, with an unlimited right of restitution, if:

- a) the sale prospectus contains a clear explanation regarding the right of restitution;
- b) the consumer had the opportunity to get acquainted in detail with the sale prospectus, in the absence of the seller;
- c) the consumer is assured of the right of restitution, on a durable information bearer.

(2) Where a right of restitution exists, revocation may be declared only by restitution of asset within the set term.

Article 751. Legal Consequences of Revocation and Restitution

(1) Where a right of revocation or restitution exists, provisions regarding rescission shall apply accordingly, unless it is otherwise provided. The term established at art.617 par.(4) starts running upon declaration of revocation or restitution by the consumer.

(2) The consumer is bound to restitute the asset on entrepreneur's risks and costs.

(3) In the case provided at art.738 par.(2) let.c), the consumer shall be also liable for deteriorations caused through use of the asset, if he was explained the legal consequences and possibilities to avoid them. Provisions of art.738 par.(2) let.c) shall apply only in the case when the consumer was not provided such explanations and explanations regarding the right of revocation, and he could not have knowledge of this right in any other manner.

(4) There exist no other rights than the stipulated ones.

Article 752. Transmittal of Information and Declarations

(1) Information and declarations shall be submitted to the consumer on a durable information bearer, if they were submitted under the form of a document or in another legible form that allows him to reproduce the information exactly, within a term in accordance with juridical act requirements.

(2) Provisions of par.(1) shall apply accordingly to consumer's declarations towards the entrepreneur.

TITLE III CATEGORIES OF OBLIGATIONS

CHAPTER I SALE AND PURCHASE

SECTION 1 GENERAL PROVISIONS ON SALES AND PURCHASE

Article 753. Contract of Sale and Purchase

(1) By a contract of sale and purchase, a party (seller) is bound to convey to the other party (buyer) ownership of an asset, while the latter undertakes to receive the asset and pay the agreed price.

(2) The seller undertakes to convey, together with the asset, legally provided documents regarding the asset, unless the contract of sale and purchase provides otherwise.

(3) Where the contract of sale and purchase specifies no explicit price, the parties may agree upon the manner of its determination.

Article 754. Costs of Sale of Movable Asset

(1) The costs of conveyance of the movable asset, in particular the costs of measuring and packing, are borne by the seller; the costs of asset's acceptance and transportation to a place other than the place where the contract of sale and purchase was concluded are borne by the buyer, unless the contract stipulates otherwise.

(2) Where the contract of sale and purchase of a movable asset must be certified at the notary and registered, the buyer shall bear the costs of notary certification, registration in the relevant public register and transfer of ownership.

Article 755. Costs of Sale of Immovable Asset

The buyer of a land plot or other immovable property shall bear the costs of preparation, notary certification and registration of the contract of sale and purchase in the real estate register, as well as those of receiving the necessary documents.

Article 756. Price

(1) The price of the asset must be expressed in money.

(2) Where in the contract of sale and purchase concluded between entrepreneurs, the price of the asset is not determined expressly or implicitly, by a provision allowing its determination, it shall be deemed, absent a contrary provision, that parties tacitly referred to the price usually practiced at the moment of contract conclusion in the respective commercial field for similar assets sold under comparable circumstances. Where there are no similar contracts, it shall be deemed, absent a contrary provision, that the parties tacitly referred to a price practiced on the date of asset's conveyance.

(3) Where the price of the asset is determined based on its weight, when in doubt, the net weight will be taken as a base for determining the price.

Article 757. Term for Asset Conveyance

(1) The seller must convey the asset:

- a) on the date established in the contract or on the date that may be deduced from the contract;
- b) any moment within the period set forth by contract or determined by reference to contract, except for the case when it follows from the circumstances that the choice of the date pertains to the buyer;
- c) within a reasonable time calculated from the date of contract conclusion, in all other cases.

(2) The contract of sale and purchase is deemed concluded with a clause of strict performance on the set date, if it follows clearly from the contract that upon breach of this term the buyer will lose interest in contract performance.

(3) Where there is a contract with clause of strict performance on the set date, the seller may perform before or after the term set only with the consent of the buyer.

Article 758. Seller's Obligation to Deliver Asset

(1) If, under contract, the seller conveys the asset to a carrier and the asset is not clearly individualized, as prescribed by contract, by the application of a distinguishing sign on it, by transport documents or by any other means, the seller must send to the buyer a deliverance notice that specifies the asset.

(2) Where the seller is bound to take action for assets' transportation, he must conclude contracts necessary for carrying out transportation to the indicated place, with vehicles adequate to the circumstances, and in conditions usual for such type of transportation.

(3) Where the seller is not bound to insure the asset during transportation, he is bound to forward all information necessary for the conclusion of the contract of insurance, upon buyer's request.

Article 759. Risk of Asset's Accidental Loss or Deterioration

(1) The risk of asset's accidental loss or deterioration is transferred on the buyer at the moment when the seller performed his contractual obligations regarding putting the asset at the avail of the buyer, unless the contract provides otherwise.

(2) Where the contract of sale and purchase involves transportation of asset and the seller is not bound to convey the asset in a particular place, the risk is transferred on the buyer upon conveyance of the asset to the first carrier. Where the seller is bound to convey the asset to the carrier in a particular place, the risk shall be transferred on the buyer only after conveyance of the asset to the carrier in that particular place. Where the buyer has given to the seller instructions regarding the order of transportation and the seller disobeyed them without well-grounded reason, he shall be bound to compensate for damage caused thereby.

(3) In case of sale of asset during transportation, the risks are transferred on the buyer at the moment of contract conclusion, unless the contract provides otherwise.

(4) Where the contract is concluded after conveyance of assets, the risks that are known or could not have been unknown to the seller upon conclusion of contract, remain binding on the seller.

(5) In case of sale of generic assets, the risks shall not be transferred on the buyer before the assets are individualized.

Article 760. Moment of Performance of Obligation to Convey Asset

(1) The obligation to convey the asset shall be deemed performed when:

a) The asset was conveyed to the seller or to the person specified by him;
b) The asset was put at the avail of the buyer or of the person specified by him, if the asset must be conveyed at its place of location. The asset shall be deemed put at the avail of the buyer if it is individualized by marking or in any other way and is prepared for conveyance at the set date, and the buyer is notified about this in accordance with contract provisions.

(2) Where seller's obligation to ensure transportation of asset or to convey the asset to buyer's place of location does not follow from the contract, seller's obligation to convey the asset shall be deemed performed on the date of asset conveyance to the carrier or to the post office for transportation to the buyer, unless the contract provides otherwise.

Article 761. Acceptance of Assets

(1) The buyer is bound to undertake actions that, according to usages, are necessary on his behalf for securing conveyance and acceptance of asset, unless the law or contract provide otherwise.

(2) Where the buyer does not accept or refuses acceptance, in breach of legal or contractual provisions, the seller shall be entitled to refuse fulfillment of contract.

Article 762. Sale of Asset to Several Persons

If the seller has sold the same asset to several persons, preference is given to the buyer who took possession of the asset, and if the asset was delivered to none of them - to the one who was the first to conclude the contract.

Article 763. Material Defects of Asset

(1) The seller is to deliver to the buyer an asset without material defects.

(2) An asset shall be deemed not to have material defects if, upon transfer of risks, it has the agreed properties. Where the parties did not agree on asset's properties, the asset shall be deemed as having no defects, if:

a) it is suitable for the destination established in the contract;
b) it is suitable for the ordinary use and has the same properties as those characteristic to assets of the same type and which the buyer is entitled to expect, taking into account the type of the good. Such properties also comprise those, which the buyer is entitled to expect according to the public specifications of the seller, producer or their agents, especially by means of advertising, except for the case when the specifications could have not influenced the decision to buy.

(3) There also exist material defects when the contractually agreed assemblage was performed deficiently by the seller or his assistants, as well as when the asset is to be assembled by the buyer and he assembles it deficiently due to erroneous assemblage instructions.

(4) There also exists material defect when the seller conveys only a part of the asset, another asset, or the asset in lesser quantity than the agreed one, except for cases when the defect does not have substantial influence on the use of the asset.

Article 764. Defects of Legal Nature

The seller is bound to transfer the asset to the buyer free of defects of legal nature (free from rights of third parties), unless the buyer agreed to conclusion of contract being aware of the rights of the third party over the asset. If a non-existing right is entered in the real estate register, this is also deemed defect of legal nature.

Article 765. Duty to Check Asset's Quality and Acceptance of Deficient Asset

(1) Buyer's rights in relation to defects shall be lost, if, at the moment of contract conclusion, the buyer was aware of those defects.

(2) The buyer may benefit of the rights resulting from the defect he was not aware of due to gross negligence, only when the seller willfully dissembled the defect or issued a surety for the existence of a certain property.

(3) The buyer who is an entrepreneur must verify or have somebody verify the asset within a term as short as the circumstances allow and, if defects are detected, must notify the seller without delay.

(4) The buyer loses the right to invoke the defect if he did not notify it to the seller within a reasonable term from the moment he became aware or should have become aware of the defect and its type. The seller may not invoke the provisions of this paragraph, if he has willfully dissembled the defect.

(5) The seller may not invoke an agreement by which the buyer is deprived or limited in his rights regarding a defect, if the seller willfully dissembled the defect or issued surety for the existence of a certain property.

(6) Where the seller is bound by law or contract to check the quality of an asset, the seller must submit to the buyer proof of performance of asset's quality check.

Article 766. Duty of Seller in Eviction

(1) Where a third party, based on his right over the asset, which arose earlier than the conclusion of the contract of sale and purchase, files an eviction suit against the buyer, the latter is bound to engage the seller as co-defendant and oppose to the third party all exceptions that he would have opposed to the seller.

(2) Buyer's inaction in what regards seller's engagement as co-defendant releases the latter from liability, if he proves that his engagement would have prevented buyer's eviction.

Article 767. Seller's Liability in Case of Buyer's Eviction

In case of buyer's eviction based on the rights of a third party over the asset, which appeared earlier than the conclusion of the contract of sale and purchase, the seller shall compensate for the damage caused to the buyer. These provisions shall not apply where the buyer consented on buying an asset charged with the rights of a third party, in accordance with art.764.

Article 768. Recovery

(1) Where the asset is deficient, the seller may demand recovery, requesting removal of defect or delivery of an asset without defects.

(2) The seller shall bear useful recovery costs, in particular the costs of transportation, delivery, execution of works and procurement of materials.

(3) The seller may refuse removal of defects if this requires unreasonably high costs.

(4) Where instead of defect removal, the seller delivers an asset free from defects, the seller may demand from the buyer restitution of the deficient asset, in accordance with the rules regarding effects of contract rescission.

Article 769. Special Provisions on Rescission and Reparation of Damage

Besides cases provided by art.617, there is no need to establish a term where the seller refused defect removal or where a recovery method was unsuccessful or may not be imposed on the buyer. A recovery shall be deemed unsuccessful, after a second unsuccessful attempt, if it does not follow otherwise from the type of the asset or of the defect or from seller's conduct.

Article 770. Effects of Impossibility to Return Asset

(1) If the buyer cannot return the assets to the seller in the state they were received, the former shall be deprived of the right to declare rescission of contract or to demand from the seller conveyance of replacement assets, unless the impossibility of returning the assets is due to seller's action or inaction or to assets' inutility, if their deterioration is due to nonobservance of conveyance conditions (including packaging) or if the assets have been used before discovering their deficiency.

(2) The loss by the buyer of the right to declare rescission of contract or to demand from the seller conveyance of replacement assets does not prejudice his right to employ other means of legal protection provided by law or contract.

Article 771. Demand to Reduce Price

Instead of contract rescission or defect removal by the seller, the buyer may demand reduction in price in an amount equivalent to the damage removal costs. This article refers to the price established at the moment of contract conclusion.

Article 772. Guaranty for Asset's Properties

(1) Where the seller, producer or a third party gives guaranty for properties of an asset, the buyer shall benefit of the rights of guaranty under the terms specified in the declaration of guaranty and in the relevant advertising in relation to the one giving guaranty, without prejudice to other rights provided by law.

(2) To the extent that a guaranty has been issued, it is presumed that rights arise in relation to a defect appeared within the period of guaranty.

(3) The guaranty term starts to run from the moment of asset's conveyance by the seller, unless the contract provides otherwise.

(4) The guaranty is also applicable on accessories, for the duration of the guaranty set for principal assets, unless the contract provides otherwise.

Article 773. Serviceable Life

(1) The law, standards and other mandatory provisions may set terms for the validity of asset's quality, upon the expiry of which the asset is no longer susceptible of use (serviceable life).

(2) The seller is bound to convey the asset, for which serviceable life is set, in such a manner that the buyer can use it in conformity with its destination before the expiry of this term.

Article 774. Assets' Quantity

- (1) The seller is bound to convey the good in the quantity stipulated in the contract of sale and purchase.
- (2) The buyer is entitled to refuse acceptance of the asset if the seller offers it in smaller quantity than agreed. Where the buyer accepts receipt of the assets in a smaller quantity, the buyer shall pay proportionately in relation to the contractual price.
- (3) Where the seller offers a quantity greater than that provided by contract, the seller is entitled to accept receipt of the asset in such a quantity, bound to pay proportionately in relation to the contractual price or to receive only the quantity provided by contract, while the excess shall be returned to the seller, on account of the latter.
- (4) Where the quantity of the asset or its method of determination is not specified, the contract is void.

Article 775. Assets' Assortment

The seller is bound to convey the asset in the assortment (correlation of models, varieties, sizes, colors and other features) stipulated by contract. Absent such stipulation, the seller may deliver goods in the assortment that corresponds to buyer's needs, if the seller was aware of these needs at the moment of contract conclusion or may refuse fulfillment of contract.

Article 776. Effect of Non-Compliance with Assortment Clause

- (1) Where the assets are delivered in an assortment that does not correspond to the contract, the buyer is entitled to refuse their acceptance and payment of price, and if the price has already been paid, to demand its reimbursement.
- (2) Where, together with the assets in the agreed assortment, other assets are delivered, the buyer may refuse acceptance of the assets not stipulated in the contract, or may accept all assets. In the case he accepts assets not stipulated in the contract, the buyer shall pay for their value at the price agreed with the seller.

Article 777. Completeness of Assets' Assortment

- (1) The seller is bound to deliver the assets to the buyer, in accordance with the contract of sale and purchase and with complete assortment.
- (2) Where the completeness of the assortment is not established, the seller is bound to deliver to the buyer assets with completeness of assortment determined by business circuit usages or by other traditionally set requirements.

Article 778. Set of Assets

- (1) Where the seller is bound to deliver to the buyer a complete set of assets, the obligation shall be deemed performed on the date of delivery of all objects of the set.
- (2) Where the contract does not stipulate the delivery of a certain set of assets, and it does not follow otherwise from the essence of the contract, the seller shall be bound to deliver concomitantly all objects included in the set.
- (3) In case of incomplete delivery of assets, the buyer is entitled to demand replenishment of assets within a reasonable time or reduction of the purchase price.
- (4) Where the seller did not fulfill the requirements shown at para.(3) within a reasonable time, the seller may demand replacement of incomplete assets with complete ones or may not fulfill the contract and demand restitution of sums paid for the asset.

Article 779. Package

- (1) Unless it follows otherwise from the contract or the substance of the obligation, the seller is bound to deliver packaged assets to the buyer, except for assets that, by their nature, do not require packaging. Where the contract does not set package requirements, the asset must be packed up as usual for assets of this type. Absent such a usage, the asset must be packed up to ensure its integrity during storage and transportation, usual for such type of assets.
- (2) Where the asset that must be packed up is delivered to the buyer without package or in deficient package, the buyer is entitled to demand from the seller packing of the asset, unless it follows otherwise from the substance of the obligation or the nature of the assets.
- (3) Instead of the requirements towards the seller provided at par.(2), the buyer may forward other claims that follow from delivery of a deficient asset.

Article 780. Obligation to Preserve Sold Asset

- (1) Where the buyer is in default regarding receipt of the delivered asset or does not pay the price, if the delivery of the asset and the payment of price must be done simultaneously, the seller, if possessing or controlling the asset, must take measures, reasonable under the given circumstances, to preserve the asset. The seller is entitled to retain the asset until the buyer reimburses his reasonable Costs.
- (2) Where the buyer accepted the asset, but wishes to return it, for grounded reasons, the buyer shall be bound to take reasonable measures for preserving the asset. He may retain the asset until the seller reimburses the necessary Costs.
- (3) The party bound to take measures for preserving the asset may deposit it at a third party, on account of the other contractual party, unless this results in disproportionate costs.

(4) The party bound to take measures for preservation of the asset has a right of retention until it will be paid preservation recompense.

Article 781. Right to Alienate Asset

(1) Conditioned by other party's notification of his intentions, the party bound to preserve the asset is entitled to sell it at a suitable price, if the other party excessively delays its receipt or the payment of preservation costs.

(2) Where the asset is under threat of perishing or rapid spoilage (deterioration) and if preservation will cause unreasonable costs, the party bound to preserve may sell the asset.

(3) The party that sold the asset shall transfer to the other party the amount obtained, while being entitled to retain reasonable costs for preservation and sale.

Article 782. Buyer's Right to Demand Obligations' Performance in Kind

With regard to unique assets, those individualized in relation to the given contract or other assets that the buyer may not acquire from other persons or such attempts have no effect, the buyer is entitled to demand fulfillment in kind of contractual obligations, if such a demand is justified in relation to the parties and to the protection of buyer's rights.

Article 783. Term for Liability of Seller for Asset's Defects

(1) After discovering asset's defects that have not been declared by the seller before sale, the buyer is entitled to submit claims to the seller immediately, but not later than the term established by contract.

(2) If the contract does not set any term, claims may be submitted not later than six months after asset's delivery and in regard of immovable assets – not later than one year.

(3) If it is impossible to establish the day of delivery of the asset that must be registered or if the asset was delivered to the buyer before conclusion of contract, the term for submitting claims shall be calculated from the day of asset's registration as prescribed.

Article 784. Term for Submitting Claims with Regard to Deficient Asset with Warranty Period

(1) Where a warranty period is established with regard to an asset, the claims for discovered defects may be submitted within this period.

(2) Where the asset with warranty period had been conveyed into buyer's possession before conclusion of contract and the date of delivery may not be determined, the term for submitting claims shall be calculated from the date of contract conclusion. If the asset has been subject to transportation, the term shall be calculated from the date of shipment to buyer's address.

(3) Where the contract sets for accessories shorter warranty periods than those set for the principal asset, the buyer is entitled to submit claims regarding defects of accessories within the warranty period of the principal asset.

(4) Where the contract sets for accessories longer warranty periods than those set for the principal asset, the buyer is entitled to submit claims regarding defects of accessories within their warranty period.

Article 785. Period of Limitation for Action on Asset's Defects

Action for asset's defects may be filed within a year from the date of submittal of claims. Where no claims have been submitted or the date of their submittal cannot be determined, action may be filed within a year from the expiry of terms set at art.783 and 784.

Section 2 REPURCHASE

Article 786. General Provisions on Repurchase

If the seller has reserved the right of repurchase under a contract of sale and purchase, the repurchase shall be done by seller's declaration to the buyer about his wish to exercise the right of repurchase. The declaration does not require the form prescribed for the contract of sale and purchase.

Article 787. Regime of Accessories

The reseller must convey to the one exercising the right of repurchase the asset together with its accessories.

Article 788. Price of Repurchase

The price at which the sale was made is also the price of repurchase. The reseller is entitled to demand compensation for Costs, which he has incurred on the purchased asset before the repurchase, inasmuch as the value of the asset is increased by such costs. He may remove the attachment with which he has provided the asset, if this does not damage the asset.

Article 789. Compensation for Damage Caused before Repurchase

(1) If, before the exercise of the right of repurchase, the asset underwent deterioration, perished or its return became impossible for any other reason, the reseller shall be liable for the damage.

(2) Where the deterioration is not due to the fault of the reseller or if the asset underwent an insignificant change, the repurchaser may not demand reduction of the price of purchase.

Article 790. Effects of Disposing of Asset before Repurchase

If the buyer has disposed of the object of contract before the exercise of the right of repurchase, he is bound to extinguish the rights of third parties over the asset. It is also deemed that the reseller has disposed of the asset in the case when the asset was alienated through the enforcement procedure or was alienated by the trustee in the insolvency process.

Article 791. Term for Repurchase

The repurchase may be exercised only within the term established in the contract, which may not exceed 10 years for land plots and 5 years for other assets. These terms may not be prolonged.

SECTION 3 OPTION

Article 792. Option

The parties may agree that the buyer shall have the unilateral right to purchase a thing until a certain moment (option of purchase), or that the seller shall be entitled to sell the thing to the buyer under the same conditions (option of sale). The provisions concerning contracts of sale also apply to contracts of option, unless the parties have agreed otherwise.

SECTION 4 RIGHT OF PREEMPTION

Article 793. Purchase Based on Right of Preemption

(1) The holder of the right of preemption may exercise his right if the person bound concludes a contract of sale and purchase with a third party.

(2) Where several persons have a right of preemption together, this right may be exercised only jointly, unless otherwise provided by law or contract.

(3) The right of preemption is not transferable and may not be transmitted by inheritance, unless the contract between the bound person and the holder of the right of preemption provides otherwise.

Article 794. Notification about Intention to Sell

The person bound shall without delay notify the person entitled to preemption about the intention to sell and the terms of sale. The notification may be also provided by the third party with whom the seller intends to conclude the contract of sale and purchase.

Article 795. Exercise of Right of Preemption

(1) The right of preemption shall be exercised by notifying the person bound.

(2) After receiving information regarding the intention to sell, the right of preemption may be exercised within a month in case of land plots and within 10 days in case of other assets, unless otherwise provided by parties' agreement.

(3) By declaration towards the person bound, the contract of sale and purchase shall be concluded between the holder and the bound person, under the terms set by the bound person and the third party.

(4) The person bound may demand that the right of preemption extends over all assets that cannot be separated from the relevant asset, without causing disadvantages.

(5) Where the third party benefits of deferment of purchase price payment, the holder of the right of preemption may also benefit of the deferment, if he grants surety for the amount that must be paid.

(6) Where the object of the right of preemption is a land plot, there is no need for surety, if a mortgage was agreed upon for the selling price or if the purchase price includes a debt for which a mortgage exists charging that land plot.

Article 796. Invalidity of Agreement on Non-Exercise of Right of Preemption

An agreement between the person bound and a third party is ineffective, if the contract of sale is made contingent on non-exercise of the right of preemption, or if the person bound is entitled to rescind the contract in case of exercise of the right of preemption.

Article 797. Secondary Performances

(1) If the third party has bound himself by the contract of sale and purchase to execute a secondary performance, which the person holding the right of preemption is not able to execute, the latter shall pay the value of the secondary performance, instead of executing it.

(2) If the secondary performance cannot be estimated in money, the exercise of the right of preemption is barred. However, the agreement on secondary performance becomes invalid if its aim is to evade the exercise of the right of preemption.

SECTION 5**PURCHASE BY SAMPLING OR CONTINGENT ON ACCEPTANCE****Article 798. Conclusion of Contract of Sale and Purchase by Sampling or Contingent on Acceptance**

(1) In case of purchase by sampling or contingent on acceptance, the consent on the purchased object is at buyer's free choice. In case of doubt, the contract is considered concluded under the suspensive condition of consent.

(2) The seller is bound to allow the buyer to verify the object.

(3) The buyer shall be liable for preservation of the object until the condition provided for in para. (1) comes about.

Article 799. Term for Consent

(1) The consent for an object purchased by sampling or contingent on acceptance may be declared only within the agreed term, or, absent such term, after the expiry of a reasonable term set by the seller.

(2) Where the object has been transmitted to the buyer for sampling or contingent on acceptance and the term set or, absent such term, the term sufficient for appreciating the properties of the object has expired; buyer's silence shall be deemed consent.

SECTION 6**SALE OF CONTENTIOUS RIGHTS****Article 800. Contentious Right**

A right shall be deemed contentious where it is uncertain, contested or contestable from the part of the debtor or when an action has been filed or it is presumed that such action will be necessary.

Article 801. Prohibition to Acquire Contentious Rights

Judges, attorneys, notaries, prosecutors and court bailiffs may not acquire contentious rights, under the sanction of absolute voidance.

Article 802. Debtor's Right to Liberate Himself from Obligation

(1) Where a contested right has been sold, the one against whom it is claimed shall be exonerated if he pays the buyer the sale price, sale costs and interest for the price and sale costs, calculated as of the date when the sale price and the sale costs have been paid out.

(2) The right provided at para.(1) may not be exercised where the sale has been done towards the creditor for the debt that was owed to him, towards a co-owner or an heir of the asset that is the object of the contentious right or where the sale has been done between entrepreneurs. Likewise, the right may not be exercised if there is a court judgment, which confirms the contentious right or if this right has been established and the dispute is in preparation for court examination.

SECTION 7**SALE AND PURCHASE OF CONSUMER GOODS****Article 803. Inversion of Burden of Proof**

Where a consumer buys a movable asset from an entrepreneur (purchase of consumer goods) and discovers a defect in that asset within six months from transfer of risk, it shall be presumed that the defect appeared at the moment of risk transfer, unless the presumption is incompatible with the nature of the asset or of the defect.

Article 804. Special Provisions on Sureties

(1) In case of sale and purchase of consumer goods, the surety in the sense of art.772 must be formulated clearly and precisely. The surety must contain:

a) reference to consumer's legal rights and to the fact that those rights will not be limited by the surety;
b) all information necessary to benefit of the surety, and especially duration and space applicability of surety protection, name or denomination and address of the person granting the surety.

(2) The consumer may demand that a surety declaration on a durable information bearer be offered to him.

(3) The effects of the surety obligation shall not be affected where one of the requirements enlisted at par.(1) and (2) is not complied with.

Article 805. Public Offer of Goods

Displaying labeled goods in the shop-window, offering the menu, advertising the good, describing it in catalogues and other proposals addressed to an unlimited range of persons, shall be deemed public offer for conclusion of a contract of sale and purchase of consumer goods, regardless of whether the price of the good and other essential terms for conclusion of contract are specified.

Article 806. Sale of Assets by Using Vending Machines

(1) Where a vending machine are used for selling the good, its owner must inform the buyer, by displaying on the machine (or in another place) the name of the seller, contact information, good's denomination and price, instructions regarding actions that must be undertaken by the buyer in order to pay and receive the good.

(2) The contract of sale and purchase by means of vending machine shall be deemed concluded at the moment of performing the necessary actions for receiving the good.

(3) Where the machine is used for changing coins, currency, ticket procurement, rules on sale and purchase of consumer goods shall apply, unless it follows otherwise from the substance of the obligation.

Article 807. Price of Consumer Goods

The price and other essential terms of the contract of sale and purchase of consumer goods shall be set equally for all buyers.

Article 808. Exchange of Consumer Good

(1) Within 14 days from the moment of receiving the non-food good and unless the seller established a longer term, the buyer is entitled to exchange the good at the place of purchase or in another place set by the seller, for a similar good of another size, form, dimensions, model, color or suite, etc., with recalculation, in case of price difference.

(2) Where there is no good to perform the exchange, the buyer is entitled to return the good, while the seller is bound to reimburse the paid amount.

(3) Buyer's request to exchange the good or to return it shall be fulfilled if the good has not been used, has not lost its consumer properties and if there is proof that the good was purchased from the respective seller.

(4) Goods that cannot be exchanged or returned by virtue of this article shall be listed by law or other normative acts.

**SECTION 8
SALE BY AUCTION****Article 809. Modality of Sale by Auction**

(1) Sale by auction may be voluntary and compulsory.

(2) Compulsory sale is subject to the rules envisioned by this section.

Article 810. Setting of Price and of Other Terms

The seller may set the price or other terms of sale. This stipulation may not be raised against the winner of auction, if it has not been notified to the present persons before receipt of offers.

Article 811. Right to Non-Disclosure of Identity

The seller is entitled not to disclose his identity at the auction, but, if his identity is not disclosed to the winner of auction, the adjudicator shall be personally liable for all obligations of the seller.

Article 812. Prohibition to Withdraw Offer

The offeror may not withdraw his offer.

Article 813. Moment of Sale

The sale is concluded by adjudicating the asset by the adjudicator to the last offeror. The registration of the name or denomination of the winner of auction and of his offer in adjudicator's register shall serve as proof of sale, but absent such entry, the witness testimony is allowed.

Article 814. Drawing up of Contract for Sale of Immovable Asset

The seller and the winner of auction of an immovable asset must draw up the contract of sale and purchase within 10 days from the request of the other party.

Article 815. Effects of non-payment of the price by the winner of auction

(1) Where the winner of auction does not pay the price as prescribed by contract, the adjudicator is entitled, without prejudice to seller's remedies, to resell the asset at the next auction, in conformity with the usages and only after notification of the winner of auction.

(2) The winner of auction may not participate again in the auction and is bound to pay the difference between the price on which the asset was sold to him and the price on which the asset was resold, if the latter is lower, while not being entitled to claim the surplus. In case of compulsory sale, he will also be liable towards the seller for the person in whose interest the asset was attached and towards the creditor, who obtained a court judgment, for interest, costs and damage caused by nonperformance.

Article 816. Right of Winner of Auction to Claim Damages

(1) The winner of auction, whose right of ownership over an asset acquired by auction is affected by an attachment exercised by seller's creditor, may claim from the seller the reimbursement of the price paid, related interest and costs from the creditor to whom the asset has been transmitted.

(2) The winner of auction may claim from the creditor, in whose interest the attachment has been established, reparation of damage caused by irregularities in attachment or sale.

SECTION 9

SALE AND PURCHASE OF ENTERPRISE AS UNITARY PATRIMONIAL COMPLEX

Article 817. Contract of Sale and Purchase of Enterprise

(1) By virtue of contract of sale and purchase of an enterprise, the seller undertakes to convey into the ownership of the buyer the enterprise as a unitary patrimonial complex, except for inalienable rights and obligations.

(2) The right to firm name, trademarks and other means of individualization of enterprise and of its products, works and services, as well as the right to use such means of individualization that belong to it based on license shall be transferred to the buyer, unless the contract provides otherwise.

Article 818. Registration of Contract of Enterprise Sale and Purchase

The contract of sale and purchase enterprise as a unitary patrimonial complex shall be concluded by notary certification and registration at the State Registration Chamber.

Article 819. Evaluation of Enterprise Property

(1) Enterprise composition and value shall be determined based on the inventory sheet, drafted in accordance with the rules of inventory.

(2) Before signing the contract, the parties must draw up and examine the inventory sheet, the accounting balance, the conclusion of an independent auditor on the composition and value of the enterprise, the list of seller's debts included into the composition of the enterprise with indication of creditors, the nature of the debt, its amount and term for obligation performance.

(3) Assets included in enterprise composition, rights and obligations registered in the documents indicated at par.(1) and (2) must be conveyed to the buyer, unless otherwise provided by contract or art.817.

Article 820. Creditors' Rights

(1) Before conveyance of the enterprise to the buyer, seller's creditors must be notified about the fact that the enterprise has been sold by one of the parties.

(2) The buyer shall be liable jointly and severally with the seller, limited to the assets that have been conveyed to him, for seller's debts incurred before the sale of the enterprise.

(3) Buyer's liability provided at par.(2) may not be excluded or limited by agreement with the seller.

Article 821. Conveyance of Enterprise

(1) Conveyance of enterprise to the buyer shall be done based on the deed of conveyance, which shall include data regarding conveyed assets, the fact that creditors have been notified, and defects of the enterprise.

(2) The costs for preparation of enterprise for conveyance, including costs for drawing up the deed of conveyance, shall be borne by the seller, unless the contract provides otherwise.

(3) It shall be deemed that the enterprise is conveyed to the buyer from the moment of signing of the deed of conveyance by both parties. From this moment, risks of accidental loss or deterioration of the enterprise pass to the buyer.

Article 822. Transfer of Right of Ownership

(1) Unless the contract provides otherwise, the right of ownership over the enterprise shall be transferred to the buyer on the date of enterprise conveyance, subject to immediate registration.

(2) Where the enterprise is sold under reservation of ownership, the buyer is entitled, before acquiring the right of ownership, to dispose of the assets and non-property rights included in the composition of the conveyed enterprise, to the extent that this is necessary for the purpose for which it has been purchased.

CHAPTER II EXCHANGE

Article 823. Contract of exchange

(1) The parties to a contract of exchange are bound with mutual transfer of ownership over an asset.

(2) Each party to the contract of exchange is deemed to be the seller of the property, which he exchanges, and the buyer of the property, which he receives in exchange.

Article 824. Rules Applied to Exchange

The appropriate provisions relating to the contract of sale and purchase apply to the contract of exchange.

Article 825. Compensation of Difference in Value

(1) Where the assets exchanged are unequal in value, the difference may be compensated in money, by agreement of the parties.

(2) The compensation may not exceed the value of the asset.

Article 826. Right to Refuse Conveyance of Asset

The party that proves that the other party is not the owner of the asset is entitled, even after receipt of the asset, to refuse performance he undertook. In such case, the party may be bound to return only what he received under contract.

CHAPTER III DONATION

Article 827. Contract of Donation

(1) By contract of donation, a party (donor) undertakes to increase, gratuitously and on account of his own property, property of the other party (donee).

(2) The contract of donation by which the donor undertakes to transfer in the future his entire actual property or a fraction of it, without specifying the assets that must be conveyed, shall be void.

(3) The contract of donation that stipulates donee's obligation to pay for debts or to fulfill tasks that did not exist at the moment of contract conclusion shall be void, if the nature and extent of debts or tasks is not provided for in the contract.

(4) The contract that provides for conveyance of the asset after donor's decease shall be void.

Article 828. Conclusion of Contract of Donation

(1) The contract of donation is deemed concluded from the moment of conveyance of the asset.

(2) Where a movable asset is conveyed without consent of the other party, the conveyor may set a reasonable term, within which the other party must declare acceptance or refusal to accept the asset. Upon expiry of the term, the contract is deemed

concluded, if the other party did not declare refusal to accept donation. In case of refusal, the donor is entitled to claim restitution of the asset, in accordance with the rules on unjust enrichment.

Article 829. Form of Contract of Donation

Where the object of donation is an asset, for the sale (alienation) of which a certain form of contract is established, the observance of that form is obligatory for the contract of donation.

Article 830. Promise of Donation

(1) In order to produce effects, a contract that contains the promise to convey an asset in the future requires notary certification. Non-compliance with form requirements does not affect validity of donation if the promise is fulfilled, save for contracts regarding assets the alienation of which requires notary certification.

(2) The donor is entitled to refuse fulfillment of promise to convey an asset, if, taking into account his other obligations, it is impossible for him to fulfill the promise without prejudice to his own adequate maintenance or to his legal obligation to provide maintenance to other persons. The donee may not claim damages.

Article 831. Contract of Donation under Form of Periodic Payments

Where the contract of donation stipulates the obligation regarding material maintenance under the form of periodic payments, this obligation shall cease upon donor's decease, unless the contract provides otherwise.

Article 832. Impermissibility of Donation

Save for insignificant donations meant to fulfill moral obligations, there shall be prohibited donations:

- a) on behalf of incompetent persons;
- b) towards owners, managers or employees of medical, educational, social insurance and similar institutions from the part of the person that is interned in such an institution or from the part of the spouse or relatives of that person to the fourth degree inclusively. This rule shall not apply in relations between relatives up to the fourth degree inclusively;
- c) in relations between legal profit-making entities.

Article 833. Donation in Case of Diseases Presumed Lethal

The contract of donation concluded during donor's disease presumed to be lethal, followed by his recovery, may be declared void upon donor's request.

Article 834. Conditioned donation

(1) The parties may agree that the donation is to become effective contingent on the fulfillment of a task or accomplishment of a goal. The goal may also serve to the common good. Only the surplus over costs for task fulfillment or goal accomplishment shall constitute donation.

(2) Besides the donor, task fulfillment may be requested by any person in whose interest the task has been agreed upon.

(3) Where the donee fails to fulfill the task, the donor may revoke donation.

Article 835. Revocation of Donation Due to Ingratitude

(1) A donation may be revoked if the donee attempted to kill the donor or a close relative of the latter, if the donee is guilty of other illicit deed towards the donor or his close relative, which reflects gross ingratitude, or if the donee refuses without grounded reasons to offer to the donor the owed maintenance.

(2) If the donation has been revoked, the donor may demand return of the gift.

(3) The donation may be revoked within one year from the time when the circumstances entitling the donor to revocation became known.

(4) The action for revocation of donation may not be filed against the heirs of the donee, and neither by the heirs of the donor against the donee, unless the donor deceased before the expiry of the term shown in par.(3).

Article 836. Rescission of Contract of Donation in Case of Need

(1) Where, after performance of donation, the donor is no longer able to ensure himself an adequate maintenance and to fulfill legal maintenance obligations towards third parties, he may demand from the donee return of donated assets that are still in the possession of the latter.

(2) The demand of return is impermissible when the donor caused the state of need by willful conduct or by gross negligence.

Article 837. Absence of Obligation to Pay Interest

The donor in default is not bound to pay interest.

Article 838. Donor's Liability for Defect in Donated Property

If a donor fraudulently conceals a defect in the donated property, he is bound to compensate for the damage caused thereby.

CHAPTER IV

ALIENATION OF ASSET CONTINGENT ON LIFELONG MAINTENANCE

Article 839. Contract of Asset Alienation Contingent on Lifelong Maintenance

(1) Based on contract of asset alienation contingent on lifelong maintenance, a party (maintenance beneficiary) undertakes to convey to the other party (acquirer) ownership over an immovable or movable asset, while the acquirer undertakes to ensure to the beneficiary maintenance in kind – lifelong dwelling, nutrition, attendance and necessary assistance, as well as funerals.

(2) In case of plurality of parties, the obligation of maintenance is indivisible, either under active or under passive aspect.

(3) The claim for maintenance may not be transmitted to other persons and may not be enforced upon by creditors.

(4) Norms on lifelong annuity shall apply accordingly to the contract of asset alienation contingent on lifelong maintenance, if this is stipulated by contract.

Article 840. Form of Contract of Asset Alienation Contingent on Lifelong Maintenance

(1) The contract of asset alienation contingent on lifelong maintenance shall be done in writing.

(2) Where for alienation of the asset notary certification is required, the contract shall be certified by notary.

Article 841. Modification of Contract of Asset Alienation Contingent on Lifelong Maintenance

(1) In case of nonperformance of the maintenance obligation by acquirer, the beneficiary may demand that the maintenance obligation be performed through periodic payments in money.

(2) The maintenance obligation may also be set in money by parties' agreement.

Article 842. Surety for Beneficiary of Maintenance

(1) As long as the beneficiary is alive, the acquirer may not alienate the asset. In case of immovable assets, this interdiction shall be entered in the real estate register.

(2) Pledging and other charging of the asset is allowed only with the consent of the maintenance beneficiary.

Article 843. Risk of Asset's Loss

Loss of asset does not liberate the acquirer of obligations assumed by virtue of contract.

Article 844. Rescission of Contract of Asset Alienation Contingent on Lifelong Maintenance

(1) The beneficiary of maintenance is entitled to demand rescission of contract in case of nonperformance of contractual obligations from the part of the acquirer.

(2) The acquirer may demand rescission of contract in case of impossibility to fulfill contractual obligations due to circumstances that are not imputable to him.

Article 845. Effects of rescission of the contract of asset alienation contingent on lifelong maintenance

(1) In case of rescission of contract by maintenance beneficiary, he shall be entitled to demand either return of the asset, or payment of an amount equivalent to its value.

(2) The value of maintenance offered by the acquirer need not be reimbursed.

Article 846. Effects of Acquirer's Decease

Upon acquirer's decease, his rights and obligations pass on his heirs.

CHAPTER V

ANNUITY

Article 847. Annuity

- (1) The annuity is based on a contract under which a party (annuity debtor) undertakes, onerously or gratuitously, to make periodic payments to the other party (annuity creditor).
- (2) The annuity may be paid in money or in kind.
- (3) The annuity may be constituted in favor of a third party.

Article 848. Term of Annuity

- (1) The annuity is lifelong when its duration is limited by the lifetime of one or several persons.
- (2) When in doubt, the annuity debtor must make payments for the lifetime of the annuity creditor.

Article 849. Form of Contract of Annuity

- (1) In order for a contract by which an annuity is promised to be valid, it is necessary for the promise to be drafted in writing and certified by notary.
- (2) Where, by virtue of the annuity contract, the annuity debtor is conveyed an immovable asset, the contract must be registered in the real estate register.

Article 850. Annuity Amount

- (1) The annuity amount is set by the parties.
- (2) In case of decease of one of the annuity creditors, the annuity shall be paid integrally to the survivors, unless the contract provides otherwise.

Article 851. Annuity Payment

- (1) The periodicity and moment of annuity payment shall be set by agreement of the parties, taking into account the form of the annuity.
- (2) The lifelong annuity shall be paid in advance.
- (3) The pecuniary annuity shall be paid in advance for 3 months, unless the contract provides otherwise. The term of advance payment for other forms of annuity shall be set contingent on the nature and aim of the annuity.
- (4) If the annuity creditor was alive at the beginning of the period for which the annuity is paid, the annuity shall be paid for the entire period.

Article 852. Prohibition to Alienate Assets Received by Annuity Debtor

- (1) As long as the annuity creditor is alive, the annuity debtor may not alienate, pledge or otherwise charge the assets conveyed by the person that instituted the annuity, without the consent of the annuity creditor. Enforcement on these assets for other obligations of the debtor is not allowed.
- (2) Where the annuity debtor has been conveyed an immovable asset, the interdictions shown at par.(1) shall be registered in the real estate register.

Article 853. Modification of Annuity Payment Form

The parties to the contract for payment of annuity in kind may agree on its replacement with a periodically paid amount in money.

Article 854. Persistence of Obligation in Case of Accidental Loss or Deterioration of Asset

Debtor's obligation shall not cease due to accidental loss or deterioration of the asset that has been conveyed to him in connection to the institution of annuity.

Article 855. Challenge of Contract of Annuity

- (1) The contract of annuity may be challenged by the third party entitled to maintenance from the person bound to pay the annuity, if the latter cannot fulfill his obligations towards the third party, because of the annuity obligation. In case of rescission of contract, the asset conveyed by the person that instituted the annuity shall be returned to him.
- (2) The annuity debtor may not demand from the annuity creditor reimbursement of the annuities paid.

Article 856. Rescission of Contract of Annuity

(1) Both the annuity creditor and debtor are entitled to demand rescission of the contract of annuity if the continuation of these relations is impossible, due to nonperformance of obligations or for other grounded reasons.

(2) Rescission of contract of annuity shall be followed by return of the asset conveyed in connection with annuity establishment. Performance provided by annuity debtor need not be returned, unless the contract provides otherwise.

Article 857. Stipulation regarding Unenforceable Character of Annuity

The annuity contract may stipulate the unenforceable character of the annuity only when the annuity has been instituted gratuitously.

Article 858. Consequences of Decease of Annuity Debtor

(1) In case of decease of the annuity debtor, his obligation shall pass to the heirs that inherited the asset.

(2) Where the heir relinquishes the asset, it shall be conveyed to the annuity creditor. By this, the contract shall cease.

CHAPTER 8 GRATUITOUS LOAN FOR USE

Article 859. Contract for Gratuitous Use

(1) By contract of gratuitous loan for use, a party (lender) gratuitously conveys an asset for use to the other party (borrower), while the latter undertakes to return the asset upon expiry of the term for which it was conveyed to him.

(2) The contract of gratuitous loan for use may provide compensation by the borrower of the wear and tear of the asset.

Article 860. Liability of Lender

(1) The lender is responsible only for willful conduct or gross negligence.

(2) Where the lender does not fulfill his obligation to convey the asset, the borrower may only claim compensation for damage.

(3) Where the lender fraudulently concealed the defects of the asset conveyed into gratuitous use, the lender is bound to compensate the borrower for the damage caused therefore.

Article 861. Asset's Wear and Tear

A borrower is not responsible for any alteration or deterioration of the asset, which is brought about by the use of the asset in conformity with the stipulated destination.

Article 862. Duties of Borrower

(1) The borrower must preserve and take care of the asset with the diligence of a good owner and to use it only for the purpose established in contract or determined by the nature of the asset.

(2) The borrower shall bear the costs necessary for using the asset. The borrower may demand compensation for extraordinary, necessary and urgent costs, which were needed for preserving the asset.

(3) The borrower may not convey the asset into the use of third parties without lender's consent.

Article 863. Liability of Borrower

(1) Where the borrower does not fulfill obligations set by art.860, the lender may demand immediate return of the asset and compensation for damage caused.

(2) In case of nonperformance of the obligations stipulated at art.860, the borrower shall also be liable for cause non-imputable to him (accident), unless he proves that the damage would have occurred even if he had fulfilled his obligations. This rule shall also apply in the case when the borrower did not timely return the asset.

(3) Where several persons have jointly borrowed an asset, they shall be jointly and severally liable towards the lender.

Article 864. Duty to Return Asset

(1) The borrower is bound to return the asset lent on the expiration of the time fixed for the loan.

(2) If no time is fixed by contract, the borrower shall return the asset after he finished using it for the purpose envisioned in the contract. The lender may demand the asset back earlier, if sufficient time has elapsed for such use.

(3) If the term of the contract of loan cannot be inferred from the purpose of asset's use, the lender may demand asset's return any time.

Article 865. Asset's Retention

The borrower may not retain the asset for claims against the lender, save for claims regarding extraordinary, necessary and urgent costs made for preservation of the asset.

Article 866. Right to Cancel Contract of Gratuitous Loan for Use

The lender may cancel the contract of gratuitous loan for use, if:

- a) due to unforeseen circumstances, the lender himself needs the asset;
- b) the borrower uses the asset in breach of the destination set by contract, conveys the asset into the use of third parties without lender's consent or subjects the asset to great danger, as a consequence of inadequate prudential measures;
- c) the borrower deceased;
- d) the borrower-legal entity ceased its activity.

CHAPTER IX LOAN

Article 867. Contract of Loan

(1) By a contract of loan, a party (lender) undertakes to convey to the other party (borrower) ownership of money or other fungibles, and the borrower binds himself to return to the lender what he has received in things of the same kind, quality and quantity upon the expiry of the term for which they were given to him.

(2) The contract for loan is presumed gratuitous, unless the law or contract provide otherwise.

Article 868. Nonperformance of Obligation to Offer Loan

Where the lender does not fulfill his obligation to offer loan, the borrower may only claim compensation of damage caused therefore.

Article 869. Interest on Loan

(1) The parties to a contract of loan may provide for payment of interest that must be reasonably linked to the refinancing rate of the National Bank.

(2) The agreement on interest that comes into contradiction with par.(1) is void.

(3) Unless otherwise provided, the interest is payable at the end of each year for the period between the moment of conclusion of contract and that of loan return.

(4) Where the borrower does not pay interest in time, the lender may demand immediate restitution of loan and related interest.

Article 870. Revocation of Promise of Loan

The lender is entitled to relinquish performance of obligations, where the material standing of the borrower worsens considerably, which puts restitution of loan under risk, even if the worsening took place before conclusion of contract and became known to the lender afterwards.

Article 871. Restitution of Loan

(1) The borrower must restitute the loan at the time and in the order set by contract. Where no interest is established, the borrower is entitled to restitute the loan even before expiry of the term set.

(2) The borrower must return assets of the same quality and quantity as the received assets and nothing more, even if prices have increased or dropped.

(3) Where a sum of money was borrowed, the borrower must return the nominal sum received, regardless of the variations in cash value.

(4) Where the contract of loan sets no term for restitution and no term for notification, the loan must be restituted within 30 days from the date when the borrower received the restitution request.

Article 872. Effects of Non-Restitution of Loan

(1) Where the borrower does not timely restitute the loan, the lender may demand payment of interest for the entire sum owed, in the amount provided by art.619, unless the law or contract provide otherwise.

(2) Where the contract provides for loan restitution in installments and the borrower does not timely retribute at least an installment, the lender may demand immediate restitution of the entire loan and related interest.

(3) Where the borrower cannot retribute the asset, he is bound to pay its value, calculated contingent on the time and place of obligation performance.

Article 873. Effects of Breach of Surety Obligations for Performance

Where the borrower breaches his obligation regarding surety for restitution of asset, the lender may demand immediate restitution of the asset and related interest.

Article 874. Lender's Liability for Asset's Defects

The lender shall be liable for the defects of the asset as provided by rules regarding liability of lender in the contract of loan for gratuitous use.

CHAPTER VIII LEASE

Article 875. Contract of Lease

By a contract of lease, a party (lessor) undertakes to convey to the other party (lessee) an individually-determined asset for temporary use or for temporary use and possession, while the latter undertakes to pay rent.

Article 876. Form of contract of Lease

(1) The contract for lease of an immovable asset must be drawn in writing.

(2) The contract of lease of an immovable asset for a term exceeding three years must be registered in the real estate register. Noncompliance with this rule renders the contract non-opposable against third parties.

Article 877. Maximum Term for Contract of Lease

The contract of lease may be concluded for a term not exceeding 99 years.

Article 878. Properties of Leased Asset

(1) The lessor is bound to convey to the lessee the asset in adequate condition, in accordance with the destination agreed by contract, and to maintain the asset in such condition during the lease period.

(2) The asset conveyed by the lessor must be free from material defects and defects in title.

(3) The asset shall be deemed free from any material defects, if it has the agreed properties. Where no specific properties have been agreed upon, the asset is free from material defects when it can be used according to the destination set by contract, and absent such a specification, when it can be used for the usual destination of such assets.

(4) The asset shall be deemed free from any defects in title where no third party may exercise rights over the asset for the duration of the contract of lease.

(5) Before exercising his rights, the lessee must notify the lessor about the discovered defects of the asset.

Article 879. Reduction of Rent Due to Defects of Leased Asset

(1) If the asset has a defect, the lender shall be released from payment of a part of the rent in proportion to the diminution of the use of the asset. The right to pay reduced rent ceases if the defect is cured. An insignificant defect is not taken into consideration.

(2) In case of a contract for lease of dwelling, provisions derogating from par.(1) to the prejudice of the lessee are ineffective.

Article 880. Compensation for Losses Inflicted by Defect in Asset

(1) If a defect that diminishes the possibilities to use the asset exists at the time of conclusion of contract or appears subsequently due to a circumstance for which the lessor is responsible, or if the lessor is in default with respect to removal of the defect, the lessee may demand compensation for damage caused, without prejudice to his right to demand reduction of rent.

(2) If the lessor is in default, the lessee may himself remove the defect and demand compensation for any useful costs.

Article 881. Effects of Lessee's Awareness about Defect

If the lessee knew of the defect in the leased asset at the time of contract conclusion, and did not put in a relevant claim, he may not enjoy the rights specified in art.879.

Article 882. Invalidity of Agreement concerning Exoneration from or Reduction of Liability

An agreement whereby lessor's liability for defects in leased property is excluded or reduced is ineffective if the lessor fraudulently concealed the defects.

Article 883. Lessor's Liability for Acts of Third Party

(1) The lessor is bound to repair damage that results from interference in asset's use by a third party, only if the third party is a lessee or if the lessor permitted him use of the asset or access to it.

(2) Where the use of the asset is reduced, the lessee keeps the right to other remedies that he has against the lessor.

Article 884. Effects of Delay or Refusal to Convey Leased Asset

Where the lessor does not timely convey the leased asset or refuses to convey it, the lessee is entitled to demand performance of this obligation and reparation of damage or may cancel the contract and demand compensation for damage caused therefor.

Article 885. Prohibition to Alter Form or Destination of Leased Asset

Neither the lessor, nor the lessee may alter the form or the destination of the asset during the lease period.

Article 886. Order of Rent Payments

(1) The rent may be paid integrally at the end of the term set in the contract of lease. If the rent is measured by periods of time it is payable after the expiration of each period.

(2) Payment for additional costs is mandatory if the parties agreed on this.

(3) Where due to lessee's fault hindrances arose in the use of the leased asset, he shall not be released from rent payment.

Article 887. Terms and Conditions of Rent Modification

(1) The rent amount may be modified by parties' agreement. The lessor may demand modification of rent only once a year and only if economic conditions render non-adjustment unfair.

(2) The lessee is entitled to demand reduction of rent, if the conditions of asset's use, set in contract, or asset's condition have worsened considerably due to circumstances that are not imputable to the lessee.

Article 888. Duties of Lessee

The lessee is bound:

- a) to use the asset in conformity with its destination and contract provisions;
- b) to preserve and ensure asset's integrity;
- c) to bear current expenses for use and maintenance of the asset in normal state;
- d) to perform current repair of the asset.

Article 889. Duties of Lessee in Relation to Other Lessees

(1) The lessee is bound to act in a manner that does not hamper the normal use of the asset by other lessees. The lessee is bound in relation to the lessor and to other lessees to compensate for damage that may result from nonperformance of this obligation, whether it was caused by him, or by persons whom he permitted use of the asset or access to it.

(2) The lessor may cancel the contract of lease in case of nonperformance of the obligation provided at par.(1).

Article 890. Right of Lessee in Case of Hindrance of Use from Part of Another Lessee

(1) The lessee whose use is hindered by another lessee or by persons whom the latter permitted use of asset or access to it, may demand, as the case may be, reduction of rent or cancellation of contract, if he notified the common lessor of the breaches that affected his use and if such breaches persist.

(2) Without prejudice to the provisions of par.(1), the lessee may demand from the common lessor reparation of damage, save for the case when the latter proves that he acted with prudence and diligence.

(3) The lessor may turn against the lessee that is responsible for the damage.

Article 891. Right of Lessor to Check on Leased Asset and to Performs Works on It

The lessor is entitled to check on the leased asset, to perform works on it and, in case of an immovable asset, to present it to potential buyers or lessees, under the obligation to exercise these rights in a reasonable manner.

Article 892. Reparation of Damage Caused to Lessor

(1) The lessee is bound to compensate for damage caused to the lessor through losses in the leased asset, unless he proves that the losses are not due to his fault or to that of the persons whom he permitted use or access to the asset.

(2) Where the asset leased is an immovable, the lessee is not liable for the damage caused by fire, unless it is proved that the fire started due to the deed of the lessee or of the persons whom he permitted use or access to the asset.

Article 893. Liability for Normal Wear and Tear

A lessee is not responsible for the ordinary wear and tear of the leased asset, which is brought about by use according to the stipulated use.

Article 894. Sublease or Assignment of Lease

(1) A lessee is not entitled to convey the leased asset into sublease or to assign the lease, without lessor's consent. To do this, the lessee must inform the lessor about his intention and indicate the name or denomination and address of the person to whom he intends to sublease the asset or assign the lease.

(2) The lessor may not refuse permission to sublease or assignment of lease, if after conclusion of contract the lessee has a legitimate interest in conveying the asset, entirely or partially, to a third party. This provision does not apply if the person of the third party creates serious grounds for refusal, if the space leased consequently becomes overcrowded, or if the lessor may not be imposed to accept sublease or assignment of lease for any other grounded reasons.

(3) Where the lessor does not give his consent to sublease or assignment of lease, he shall be bound to notify the lessee about the reasons within 15 days; otherwise, it shall be deemed that the lessor consented.

(4) The lessor, who consents to sublease or assignment of lease, may not claim anything besides compensation of reasonable costs that may result from the sublease or assignment.

(5) In case of sublease, the lessee remains liable towards the lessor.

(6) The term of the contract of sublease may not exceed that of the contract of lease.

(7) Assignment of lease liberates the previous lessee from obligations. In cases other than that of a dwelling building, parties may agree otherwise.

Article 895. Reparation of Damage by Sub-Lessee

(1) Where the lessor demands reparation of damage from the lessee, the sub-lessee is held liable towards the lessor only to the extent of rent amount for sublease owed to the lessee. The sub-lessee may not oppose early payments made.

(2) Payment made by the sub-lessee, either by virtue of a provision of the contract of sublease, or in conformity with local usages, shall not be deemed early payments.

Article 896. Effects of Nonperformance of Obligations by Sub-Lessee

Where nonperformance of an obligation by the sub-lessee causes substantial damage to the lessor or to other lessees, the lessor may demand cancellation of the contract of sublease.

Article 897. Effects of Nonperformance of Obligations by Lessor

Where the lessor does not perform his obligations, the sub-lessee may exercise lessee's rights in order to compel the former to perform his obligations.

Article 898. Duty to Perform Overhaul

(1) The lessor is bound to perform overhaul of the leased asset, unless the law or contract provide otherwise.

(2) Overhaul must be performed at the term set in contract or when this results from a stringent necessity.

(3) Noncompliance by lessor with the obligation provided in par.(1) and (2) empowers the lessee to perform overhaul and deduct overhaul costs from the rent.

Article 899. Duty to Notify Lessor about Defects

The lessee, who is aware of a defect or a substantial deterioration of the leased asset, is bound to notify the lessor thereof, within a reasonable term, under liability to compensate for damage.

Article 900. Effects of Change of Owner of Leased Asset

If the lessor alienates the leased asset to a third party after that thing has been transferred to the lessee, the acquirer shall subrogate to the lessor in all rights and duties arising from the lease.

Article 901. Effects of Expropriation of Leased Asset

(1) Total expropriation of the leased asset extinguishes the lease from the date on which the expropriator is entitled to take the good into possession.

(2) If the expropriation of the asset is partial, the lessee may demand reduction of rent or cancellation of contract, as the case may be.

Article 902. Decease of Lessor or Lessee

The lease does not cease by decease of lessee or lessor, unless the contract provides otherwise or, under the circumstances, the contract cannot be maintained.

Article 903. Termination of Lease

The lease terminates:

- a) upon expiry of the term of contract;
- b) in case of loss of the leased asset;
- c) in other cases provided by law or contract.

Article 904. Extension of Contract of Lease

(1) Where contractual relations continue tacitly after expiry of the contract of lease, it shall be considered extended for an indefinite period.

(2) Upon expiry of the contract of lease, the lessee shall have a right of priority at concluding the contract for a new term, if:

- a) he previously fulfilled his contractual obligations;
- b) the asset is given for lease for another term;
- c) he agrees with the new contractual terms set by the lessor.

(3) The surety granted by a third party for performance of obligations by the lessee shall not extend on the renewed lease.

Article 905. Cancellation of Contract of Lease

(1) Cancellation of the contract of lease concluded without specification of duration may be done upon the request of either party, with a notification of 3 months in advance for immovable assets and of 1 month for movables, unless the contract provides otherwise.

(2) Where the dwelling or any other lodgments intended for human habitation is in such condition that involves a serious danger to health, the lessee may cancel contract without observance of the notification term. The lessee shall also have this right where upon concluding the contract he knew of the danger and did not put forward any objections.

(3) Unless the contract of lease provides otherwise, its cancellation also leads to cancellation of the contract of sublease.

Article 906. Cancellation of Contract on Lessor's Initiative

(1) The lessor is entitled to demand cancellation of contract, if the lessee:

- a) does not use the asset leased in accordance with the destination or with contract provisions;
- b) willfully or by negligence allows the worsening of asset's condition or creates a real danger of such worsening;
- c) does not pay rent in the course of 3 months after expiry of the payment term, unless the contract provides otherwise;
- d) concludes a contract of sublease without lessor's approval.

(2) The law and contract may provide for other reasons for cancellation of contract on lessor's initiative.

Article 907. Cancellation of Contract on Lessee's Initiative

(1) The lessee is entitled to demand cancellation of contract, if:

- a) he lost work capacity and cannot use the leased asset;
- b) he is confined and cannot perform contractual obligations.

(2) The law or contract may provide reasons other than those shown at par.(1) for cancellation of contract of lease on lessee's initiative.

Article 908. Return of Leased Asset

(1) After termination of contractual relations, the lessee is bound to return the leased asset in the condition in which it was given to him or in the condition provided by contract.

(2) Damage caused by deterioration of asset's condition shall be compensated by the lessee, unless he proves his innocence. The lessee is liable to the same extent for deterioration admitted by the members of his family, by the sub-lessee or by third parties, to whom he allowed access to the leased asset.

(3) The lessee is liable for asset's deterioration to the extent that its value has diminished, unless the contract provides otherwise.

Article 909. Regime of Improvements

(1) Upon expiry of duration or cancellation of contract of lease, the lessee is entitled to separate improvements made with lessor's permission, which are separable without damaging the asset, or to demand compensation of their value from the lessor, unless it follows otherwise from law or contract.

(2) The lessee is entitled to separate improvements made without lessor's permission, if they are separable without damaging the asset and if the lessor refuses to offer compensation of their value. Where improvements made without lessor's permission cannot be separated without damaging the asset, they shall become property of the lessor.

(3) Upon lessor's request, constructions not authorized by him shall be demolished by the lessee or on his account.

Article 910. Effects of Failure to Return Asset in Time

If, after termination of contractual relations, the lessee does not return the leased asset, the lessor is entitled to demand payment of rent for the entire period of delay. Compensation of damage not covered by rent may be also claimed.

CHAPTER IX AGRICULTURAL LEASE

Article 911. General Provisions on Agricultural Lease

(1) Agricultural lease is a contract between a party that is owner, usufructuary or other legal possessor of land plots and other agricultural assets (lessor) and the other party (lessee) regarding utilization of such assets for a set period and at a price set by the parties.

(2) By parties' agreement, provisions regarding agricultural lease may also apply to the lease of other immovable assets.

(3) Provisions regarding lease shall apply accordingly to the contract of agricultural lease, to the extent that this chapter does not provide otherwise.

Article 912. Form of Contract of Agricultural Lease

The contract of agricultural lease shall be drawn in writing.

Article 913. Description of Leased Asset

(1) The lessor and the lessee shall at the beginning of the lease jointly draw up a description of leased property and its condition at the moment of conveyance. The same applies accordingly to termination of lease.

(2) The description shall bear the date of its drawing up and be signed by both parties.

Article 914. Specifics of Agricultural Lease of Land Plot

A contract of agricultural lease of a land plot shall include conditions of use of objects situated on the plot, including installations and agricultural equipment.

Article 915. Duration of Agricultural Lease

(1) The duration of agricultural lease may not be shorter than 1 year.

(2) The lessor shall notify the lessee by a note of his unwillingness to extend the contract of agricultural lease three months ahead of the expiry of agricultural lease.

(3) If the duration of lease expired and the lessor does not demand conveyance of the plot, while the lessee continues its utilization, the contract shall be deemed extended for another year.

Article 916. Payment of Rent

(1) Payment of rent shall be made in kind, in money or in kind and in money, as the parties agree, and shall be performed at the term and place set in the contract.

(2) The following properties may serve as elements based on which the rent for each type of asset utilization is determined: plot's surface, production potential, parcel structure, relief and degree of mechanization possibilities, access, distance from storage, industrialization or commercialization facilities, condition of buildings, installations and other endowments, degree of depreciation of the leased agricultural equipment.

(3) Rent in kind shall be set in the form of a certain amount of products or a percentage from production. Products in which the rent shall be paid are established by the parties, depending on the specifics of agricultural activity and on the zone.

(4) Terms and place of payment of rent in kind shall be set by the parties, contingent on the type of products and specifics of their procurement.

Article 917. Reduction of Rent

Where over a half of the fruits procured by lease is accidentally lost, the lessee may demand proportionate reduction of rent payments. The right to reduction subsists only until separation of fruits.

Article 918. Lessor's Right of Pledge

The lessor possesses a right of gage on the assets brought in by the lessee and on the fruits of the leased property, for his claims arising from the lease.

Article 919. Change of Destination of Leased Plot

The lessee may change the destination of the leased plot only with lessor's prior written consent and in conformity with the legal provisions.

Article 920. Contractual Distribution of Risks

(1) The parties may set by joint agreement in the contract of agricultural lease the cases and limits of bearing the risk of damage caused by natural calamities.

(2) The parties may agree on the distribution of total or partial losses in leased assets, arisen as a consequence of accidents or force majeure.

Article 921. Termination of Agricultural Lease

(1) Agricultural lease shall terminate upon expiry of the term for which it was agreed upon.

(2) Early termination of lease shall take place as provided by law.

Article 922. Effects of Cancellation of Contract of Agricultural Lease of Land Plot

Where the cancellation of a contract of agricultural lease of a land plot takes place before the completion of the agricultural year, the lessor is bound to compensate the lessee for the value of the fruits not yet gathered but to be gathered in accordance with the principles of orderly management before the end of the year.

CHAPTER X FINANCIAL LEASE

Article 923. Contract of Financial Lease

(1) By contract of financial lease, a party – financial creditor (lessor) – undertakes to acquire or to manufacture the movable asset specified in the contract and to grant it in possession and use, for a period set by contract, to the other party (lessee), while the latter undertakes to pay a sum of money (royalty).

(2) In the absence of contrary provisions, the right to select the asset and the seller belongs to the lessee.

(3) Upon termination of the contract of financial lease, concluded with full amortization, the right of ownership over the asset shall pass on the lessee.

(4) The contract of financial lease may bound or empowers the lessee to purchase or rent the asset upon the expiry of contract, if the contract does not end due to complete amortization of the asset. In all instances, the amortization of the asset must be taken into account upon calculating the price or the rent. Absent a contrary provision, the lessee has a right of priority to buy or to further rent the asset.

(5) Provisions regarding financial lease do not apply where the asset is to be used for personal, family or homely purposes.

(6) Provisions on lease shall apply accordingly to the contract of financial lease, unless this chapter provides otherwise.

Article 924. Form and Content of Contract of Financial Lease

(1) The contract of financial lease shall be drawn up in writing.

- (2) The contract of financial lease must contain in particular:
- a) price of the asset;
 - b) total amount, number and maturity of installments;
 - c) final payment and methods of calculation in case of contract cancellation.

Article 925. Preservation of Asset's Movable Character

The asset being the object of the contract of financial lease preserves its movable character for the duration of contract, even if it is attached or incorporated into an immovable, to the extent that it does not lose its individuality.

Article 926. Notice on Contract of Financial Leasing

The lessor is bound to notify the seller of the contract of financial leasing, which is already concluded or is to be concluded.

Article 927. Seller's Liability towards Lessee

(1) The seller of the asset is liable directly towards the lessee for the legal or contractual warranties inherent to a contract of sale and purchase. However, the seller is not liable for the same damage towards both the lessor and the lessee.

(2) Provisions of par.(1) do not empower the lessee to rescind or amend the contract of sale and purchase without lessor's consent.

(3) The lessor is not liable for nonperformance of obligations by the seller, unless the seller was chosen by the lessor and the contract does not provide otherwise.

Article 928. Transfer of Risks and Costs on Lessee

(1) Upon taking the asset into possession, the lessee assumes all risks for its loss, including force majeure loss.

(2) The lessee bears all costs for asset maintenance and repair.

(3) Parties may derogate from provisions of par.(1) and (2) by means of contract.

Article 929. Liability of Lessor and Lessee

The lessor and the lessee are bound by their obligations in accordance with the contract and with the law.

Article 930. Disposal of Rights Arising from Contract

(1) The lessor may assign or dispose in any other manner of his rights over the asset or rights arising from the contract of financial lease. Assignment or other disposal does not liberate the lessor from obligations resulting from contract and does not change the nature or legal regime of the contract.

(2) The lessee may assign the right of use of the asset or other rights arising from contract only with lessor's consent and with observance of the rights of third parties.

**CHAPTER XI
CONTRACT FOR WORK AND SERVICE-RENDERING**

**SECTION 1
GENERAL PROVISIONS ON
CONTRACT FOR WORK AND SERVICE-RENDERING**

Article 931. Freedom to Choose Order of Work Performance or Service-Rendering

The contractor or service-provider is free to choose the order of work performance or service-rendering. There is no subordination relation between the contractor or service-provider and the beneficiary.

Article 932. Reward

(1) The reward is deemed tacitly agreed upon if, under the circumstances, such works or services are performed only for reward.

(2) Where the amount of reward is not specified, in case of existence of certain tariffs, it is deemed that the parties agreed on tariff reward, while in the absence of such tariffs, it is deemed that the parties agreed on the usual reward.

Article 933. Approximate Estimate

(1) If upon conclusion of contract, the price of works or services was subject to estimation, the contractor or service-provider must justify the increase in retribution.

(2) The beneficiary shall be bound to pay the increase shown at par.(1) only to the extent that it follows from works, services or costs, which the contractor or service-provider could have not foreseen upon conclusion of contract.

Article 934. Report of Contractor or Service-Provider

Where the reward is set contingent on the value of works, services or delivered assets, the contractor or service-provider is bound, upon beneficiary's request, to submit to him a report on the progress of works, services and costs incurred.

Article 935. Lump Price

(1) Where the work or service was agreed upon at a lump price, the beneficiary is bound to pay the agreed reward and may not demand a reduction of the reward due to the fact that the work has required fewer efforts or fewer expenses than expected.

(2) Similar to par.(1), the contractor or service-provider may not demand reward-raise for opposite reasons.

(3) Unless the parties agreed otherwise, the lump price shall remain unchanged, even if the initial performance terms or conditions have been modified.

Article 936. Personal Performance

(1) The contractor or service-provider is bound to perform personally only when such an obligation follows from contract, from circumstances or from the nature of performance.

(2) The contractor or service-provider remains in any case bound to monitor and keeps liability under contract.

Article 937. Obligation to Inform Beneficiary

Before conclusion of contract, the contractor or service-provider is bound to provide to the beneficiary, as is possible under the circumstances, all information regarding the nature of work or service and the term necessary for performance.

Article 938. Delivery of Assets by Contractor or Service-Provider

(1) Unless it is stipulated otherwise, the contractor or service-provider is bound to deliver all assets necessary for performance of contract.

(2) Assets must be of quality fit for performance of works and rendering services.

(3) Where works or services are only an accessory in relation to the delivered assets, the matter concerns a contract of sale and purchase and not a contract for work or service-rendering.

Article 939. Use of Beneficiary's Assets

(1) Where the assets are provided by the beneficiary, the contractor or service-provider undertakes to use such assets with care and to keep record of their use.

(2) Where the assets are obviously improper for use according to the destination or are affected by an obvious defect or by a hidden defect that becomes known, the contractor or the service-provider is bound to notify the beneficiary, otherwise becoming liable for the damage that may result from the use of the asset.

(3) The contractor or the service-provider is bound to submit to the beneficiary a report on the use of goods delivered by the latter and to return the remaining part.

Article 940. Risk of Accidental Loss or Deterioration of Assets

The risk of accidental loss or deterioration of the assets needed for performance of contract shall be borne by the one who delivered them, unless the contract provides otherwise.

Article 941. Rights of Contractor or Service-Provider in Case of Non-Acceptance of Offered Work or Service

(1) The contractor or the service-provider may demand an according compensation, without being bound with subsequent work performance or service-rendering, if the beneficiary does not accept the offered work or service. The beneficiary is also bound to compensate where he does not perform actions necessary for performance of work or service.

(2) The amount of compensation is determined contingent on the duration of delay and amount of reward, with subtraction of all that the contractor or the service-provider saves as a result of delay or refuse or of all that he could have gained by using his work force in other manner.

Article 942. Cancellation of Contract by Beneficiary

The beneficiary may cancel contract any time before complete accomplishment of work or service, being bound to pay to the contractor or the service-provider the reward for works or services performed and to compensate for the damage caused by cancellation.

Article 943. Cancellation of Contract by Contractor or Service-Provider

(1) Where there are no grounded reasons for cancellation, the contractor or the service-provider may cancel the contract only in such manner that the beneficiary can obtain the work or service otherwise. Where there is a grounded reason, the obligation of compensation is excluded.

(2) In case of contract cancellation, the contractor or the service-provider is bound to return the received prepayment.

(3) Where the contractor or the service-provider cancels the contract, he may demand a proportionate part of reward for works or services performed, to the extent that the beneficiary has an interest in those works or services.

Article 944. Decease of Beneficiary

Beneficiary's decease does not trigger termination of contract, unless its performance becomes impossible or useless.

Article 945. Decease or Incapacity of Contractor or Service-Provider

Decease or incapacity of contractor or service-provider does not trigger termination of contract, unless the contract has been concluded due to his personal qualities or cannot be continued in an adequate manner by the successors in his activity. In such case, the beneficiary is entitled to cancel the contract.

SECTION 2 CONTRACT FOR WORK

Article 946. Contract for work

(1) By virtue of a contract for work, a party (contractor) is bound to produce, at his own risk, a certain work for the other party (customer), while the latter undertakes to receive the work and to pay the remuneration agreed upon.

(2) The object of the contract for work may be either production or alteration of an asset, or any other result to be brought about by performance of work.

Article 947. Transfer of Right of Ownership

(1) The contractor is bound to convey to the customer the work free from any material defect or defect in title.

(2) The work is free from material defects if it has the agreed properties. Where no properties have been agreed upon, the work shall be deemed free from material defects when it is conform to the use assumed based on contract or, if no such use may be inferred, when it is conform to the usual use.

(3) Where the contractor produces another work than the ordered one or produces the work in smaller quantity or dimensions, while, under the circumstances, this may be deemed performance of contract, the situation shall be assimilated to the existence of a material defect.

(4) The work is free from defects in title where no third party can exercise rights against the customer.

Article 949. Considerable Overrun of Estimate

(1) If an exceeding of the estimate is needed, the contractor shall give notice to the customer without delay. Noncompliance with this obligation, entitles the customer to demand cancellation of contract and reparation of damage caused or his own liberation from the obligation to cover costs exceeding the agreed estimate.

(2) Where the excess over the estimate was unforeseeable upon conclusion of contract, the contractor is entitled only to the additional costs incurred, while the customer is entitled to accept this overrun or to demand cancellation of contract.

Article 950. Contractor's Duty to Give Notice

(1) The contractor is bound to give notice to the customer of the fact that:

a) the material furnished by the customer is unusable or low-quality;
b) the defects of the material will render defective the final product;
c) compliance with customer's indications threatens the durability or utility of the work;
d) there are other circumstances that do not depend on the contractor and which pose a threat to the durability or utility of the work.

(2) Where the contractor does not fulfill his duty under par.(1), the customer is entitled to claim reparation of damage.

Article 951. Contractor's Right to Cancel Contract

Where the customer, after being timely and accordingly notified by the contractor, does not replace within the agreed term the unusable or low-quality material, does not alter the indications regarding performance of work or does not remove other circumstances that pose a threat on the durability or utility of the work, the contractor is entitled to demand cancellation of contract and reparation of damage.

Article 952. Contractor's Right of Retention and Pledge

The contractor has a right of retention and pledge over the movable asset produced or improved by him, if, in the course of production or improvement, the asset came into contractor's possession. This provision shall not apply where at the moment of entering into possession of the asset the contractor was aware that the owner does not agree with the production or improvement.

Article 953. Institution of Mortgage on Plot for Construction

Where the object of contract is a construction or a part of construction, the contractor is entitled to demand the institution of a mortgage on customer's plot for construction, in order to ensure right resulting from the contract for work.

Article 954. Term for Performance of Contract for Work

(1) The contracting parties may agree on a general term of performance and, if necessary, on the term for starting the works, the term for performance of certain parts of the works and on the term for finalization of the work.

(2) The term may be modified only upon parties' agreement.

(3) If the parties agree, performance may take place within a limited or reduced term, in the presence of the customer.

Article 955. Effects of Impossibility to Finish Work

(1) If finalization of the work becomes impossible for reasons independent from parties' will, the contractor may not claim payment of reward.

(2) The contractor is entitled to reward if the impossibility to finish the work occurred due to the low-quality material provided by the customer or to his indications, contingent on fulfillment by contractor of his duty to give notice.

Article 956. Risk of Accidental Loss or Deterioration of Object of Contract

(1) Before receipt of the object of contract, the risk of its accidental loss or deterioration shall be borne by the contractor. This risk shall pass on the client upon receipt of the work.

(2) Where the client is in default in receiving the work, the risk shall pass on him on the date from which he is in default.

Article 957. Receipt

(1) After performance of work, the customer is bound to receive the work in the order, place and at the time set by legislation or contract.

(2) The receipt is a declaration by which the customer accepts the work, with or without reserves.

(3) The situation in which the customer does not take over the work within the term set by the contractor for this purpose shall be equated to receipt.

Article 958. Documentation of Receipt

(1) Discovered defects and deviations must be entered into the deed of receipt signed by the parties or drawn up unilaterally, setting the order, conditions and terms for removal of discovered defects and deviations.

(2) Defects and deviations are removed at contractor's expense.

(3) The customer who accepted the work without any reserves shall nevertheless keep a right against the contractor in case of hidden defects.

Article 959. Complaints

Complaints regarding hidden defects or deviations from contract terms that could not be discovered upon receipt of work shall be submitted to the contractor after being discovered.

Article 960. Removal of Defects

(1) Where the work is defective, the customer may demand removal of defects. The contractor may choose between removal of defects or performance of a new work.

(2) The contractor bears the costs of recovery, in particular costs for transportation, displacement, labor and price of materials.

(3) The contractor may refuse recovery if it is possible only at disproportionate costs.

Article 961. Contractor's Right to Produce New Work

Where the contractor produces a new work, he may demand from the customer return of the deficient work, according to the provisions regarding cancellation of contract.

Article 962. Customer's Right to Remove Defect

(1) After useless expiry of the term set by the customer for recovery, he may remove the defect himself and claim compensation for necessary costs, if the contractor does not refuse recovery due to disproportionate costs.

(2) The situation provided at par.(1) shall be governed by art.709, applied accordingly.

(3) The customer may demand from the contractor an advance payment for defect recovery costs.

Article 963. Cancellation of Contract due to Defects

(1) The customer may cancel the contract in accordance with art.709 par.(2), due to a defect in the work.

(2) Besides cases provided at art.709 par.(2) there is no need to set a term, even in the case when the recovery failed.

(3) The contractor is bound to compensate the customer for the damage caused.

Article 964. Diminution in Value of Work

The customer, who did not demand defect removal after the term set for this purpose by the contractor and also did not cancel the contract, may only reduce the reward by an amount equivalent to the diminution in the value of the work due to the defect.

Article 965. Effects of Fraud

Where defects have been fraudulently concealed, the contractor may not invoke an agreement by which customer's rights concerning defects are excluded.

Article 966. Payment of Reward under Contract for Work

(1) After receipt of work, the customer is bound to pay the reward agreed by the parties, unless legislation or contract provide payment in installments or otherwise.

(2) The customer is entitled to retain from the reward an amount sufficient to cover the reserves that he made upon receipt regarding defects in the work, until the necessary repairs or corrections are made.

(3) The customer may not exercise the right provided at par.(2) if the contractor grants sufficient surety regarding performance of his obligations.

Article 967. Contractor's Savings

(1) The reduction by the contractor of the costs of the work in relation to those set in the contract without reducing the quality and quantity of the work does not liberate the customer from the obligation to pay the established reward.

(2) The parties may agree on another order of distribution of savings from reduction of costs of the work.

Article 968. Period of limitation in Contract for Work

(1) The period of limitation is one year from the date of receipt of the work.

(2) Actions regarding constructions may be filed within 5 years.

(3) Where the contract provides for receipt of work in parts, the period of limitation runs from the day of receipt of work in total.

Article 969. Term of Warranty

Where legislation or contract set a warranty term, the claim may be submitted within this term. The period of limitation runs from the moment of claim submittal and if no such claim was submitted, the period of limitation runs from the date of expiry of the warranty term.

SECTION 3 SERVICE RENDERING

Article 970. Contract for Service Rendering

(1) By contract for service rendering, a party (service-provider) undertakes to render to the other party (beneficiary) certain services, while the latter undertakes to pay the agreed reward.

(2) The object of contract for service rendering are services of any character.

(3) Labor contract are regulated by labor legislation.

Article 971. Term of Payment

(1) Payment for services shall be done after service rendering.

(2) Where the payment for services is computed for certain periods, the amounts are to be paid after each separate period.

Article 972. Delay in Taking Over Services

Where the beneficiary is in default at taking over the services, the provider is entitled to demand payment of the agreed sum for services that could not be rendered due to default and is not bound to render services for this amount. However, the provider must accept deduction from the payment amount of the value of his savings due to non-performance of services or of his income obtained through service rendering to other persons within the same period, or of the value of services that he did not render in bad faith.

Article 973. Ensuring Conditions for Service Rendering

(1) Where the beneficiary is responsible for this, he must arrange and maintain premises, equipment or devices he is bound to procure for service rendering and to regulate service rendering that must be done under his guidance and in conformity with his indications in such manner as to ensure provider's protection against the risks to life and health, to the extent that the nature of the service allows it.

(2) Beneficiary's obligations according to par.(1) may not be preliminarily excluded or limited by a contract.

Article 974. Termination of Relations under Contract for Service Rendering

(1) Relations under contract for service rendering terminate upon the end of the period for which they have been set.

(2) Where the parties did not agree on the duration of contractual relations and it does not follow from the nature or purpose of the services, either of the parties may cancel the contract.

Article 975. Terms for Cancellation of Relations under Contract for Service Rendering

Relations under contract for service rendering may be cancelled:

a) daily, starting with the end of the next working day, where the payment is done by day;

b) at the latest on the first working day of the week, starting with the end of the next Saturday, where the payment is calculated by week;

c) at the latest on the 15th day of each month, starting with the end of the calendar month, where the payment is calculated by month;

d) with the observance of the 6-week term for notice, starting with the end of the calendar quarter, where payment is calculated by quarters or longer periods;

e) anytime, where payment does not depend on time intervals. Where relations on service rendering take the entire time of the contractor, the term of notice should be 2 weeks.

Article 976. Long-Term Contract for Service Rendering

Where the contract for service rendering is concluded for terms longer than 5 years, the provider may cancel the contract after 5 years. The term for notice is 6 months.

Article 977. Tacit Prolongation of Contract for Service Rendering

Where relations between parties will continue after the expiry of the term set, with the knowledge of the other party, the contract shall be deemed prolonged for an indefinite term, to the extent that the other party does not immediately reject such prolongation.

Article 978. Cancellation of Contract for Service Rendering for Grounded Reasons

(1) Where, after starting contractual relations, the contract for service rendering is cancelled for grounded reasons in accordance with art.748, the provider is entitled to demand a part of the reward for services rendered until the moment of cancellation.

(2) Where the provider cancels the contract for service rendering for reasons that do not pertain nonperformance of contractual terms by the beneficiary or where the beneficiary cancels the contract due to the fact that the provider does not comply with contract provisions, the provider shall not be entitled to reward, to the extent that in consequence of cancellation the beneficiary does not have an interest in the services rendered until that moment. Where advance payments were made, the provider is bound to reimburse the amounts in accordance with art.738 or, in case that the cancellation occurs for reasons not imputable to the provider, in accordance with the rules on unjust enrichment.

(3) Where cancellation occurs for reason of breach of contract terms by the other party, that party shall compensate for the damage caused by contract cancellation.

Article 979. Certificate regarding work performed by provider

Upon concluding a long-term relation, the provider may demand from the other party a written certificate of the work performed and period of work.

CHAPTER XII CARRIAGE

SECTION 1 GENERAL PROVISIONS ON CARRIAGE

Article 980. Contract of Carriage

(1) By a contract of carriage, a party (carrier) binds himself to the other party (passenger or consignor) to transport that party with its luggage or, respectively, to transport the cargo to the place of destination, while the other party undertakes to pay the agreed remuneration.

(2) Free of charge carriage of a person or asset shall not be governed by the rules stipulated in this Chapter and the carrier shall bear only a duty of prudence and diligence, save for the case when the carriage is performed in the course of entrepreneurial activity by the person offering public carriage services.

Article 981. Duty to Conclude Contract

A person, who publicly offers delivery of goods and transportation of passengers is bound to conclude a contract of carriage, provided there are no serious grounds for refusal.

Article 982. Successive Carriage and Combined Carriage

(1) Successive carriage is carriage performed by several carriers that succeed one after another, using the same transportation method (means).

(2) Combined carriage is carriage in which carriers succeed one after another, using different transportation methods (means).

Article 983. Subrogation of Carrier

(1) Where the carrier transmits, in total or in part, fulfillment of his obligations, the person that replaced him shall be deemed party to the contract of carriage.

(2) Payment made by a consignor to one of the carriers shall be deemed liberating.

Article 984. Term for Carriage of Passenger or Cargo

(1) The carrier is bound to transport the passenger and his luggage or the cargo within the terms established by law or contract or, absent such terms, within a reasonable term.

(2) The transportation must be made on the shortest and most reasonable itinerary.

Article 985. Carriage Fee

(1) Unless the law provides otherwise, the carriage fee agreed between the parties shall be paid for carriage of passenger and luggage or for carriage of cargo.

(2) Unless the law or contract provide otherwise, the carriage fee shall be paid prior to transportation of passenger and luggage or of cargo.

(3) The carrier has a right of retention over luggage and cargo until the payment of the carriage fee.

SECTION 2 PASSENGER CARRIAGE

Article 986. Ticket (Travel Title)

- (1) The contract for passenger carriage is confirmed (documented) by a ticket (travel title).
- (2) The ticket (travel title) may be transmissible or non-transmissible. The possibility of ticket transmission ceases to the latest upon beginning of the trip.

Article 987. Volume of Obligation

- (1) Passenger carriage includes loading, carriage and unshipping operations.
- (2) The carrier is bound to securely transport the passenger to the destination.

Article 988. Carrier's Liability

- (1) The carrier is bound to compensate for the damage caused to the passenger, save for the case when the damage is due to a *force majeure*, to passenger's state of health or to passenger's act. The carrier shall be bound to compensate for the damage caused even if it is due to his own state of health, to that of his agents or to vehicle's state or functioning.
- (2) Carrier's liability for damage due to delay is excluded, unless it has been expressly agreed otherwise or unless the carrier has acted willfully or with gross negligence.
- (3) Carrier's liability may not be excluded or limited by contract.
- (4) Limitations of the amount of damages in public transport must be approved by the Government.

Article 989. Carrier's Liability for Luggage

- (1) The carrier is liable for loss, destruction or deterioration of luggage that has been entrusted to him by the passenger, save for the case when force majeure, defect in luggage or passenger's fault is proved.
- (2) The carrier is not liable for loss of documents, money or other valuable assets save for the case when the nature or the value of the asset has been declared to him and the carrier undertook to transport it. The carrier is particularly not liable for the loss of hand luggage that remained under passenger's supervision, save for the case when the latter proves carrier's fault.

Article 990. Carrier's Liability in Successive or Combined Passenger Carriage

In case of successive or combined passenger carriage, the one performing the transportation during which the damage was caused shall be liable for it, unless one of the carriers assumed liability for the entire trip by an express stipulation.

Article 991. Passenger's Liability

The passenger is liable for damage caused to the carrier through his conduct or due to the nature or condition of his hand luggage, unless the damage was caused despite to passenger's according conduct.

Article 992. Contract Cancellation

- (1) The passenger may cancel the contract at any moment, unless this causes delays. The passenger is bound to pay to the carrier damages arising from cancellation.
- (2) Where the passenger becomes aware of circumstances pertaining to carriage, which he could not have been aware of or, if aware, it would have given him grounded reasons not to conclude the contract, he may cancel the contract.
- (3) The passenger may also cancel the contract when it is foreseeable that delays will occur as compared to the agreed time and duration. In such cases, passenger's obligation to pay damages does not arise.

SECTION 3 TRANSPORTATION OF GOODS

Article 993. Transportation by Several Vehicles

Where the vehicle by which the good is transported travels through a portion of the itinerary by sea, by rail, by river or canal, or by air, while the good is not subject to unloading (transshipment), the provisions of this section shall apply to the entire transportation.

Article 994. Form of Contract

- (1) A contract of carriage is ascertained upon by a bill of lading (consignment or other equivalent document).
- (2) Absence, loss or deterioration of the bill of lading does not affect contract validity.

Article 995. Drawing Up of Bill of Lading

- (1) Unless the parties agree otherwise, the bill of lading shall be drawn up by the consignor.
- (2) The bill of lading shall be drawn up at least in three originals, signed by the consignor and the carrier. The first remains with the consignor, the second is attached to the cargo, and the third is kept by the carrier.
- (3) If the goods are loaded on several vehicles or if there are cargos of different types or cargos shipped to different places, either the carrier or the consignor may demand the drawing up of a number of bills of lading equal to that of the vehicles used or to the number of cargo types or of the places to which the cargos are to be shipped.

Article 996. Incorrect Data Entered into Bill of Lading

- (1) The party is liable for damage caused to the other party by furnishing false or incomplete data for the bill of lading.
- (2) Liability for incorrectness of the bill of lading is borne by the party who drafted or modified the bill of lading.

Article 997. Carrier's Duties upon Cargo Taking Over

- (1) Upon taking over the goods, the carrier is bound to check:
 - a) The conformity of data from the bill of lading with the number, quantity and signs on the parcels;
 - b) External appearance of cargo and package;
 - c) Order of loading and arrangement of cargo within the vehicle.
- (2) Where the carrier does not have the necessary means for checking data mentioned at par.(1) let.a), he shall mention his grounded reserves in the bill of lading. Likewise, the carrier must justify reserves regarding external appearance and package of the cargo. The reserves do not bind the consignor if he did not acknowledge them expressly in the bill of lading.
- (3) The consignor may demand from the carrier to verify the gross weight or otherwise expressed quantity of the cargo, as well as the content of parcels. The carrier is entitled to compensation of costs for checking. The results of the verification are entered into the bill of lading.

Article 998. Consignor's Liability for Package

The consignor is liable to the carrier for damage caused due to inadequate packaging of the goods, to carrier's personnel, materials, transportation installations and to other cargos, as well as for all costs generated by such packaging, unless the defects were obvious and the carrier was aware of them upon taking over, without any reserves.

Article 999. Attachments to Bill of Lading

- (1) The consignor must attach to the bill of lading documents necessary for customs clearance or for other similar operations, prior to delivery to the place of destination, or to put these documents at the disposal of the carrier with all necessary indications.
- (2) The carrier is not bound to check whether the documents or the indications are according and sufficient. The consignor is liable towards the carrier for the damage caused due to errors or due to the fact that the documents or indications are incomplete or false, unless the carrier has a partial fault in this.
- (3) The carrier is liable for loss or inadequate use of the documents attached to the bill of lading handed to him. However, the carrier is not bound to pay damages greater than those for cargo loss.

Article 1000. Effects of Signing Bill of Lading

- (1) The bill of lading signed by the carrier serves as prima facie proof of conclusion and content of the contract of carriage, as well as of taking over of the cargo by the carrier.
- (2) Where the bill of lading does not comprise the grounded reserves of the carrier, there exists a prima facie presumption that upon taking over the cargo and package were in good state, while the number, quantity and signs on the parcels were conform to the data in the bill of lading.

Article 1001. Consignor's Right to Dispose of Cargo

- (1) The consignor is entitled to dispose of the cargo. In particular, he may demand from the carrier to cease further transportation of cargo, to change the place of delivery or the consignee mentioned in the bill of lading.
- (2) The right provided at par.(1) ceases as of moment when the second copy of the bill of lading is handed out to the consignee or when the latter exercises his right provided at art.1002 par.(2). From this moment, the carrier must submit to addressee's instructions.

(3) Where the consignor makes a note in this regard on the bill of lading, consignee's right of disposal arises at the moment of the drawing up of the bill of lading.

(4) Where the consignee, upon exercising his rights of disposal, ordered delivery to a third party, the latter cannot, in turn, appoint another consignee.

(5) The exercise of the right of disposal is subject to the following rules:

a) the consignor or the consignee mentioned at par.(3), that intend to exercise the right of disposal, must submit the first copy of the bill of lading, where the new instructions given to the carrier are entered, and bear the damage caused, including carrier's costs arisen by executing those instructions;

b) execution of instructions must be possible at the moment when they reach the person bound to execute them and must not hinder carrier's current activity and cause damage to other consignors or consignees;

c) the instructions must not lead to the fragmentation of the carriage.

(6) Where the carrier cannot execute the instructions received by virtue of par.(5) let.c), the carrier must give immediate notice to the one who issued the instructions.

(7) The carrier that did not execute the instructions given in compliance with the provisions of this article, or who does execute such instructions without soliciting the submittal of the first copy of the bill of lading shall be liable towards the entitled person for the damage caused therefore.

Article 1002. Consignee's Rights upon Receiving Cargo

(1) After the cargo reaches the place set for delivery, the consignee is entitled to request from the carrier, against a receipt declaration, the second copy of the bill of lading and handing over of the cargo.

(2) Where loss of the cargo has been established or where the cargo has not been delivered within the term provided at art.1010, the consignee may on his own behalf exercise against the carrier rights arising from the contract of carriage.

(3) The consignee exercising the rights pertaining to him under para.(1) must pay the entire amount of costs resulting from the bill of lading. In case of disputes in this regard, the carrier is bound to hand over the cargo, only if the consignee grants surety.

Article 1003. Impossibility to Perform Contract

(1) Where, prior to or after the cargo reached its destination, performance of contract under the terms set in the bill of lading became impossible, the carrier must demand indications from the entitled person, based on art.689, in order to dispose of the cargo.

(2) Where the circumstances allow fulfillment of carriage under terms different from those set in the bill of lading and the carrier does not receive indications from the entitled person within a reasonable term, the carrier must take the measures that seem to correspond to the greatest extent to the interests of the one entitled to dispose.

Article 1004. Circumstances Preventing Cargo's Handing Over

(1) Where the consignee refuses to take over the cargo, the carrier is entitled to dispose of it without presenting the first copy of the bill of lading.

(2) Even if he refused to take over the cargo, the consignee may demand delivery as long as the carrier did not receive a contrary indication from the consignor or did not dispose of the cargo.

(3) Where an obstacle for delivery appears after the consignee, by virtue of his powers under art.1001 par.(3), has given instructions that the cargo be delivered to a third party, upon application of par.(1) and (2) of this article, the consignee shall replace the consignor and the third party shall subrogate to the consignee.

Article 1005. Carrier's Right to Compensation of Costs Incurred upon Execution of Consignor's Indications

(1) The carrier is entitled to demand compensation of costs incurred as a consequence of the request and execution of indication, unless he is bound by contract or by law to bear those costs.

(2) In cases mentioned at art.1003 par.(1) and at art.1004, the carrier may unload the cargo immediately, on account of the person entitled to dispose of it. However, he may entrust the cargo to a third party and, in such case, be liable only for the prudence in choosing the third party. The cargo shall remain charged with claims deriving from the bill of lading and with all other costs.

(3) Where the cargo consists of perishable goods or if the state of the cargo justifies such action, or if the costs of storage are disproportionate in relation to the value of the cargo, the carrier may sell the cargo without waiting for indications from the person entitled to dispose. The carrier may also sell the cargo in other cases, if within a reasonable time he does not receive from the person entitled to dispose contrary instructions, performances of which may be demanded from him based on the principle of fairness.

(4) Where the cargo is sold in accordance with the provisions of this article, the proceeds shall be made available to the person entitled to dispose of the cargo after subtracting the costs charging the cargo. Where these costs exceed the price obtained, the carrier may claim the difference.

(5) The order of sale is determined according to the laws and customs of the place where the cargo is located.

Article 1006. Right of Retention over Cargo

As long as the carrier can dispose of the cargo he has a right of retention over it for all costs arisen under the contract of carriage.

Article 1007. Grounds for Carrier's Liability

(1) The carrier bears responsibility for partial or complete loss or deterioration of the cargo, if the cargo was lost or damaged within the time from taking it over up until delivery; he is also responsible for delay of delivery. The carrier is also held liable to compensate for the damage caused for nonperformance of other contractual obligations. The amount of compensation claim may be limited by contract.

(2) The carrier is liable in the amount of 100% of the carriage fee for delay in delivery to the place of destination and is bound to compensate for the damage caused therefor.

(3) Exoneration or limitation of carrier's liability may be provided only in the cases and under the conditions prescribed by law.

Article 1008. Exoneration from Liability

(1) The carrier shall be exonerated from liability for destruction, loss or deterioration of cargo or for delay in delivery, if:

- a) these are due to the fault of the person authorized to dispose of the cargo;
- b) consignor's agent accompanied cargo transportation;
- c) these are due to the instructions of the person authorized to dispose of the cargo, unless the losses were inflicted by the carrier;
- d) these are due to defects inherent to the cargo;
- e) these are due to the natural perishable character of the cargo.

(2) The carrier may not be exonerated from liability due to defects in the rented vehicle or due to the fault of the lessor and of his employees, involved in the process of cargo transportation.

(3) With no prejudice to the provisions of art.1009 para.(2)-(5), the carrier is relieved of responsibility if cargo loss or damage has been inflicted under one or several of the following circumstances:

- a) an open, uncovered vehicle was used, and such utilization was explicitly agreed upon and mentioned in the bill of lading;
- b) absence or defects in packaging;
- c) manipulation, loading, arrangement and unloading of goods were performed by the consignor, consignee or a third party acting on behalf of either of them;
- d) complete or partial loss or deterioration of the cargo occurred in consequence of its natural properties, in particular by breaking, corrosion, internal spoiling, drying, spilling, normal losses in weight or attack of insects or rodents;
- e) animals were transported.

(4) If, by virtue of this article, damage was caused partially due to circumstances for which the carrier bears no responsibility, and partially by circumstances that are imputable to him, the carrier shall be liable only to the extent that the damage has been caused by circumstances of the second category.

Article 1009. Burden of Proof

(1) If the carrier maintains that the loss or damage of the goods, or delay of their delivery is due to circumstances mentioned in art.1008 para.(1), the burden of proof is upon him.

(2) If the carrier maintains that under the circumstances the delay or damage could have been caused by one or several dangers specified in art.1008 par.(3), the damage is deemed to have been caused by those factors. The person authorized to dispose of the cargo may prove that the damage has not been caused by that danger or not only by that danger.

(3) The presumption established at par.(2) does not apply to the circumstances specified in art.1008 par.(3) let.a) in the event of extraordinary shipment or loss of entire parcels.

(4) If the goods are carried by a vehicle which is specially equipped to protect the cargo against heat, cold, temperature drops or humidity, the carrier may rely on provisions of art.1008 par.(3) if he proves that he has taken all possible measures to select, employ, and utilize that special equipment and complied with all special instructions given in this regard.

(5) The carrier may rely on art.1008 par.(3) let.d) only if he proves that he has taken all measures which must be usually taken and complied with all instructions given to him.

Article 1010. Delay in Delivery

A delivery is deemed to have been delayed if the cargo was not delivered by the fixed time or, when the time is not fixed, if the actual duration of transportation, under the given circumstances, exceeds the duration that would have been sufficient for a forehanded carrier under normal circumstances.

Article 1011. Presumption of Cargo Loss

(1) The person authorized to dispose of the cargo may, without presenting any evidence, consider the cargo lost if, within thirty days after the fixed delivery date, the cargo has not been delivered or, if the date is not fixed, after the expiration of sixty days from the time when the carrier took over the cargo.

(2) The person authorized to dispose of the cargo, upon receiving compensation for the damage caused by loss of cargo, may demand in writing that an immediate notice be given to him if the lost cargos were found within one year from compensation payment. This request must be confirmed in writing by the person bound.

(3) Within thirty days from receiving notice under para.(2), the person authorized to dispose of the cargo may demand that delivery of the goods against satisfaction of the claims under the bill of lading and on condition that the compensation received be returned; if necessary, this may be done after deduction of costs incurred on compensation for the damage. The claims for compensation on account of carriage delay, according to articles 1003 and, potentially, 1016 remain unchanged.

(4) If no claim is put forward as specified in par.(2) of this article, or if there is no instruction with regard to the term specified in par.(3) of this article, or if the cargo is found after the expiration of one year from compensation payment, the carrier may dispose of the cargo in conformity with the rules effective in the place where the cargo is located.

Article 1012. Delivery without Taking over After-Payment

If the cargo has been handed over to the consignee without taking over the after-payment, which the carrier was bound to take over, the carrier, while keeping the right of recourse action against the consignee, shall be bound to compensate the consignor for the value of the after-payment.

Article 1013. Rules for Shipment of Dangerous Goods

(1) If the consignor ships goods which are dangerous, he is obliged to provide the carrier with precise information regarding the nature of the danger and instruct him of the necessary security measures. If all this information is not entered in the bill of lading, the consignor or the consignee must produce other evidence that the carrier knew of the exact nature of the danger pertaining to cargo transportation.

(2) The carrier may, at any time and place, unload, destroy or render harmless the dangerous goods, without duty to compensate, if he was not warned of the danger under the conditions of para.(1). The consignor is also responsible for damage and costs caused by hand-over, transportation, unloading and destruction of such cargos.

Article 1014. Determination of Cargo Value in Case of Loss and Payment of Damages

(1) If under the provisions of this Section the carrier is bound to compensate for the damage caused by partial or complete loss of the cargo, the damages are paid according to the value of the cargo at the place and the time of hand-over.

(2) The value of the cargo is determined on the basis of the stock exchange price, and if there is no such price, on the basis of the market price, and if the latter does not exist either, on the basis of the usual price of goods with similar properties.

(3) Besides the damages provided at par.(1), carriage fee, customs duties and other transportation costs are also subject to compensation, entirely – in case of complete loss, and partially – in case of partial loss.

(4) If delivery of the goods is delayed and the person authorized to dispose of the cargo proves that damage has been caused thereby, the carrier must compensate for the damage, but only to the amount of the value of those goods.

(5) Compensation to a greater amount than that indicated at par.(4) may be demanded only if, according to art. 1016, a special interest in that delivery has been stipulated.

Article 1015. Liability for Cargo Deterioration

(1) If the goods have deteriorated, the carrier must compensate for the amount by which the value of the goods has diminished. The amount of damages is determined according to the procedure specified in art.1014 par.(1), (2) and (4).

(2) Where the entire cargo has depreciated in consequence of deterioration, the damages calculated in accordance with par.(1) may not exceed the amount that should have been paid in case of total loss.

Article 1016. Consignor's Special Interest

(1) The consignor, having made an extra payment, may thus mark his special consideration in the carriage in contemplation of loss or deterioration of the goods, or delay of delivery.

(2) If special consideration in the carriage has already been expressed, regardless of the compensation provided by articles 1014 and 1015, an additional compensation for damage may be demanded in the amount expressed in the consideration.

Article 1017. Right to Interest of Person Entitled to Dispose of Cargo

The person entitled to dispose of the cargo may demand payment of interest on the compensation due to him for the damage, in the amount set by art.619. The interest accrues from the day this person raises a claim against the carrier, or, if no claim was raised, from the day of filing of the suit.

Article 1018. Carrier's Rights in Case of Extra-Contractual Claims

(1) If spoilage, loss, deterioration or delay during the carriage that is governed by this Section trigger submittal of extra-contractual claims, under applicable law, the carrier may, in contrast, rely on the provisions of this Section, which exclude his liability, or determine or limit the amount of compensation.

(2) If any claims for extra-contractual liability are submitted on account of a loss, deterioration or delay, with respect to carrier's agent, he may rely on the provisions of this Chapter, which exclude his liability, or determine or limit the amount of compensation for damage.

Article 1019. Inadmissibility of Release from Liability

The carrier may not rely on those provisions of this Section, which exclude or limit his liability or relieve him of the burden of proof, if the damage has been caused willfully or with gross negligence.

Article 1020. Submittal of Claims

(1) In case of nonperformance of contractual obligations, the parties are bound to preliminarily submit a claim.

(2) If the consignee accepts the cargo without checking it together with the carrier and does not raise any claims against the carrier on account of spoilage, deterioration or loss, the consignee is deemed to have accepted the goods in the condition specified in the bill of lading, until the reverse is proved. In case of shortages or flaws noticeable upon external inspection, the claims must be submitted on the day of receipt of the goods.

(3) If the receiver and the carrier have jointly checked the condition of the cargo, evidence contrary to the results of this inspection can be admitted only if the shortage or the flaw is unnoticeable upon external inspection and the consignee makes a written claim within seven days, without counting weekends and legal holidays.

(4) Where the reserves do not pertain to shortages or flaws that may be noticed upon external inspection, the claims must be submitted in writing, within 7 days after receipt, without counting weekends and legal holidays.

(5) In case of delay of delivery, damages may be claimed only if a written claim was submitted to the carrier within 21 days from the moment when the cargo has been made available to the consignee.

(6) Upon calculating the terms established in this article, the day of receipt or the day on which the cargo was put at the disposal of the consignee shall not be taken into account.

(7) The carrier and consignee are bound to offer to each other all according facilities for the necessary checks and findings.

Article 1021. Period of Limitation in Contract of Carriage

(1) The period of limitation in relations under contract of carriage is one year. In case of willful conduct or gross negligence, the period of limitation shall be three years.

(2) The prescription begins to run:

- a) in case of partial loss, deterioration or delay – from the day of cargo handing over to the consignee;
- b) in case of complete loss of cargo - on the thirtieth day after the expiration of the term of carriage or, if no such period has been fixed by the parties or by the law – on the sixtieth day after cargo taking over by the carrier;
- c) in all other cases – upon expiration of three months from the day of conclusion of the contract of carriage.

Article 1022. Liability of Successive Carriers

(1) If, under the same contract, a carriage is performed by different carriers who successively replace each other, each of them bears responsibility for performance of the entire carriage.

(2) The second carrier and every subsequent carrier becomes party to the contract to the extent set in the bill of lading, by taking over the cargo and the bill of lading.

Article 1023. Cargo Taking Over from Previous Carrier

(1) The carrier, who takes over the cargo from the previous carrier, must issue to the latter a certificate of receipt, dated and signed. He must enter his name and address on the second copy of the bill of lading. If necessary, the carrier shall write his objections according to art.997 par.(2) on the second copy of the bill of lading and on the certificate of receipt.

(2) Relations between successive carriers are regulated by art.1000.

Article 1024. Submittal of Claims against Successive Carriers

(1) Claims for damages in consequence of a loss, deterioration may be enforced only against the first and the last carrier or against the carrier during whose turn of performance the goods were lost, damaged or delayed in hand-over.

(2) One suit may be brought against several carriers.

Article 1025. Right to Recourse Action

Where a carrier has paid damages by virtue of the provisions of this Chapter, he shall be entitled to recourse action, in accordance with the following rules:

a) if spoilage, loss or deterioration has been caused by one of the carriers, he shall bear alone the compensation paid by him or by another carrier;

b) if spoilage, loss or deterioration has been caused by two or more carriers, each of them shall pay an amount proportionate to his share of responsibility. Where the share of responsibility of each carrier cannot be established, the carriers shall be bound contingent on the share from the carriage fee that pertains to each of them;

c) if the carrier liable for damage cannot be identified, the compensation for damage shall be paid by all carriers, in the proportion determined according to let.b).

Article 1026. Insolvency of Carrier

If one of the carriers is insolvent, the amount from compensation that pertains to him and which he has not paid, shall be distributed among the other carriers in proportion to their share in the carriage fee.

Article 1027. Exceptions Raised in Case of Recourse Action

The carrier against whom the recourse action is filed in accordance with art.1025 and 1026, may not object against the fact that the carrier exercising the recourse has made payment to the damaged persons without being indebted, if the compensation has been set by court judgment and if the carrier against whom the recourse is exercised was duly notified of the pending trial, having the possibility to intervene in it.

Article 1028. Carrier's Right to Derogate from Provisions of This Code

Without prejudice to the interests of the consignor or consignee, the carriers are entitled to agree on certain rules that derogate from the provisions of art.1025 and 1026.

Article 1029. Nullity of Agreements

(1) Without prejudice to the provisions of art.1028, any clause that directly or indirectly derogates from the provisions of this chapter shall be null and without effect. The nullity of such clauses does not trigger nullity of the remaining contract clauses.

(2) In particular, the agreement by which the carrier leaves compensation claims on account of cargo insurance, as well as other similar agreements, shall be null.

(3) The agreement by which the burden of proof is reversed shall also be null.

CHAPTER XIII MANDATE

Article 1030. Contract of Mandate

(1) By a contract of mandate, the party (mandator) empowers the other party (mandatary) to represent it upon conclusion of transactions, while the latter, by accepting the mandate, undertakes to act on behalf and on account of the mandator.

(2) The mandator is bound to cooperate with the mandatary in regard of mandate performance.

Article 1031. Acceptance of Mandate

Acceptance of mandate may be express or tacitly agreed upon. Tacit acceptance results from the acts or even from silence of the mandatary.

Article 1032. Special Mandate and General Mandate

(1) The mandate may be specially issued for a legal operation or for certain determined operations (for a transaction or several transactions) or it may be general (for all mandator's transactions).

(2) The mandate formulated in general terms confers powers to undertake only acts of administration and preservation. The empowerment to conclude other acts must be formulated only in an express clause, except for the mandate certified at the notary and issued in advance for case of mandator's incompetence.

Article 1033. Remuneration of Mandatary

- (1) The mandator is bound to pay remuneration to the mandatary only in cases provided by the contract or by law.
- (2) The professional mandate is presumed to be onerous.
- (3) In the case of onerous mandate, the mandator is bound to pay to the mandatary the remuneration set by contract, based on legal provisions, usages or contingent on the value of services rendered.
- (4) The mandatary is entitled to retain from the amounts that he must convey to the mandator sum that the latter owes for performance of mandate. The mandatary is also entitled to retain from the amounts entrusted to him for performing the mandate sums payable to him.

Article 1034. Powers of Mandatary

- (1) Powers of the mandatary are not limited to express mandate provisions, but extend to all that may be inferred from its content and substance, with the exceptions provided at art.1032 para.(2).
- (2) The mandatary may conclude all acts that may be deduced from his powers and which are necessary for mandate performance.
- (3) Powers granted to a person to conclude acts that pertain to the profession or function he exercises and which result from their nature need not be expressly stipulated.

Article 1035. Mandatary's Prudence and Diligence

The mandatary is bound to act in the interest of the mandator with prudence and diligence and to avoid conflicts between his personal interests and those of the mandator.

Article 1036. Mandate Performance by Third Party

- (1) The mandatary is bound to fulfill the mandate personally, unless the contract allows transmittal of mandate to a third party. Employment of assistants in view of fulfilling the mandate is allowed.
- (2) Where mandator's interests require this, the mandatary must reassign powers to a third party if, due to unforeseeable circumstances, he cannot exercise the mandate and cannot notify the mandator in due time.
- (3) The mandatary shall be liable for the acts of the third party to whom he reassigned the mandate without authorization as for his own acts.
- (4) Where the reassignment of the mandate to a third party was allowed, the mandatary shall be liable only for the fault in choosing the third party and for the mode in which the instructions were given.
- (5) The mandator is entitled in all cases to file suit against the person that assisted or replaced the mandatary.

Article 1037. Appointment of Several Mandataries

- (1) Where several mandataries are appointed for the conclusion of a transaction, the mandate shall produce effects only if all mandataries accept it.
- (2) The mandataries must jointly conclude all acts mentioned in the mandate, unless it is stipulated or it follows otherwise from the mandate. They shall be jointly and severally liable for performance of assumed obligations.
- (3) Where the mandatary concludes by himself the acts that he was empowered to conclude together with another person, this shall be deemed as exceeding of his commission, unless when the act was concluded on terms more favorable to the mandator than the agreed ones.

Article 1038. Double Representation

- (1) The mandatary who accepted to represent for the conclusion of the same act persons whose interests could be in conflict must notify each mandator, save for the case when usages or mandators' awareness of double representation liberate the mandatary from this duty.
- (2) In case of double representation the mandatary shall act impartially in the interest of each mandator.
- (3) The mandator who was not aware of the double representation and suffered damage may demand annulment of the act concluded by the mandatary.

Article 1039. Conclusion of Act with Himself

- (1) The mandatary may not conclude acts on behalf of the mandator with himself, even through representative, save for the case when he is expressly authorized or when the mandator is aware and does not object.
- (2) Only the mandator may demand annulment of act concluded with breach of provisions of par.(1).

Article 1040. Deviation from Mandator's Instructions

- (1) The mandatary is bound to carry out mandator's instructions.
- (2) The mandatary is entitled to deviate from mandator's instructions if, under the circumstances, he can assume that the mandator would approve of the deviation if he had knowledge of the state of affairs. Before making the deviation the mandatary shall give notice to the mandator and await his decision, unless there is danger in delay.
- (3) If carrying out the instructions by the mandatary may inflict a significant damage on the mandator, the mandatary may carry out the instructions only after he gives notice to the mandator concerning the damage and the latter does not change his instructions.

Article 1041. Duty to Give Information and Report on Mandate Performance

- (1) The mandatary is bound on mandator's demand to give him all necessary information and explanations on mandate performance, and, upon performance, to notify the mandator without delay and to render a report.
- (2) An agreement which limits or excludes in the future mandatary's duties, as specified in par.(1), requires written form.

Article 1042. Confidentiality of Information Known to Mandatary

- (1) The mandatary is bound not to disclose the facts he knows by virtue of his occupation, if the mandator has a legitimate interest not to reveal them, unless there is no statutory duty to reveal the secret or unless the mandator permits the mandatary to reveal it.
- (2) The duty of non-disclosure also exists after the termination of the mandate.

Article 1043. Duty to Hand Over to Mandator Results of Performance

The mandatary is bound to hand over to his mandator all that he received for performance of the mandate and did not use for this purpose, as well as all that he obtains from performing the contract.

Article 1044. Prohibition to Use Information or Assets for Own Benefit

- (1) The mandatary may not use to his own benefit information obtained or assets received or which he is bound to administrate during performance of mandate, unless the mandator gave his consent on this or the right of use follows from law or mandate.
- (2) Where the mandatary uses information or assets without authorization, he shall be bound, besides compensating for the damage caused, to pay to the mandator an amount equal to his enrichment due to the use of information or an according rent for the used assets. If the mandatary spends for his own benefit money, which he has to give to the mandator or to spend for the latter, the mandatary is bound to pay interest upon it from the time of spending.

Article 1045. Protection of Mandator's Rights

Any property which the mandatary has purchased at mandator's expense, but on his own behalf, during performance of contractual obligations, or which the mandator has given to him for performance of the mandate, is deemed mandator's property in relationships with mandatary's creditors.

Article 1046. Reimbursement for Mandatary's Costs

- (1) If, for the purpose of mandate performance, the mandatary incurs any costs, which he may regard as necessary under the circumstances, the mandator is bound to reimburse him.
- (2) Claims under para. (1) cannot be submitted when the costs are to be compensated through remuneration. The costs that are ordinarily incurred upon performance of obligations similar to those set in the contract or costs that would have been made by the mandatary even in absence of contract shall be reimbursed through remuneration, if their reimbursement is not usually done and unless it was agreed otherwise.
- (3) The mandator shall on mandatary's demand make advance payments for costs necessary for mandate performance.

Article 1047. Compensation for Damage Caused to Mandatary

- (1) The mandator is bound to compensate for the damage for which he is not culpable and which has occurred during mandate performance by the mandatary, if the damage was caused through mandator's instructions or as a result of a serious danger involved in the performance of the contractual obligation.
- (2) The claim under par.(1) does not arise if the damage suffered has been covered on account of the remuneration or has been caused by an act that was not necessary for performing mandatary's contractual obligations or by an omission of the latter. If the settlement of damage on account of remuneration becomes disputable, the burden of proof is upon the mandatary.

Article 1048. Solidarity of Mandators

Where several persons appointed a mandatary for a common business, each of them shall be jointly and severally liable for all effects of the mandate.

Article 1049. Mandatary's Liability in Case of Gratuitous Mandate

Where the mandate is gratuitous, the mandatary shall be liable only for willful conduct and gross negligence.

Article 1050. Revocation of Mandate

- (1) The mandate may be revoked at any time by either of the parties.
- (2) Revocation of mandate which has been notified only to the mandatary may not be relied upon in relation to third parties that concluded contract in good faith with the mandatary, without being aware of the revocation.
- (3) The mandatary can revoke the mandate only in such manner that the mandator can make other arrangements for taking care of the acts, unless a serious cause exists for revocation.
- (4) If the mandator revokes the mandate, he is bound to compensate the mandatary for all necessary costs incurred while performing the contract. If the mandate is onerous, the mandator is bound to pay to the mandatary the agreed upon remuneration.
- (5) The clause by which either party's right to revoke the mandate is excluded shall be null.

Article 1051. Mandator's Death or Incompetence

- (1) Contractual relations are not extinguished by the death of the mandator or by declaring him incompetent, unless it is agreed or appears otherwise from the essence of the contractual obligation.
- (2) If contractual relations terminate by mandator's death or incompetence, and if there is danger of loss for the mandator or his heirs in suspending the mandate performance, the mandatary shall continue performance of contractual obligations. Performance shall continue until the heir or mandator's legal representative can make necessary arrangements. Under such circumstances, contractual obligations shall be deemed valid.
- (3) Where contractual relations terminate by mandator's death or incompetence, the contract shall be deemed valid in relation to the mandatary until the moment when he became or should have become aware of the reason for termination.

Article 1052. Termination of Contractual Relations by Mandatary's Death

- (1) Contractual relations are extinguished by the death of the mandatary, unless it was agreed or it appears otherwise from the contractual obligation.
- (2) The heir of the mandatary shall without delay notify the mandator of the mandatary's death and shall make arrangements necessary to protect mandator's interests.

CHAPTER XIV TRUST

Article 1053. Contract of Trust

- (1) By a contract of trust, a party (trust founder) transfers assets into the fiduciary administration of the other party (trustee), while the latter undertakes to administrate the property in the interest of the trust founder.
- (2) The contract may indicate a third party as trust beneficiary, who can put forward his own claims against the trustee.
- (3) Public authorities may not become trustees.
- (4) The trustee may not be at the same time trust beneficiary.
- (5) Where trust is instituted on statutory grounds, rights of trust founder belong to the guardianship authority or to another person indicated by law.

Article 1054. Form of Contract of Trust

A contract of trust must be in writing

Article 1055. Object of Trust

- (1) The trust may be instituted on any asset, including an aggregate of assets, either existing at the time of contract conclusion or acquired later, including assets acquired by the trustee during contract performance.
- (2) The property attributed into trust also includes assets that replace the original ones, as equivalents or in consequence of certain transactions.
- (3) Money may not be separately attributed into trust, save for cases provided by law.

- (4) Assets attributed into trust shall be separated from other property of the trust founder, as well as from trustee's property.

Article 1056. Rights and Duties of Trustee

- (1) The trustee is bound to administer the trusted property in his own name, but at the risk and expense of the trust founder.
- (2) In relations with third parties the trustee exercises the power of owner. If the trustee, does not show for the founder's interests the same diligence as for his own affairs, he must compensate for the damage caused.
- (3) The trustee must make public the separation of property taken into trust from his own property and to maintain this publicity. He shall be liable towards the trust founder for disadvantages, losses and damage inflicted by confusion between the two properties.
- (4) The trustee may dispose of an immovable asset only in cases provided by law or the contract of trust.
- (5) Rights obtained by the trustee as a result of trust activity shall be included into the property received for administration, unless the contract provides for the duty to transmit them to the founder or the beneficiary.
- (6) Debts arising from trustee's activity shall be paid from assets attributed into trust.

Article 1057. Remuneration, Costs and Fruits

- (1) The trustee does not get remuneration for his activity, unless the parties agreed otherwise or it follows from legal provisions.
- (2) Where there is stipulation regarding remuneration, it may be set as percentage from income (profit) obtained from the administration of the entrusted property, or as a fixed money amount, or as procurement by the trustee of a part of the entrusted property, as provided by the contract of trust.
- (3) The trust founder incurs all costs on trust, unless the law or contract provide otherwise.
- (4) The fruits of the property belong to the trust founder.

Article 1058. Liability of Trustee

- (1) The trustee bears liability in relations with third parties for all acts concluded with observance of empowerments granted by the contract of trust. The liability is limited to the property that was received into trust.
- (2) After termination of trust and transmittal of the property to the trust founder, it may be enforced upon for claims that arose in connection with the trust.
- (3) Property attributed into trust may not be enforced upon for claims submitted against the trustee personally.
- (4) The trust founder and the beneficiary are liable for trustee's actions only when an illicit conduct may be imputed.

Article 1059. Note of Trustee's Status upon Conclusion of Transactions

- (1) The trustee must specify in the transactions that he acts as trustee. This condition shall be deemed observed if:
- a) upon conclusion of transaction, the other party was or should have been aware of the fact that the transaction is concluded by the trustee in this position;
- b) in the transaction concluded in writing, after the name or denomination of the trustee, the mention "T." is entered.
- (2) Where there is no mention in the transaction that the trustee acted in such position, he shall be personally liable towards the third parties only with his own property.

Article 1060. Application of Rules of Mandate

The relevant rules of mandate shall apply to trust relations.

**CHAPTER XV
COMMISSION**

Article 1061. Contract of Commission

- (1) By a contract of commission, a party (commissioner) undertakes to conclude transactions in his own name, but on account of the other party (principal), while the latter undertakes to pay remuneration (commission fee).
- (2) The transaction concluded by the commissioner with a third party gives rise to rights and duties only for the commissioner, even if the principal has been mentioned or participated in transaction performance.
- (3) Relations between the principal and the commissioner are similar to the rights and duties arising between mandator and mandatary, with the differences set by this Chapter.

Article 1062. Performance of Obligations by Commissioner

- (1) The commissioner must observe instructions received from the principal and perform obligations assumed in terms as favorable as possible for the principal.

(2) Where the commissioner concludes transactions under terms more favorable than those stipulated by the principal, the benefits shall be shared equally between him and the principal, unless the contract provides otherwise.

Article 1063. Commissioner Fee

(1) The principal is bound to pay to the commissioner the remuneration set by contract or usage.

(2) The commissioner may claim payment of commissioner fee even when performance of the transaction concluded by him did not take place due to the fault of the principal or in connection with his personality.

Article 1064. Deviation from Principal's Instructions

(1) The commissioner is entitled to deviate from principal's instructions if the interests of the latter require this or if there is no possibility to solicit principal's prior approval or if the reply was not received in due time.

(2) Where the commissioner sold the assets at a price lower than that stipulated by the principal, he must cover the difference, unless he proves that he could not sell the asset at the stipulated price and that by selling the asset at a lower price he avoided a even greater damage.

(3) Where the commissioner buys an asset at a price higher than the stipulated one, the principal must declare that he relinquishes the transaction concluded by the commissioner immediately upon being notified of the conclusion of that transaction. In a contrary case, it shall be deemed that the principal accepted the terms of the buy.

(4) Where the commissioner declares that he will cover for the difference in price, the principal may not relinquish the transaction.

Article 1065. Right over Asset that Is Transaction Object

The principal has a right of ownership over the asset conveyed to the commissioner or received by the latter for the principal.

Article 1066. Commissioner's Right of Retention

In view of securing claims under the contract of commission, the commissioner is entitled to retain assets that he is bound to convey to the principal or to persons indicated by the latter.

Article 1067. Performance of Transaction Concluded by Commissioner

(1) The commissioner must perform all obligations and exercise all rights under the transaction concluded in his name, but on principal's account.

(2) The commissioner is not responsible for nonperformance of obligations by third parties, save for the case when he granted surety to the principal for performance by third parties. In exchange for the surety the commissioner is entitled to a special remuneration.

(3) Where the third party breached its obligations, the commissioner must inform the commitment immediately and gather necessary proof. Upon principal's request the commissioner shall assign to the former rights arising from the transaction concluded in view of fulfilling the contract of commission.

Article 1068. Commissioner's Obligation to Insure Principal's Asset

The commissioner is bound to insure assets received from the principal or for the principal only in cases in which this is stipulated in the contract or results from usages.

Article 1069. Commissioner's Report

After performance of obligations or after cancellation of contract, the commissioner shall convey all that he received by virtue of contract and shall submit a report. Where there are objections regarding the report, the principal must inform the commissioner within 15 days from the receipt of the report, unless the contract provides for another term.

Article 1070. Receipt of Performance by Principal

The principal shall receive all that the commissioner executed by virtue of the contract of commission, shall inspect the assets and immediately inform the commissioner about defects, and shall release him of the obligations that he assumed towards third parties in view of performing the contract of commission.

Article 1071. Compensation for Commissioner's Costs

(1) The principal undertakes to compensate for all useful costs borne by the commissioner while fulfilling the contract of commission.

(2) Costs for preservation of principal's assets, including those received from third parties, shall be borne by the commissioner, unless the law or contract provide otherwise.

Article 1072. Cancellation of Contract on Principal's Initiative

(1) The principal is entitled to cancel the contract at any moment.

(2) In case of contract cancellation, the principal is bound to pay to the commissioner the set remuneration for the juridical acts that have already been concluded and to compensate for the damage caused by performance of contract.

Article 1073. Cancellation of Contract by Commissioner

The commissioner may cancel the contract of commission only in the case provided by contract, impossibility to perform the assumed obligation or if the principal does not perform contractual obligations.

Article 1074. Disposing of Principal's Assets

(1) Where the principal cancelled contract or was notified of contract cancellation by commissioner, he must give instructions regarding the assets found at the commissioner within one month.

(2) Where the principal does not fulfill the obligation provided at para.(1), the commissioner is entitled to place principal's assets on deposit on the account of the latter or to sell them at a price that is most convenient for the principal.

CHAPTER XVI FORWARDING

Article 1075. Contract of Forwarding

(1) By a contract of forwarding, a party (forwarder) binds himself, on his own behalf and at the expense of the other party (customer), to conclude a contract of carriage and perform acts needed in view of carriage accomplishment, while the customer is bound to pay the remuneration agreed upon (commission).

(2) The contract of forwarding is concluded in writing. If necessary for fulfilling contractual obligations, the customer must issue a proxy to the forwarder.

(3) The rules of mandate shall apply to forwarding, unless it follows otherwise from this Chapter.

(4) The norms of this Chapter shall also apply in cases when, in accordance with the contract of carriage, the obligations of the forwarder are exercised by the carrier.

Article 1076. Forwarder's Diligence

The forwarder is bound to perform forwarding, in particular regarding selection of carrier, with the prudence of a diligent forwarder. For this purpose, he must watch over customer's interests and follow his instructions.

Article 1077. Customer's Duties

(1) At forwarder's request, the customer is bound to timely provide the former with information about the cargo and with instructions necessary for drawing up carriage documents and for passing customs procedures and other formalities. The customer is bound to deliver relevant documents proving the accuracy of such information.

(2) In carrying a dangerous cargo, the customer must warn the forwarder about the type of danger and instruct him regarding safety measures.

(3) The cargo, regarding which the forwarder was not notified of the danger, may, at any time and place, be unloaded, destroyed, or rendered harmless without duty to compensate for the damage.

(4) The customer is bound, if the kind of the goods requires so, to pack them in compliance with the requirements of the carriage.

(5) If the cargo requires identification through marks, it must be marked in such a manner as to be clearly seen until the cargo is delivered.

(6) The customer bears liability for the damage caused to the forwarder by non-compliance with the requirements provided for in this article, except when the forwarder did not object against the absence or defects of package or identifiers, according to par.(4) and (5) of this Article, although such absence or defect was evident and known to him while taking over the cargo.

Article 1078. Checking of Cargo by Forwarder

The customer may, on condition of a special remuneration, demand from the forwarder to check the cargo item by item when the latter receives it.

Article 1079. Duty to Insure Cargo

The forwarder is bound to insure the cargo only if he receives customer's instruction to that effect. In the absence of such instruction the forwarder is bound only to insure the cargo on ordinary terms at an insurer chosen by him.

Article 1080. Determining Asset's Condition at Place of Destination

Where the condition of the asset was concluded upon in the absence of the parties, the delivery of the asset to the consignee justifies the presumption that the asset has been received without losses and deteriorations, except for the situation when the consignee submitted to the person that performed the delivery objections in which the type of damage was mentioned. Where losses of damage may be discovered upon external inspection, the objection must be submitted on the moment of delivery at the latest, while in regard of losses and damage that cannot be noticed upon external inspection, objections must be submitted on the third day after delivery at the latest.

Article 1081. Application of Rules on Carriage

Where the consignee does not take over the cargo at the place of destination or where the cargo cannot be delivered for other reasons, forwarder's rights and duties shall be set in accordance with rules on contract of carriage.

Article 1082. Forwarder's Right to Perform Carriage on His Own

(1) Unless it is set otherwise, the forwarder is allowed to perform the carriage himself. The permission is valid only to the extent that the duty to tend to customer's rights and interests is fulfilled.

(2) Where the forwarder makes use of the right specified at par.(1), he shall concomitantly assume carrier rights and duties.

Article 1083. Forwarder's Liability

(1) As usually, the forwarder is liable for duties arising under contract of forwarding only in case of his own fault or fault of his assistants.

(2) The forwarder cannot rely on the provisions of this Chapter that exclude or limit his liability or reverse the burden of proof, where the damage has been caused by willful conduct or gross negligence.

Article 1084. Damage Caused by Third Parties

Where the damage is caused by a third party participating in contract performance, the forwarder is bound, upon customer's request, to assign to the latter his claims against the third party, save for the case when, by virtue of a special agreement, the forwarder assumes exercise of claim on customer's account and risk.

Article 1085. Payment of Remuneration

Remuneration under contract of forwarding, becomes due on the moment when the forwarder handed over the cargo to the carrier.

**CHAPTER XVII
DEPOSIT****Article 1086. Contract of Deposit**

By a contract of deposit, a party (depository) is bound to keep in his custody a movable delivered to him by the other party (depositor) for a certain or undetermined term, and to return the asset upon request.

Article 1087. Refuse to Convey or Receive Asset

(1) The depository cannot demand from depositor conveyance of asset. However, unless the law or contract provide otherwise, the depositor is liable for the damage caused to the depository by willful conduct or gross negligence by refusing to convey the asset.

(2) Unless the contract provides otherwise, the depository is entitled to refuse receipt of the asset where it is not conveyed to him within the established term.

Article 1088. Remuneration for Deposit

(1) The deposit is undertaken gratuitously, unless the contract stipulates otherwise. If the depositary undertakes the deposit as part of his professional activity, the remuneration is deemed to have been tacitly agreed upon.

(2) Where the parties did not agree on the amount of remuneration, it shall be deemed agreed upon as the tariff remuneration, where such tariffs exist, or, in the absence of tariffs, as the usual remuneration.

(3) The depositor is bound to compensate depositary's costs necessary for keeping the asset.

Article 1089. Duty to Keep Asset

(1) Under onerous deposit, the depositary is bound to take care of the integrity of the received asset with the diligence and prudence of a provident entrepreneur.

(2) Under gratuitous deposit, the depositary is bound to tend to asset's integrity as for his own asset.

Article 1090. Prohibition of Request Proof of Ownership

The depositary may not demand from the depositor or the person to whom he must return the asset proof of the fact that he is the owner of the asset.

Article 1091. Impermissibility of Asset's Conveyance into Deposit of Third Party

(1) The depositary may not, without depositor's consent, convey the asset into the deposit of a third party.

(2) In case of conveyance of the received asset to a third party, with depositor's consent, the depositary remains liable only for the selection of the third party and of the place of deposit.

Article 1092. Inadmissibility to Use Deposited Thing

Unless the contract provides otherwise, the depositary is not entitled without depositor's consent to use the asset deposited with him, except when the use is necessary for asset's preservation.

Article 1093. Change of Deposit Conditions

(1) As the case may be, the depositary is entitled to change the conditions of deposit, only after serving notice to the depositor and receiving his approval. Similarly, the depositary is bound to inform the depositor about seizure or exercise of the claims of third parties over the deposited asset.

(2) Where the change in the conditions of deposit is necessary to avoid the risk of asset's destruction, loss or deterioration, the depositary is entitled to alter the order, place and other conditions of deposit, without seeking depositor's approval.

(3) The arising of a serious danger of deterioration or spoilage of the deposited asset or the occurrence of other conditions that threaten the security of asset custody entitles the depositary to sell the asset at a price determined under the existent situation, if the depositor cannot take any action.

(4) Where circumstances mentioned at par.(3) arose for reasons for which the depositary is not responsible, he shall be entitled to retain sale costs from the amount received from asset's sale.

Article 1094. Compensation for Damage Caused by Asset's Properties

The depositor shall compensate the depositary for any damage caused by the properties of the asset deposited with him if the former knew or could not have known about such properties. The depositor is not liable for that damage if he notified the depositary regarding asset's properties or if the depositary was aware of them.

Article 1095. Duty of Return

(1) The depositary is bound to return the asset in its condition at the moment of return. The risk of accidental loss or deterioration remains on the depositor.

(2) The depositary, from whom the deposited asset has been taken and who received an amount in money or another asset instead, must return to the depositor that what he received.

(3) The successor of the depositary who sold in good faith the asset of which he did not know that it is held in deposit, must only return the price received or to assign his claim against the buyer, if the price has not been paid.

Article 1096. Right to Withdraw Deposited Asset

(1) The depositor is entitled to withdraw the deposited asset, even if the contract provides for a fixed term of deposit.

(2) Where the deposit is made in the interest of the depositary, the depositor is bound to compensate for the damage caused by early withdrawal of the asset.

Article 1097. Duty to Withdraw Asset

(1) The depositary may, at any time, require that the asset deposited be taken back, if the contract does not fix a term for deposit.

(2) The depositary may exercise the right specified at par.(1) only in such a way as to enable the depositor to deposit the asset somewhere else, except when there are grounded reasons to demand immediate withdrawal.

Article 1098. Place of Return of Deposited Asset

The return of the asset deposited shall be made at the place where the asset was handed over to the depositary, except when the parties agreed otherwise.

Article 1099. Duty to Transfer Fruits of Deposited Asset

(1) The depositary is bound to transfer to the depositor all fruits received during the period of custody. He shall be liable for nonperformance of this obligation only in case of willful conduct or gross negligence.

(2) The depositor is bound to reimburse the depositary for the necessary costs owing to the collection and preservation of the fruits.

(3) The depositary is bound to pay interest for deposited money only from the day on which he defaulted on return of the money.

Article 1100. Costs for Return

(1) Under gratuitous deposit, the costs for return shall be borne by the depositor.

(2) Under onerous deposit, the costs for return shall be borne by the depositary.

Article 1101. Depositary's Liability in Case of Delay in Asset's Taking Over

Where a term was set for taking over the asset, following its expiry the depositary shall only be liable for damage caused by willful conduct or gross negligence.

Article 1102. Duty to Pay Remuneration

If the parties agreed on an onerous deposit, the depositor is bound to pay the remuneration upon termination of the contract, unless the contract provides otherwise.

Article 1103. Right of Retention of Deposited Assets

The depositary is entitled to retain the deposited asset after expiry of the term set in contract until he receives remuneration due and reimbursement for costs owing to custody.

Article 1104. Deposit of Generic Assets

Where generic assets are deposited, in the absence of an agreement to the contrary, they shall pass into the ownership of the depositary. In such case, the depositary undertakes to return to the depositor an equal or otherwise agreed amount of assets of the same kind and quality.

Article 1105. Specifics of Hotel Deposit

(1) Hotels, hostels, sanatoriums, rest homes and other similar institutions are liable for any damage caused to the customer by loss, destruction or deterioration of the asset which he had with him in the booked premises, even if such assets, save for money, securities and jewelry, were not specially handed over for deposit. An agreement to the contrary is deemed void.

(2) Liability provided for at par.(1) shall be excluded if the damage has been caused by a force majeure, by a guest of the customer or by asset's properties.

Article 1106. Sequestration

Sequestration is the deposit by which the persons convey a contentious asset to a third party that undertakes to return it, after the end of trial, to the one entitled over it.

Article 1107. Selection of Depositary in Case of Sequestration

(1) The depositary charged with sequestration shall be chosen by the parties by mutual agreement. The parties may appoint one of them.

(2) Where the parties did not reach an agreement regarding the depositary or the terms of sequestration, the parties may demand court judgment.

Article 1108. Rights of Depositary Charged with Sequestration

(1) Absent a stipulation to the contrary or a court authorization, the depositary charged with sequestration may not incur costs or undertake other acts in relation to the asset, except those for preservation.

(2) The depositary may, however, sell the assets, the deposit of which involves disproportionate costs in relation to their value, either with the consent of the parties, or without their consent, with authorization from court. The amount collected from the sale of the asset shall remain at the depositary under the terms of sequestration.

Article 1109. Termination of Sequestration

(1) The sequestration terminates after solving the dispute by returning the asset to the one entitled.

(2) The depositary may be liberated and return the asset before dispute-solving only with the consent of all parties or, without their consent, with court permission, if there are serious grounds for that.

Article 1110. Report

The depositary charged with sequestration must submit a report at the end of deposit or in the course of it, upon the request of the parties or of the court.

Article 1111. Attachment

Attachment may be also placed by the court. In such case, this procedure shall be governed by the norms of the Code of Civil Procedure and by provisions of this Chapter, insofar as they are compatible.

CHAPTER XVIII WAREHOUSE DEPOSIT

Article 1112. Norms Applicable to Relations of Warehouse Deposit

The relations of warehouse deposit, which is a contract of conveyance of goods for storage in a warehouse, shall be governed accordingly by provisions regarding deposit, unless this Chapter provides otherwise.

Article 1113. Duty of Warehouse Depositary to Perform Obligations with Diligence

The warehouse depositary must ensure storage and custody of the deposited assets with the diligence of a provident entrepreneur.

Article 1114. Check of Quantity and Type of Assets by Depositor

(1) The depositary is not bound, while accepting the goods, to check their quantity (number, size or weight), type, kind or other properties, unless it follows otherwise from law or contract.

(2) If, upon delivery, the goods are in a depreciated or deteriorated condition, which is noticeable at visual inspection, the depositary is bound to reinforce his right to compensation against the carrier, to take care of the proof of deposited goods' condition and to notify the depositor without delay. In case of failure, the depositary shall compensate for the damage caused therefore.

Article 1115. Right to Examine Deposited Goods

During the working hours the depositary must allow the depositor or another empowered person to examine the goods delivered, take samples or perform undertakings necessary for their preservation.

Article 1116. Duty to Inform

The depositary is bound to inform the depositor without delay about change in the place of storage, about changes in the condition of the goods or about the possibility of occurrence of such changes. The notice shall be addressed to the last holder of the warehouse certificate known to the depositary. If the depositary fails to comply with this duty, he shall compensate for the incurred damage.

Article 1117. Depositary's Liability

The depositor bears liability for any damage caused by loss or deterioration of goods deposited with him, except when even the care of a professional depositary could have not prevented the damage.

Article 1118. Deposit of Generic Goods

(1) A depositary that undertakes the custody of generic goods is entitled to mix them with goods of the same kind only if he has an explicit permission to do so.

(2) The owners of the mixed goods shall have a right of joint ownership in shares over the entire stock of goods. Unless it was agreed otherwise, the shares shall be determined contingent on the quantity of deposited goods.

(3) The depositary is entitled and bound to return the goods to each depositor from the total stock according to their shares without seeking permission from other depositors.

Article 1119. Sale of Deposited Good in Case of Deterioration

(1) If the deposited goods are subject to spoilage or change so much that they can depreciate, and the depositary has no time to prevent or remove the spoilage or deterioration, or the authorized person, after being notified, failed to take a timely decision, the depositary is entitled to organize sale of these goods by public auction.

(2) The proceeds from the sale according to par.(1), shall be given to the depositor after deduction of the costs owing to custody and sale.

Article 1120. Warehouse Certificate

On the receipt of the goods, the depositary is bound to issue a warehouse certificate to the depositor.

Article 1121. Requisites of Warehouse Certificate

(1) A warehouse certificate must contain:

- a) date of its issuance and file number in the deposit register;
- b) name or denomination and address of the person to whom the deposited goods belong;
- c) place of custody;
- d) rules of deposit;
- e) quantity (number, size or weight) of deposited goods and their quality; description of the package, if the goods are packed;
- f) deposit costs and other costs that might arise;
- g) whether the deposited good must be insured, and, if positive, the price of insurance;
- h) period of deposit and date of expiry or absence of term;
- i) other data, upon parties' request;
- j) Depositary's signature and seal.

(2) The absence of some requisites does not render the warehouse certificate invalid.

Article 1122. Right of Charging Deposited Good

The holder of the warehouse certificate may pledge the deposited goods as security for another obligation in such a manner that the goods shall not be taken out of the warehouse.

Article 1123. Endorsement of Warehouse Certificate

If the depositary issues a warehouse certificate to order, it may be conveyed to another person by endorsement.

Article 1124. Depositary's Liability in Case of Endorsement of Warehouse Certificate

(1) If a warehouse certificate is transmitted by endorsement, the depositary bears liability to the legal holder of that certificate for the precision of the information included in it, except when the certificate states in writing that those data are based exclusively on information provided by either the depositor or a third party.

(2) If the depositary had knowledge about imprecision of the information, he shall bear responsibility even if he has made the statement as specified in par.(1).

(3) In the event of mixed custody, the depositary is not entitled to make a statement as specified in para. (1).

Article 1125. Delivery of Goods in Case of Certificate to Order

(1) In case of issuance of a warehouse certificate to order, the depositary is bound to deliver the deposited goods only to the legal holder of the certificate and only in exchange for the certificate.

(2) Where a certificate was issued constituting a pledge over the deposited goods, the depositary must also solicit the return of this certificate.

(3) The depositary is not bound to check the authenticity of the endorsements. The delivery shall be confirmed by entry on the warehouse certificate.

Article 1126. Destruction or Loss of Warehouse Certificate

(1) Where the warehouse certificate was destroyed or otherwise lost, the empowered person may demand, by public announcement, rendering the certificate void and issuance of a new one. In such case, special provisions of the Code of Civil Procedure shall apply.

(2) Based on a court judgment, the depositary will issue a new warehouse certificate and a new pledge certificate, as the case may be.

Article 1127. Assignment of Pledge over Deposited Goods

(1) Where the owner constitutes a right of pledge on the deposited goods, the endorsement and transmittal of the pledge certificate shall equal assignment of pledge.

(2) The endorsement must mention the pledge creditor and the amount of claim.

(3) The depositary must be notified about the pledge. He must confirm that the pledge took place.

Article 1128. Depositary's Right of Pledge

(1) The depositary has a right of pledge over the deposited goods for storage costs as long as the goods are in his possession.

(2) Where the warehouse certificate was transmitted by endorsement, the right of pledge shall exist only in relation to the legal holder of the warehouse certificate.

Article 1129. Depositary's Right to Demand Withdrawal of Deposited Good

(1) The depositary may not demand withdrawal of the deposited good until the agreed term of storage has expired, and in the absence of such term, not before the lapse of 3 months from the date of storage.

(2) Where no term of storage was agreed upon or where the good is kept in custody after the expiry of such term, the depositary may demand withdrawal of the good only after cancellation of contract, with observance of a one-month notice term.

Article 1130. Sale of Goods by Auction

(1) Where the depositor does not withdraw the deposited good upon expiry of the term of deposit, the depositary is entitled to sell the good by auction, after providing a warning. The sale may not occur earlier than a month from the day of warning.

(2) After depositary's claims arising from storage and organization of auction have been paid from the sale proceeds, the remaining amount shall be transmitted by him to the legal holder of the warehouse certificate.

CHAPTER XIX CONTRACT FOR TRAVELING SERVICES

Article 1131. Contract for Traveling Services

(1) Based on the contract for traveling services, a party (travel organizer, travel agent) undertakes to render to the other party (tourist) agreed services, while the latter undertakes to pay the cost of such services.

(2) The declaration stating that only mediation of contract with persons that will accomplish the travel (service-provider) is being undertaken shall be disregarded if other circumstances confirm that the author of the declaration accomplishes contractual obligations pertaining to the travel at his own responsibility.

Article 1132. Preliminary Information

(1) Any advertising material, an offer or other information about traveling services provided by the organizer must be made in such a manner as to exclude misinterpretation.

(2) The conditions specified by the publicity ad, the offer or other information, which the organizer provides to the customer, are binding upon the former, unless the customer is notified about alteration of the conditions before contract conclusion.

Article 1133. Mandatory Information

(1) Before contract conclusion, the organizer is bound to inform the customer in writing or in any other suitable form about the visa and passport regime and about health insurance requirements for the duration of the travel.

(2) Within a reasonable time before the start of the travel, the travel organizer is bound to provide to the customer in writing or any other suitable form information on:

a) the time and place of intermediate stations and transportation junctions, as well as the details of customer's placement within the vehicle (cabin on ship, train compartment etc.);

b) name, address and phone number of organizer's local agents or, absent such agents, data for identifying the local agency which the customer may address in case of necessity. Absent such agents or agencies, the customer must be provided organizer's contact data;

c) in case of travel of persons under age – data for direct contact with the person under age or with the responsible person at the place of destination;

d) possibility of acquiring an insurance policy, covering customer's liability for declining the travel, as well as other costs, in case of accident or illness.

Article 1134. Content of Contract for Traveling Services

(1) The contract for traveling services must include the following clauses:

a) itinerary, place (places) of destination and terms of stay, with indication of dates;

b) vehicles, their class and properties, date of departure and arrival;

c) information on accommodation, class or level of conveniences, basic properties, catering services;

d) in case a minimal number of persons required to realize the travel is set, the deadline for notification of the customer in case of cancellation of the travel;

e) visits, excursions and other services included in the general cost of the travel;

f) denomination and address of the organizer (travel agent) and of the insurer as the case may be;

g) cost of the travel, possibility of cost alteration, costs of certain additional services (boarding and debarkation fee in ports and airports, tourist fees) not included in the cost of the travel and possibility of their alteration;

h) terms and order of payment of the cost and other costs;

i) specific conditions agreed by the parties upon customer's request;

j) terms for forwarding complaints regarding nonperformance or inadequate performance of contract;

k) other conditions.

(2) All contractual provisions must be provided to the customer in writing, before concluding the contract.

(3) Provisions of par.(2) do not preclude conclusion of contract at the last moment.

Article 1135. Travel of Third Party

(1) The customer is entitled to request, before the beginning of the travel, that a third party takes over the rights and obligations under the contract for traveling services. The organizer may reject tourist's request if the third party does not fit into travel conditions.

(2) The organizer is entitled to demand from the tourist compensation for additional costs caused by replacement with a third party.

Article 1136. Alteration of Essential Contract Terms

(1) If, before departure, the organizer learns that he has to alter in a significant way the essential terms of the contract, including the price, he shall forthwith notify the customer to that effect.

(2) The price specified in the contract cannot be altered unless the contract provides for a possibility to alter the price and specifies the way to calculate the altered price. The price may be altered in an exceptional manner if changes occur in the price of transportation, fees for certain services (boarding and debarkation fees in ports and airports, other fees). The price may not be increased within 20 days before the day of departure.

(3) In the event provided for in par.(1), the customer may relinquish the contract or accept the alteration, being bound to notify the organizer of his decision as soon as possible.

Article 1137. Security Providing and Removal of Deficiencies

(1) The organizer is bound to organize the travel in such manner as to ensure the promised properties and to avoid shortages that would diminish its value or utility as deduced from contract or from usual practice.

(2) Where the tourist detects shortages in the course of the travel, he is entitled to demand their immediate removal. The organizer may refuse removal of shortages, if such removal requires disproportionate costs.

(3) Where the organizer does not remove the shortages within the term set by the tourist, the latter may remove them by him and demand from the organizer compensation of incurred costs. Where the organizer refuses to remove the shortages or the tourist has an interest in their immediate removal, the setting of a term is not necessary.

Article 1138. Reduction of Price for Shortages of Travel

(1) Where shortages are detected in the course of the travel, its price shall reduce, taking into account the moment of detection.

(2) The price of the travel shall not reduce if the tourist, either willfully or by gross negligence, did not give notice to the organizer about the detected shortages within a reasonable time.

Article 1139. Cancellation of Contract due to Shortage

(1) If the travel is substantially affected due to shortages of the type mentioned at art.1138, the tourist may cancel the contract. He may also cancel the contract when, due to such shortages, for an important reason that may be acknowledged by the organizer, he may not be demanded to continue the travel.

(2) Cancellation of contract is admissible only if the organizer omitted the term set by the tourist, without providing for removal. Setting the term is not necessary if removal is impossible or is refused by the organizer or if immediate cancellation of contract is justified by a special interest of the tourist.

(3) In case of contract cancellation, the organizer loses the right to claim the agreed price. He may nevertheless demand an according indemnification for services that have already been rendered and for those necessary in view of concluding the travel, unless the tourist does not have any interest in such services due to cancellation of contract.

(4) In case of cancellation of contract, the organizer of the travel is bound to take necessary measures to return the tourist back, especially where the contract provides for return travel. Additional costs shall be borne by the organizer.

Article 1140. Compensation for Damage due to Shortage

Regardless of whether he demanded price reduction or cancelled the contract, the tourist may demand compensation for non-fulfillment of contract, where the shortages of the travel are due to circumstances imputable to the organizer.

Article 1141. Term for Submitting Complaints and Period of limitation

(1) Complaints based on art.1137-1140 may be submitted by the tourist to the organizer within a month from the moment set by contract for travel conclusion. Complaints may be also submitted after the expiry of the one month-term, where it has been omitted for reasons not imputable to the tourist.

(2) The period of limitation for actions filed by the tourist shall be six months, computed from the last day of the travel, as set by contract.

Article 1142. Permission to Limit Liability

Based on an agreement with the tourist, the organizer may limit his liability for damage, other than bodily injury, to the triple price of the travel, if:

- a) the damage is not caused by willful conduct of gross negligence;
- b) the damage is caused to the tourist only by error of a service-provider involved in contract unfolding.

Article 1143. Cancellation of Contract by Tourist

(1) The tourist may cancel the contract anytime before the beginning of the travel.

(2) Where the tourist cancels the contract, the organizer is deprived of the right to demand payment of the price of travel. However, he may demand an according compensation. The amount of the compensation shall be determined based on the price of the travel, by subtracting the costs that have not been incurred by the organizer, as well as that which he could obtain by utilizing his services in any other manner.

Article 1144. Cancellation of Contract due to Force Majeure

(1) Where the travel is rendered difficult, imperiled or substantially damaged due to a force majeure that could not be foreseen at the moment of contract conclusion, either the organizer or the tourist may unconditionally cancel the contract.

(2) Where the contract is cancelled under par.(1), provisions of art.1139 par.(3) and the first sentence of par.(4) shall apply. The additional costs for return transportation shall be borne by the parties, in equal shares. In other cases, additional costs shall be borne by the tourist.

Article 1145. Prohibition of Derogations

The provisions of this Chapter may not be derogated from to the detriment of the tourist.

**CHAPTER XX
GUARANTY**

**SECTION 1
GENERAL PROVISIONS ON GUARANTY**

Article 1146. Contract of Guaranty

(1) By contract of guaranty, a party (guarantor) binds himself to the other party (creditor) to fulfill debtor's obligation in total or in part, gratuitously or onerously.

(2) A guaranty may also secure a future or conditional obligation.

Article 1147. Form of Contract of Guaranty

The validity of guaranty requires written form. Where the guarantor fulfills the obligation, noncompliance with the form requirement is deemed removed.

Article 1148. Non-mandatory Character of Debtor's Consent upon Guaranty Establishment

A person may become guarantor without debtor's consent and even without his knowledge.

Article 1149. Multiple Guaranties

(1) The guaranty may be constituted either for the principal debtor or for the guarantor.

(2) The later guarantor, who became bound in regard of obligation fulfillment by the earlier guarantor, shall be liable jointly with the latter, in the same fashion as the earlier guarantor is liable jointly with the principal debtor.

Article 1150. Grounds for Guaranty Establishment

(1) The guaranty may arise from parties' agreement, may be prescribed by law or set by court judgment.

(2) The debtor bound to constitute a guaranty must propose a natural person with domicile or residence in the Republic of Moldova or a legal entity registered in the Republic of Moldova, which disposes of enough assets to give guaranty for the obligation. Where the proposed person is not accepted, the debtor must propose another person. This rule does not apply where the creditor requested a certain person as guarantor.

Article 1151. Right to Guaranty Replacement

The debtor bound to provide a legal or judicial guaranty may offer in exchange another sufficient guaranty.

Article 1152. Limits of Guaranty

(1) The guaranty may not exceed debtor's debt and may not be constituted on more onerous terms.

(2) The guaranty that exceeds debtor's debt or on more onerous terms is valid only to the extent of the principal obligation.

(3) The guaranty may be constituted for a part of the obligation and on less onerous terms.

(4) The obligation of the guarantor is not increased by any transaction entered into by the principal debtor after the assumption of the guaranty.

Article 1153. Extent of Guarantor's Liability

(1) Under all circumstances, the guarantor shall be liable only to the extent of the maximum amount shown in the contract of guaranty.

(2) To the extent of the maximum amount shown in the contract of guaranty and absent a provision to the contrary, the guarantor shall be liable for:

- a) the total amount of the principal debt at the respective moment, especially when the principal debt changed due to the fault or delay of the principal debtor. However, where the contract provides for a penalty or a lump compensation for the case of contract termination, the guarantor shall be liable only if there is an express provision to this effect;
- b) costs for contract cancellation and court enforcement, if such must be borne by the principal, to the extent that the guarantor was timely accorded the possibility to avoid such costs by fulfilling creditor's requirements;
- c) interest owed by the principal debtor, if this was expressly agreed upon.

Article 1154. Relations between Several Guarantors

(1) Where several guarantors assumed guaranty for the same debtor and the same obligation, the guarantor who performed the obligation shall be entitled to recourse action against the other guarantors for the share of each of them.

(2) In case of insolvency of one debtor, his share shall be distributed proportionately amongst the remaining guarantors.

SECTION 2

RELATIONS BETWEEN CREDITOR AND GUARANTOR

Article 1155. Creditor's Duty to Inform

(1) The creditor is bound to provide upon guarantor's request all useful information regarding the content and conditions of the principal obligation and regarding its stage of performance.

(2) The guarantor may not relinquish in advance the right to being informed.

Article 1156. Guarantor's Liability

(1) In case of nonperformance of the principal obligation, the guarantor and the debtor shall bear joint and several liabilities towards the creditor, unless the contract provides otherwise.

(2) The parties may agree that the guarantor is bound to pay the debt only after enforcement against the debtor. In such case, the guarantor must indicate the assets of the debtor and make advance payments for the costs of enforcement over those assets.

Article 1157. Exceptions that May Be Invoked by Guarantor

(1) The guarantor may oppose to the creditor all exceptions that he could have opposed to the debtor. In case of death of the principal debtor, the guarantor may not rely on the fact that heirs' liability for debtor's obligations is limited.

(2) The guarantor shall not be deprived of the right to rely on an exception only for the reason that the principal debtor has relinquished it.

(3) The guarantor may refuse fulfillment of creditor's requirements as long as the debtor is entitled to challenge the deed on which the obligation is based.

(4) The right provided at par.(3) is also recognized to the guarantor where the creditor can satisfy his claim towards the principal debtor by setoff of his debt towards the latter.

Article 1158. Diminution of Securities by Creditor

Where the creditor diminishes, to the detriment of the guarantor, certain rights of pledge or other securities or preferential rights which existed at the moment of guaranty arising or were obtained later by the principal debtor and meant to provide for the right secured by the guaranty, guarantor's obligation shall be reduced by an amount corresponding to that diminution.

Article 1159. Guarantors' Joint and Several Liabilities

(1) Where several persons assumed guaranty in favor of the same creditor, for the same obligation, each of them shall be liable for the entire debt, unless the parties agreed on the divisibility of the obligation.

(2) Where the parties agreed on divisibility, the guarantors may demand that the creditor divides his action and reduce it to the share that each of them owes.

Article 1160. Notice about Delay in Obligation Performance

Where the principal debtor is in delay in what regards performance of his obligations, the creditor must give notice about this to the guarantor.

Article 1161. Guarantor's Subrogation in Creditor's Rights

(1) The guarantor who performed the obligation subrogates into creditor's rights against the debtor. The transfer of the right of claim may not occur to the detriment of the creditor. Exceptions of the principal debtor based on his relation with the guarantor shall remain unaffected.

(2) After the guarantor performs his obligation, the creditor shall be bound to convey to him documents that confirm creditor's claim against the debtor, as well as rights that secure these claims.

SECTION 3

RELATIONS BETWEEN GUARANTOR AND DEBTOR

Article 1162. Debtor's Summoning into Trial

Where an action is filed against the guarantor, he is bound to summon the debtor into trial. Otherwise, in case of guarantor's action of recourse, the debtor shall be entitled to rely on all defenses that he could have opposed to the creditor.

Article 1163. Recourse against Debtor

(1) The guarantor who performed the principal obligation has a right of recourse against the debtor to the extent of the amounts he has paid, including the principal debt, the related interest, as well as all costs that he has incurred in relation to the guaranty.

(2) The guarantor has no recourse against the debtor who has also paid the debt due to the fact that the guarantor did not notify him of the payment made.

(3) The guarantor may file action against the debtor even before paying the debt, if the guarantor has been filed against a judicial action for payment, or if the debtor undertook to liberate him from guaranty upon lapse of a certain term and the term has lapsed.

(4) Where there are several joint and several debtors, the guarantor who executed the guaranty for all of these debtors has a right of recourse against each of them in order to recover integrally what he has paid.

Article 1164. Guarantor's Request to Be Liberated from Guaranty

(1) Where the guarantor became bound at principal debtor's instructions or if, as a consequence of guaranty execution, he acquires rights of mandatary in relation to the principal debtor, based on provisions regarding management of affairs, the guarantor may demand from the principal debtor to liberate him from guaranty obligations, if:

- a) the material condition of the principal debtor substantially worsened;
 - b) judicial enforcement over the principal debtor is substantially hampered after the assumption of guaranty due to change of domicile, residence or premises of the debtor;
 - c) the principal debtor is in delay regarding performance of his obligations;
 - d) the creditor obtained a court judgment with an enforcement title against the guarantor.
- (2) Where the principal obligation has not matured yet, the principal debtor may offer securities to the guarantor instead of liberating him.

Article 1165. Notification of Guarantor about Performance of Obligation by Debtor

The debtor that performed the obligation secured by guaranty must give immediate notice to the guarantor. Otherwise, the guarantor who performed the obligation shall maintain the right to file recourse action against the debtor.

SECTION 4 TERMINATION OF GUARANTY

Article 1166. Guarantor's Right of Cancellation

(1) Where the guaranty was constituted to secure future or undefined obligations or if no term for guaranty was set, the guarantor is entitled to cancel the contract after the lapse of three years from guaranty assumption, with a 3-month notice term to the creditor, the principal debtor and other guarantors.

(2) A fixed-term guaranty may be cancelled after 5 years with a 3-month notice term.

(3) After cancellation, the guaranty is maintained only for already existent obligations, even if they are conditional.

Article 1167. Extinction or Alteration of Secured Obligation

(1) The guaranty terminates upon extinction of secured obligation.

(2) The guaranty terminates in case of alteration of secured obligation without guarantor's consent, when such alteration leads to increase of guarantor's liability or brings about other unfavorable consequences for him.

(3) The guaranty terminates in case of transfer of the secured debt towards another person, if the guarantor did not accept to guarantee performance of obligation by the new debtor.

Article 1168. Guarantor's Death

Guaranty terminates in case of guarantor's death. Any provision to the contrary shall be void.

Article 1169. Impossibility of Subrogation

The guaranty also terminates when guarantor's subrogation in creditor's rights towards the debtor becomes impossible due to creditor's fault. In such case, the guarantor is liberated to the extent of the damage suffered.

Article 1170. Termination of Guaranty by Term Lapse

- (1) The guaranty terminates upon lapse of the term for which it has been assumed.
- (2) Where the term is not set, the guaranty terminates if the creditor did not file any action against the guarantor within a year from the maturing of the secured obligation.

CHAPTER XXI FRANCHISE

Article 1171. Contract of Franchise

A contract of franchise is a long-term obligation whereby one party (franchisor) and the other party (franchisee) - independent business entities - undertake to assist each other in selling goods and providing services by way of exercising specific responsibilities.

Article 1172. Form and Provisions of Contract of Franchise

- (1) The validity of a franchise requires written form.
- (2) In addition to a clear statement of the reciprocal obligations, the duration of contract, the provisions relative to cancellation and extension, and other essentials, the parties must incorporate into the text of the contract a full description of the franchising program.

Article 1173. Franchisor's Duties

- (1) The franchisor is bound to grant the franchisee an ensemble of non-property assets, rights, trademarks, samples, arrangements, decorations, concepts of acquisition, sale and management, and other data and knowledge useful for sale promotion.
- (2) The franchisor is obliged to protect the program of cooperation against interference of third parties, to improve it constantly and to support the franchisee by providing him with guidance, information, and by upgrading his professional skills.

Article 1174. Franchisee's Duties

The franchisee is bound to pay a recompense, the amount of which is calculated, in principle, as a fraction of the volume of sale in accordance with the contribution of the franchising program to the volume of sales. The franchisee undertakes as well to actively use the franchising program with the diligence of a good entrepreneur as well as to purchase goods and services through the franchisor or persons designated by him, if this is directly related to the object of the contract.

Article 1175. Duty to Provide Information and Keep Confidentiality

While negotiating a franchise, the parties must frankly and fully inform each other of the circumstances related to the franchising and provide each other with relevant information in good faith. The parties undertake not to reveal confidential information, even if the contract is not eventually concluded.

Article 1176. Period of Contract

- (1) The period of the contract is fixed by the parties in consideration of the requirements for the sale of goods or services agreed upon.
- (2) If the period is not fixed or exceeds ten years, either party may terminate the contract in one year's notice. If neither party exercises its right of termination, each time the contract shall be extended for two years.

Article 1177. Duty of Fair Competition

- (1) The parties are bound to stay in loyal competition even after termination of the contract. Within these limits, a local prohibition of competition may be established for the franchisee, which cannot exceed one year.
- (2) If the prohibition of competition imperils the business activity, a proper financial compensation must be accorded to the franchisee, irrespective of the grounds for contract termination.

Article 1178. Franchisor's Responsibility

- (1) The franchisor bears responsibility for the existence and volume of the rights and information provided by the franchising program.
- (2) If there exist no rights mentioned at par.(1) or if the franchisor culpably violates other contractual obligations, the franchisee is entitled to reduce the recompense. In case of a dispute, the extent of reduction shall be determined on the basis of the

opinion of an independent expert. Expert's fees shall be borne by the party whose estimation is most far from that determined by the expert.

CHAPTER XXII BROKERAGE

SECTION 1 GENERAL PROVISIONS ON BROKERAGE

Article 1179. Contract of Brokerage

By contract of brokerage, a party (broker) undertakes towards the other party (customer) to act as mediator for concluding one or several contracts between the latter and a third party.

Article 1180. Payment of Remuneration for Brokerage

- (1) The person that promises a broker's fee for mediation of a contract or for information on the opportunity of making a contract is bound to pay the fee only if the contract is concluded in consequence of the given indications.
- (2) If the contract is concluded under a suspensive condition, broker's fee may not be demanded until the condition is fulfilled.
- (3) If the amount of the remuneration is not specified, the amount usually paid for a similar act is deemed agreed upon.
- (4) The broker may not demand an advance payment from the fee set according to this article and may not accept such an advance payment.
- (5) The contractual provision that derogates from the provisions of this article is void.

Article 1181. Right to Other Remuneration

- (1) Parties may agree that broker's services, which cannot be related to brokerage, but are agreed upon in the contract, shall be remunerated regardless of whether or not the contract was concluded as a result of brokerage activity.
- (2) An agreement providing for the reimbursement of costs unnecessary for brokerage or of unproved costs is invalid.

Article 1182. Contract of Exclusive Mandate

- (1) Where the customer undertook to refrain from resorting to the services of another broker for a certain period (exclusive mandate), the broker is bound, during that time, to act in view of contract mediation or indicating opportunities for contract conclusion.
- (2) If the customer breaches his obligation under par.(1), the broker may demand compensation for damage, if a contract with a third party is concluded using another broker's services. The contract may provide for an according lump compensation, regardless of damage proof. This compensation may not exceed 2.5% of the selling price, if the contract provides for brokerage or indication of an opportunity for concluding a sale. An agreement concluded without observance of this paragraph to the detriment of the customer is void.
- (3) An agreement on exclusive mandate must be in writing.

Article 1183. Cancellation of Contract of Brokerage

- (1) A contract of brokerage may be cancelled at any time, without prior notice, if the period of contract was not fixed.
- (2) A contract of exclusive mandate may be cancelled only for grounded reasons and with a 2-week term of notice.

Article 1184. Inadmissibility of Broker's Fee Payment and of Compensation Claims

- (1) Broker's claims regarding fee payment and compensation or regarding reimbursement of costs are barred if the contract concluded with a third party pertains to an object that belongs to the broker. The same rule applies when specific circumstances result in a suspicion that the broker is affected in his capacity to represent customer's interests.
- (2) The broker keeps the right to claim remuneration or reimbursement for costs, if he, before the conclusion of the contract with the third party, warns the customer of those circumstances that justify the suspicion of a possible damage to the customer.
- (3) The rules of para.(1) apply even if another person acts at broker's expense or the contract has been concluded at the expense of the third party.
- (4) The broker loses the right to remuneration and reimbursement for costs, if he, contrary to the terms of the contract, has also acted for the third party.
- (5) An agreement in conflict with the rules stipulated by this article is void.

SECTION 2 BROKERAGE IN TENANCY

Article 1185. Rules Applicable to Brokerage in Tenancy

(1) The general rules established for brokerage also apply to a contract, by which a party (tenancy broker) undertakes to mediate or to indicate to the other party the opportunity of concluding a contract of lease of living accommodation, unless it appears otherwise from this section.

(2) The provisions for tenancy brokerage do not apply to contracts pertaining to brokerage for lease of accommodation for tourists.

Article 1186. Inadmissibility of Paying Broker's Fee and Claims for Compensation of Tenancy Broker

(1) Tenancy broker's claims regarding fee payment and compensation or reimbursement of costs are barred, if:

- a) The lease contract only prolonged an already existing tenancy or changed the rent for the same living accommodation;
- b) A lease of the living accommodation administered by the broker is entered into.

(2) The tenancy broker may not demand other remuneration for his acts performed in connection with brokerage or indication of the opportunity for conclusion of the contract of tenancy, than the remuneration prescribed at art.1181 para.(1).

(3) Provisions in conflict with this article are void.

SECTION 3 BROKERAGE IN LOAN

Article 1187. Rules Applicable to Brokerage in Loan

The general rules for brokerage also apply to the contract, by which a party (loan broker) undertakes to act as a broker for the other party (customer) in concluding or indicating the opportunity to conclude a contract of loan, unless special rules follow from this Section.

Article 1188. Form and Content of Contract for Brokerage in Loan

(1) The contract for brokerage in loan must be in writing.

(2) The contract must stipulate the amount of the loan broker's fee, calculated as a certain percentage of the loan amount. Additionally, the contract must stipulate amount, term, interest and amortization of the loan, payment period, exchange rate, period of interest accrual, accessory costs of the loan, as well as the effective annual interest, the total amount that must be paid by the customer, and the full name and address of the lender.

(3) The provisions of par.(2) do not apply if the task of brokerage or of indicating the opportunity to conclude a contract concerns a loan secured by a mortgage or a loan granted for purchase of an immovable, or a loan which the customer must use for his professional, commercial, public or work activity.

(4) The text of the contract shall not refer to the petition for granting of a loan.

(5) The loan broker must submit a copy of the contract to the customer.

Article 1189. Loan Broker's Remuneration

(1) The customer is bound to pay the remuneration only if he has received a loan as a result of brokerage or broker's indication. The contract concluded by derogation to the prejudice of the customer is void.

(2) The loan broker may not agree on another remuneration for brokerage or indication of the opportunity to conclude a loan than that provided by par.(1).

SECTION 4 TRADE BROKERAGE

Article 1190. General Provisions on Trade Brokerage

(1) A person enjoys the rights and performs the duties of a trade broker if he, in pursuance of his professional activity, not being permanently authorized by other persons on the basis of contractual relations, acts as an agent for those persons in concluding contracts of acquisition and alienation of goods or securities, contracts of insurance, banking operations, cargo carriage, lease of commercial goods.

(2) The rules of this section do not apply to transactions other than those mentioned at par.(1) and transactions with real estate.

Article 1191. Final Text of Contract

(1) After settlement of the transaction, the trade broker must without delay, unless the parties or the local usages release him from doing this, provide each party with the final version of the contract signed by him, which specifies the contracting parties, subject and terms of transaction; particularly for the sale of goods or securities, the contract must specify their type and quantity, as well as the price of and the time of delivery.

(2) With regard to transactions, which cannot be performed immediately, the final version of the contract shall be submitted to be signed by the parties and each party shall receive the final version of the contract signed by the other party.

(3) If a party refuses to accept or to sign the final version of the contract, the trade broker is bound, without delay, to inform thereof the other party.

Article 1192. Specified Commitment

(1) If a party accepts the final version of the contract where the trade broker reserves a right to specify the other contractual party later, the first party shall become bound by the transaction in relation to the party specified afterwards, unless substantial objections can be raised against the latter.

(2) The other party shall be specified within the usual term at the place of issuance of the final version of contract, or, in the absence of such a term, within a reasonable term.

(3) If the party is not specified or there are substantial objections against the specified person, the first party may raise a claim against the trade broker with a view to contract performance. The claim is barred if, upon trade broker's inquiry, that party does not immediately demand execution of transaction.

Article 1193. Keeping of Samples

(1) To the extent that the parties or the local rules allow this, the trade broker shall keep a sample of each commodity sold through his agency, until the commodity is accepted without objections or the transaction is closed in some other manner.

(2) The trade broker shall identify the sample by a mark.

Article 1194. Absence of Authority to Collect Payments

A trade broker is not authorized to collect payments or other forms of defrayal stipulated by the contract.

Article 1195. Liability of Trade Broker

A trade broker is liable to each of the parties for damage caused through his fault.

Article 1196. Right to Demand Remuneration from Both Parties

Unless the parties have an agreement on the payment of broker's fee and unless there are other local rules, each of the parties is bound to pay half of the remuneration.

Article 1197. Trade Broker's Ledger

(1) The trade broker is bound to keep a ledger and to enter all conducted transactions on a daily basis. The entries shall be made in chronological order. The trade broker is bound to confirm each entered information with his signature.

(2) Provisions regarding commercial registers shall apply to trade broker's ledger.

Article 1198. Issuance of Excerpts from Trade Broker's Ledger

Upon parties' request, the trade broker is bound to issue signed excerpts from the ledger. The excerpts shall contain all relevant data with respect to transactions conducted through his agency.

CHAPTER XXIII

COMMERCIAL AGENT, MERCHANDISE BROKER

SECTION 1

COMMERCIAL AGENT

Article 1199. General Provisions on Commercial Agency

(1) A commercial agent is a natural person who is independently engaged in business activity and who is assigned on a permanent basis to mediate or conclude commercial contracts with goods and services on behalf and account of another person (principal).

(2) In terms of this Code, a person is not a commercial agent if he:

a) being the principal's employee, is empowered to enter into transactions which are binding upon the principal;

- b) being a partner, is authorized to enter into transactions which are binding upon his partners;
- c) is a trustee in the reorganization or liquidation procedure during insolvency proceedings;
- d) Operates at commodity exchanges.

Article 1200. Duties of Commercial Agent

- (1) The commercial agent is obliged to represent the principal's interests in good faith.
- (2) The commercial agent is bound to make the appropriate efforts at negotiations, and, if necessary, to conduct transactions on the principal's instructions, to provide the principal with all necessary information available to the commercial agent, and to follow all reasonable instructions given by the principal.

Article 1201. Duties of Principal

The principal is obliged to act in good faith with regard to the commercial agent. In particular, the principal is bound to provide the commercial agent with all information necessary for performance of the agency contract, to notify the commercial agent within a reasonable time that the volume of commercial transactions will be much less than the commercial agent could expect under normal circumstances, as well as about acceptance, rejection or nonperformance of a commercial transaction proposed by the agent.

Article 1202. Remuneration of Commercial Agent

- (1) A commercial agent has the right to remuneration for the services rendered to the principal in accordance with the agency contract.
- (2) If the amount of remuneration is not fixed, the tariff common for such activity is deemed to have been agreed upon. If there is no tariff, the commercial agent is entitled to a reasonable remuneration for the services rendered to the principal, taking into account all conditions of the given transaction and the principle of fairness.

Article 1203. Payment of Remuneration

- (1) The remuneration may be completely or partially paid in the form of commission, i.e. varying contingent on the value of commercial transactions.
- (2) The commercial agent is entitled to commission for transactions concluded during the term of validity of the agency contract, if and inasmuch as:
 - a) the transaction was concluded owing to the acts of this commercial agent;
 - b) the transaction was entered into with a third person who had earlier become a client of the principal in a similar transaction owing to the acts of the commercial agent.
- (3) The commercial agent is also entitled to commission for transactions concluded during the validity of the agency contract, if this agent has an exclusive right conferred on him by the principal in accordance with the agency contract, to conduct negotiations or to conclude contracts on principal's behalf, within a certain territory or for a certain group of clients, and if a contract is concluded with a client who is situated in this territory or belongs to this group of clients.
- (4) The commercial agent is entitled to commission for a transaction concluded after the end of validity of the agency contract, if:
 - a) in compliance with the provisions of par.(2) and (3), the proposal (offer or request) of the third party to conclude the contract was received by the principal before the end of validity of the agency contract;
 - b) the transaction has been concluded owing to the acts of the commercial agent, within a reasonable time after the end of validity of the agency contract.
- (5) The commercial agent is not entitled to commission in accordance with par.(2) and (3) if the commission, according to par.(4), is concluded due to the previous commercial agent, unless it would be reasonable to divide the commission between the two agents.

Article 1204. Term for Commission Payment

- (1) The commercial agent is entitled to commission from the time and to the extent that the transaction has been performed. Upon parties' agreement, agent's right to remuneration may arise from the time of maturity of principal's obligation to perform the transaction concluded with a third party or from the time of performance by the third party.
- (2) The commission must be paid to the latest on the last day of the month when the agent obtained the right to commission. The provisions of this paragraph may not be derogated from to the detriment of the commercial agent.

Article 1205. Termination of Right to Commission

- (1) The right to commission terminates if it is ascertained that the contract between the principal and the third party was not performed, provided that this nonperformance did not occur due to principal's fault. This provision may not be altered to the prejudice of the commercial agent.

(2) The commission already received by the agent shall be returned by him in the event of termination of the right to such remuneration.

Article 1206. Providing of Information regarding Remuneration Calculation

(1) The principal is bound to provide the commercial agent with a written calculation of the commission to which the commercial agent is entitled. This calculation must include the basic components used in calculation of the amount of commission.

(2) The commercial agent has the right to obtain information, in particular excerpts from books and documents kept by the principal, which are necessary for the commercial agent to check the amount of the commission due to him.

(3) The provisions of par.(1) and (2) may not be derogated from to the prejudice of the commercial agent.

Article 1207. Form of Agency Contract

(1) An agency contract may be concluded in writing or by word of mouth.

(2) Each party has the right to obtain a document from the other party stating the conditions of the agency contract, including the conditions negotiated after the conclusion of such contract. An agreement by which the parties waive this right is void.

Article 1208. Duration of Agency Contract

(1) The contract between the commercial agent and the principal may be concluded for an indefinite period.

(2) If the parties continue to perform their duties under an agency contract concluded for a fixed period of time after the expiration of this period, the contract is deemed extended for an indefinite time.

Article 1209. Termination of Agency Contract

(1) Each party may give notice to terminate the agency contract concluded or prolonged for an indefinite term.

(2) The term of notice is one month during the first year from the time of entering into the contract, two months during the second year from the time of entering into the contract, and three months during the third and subsequent years from the time of entering into the contract. The parties may not provide for shorter terms of notice in the contract.

(3) If the parties agree upon terms of notice longer than those specified in par.(2), the term of notice stipulated for the principal may not be shorter than the term of notice stipulated for the agent.

(4) The end of the term of notice must coincide with the end of the calendar month, unless otherwise provided in the contract.

Article 1210. Competition Clause

(1) The parties to an agency contract may make a provision in such contract concerning restriction of commercial agent's business activity in the same field as principal's after termination of the contract (competition clause).

(2) The competition clause is valid, if:

a) it is provided in writing;

b) it relates to a geographical territory or a group of clients and a geographical territory and to the same kind of goods or services as provided for by the agency contract;

c) it does not infringe upon legislation on antimonopoly and protection of competition.

(3) The validity of the competition clause shall not exceed two years from the time of termination of the contract.

Article 1211. Compensation and Recovery of Damage

(1) Upon contract termination, the commercial agent may demand according compensation from the principal, if and inasmuch as:

a) the agent has drawn new clients to the principal or substantially increased the volume of transactions with the existing clients, and the principal is about to get a substantial profit from transactions with those clients;

b) payment of compensation is fair in consideration of all the circumstances and, particularly, of the commission to which the commercial agent would have been entitled if contractual relations continued, based on transactions already concluded or realizable in the future, with clients drawn by him; or in consideration of the competition clause provided for by the agency contract in accordance with art.1210.

(2) The amount of compensation may not exceed the sum of the agent's annual remuneration, calculated on the average for the last five years of his activity. In case of a shorter duration of contractual relations, the average remuneration for the period of agency shall be used as the basis.

(3) Compensation payments bar agent's claim for reparation of damage.

(4) The commercial agent may demand compensation for losses inflicted upon him in consequence of termination of his contractual relations with the principal. Termination of contract is deemed, in particular, to inflict losses if:

a) the commercial agent is deprived of the commission which he would have earned by appropriate performance of the agency contract, given that the principal gets substantial profit owing to agent's activity;

b) the commercial agent is denied a possibility to be compensated for the costs incurred by him in performance of the agency contract in compliance with the principal's instructions.

(5) The right to compensation provided for in para.(1), and the right to damages provided for in par.(4) may also be exercised by the heirs in the event of termination of the contract in consequence of death of the commercial agent.

(6) The claim for compensation and damages must be made within one year after termination of the contract.

(7) Compensation and damages are not payable if:

a) the principal had a lawful right to terminate the contract due to the commercial agent's fault;

b) the contract has been terminated by the commercial agent, unless such termination was caused by principal's conduct, or was in connection with the age or illness of the commercial agent, due to which he could not continue his activity in accordance with the agency contract;

c) by agreement with the principal, the commercial agent transfers his rights and duties under the agency contract to another person.

SECTION 2

MERCHANDISE BROKER

Article 1212. General Provisions on Merchandise Broker

(1) A merchandise broker (broker) is a person who, in pursuance of his business, undertakes to conclude contract on merchandise or securities in his name but on account of another person (principal).

(2) Where this Section does not provide regulation for broker's activity, rules regarding the commercial agent shall apply.

(3) Norms on contract of commission shall apply, unless the provision of this Chapter provide otherwise.

Article 1213. Duties of Merchandise Broker

(1) A merchandise broker is bound to conduct the assumed obligations with due care of a businessman in good faith. The broker is bound to comply with the interests and to follow the instructions of the principal.

(2) The merchandise broker shall provide the principal with the required information; particularly notify him without delay of the performance of the commission. The merchandise broker must submit to the principal a report on commission performance and give him what is due from the respective performance.

(3) The merchandise broker is liable to the principal for the transaction concluded, if the former, while informing the latter about transaction performance, does not specify the third party, whom he has entered the transaction with.

Article 1214. Noncompliance with Principal's Instructions

If the merchandise broker does not act in compliance with principal's instructions, he is bound to compensate the latter for the damage. The principal in this case is not bound to admit the effect of the transaction with respect to himself.

Article 1215. Price Limits

(1) If the merchandise broker has performed a sale at a price lower than it was agreed, or exceeded the purchase price set, the principal, if wishing to reject the transaction as one not made on his account, must declare his intention immediately after receiving notice about transaction conclusion. Otherwise, the deviation from the price set is deemed approved.

(2) If the merchandise broker, while providing notification about the closure of the transaction, offers to cover the difference in price, the principal may not reject the transaction. Principal's right to compensation for losses which exceed the difference in price remains unimpaired.

Article 1216. Conclusion of Transaction on More Profitable Terms

If the merchandise broker concludes a transaction on more profitable terms than the principal has stipulated, the added profit is counted as principal's benefit. The foregoing is particularly effective when the selling price realized by the broker is higher than the lowest price set by the principal, or when the actual purchase price paid is less than the highest price set by the principal.

Article 1217. Merchandise Broker's Remuneration

(1) The merchandise broker may claim compensation, if the transaction is closed.

(2) Even if the transaction is not closed, the broker is entitled to commission, insofar as the trade usages provide for it.

(3) The broker may also claim commission if the transaction concluded by him was not performed for reasons relating to the fault of the principal or in relation to his personality.

Article 1218. Damaged or Defective Merchandise

If the merchandise that was delivered to him is deteriorated or has defects detectable upon inspection, the merchandise broker is bound to ensure proof of its condition in relation to the carrier or the principal regarding the condition of the merchandise and to give immediate notice to the principal. Otherwise, the merchandise broker is bound to compensate for losses inflicted therefore.

Article 1219. Merchandise Broker's Responsibility for Commodities

(1) The merchandise broker bears liability for the loss or damage of the goods that he has taken charge of, unless the loss or damage is caused by circumstances that a businessman in good faith could not have averted by his care.

(2) The merchandise broker bears liability for lack of merchandise insurance only if the principal has instructed him to insure the merchandise.

Article 1220. Advance and Credit upon Performance of Contract of Commission

(1) If the merchandise broker has granted an advance payment or a credit to a third party without principal's consent, the former acts at his own risk.

(2) If the trade usages provide for the possibility of deferred payment of the purchase price, the merchandise broker is also entitled to it, unless there is another instruction by the principal.

(3) If the merchandise broker sells on credit, having no authority, he is bound as a debtor to pay, without delay, the purchase price to the principal.

Article 1221. Similar Transactions

The provisions of this Section also apply if the merchandise broker, in pursuance of his usual trade or business, undertakes, in his name and on behalf of another person, to conduct transactions of other kind than specified in art.1212 par.(1).

CHAPTER XXIV
BANKING CONTRACTS AND OPERATIONS

SECTION 1
BANK DEPOSIT

Article 1222. Contract of Bank Deposit

(1) By a contract of bank deposit, the bank or another legally authorized financial institution (bank), receives from its client (depositor) or from a third party in favor of the depositor an amount of money, undertaking to return it to the depositor after a certain period (timed deposit) or upon request (deposit by request).

(2) Relations between the bank and the depositor shall be regulated by rules on loan and current bank account, if such rules do not come into contradiction with this Section and with the nature of the bank deposit.

Article 1222. Form of Contract of Bank Deposit

The contract of bank deposit must be concluded in writing. The written form is deemed complied with if the bank issues to the depositor a savings-bank book, a deposit certificate or any other document confirming the deposition of money and which complies with legal requirements and bank usages.

Article 1223. Interest

(1) The bank shall pay to the depositor an interest in the amount and order set by contract, while if the contract does not provide for the amount of interest, this shall be determined in accordance with provisions of art.619. The parties may agree that the bank does not pay interest to the depositor.

(2) The bank may not unilaterally reduce the amount of interest, save for cases provided by law or contract, contingent on complying with a term of notice of at least 15 days.

Article 1224. Order of Interest Calculation and Payment

(1) The interest on the bank deposit shall be calculated starting with the day following the day of deposit until the day preceding the return of the deposited amount or its transfer on other legal grounds.

(2) Unless the contract of bank deposit provides otherwise, the interest on the amount of the bank deposit shall be paid to the depositor, upon his request, at the expiry of each quarter, while interest that has not been withdrawn shall be added to the sum of the deposit, on which interest further accrues.

(3) Upon returning the deposited amount, the entire interest computed until that moment shall be paid out.

Article 1226. Bank Secret

(1) The bank guarantees the secret of information pertaining to business relations with the client.

(2) Information that constitutes bank secret may be furnished only upon the request of the client or his representative. The bank may furnish such information to the public authorities only in cases and in the manner set by law.

(3) Where the bank disclosed information constituting bank secret, the depositor thus damaged is entitled to demand compensation.

Article 1227. Timed Deposit and Deposit upon Request

(1) Regardless of the type of deposit, the bank is bound to return the sum of the deposit, entirely or partially, upon depositor's first request, with a notice term as set by parties' agreement or by bank usages. Any contrary provision to the detriment of the depositor is void.

(2) Where the depositor is returned entirely or partially the deposited amount before the lapse of the agreed term, the interest shall be computed in the amount provided for deposits upon request, unless the contract provides otherwise.

(3) Where upon the lapse of the agreed term the depositor does not request return of the deposit, the contract shall be deemed extended under terms of a deposit upon request.

SECTION 2 CURRENT BANK ACCOUNT

Article 1228. Contract of Current Bank Account

By a contract of current bank account, the bank undertakes to receive and register in the account of the account holder (client) money amounts deposited by him or by a third party in cash or by transfer from accounts of other persons; to perform client's orders regarding transfer of amounts to other persons and cash withdrawals, within the limits of account balance; and to perform other operations on client's account, on the instructions of the latter, as provided by law, contract and bank usages, while the client undertakes to pay a remuneration for the rendering of the mentioned services.

Article 1229. Disposal of Money Amounts Found on Bank Account

(1) The account holder is free to dispose of the money amounts on his account at any moment, save for cases when, by agreement of the parties, a term for notice is set. The client is entitled to revoke his instructions regarding disposal of money amounts on his account. The revocation shall be effective if the bank receives it before the moment of performance of the respective instructions.

(2) Persons authorized to dispose of the money amount on account shall be indicated by the client by submitting the respective documents provided by law, contract and bank usages.

(3) The identification of persons authorized to dispose of the money amounts on account is made by the bank based on signatures or other identification means.

Article 1230. Client's Orders and Instructions

(1) The bank is bound to fulfill operations in client's account only by his order. The bank cannot perform operation in client's account without his orders save for cases provided by law or contract.

(2) In the case of performance of certain operations in client's account, the bank is bound to comply with the instructions of account holder within the limits of contract's purpose.

(3) Where the bank does not comply with client's instructions or derogates from them, the bank is bound to pay compensation if it cannot be deemed that, if aware of the situation, the holder would have approved the derogation.

(4) Rules on contract of mandate shall apply to the relations between the bank and the client, unless they contradict the provisions of this Chapter and the nature of the contract of current bank account.

Article 1231. Accounting of Operations and Account Statement

The bank shall keep account records by registering performed operations on account's debit and credit, being under the obligation to submit to the client, within the terms agreed, account statements concerning its condition. The account holder may demand at any time information or explanations on account's situation and circumstances of any operations performed on account.

Article 1232. Mutual Claims between Bank and Client

- (1) The bank owes to the client interest for the use of funds on his account, unless the contract provides otherwise.
- (2) The mutual claims of the bank and the client shall be extinguished by setoff.

Article 1233. Contract Cancellation

- (1) The contract concluded for an undetermined period may be cancelled at any time by either party, contingent on compliance with a term of notice set by the contract or by bank usages, or, absent such a term, with a 15-day's notice.
- (2) The bank may cancel the contract only to the extent that the holder of account may benefit in any other way of the possibility to make settlements by transfer, unless there is a grounded reason for cancellation.

Article 1234. Duty of Confidentiality

- (1) The bank is bound to keep confidential all facts that became known to it as a consequence of business relations with the client. This duty does not arise if this is provided by a legal provision or if it pertains to general information, the disclosure of which does not damage the justified interests of the client.
- (2) The duty of confidentiality also subsists after termination of contractual relations.

Article 1235. Cheque Collection and Payment

- (1) Even in the absence of an additional contract to this effect, the bank is bound towards the client to collect cheques presented by the client, by mediating timely submittal to the drawee bank, and, in case of non-collection, to take the necessary security measures.
- (2) Where an according contract exists, the bank is bound to pay cheques issued by the client, within the limits of account's credit.

SECTION 3 BANK CREDIT

Article 1236. Contract of Bank Credit

- (1) By a contract of bank credit, the bank (creditor) undertakes to put at the avail of a person (debtor) an amount of money (credit), while the debtor undertakes to repay the received amount and pay interest and other related amounts provided by contract.
- (2) The contract of bank credit shall be concluded in writing.
- (3) Rules on contract of loan shall apply to the contract of bank credit, to the extent that the rules of this Chapter do not provide otherwise or it does not follow otherwise from the essence of the contract of bank credit.

Article 1237. Interest on Bank Credit

- (1) The parties to the contract of bank credit may agree on a fixed or floating interest.
- (2) Where the parties agreed on a floating interest, its amount may be altered by parties' agreement.
- (3) The creditor may not alter the amount or interest unilaterally, save for cases provided by law or contract. Where the contract provides for bank's right to unilaterally alter the amount of interest, this shall be done contingent on the refinancing rate of the National Bank, the rate of inflation and the evolution of the market, taking into account the principle of fairness.
- (4) The creditor shall give written notice to the debtor about the alteration of the amount of interest, 10 days before alteration. The new amount of interest shall apply to the balance of the credit on the day of alteration.

Article 1238. Commission

Besides interest, the parties may agree on a commission for services rendered in connection with credit use.

Article 1239. Overdraft Credit

- (1) The credit may be accorded by putting at the avail of the debtor an amount of money (credit line), which he may use in installments, depending on his needs.
- (2) The interest for the overdraft credit shall be computed based on the amount of credit actually used during a certain period.

Article 1240. Security for Credit Reimbursement

- (1) Parties may agree on constituting securities, real (pledge), personal (guaranty) or other securities used in banking practice.

(2) Where the creditor believes that the security for credit reimbursement is insufficient, the creditor is entitled to demand additional security to be constituted. Where the debtor refuses to constitute additional security demanded by the creditor, the latter is entitled to reduce credit in proportion to the reduction of security or to cancel the contract.

(3) The creditor is bound to accept the annulment of security measures that exceed the agreed limit of security. This provision does not apply where the security exceeds the agreed limit only temporary.

Article 1241. Refusal to Perform Contract

(1) The creditor is entitled to refuse performance of the obligation to offer the credit to the debtor if, after the conclusion of the contract of credit:

- a) Circumstances arose that indicate with certainty debtor's future incapacity to reimburse the credit;
- b) The debtor or a third party breaches the obligation to offer security for credit reimbursement, which he has assumed, or other conditions set by the bank for offering the credit.

(2) Where the contract provides for credit in installments, the creditor is entitled to refuse to offer the following installment of the credit, where the debtor does not fulfill the terms of the contract regarding previous installment or installments.

(3) The debtor is entitled to reject the credit entirely or partially. In such case, he shall pay to the creditor remuneration for offering the credit (commission for non-use).

(4) The right of refusal provided by para. (1)-(3) may be exercised only if the party that refuses notifies the other party within a reasonable time before performance of obligations that constitute the object of refusal.

Article 1242. Cancellation of Contract

(1) The creditor may cancel the contract and demand reimbursement of credit and related amounts, if:

- a) the debtor became insolvent;
- b) the debtor did not constitute the requested security or reduced the offered security without creditor's consent;
- c) the debtor does not pay the interest at the established term;
- d) the debtor did not perform the obligation of reimbursement of at least 2 installments of the credit, where the contract provided for credit reimbursement in installments;
- e) in other cases provided by law or contract.

(2) Contract cancellation immediately suspends credit use, but the creditor may allow the debtor 15 days for reimbursing the amounts used and related amounts.

(3) The debtor may declare cancellation of the contract of credit with floating interest at any moment, contingent on notifying the creditor within 7 days after receiving the notice about alteration of interest amount.

(4) The debtor may cancel the contract of credit with fixed interest for a certain period, if the duty to pay interest ceases before the term set for credit reimbursement comes about and there is no agreement concerning another interest. A 15-day notice term must be complied with.

(5) Cancellation for the reason shown at par.(1) let.d) shall take effect only where the creditor allowed the debtor 15 days for payment of the remaining amount and the payment was not made.

Article 1243. Debtor's Liability

(1) Where the debtor does not perform the due obligation of credit reimbursement, as well as of payment of interest and other related sums, the creditor may demand the payment of a default penalty in the order and amount provided by law or contract.

(2) Where the debtor is in delay in what regards payment of amounts owed under the contract and the parties did not agree in the contract on the default penalty, an interest by 5% greater than that provided for in the contract shall accrue on the owed amount.

(3) Where the creditor cancelled the contract for the reason that the debtor is in delay concerning reimbursement of owed amounts, the creditor shall be entitled to an interest equal to the legal rate of interest. This does not affect creditors or debtor's right to prove causation of a greater or lesser damage by delay of credit reimbursement.

Article 1244. Creditor's Liability

Where the bank does not perform the obligation to offer credit, the debtor may demand payment of a delay penalty in the order and amount provided by law or contract.

Article 1245. Reparation of Damage in Case of Early Reimbursement of Credit

Where the debtor reimburses the credit before the maturity date, the creditor is entitled to demand compensation for damage caused by early reimbursement, while subtracting the saved amounts, taking into account the credit that could have been accorded on account of these funds. Upon calculating the damage, both the profit lost by the creditor and the costs avoided by the debtor by early reimbursement shall be taken into account.

SECTION 4
BANK GUARANTY

Article 1246. Bank Guaranty

(1) The bank guaranty is a written commitment, assumed by a bank or other financial institution (guarantor), at the request of another person (principal), to pay a sum of money to the principal's creditor (beneficiary) on the basis of beneficiary's written request.

(2) The bank guaranty ensures proper performance of the principal's obligations to the beneficiary.

(3) The principal is bound to pay the guarantor the remuneration agreed upon.

(4) The guarantor's obligations to the beneficiary provided by the bank guaranty do not depend on the principal obligation, which the guaranty has been issued to secure, even if the guaranty makes a reference to it.

Article 1247. Irrevocability of Bank Guaranty

A bank guaranty may not be revoked, unless it stipulates otherwise.

Article 1248. Inadmissibility to Assign Bank Guaranty

The right to a bank guaranty may not be assigned to a third party, unless the guaranty provides otherwise.

Article 1249. Moment of Bank Guaranty Coming into Effect

A bank guaranty comes into effect from the day it is issued, unless it stipulates otherwise.

Article 1250. Claim of Payment

(1) Where the secured case occurred, the beneficiary must lodge in writing his claim against the guarantor, attaching the relevant sustaining documents. The beneficiary must specify the essence of obligation breach from the part of the principal.

(2) Beneficiary's claim against the guarantor may be lodged only before the expiration of the term set in the guaranty.

Article 1251. Guarantor's Duties

(1) Upon receiving beneficiary's claim, the guarantor must without delay inform the principal thereof.

(2) Where the beneficiary claimed his rights, the guarantor must, within a reasonable time and with due diligence, examine whether the conditions necessary for payment are complied with.

Article 1252. Guarantor's Refusal to Satisfy Claim for Payment

(1) The guarantor is bound refuse to satisfy claims arising under bank guaranty, if the secured case did not occur, the documents attached do not comply with the terms set or if the claims have been filed after the expiration of the term fixed by the guaranty. The guarantor must without delay inform the beneficiary of the refusal to satisfy his claim.

(2) If, before satisfaction of beneficiary's claim, the guarantor obtains knowledge that the principal debt secured by the bank guaranty has been fulfilled completely or has terminated for other reasons, or has become ineffective, he must without delay notify the beneficiary and the principal to that effect. Where the principal repeatedly orders payment after such notification, the guarantor is bound to make payment.

Article 1253. Limits of Guarantor's Liability

(1) Guarantor's obligation to the beneficiary is restricted to the payment of the secured amount.

(2) Unless the guaranty stipulates otherwise, guarantor's liability to the beneficiary for nonperformance or improper performance of the guaranty obligation shall not be restricted to the payment of the secured amount.

Article 1254. Grounds for Termination of Guarantor's Obligation

(1) Guarantor's obligations to the beneficiary terminate by:

- a) payment of the secured amount;
- b) expiration of the fixed term of the guaranty;
- c) beneficiary's waiver of his rights;
- d) Guarantor's written confirmation of the beneficiary's waiver of his rights.

(2) Termination of guarantor's obligations on grounds provided for by let. a), b) and d) comes about regardless of the fact whether the deed of guaranty is returned to him.

(3) The guarantor must without delay notify the principal of guaranty termination.

Article 1255. Principal's Duties towards Guarantor

- (1) The principal is bound to reimburse the guarantor the sum given to the beneficiary under the bank guaranty.
- (2) The right to reimbursement shall arise only inasmuch as the guarantor could have considered necessary payments made to the beneficiary in relation to the agreement concluded with the principal.

**SECTION 5
PAYMENT ORDER****Article 1256. Payment Order**

- (1) The payment order (payment draft) is the order given by a person (drawer) to a bank (drawer bank) to pay an amount of money in favor of another person (beneficiary) for the purpose of extinguishing drawer's obligation towards the beneficiary.
- (2) The payment order may be simple, where collection of amount by the beneficiary is not contingent on submittal of a certain document regarding the purpose of payment, or documentary, where collection of payment is contingent on submittal by the beneficiary of certain documents requested by the drawer.

Article 1257. Execution of Payment Order

- (1) The drawer bank shall execute the payment order by transferring the indicated amount from drawer's account to beneficiary's account in the same bank or a different bank (payer bank).
- (2) The bank shall execute the payment order within the terms set by law, parties' agreement or bank usages.
- (3) The drawer may revoke or alter the payment order as long as the bank did not execute it yet.

Article 1258. Content of Payment Order

The payment order shall include:

- a) drawer's name or denomination, address and account number;
- b) beneficiary's name or denomination, address and account number;
- c) denomination, code and address of drawer bank;
- d) payment order;
- e) amount in figures and in words;
- f) grounds for payment;
- g) in case of documentary payment order, instruction regarding documents that must be submitted by the beneficiary;
- h) date of issuance;
- i) signature of drawer's authorized person(s);
- j) other information, according to the regulations of the National Bank of Moldova.

**SECTION 6
PAYMENT BY CHEQUE****Article 1259. Cheque**

- (1) The cheque is a transmissible document, consisting in a written claim, drafted in accordance with legal provisions, containing the unconditional order of the issuer (drawer) towards the payer (drawee) to pay a certain amount upon the request of the presenter of the cheque or of the person indicated on the cheque, or by order of the latter.
- (2) The cheque is not contingent on the transaction on which the claim paid by cheque is based.
- (3) Payment by cheque is regulated by this code, other laws and bank usages.

Article 1260. Cheque Requisites

- (1) The cheque includes:
 - a) the word "cheque", inserted in the title;
 - b) the simple and unconditional instruction to pay a certain amount to the presenter of the cheque or to the person indicated in the cheque, or by order of the latter;
 - c) drawee's name or denomination, address or premises;
 - d) place of payment;
 - e) date and place of issuance;
 - f) drawer's name or denomination, address or premises;
 - g) Drawer's signature.
- (2) The deed that lacks at least one of the requisites mentioned above shall not be deemed cheque, save for the following cases:

a) in the absence of a special note, the place indicated near the name of the drawee shall be deemed as the place of payment. Where several places are mentioned near the name of the drawee, the cheque is payable in the place specified first. Where there is no such mention at all, the cheque is payable at drawee's domicile or premises;

b) the cheque that does not mention the place of issuance, is deemed signed in the place shown near drawer's name or denomination.

(3) Any mention on the cheque relating to acceptance, interest or liberation of drawer from liability for payment shall be deemed unwritten.

Article 1261. Amount of Cheque

Where the amount for cheque payment written in figures differs from the amount written in words, the amount in words shall be deemed as the amount for payment. Where the amount for payment is written several times either in figures or in words, in case of a dispute, the smallest amount shall be deemed as the amount for payment.

Article 1262. Signature on Cheque

(1) If the cheque bears signatures of persons incapable to undertake obligations by bill of exchange, fake signatures or signatures of non-existing persons, the obligations of the other signers shall nevertheless remain valid.

(2) The one who signs the cheque as agent for another person, for whom he is not empowered to act, shall be obliged personally based on the issued cheque, while if he has paid, he acquires the same rights as would have had the allegedly represented person.

Article 1263. Cheque Issuance

(1) The cheque may be issued:

a) in favor of a person, with the note "by order", "at our instructions" or with equivalent notes, or without them (cheque by order). The cheque may be issued by order of the drawer.

b) in favor of a person, with the note "non-transmittable by order" or another equivalent note (nominal cheque). The nominal cheque may not be issued in favor of the drawer, save for the cheque issued by drawer's branch in favor of another branch;

c) in favor of cheque's presenter (bearer cheque). The cheque issued in favor of a person with the note "or as bearer cheque" is deemed to be bearer cheque. The cheque that does not contain the name of the beneficiary is deemed to be bearer cheque.

(2) The cheque may be issued only against a drawee, at whom the drawer has constituted a deposit (provision) of which he can dispose of, in accordance with a tacit or express agreement, also referring to the form of cheque issuance. However, the breach of these rules does not affect the validity of the cheque.

(3) Where the cheque that has not been filled in upon its issuance is later filled in contrary to parties' agreement, noncompliance with this agreement is non-opposable to the cheque holder, save for the case when he obtained it in bad faith or by gross negligence.

Article 1264. Cheque Transmittal

(1) The cheque by order may be transmitted through endorsement. The endorsement transfers all rights from endorser to the cheque holder, who is deemed legal possessor if he justified his right by an unbroken chain of endorsements, even if such endorsements are blank.

(2) The endorser is liable for cheque payment, save for persons to whom the cheque was passed over by endorsement, after the following endorsements by that endorser have been prohibited.

(3) The endorser is bound to indicate the date of endorsement note.

(4) The nominal cheque is transmitted according to the rules of a simple assignment and encompasses the effects of such assignment.

Article 1265. Endorsement

(1) The endorsement must be simple and unconditional. Any condition inserted in the text of the endorsement shall be deemed unwritten.

(2) The endorsement may be made in favor of drawer or of any other person bound. These persons may, in turn, endorse the cheque again.

(3) The partial endorsement and that signed by the drawee are void.

(4) The endorsement shall be written on the cheque (verso) or on the allonge (page attached to the cheque). The endorsement must be signed by the endorser.

Article 1266. Blank Endorsement

(1) It is allowed that the endorsement does not specify the person in whose favor it is made, bearing only endorser's signature and requisites on the cheque (verso) or on the allonge (blank endorsement).

(2) The bearer endorsement is deemed blank endorsement.

Article 1267. Endorsement by Proxy

Where the endorsement contains the note "for collection", "as empowered" or any other note that implies an order for collection of cheque, the holder may exercise all rights arising from the cheque, but can endorse it only by order of the endorser (endorsement by proxy). In such case, persons responsible for cheque payment may oppose to the holder only exceptions opposable to the endorser.

Article 1268. Endorsement following Protest or Maturity

The endorsement effected after protest or any similar act, or after the lapse of the term of cheque submittal has the effects of a simple assignment. Until the first disproof, the undated endorsement shall be deemed effected before the date of protest or of any similar act or before the lapse of the term for cheque submittal.

Article 1269. Dispossession

Where the cheque has gotten off the possession of a person, the new holder is bound to return it only if he received it in bad faith or by gross negligence.

Article 1270. Collateral Acceptance

(1) Partial or complete cheque payment may be guaranteed by collateral acceptance (guaranty), accorded by a third party or even by a signor of the cheque (guarantor).

(2) The collateral acceptance shall be accorded by note on the cheque or the allonge. Its shall be expressed by the words "to consider as collateral acceptance", "as guarantor for..." or by any other equivalent. The guarantor shall indicate the amount of guaranty, his name, domicile (premises) and the person for whom the guarantor binds himself and shall sign the guaranty.

(3) The guarantor shall be liable as all persons bound by the cheque. Guarantor's obligation shall be valid even in the case when the secured obligation is void for any reason.

(4) Where the guarantor pays the cheque, he acquires rights arising under the cheque towards the one he gave guaranty for, as well as in relation to those that, according to the cheque, are bound towards the person in whose favor the cheque was issued.

Article 1271. Payment Based on Cheque

(1) The cheque is payable upon request. Any contrary indication is deemed unwritten. The cheque submitted for payment before the day of issuance shown on the cheque is payable upon submittal.

(2) The term of cheque submittal for payment constitutes 8 days. The term starts running from the moment of cheque issuance.

Article 1272. Cheque Revocation

(1) Cheque revocation is valid only after the lapse of the term of submittal for payment.

(2) Where the cheque is not revoked, the drawee may also effect payment after the lapse of the term of submittal for payment.

(3) The death or incapability of the drawer, occurred within the term of submittal for payment, does not affect cheque validity.

Article 1273. Drawee's Rights

(1) The drawee may demand the copy of the cheque upon effecting payment towards cheque's holder and request from him written confirmation of receipt of the paid amount.

(2) Partial payments may not be refused. In case of partial payments, the drawee may demand from the cheque holder written confirmation of partial payment.

Article 1273. Holder's Rights in Case of Cheque Non-Payment

(1) The cheque holder may exercise his right of action against the drawer, the endorser and other bound persons, if the cheque submitted within the legal term is not paid and the refusal of payment is proved by:

a) a notary certified deed (protest);

b) a declaration of the drawee that contains the date of the declaration and the date of cheque submittal for payment.

(2) The protest or any other similar act must be effected before the lapse of the term of cheque submittal for payment.

Article 1275. Notification Duties

(1) The holder of the cheque must give notice to the cheque endorser and drawer about payment refusal within 4 working days that follow the day of issuance of the protest or other similar deed, while in case of a note on the cheque stating "circulation without delay", the duty to give notice must be fulfilled on the day following the day of cheque submittal.

(2) Every endorser shall give notice to the preceding endorser (from whom the former received the cheque) within 2 working days, while in the case that the obligation of the preceding endorser is secured by a guarantor, the respective person shall also give notice to the guarantor about the notification received, specifying the name or denomination and address of those who signed the previous notices, until the information about non-payment shall be sent to the drawer.

(3) Failure to send the mentioned notices does not deprive the person from his rights that arise under the cheque. However, this person shall be held liable for the damage that could be caused by failure to perform the duty to give notice (such liability cannot exceed the value of the cheque).

Article 1276. Note "Without Protest"

(1) The cheque holder, endorser or guarantor, are entitled to liberate the next cheque holders from the duty to make deed of protest or any other similar deed necessary for the exercise of the right of recourse, by inserting the note "circulation without delay", "without protest" or any other similar note, signed by them. Where the respective note is inserted by the drawer, it shall be applicable to all persons that signed the cheque, while if it is inserted by an endorser or a guarantor; the note shall be applicable only to those that signed it.

(2) The note provided for in par.(1), does not liberate cheque holders from the duty to give notice.

(3) Where, in spite of the note, the cheque holder issues a deed of protest or any other similar deed, he shall bear the related costs.

Article 1277. Liability of Participants to Cheque Payments

(1) All persons bound under the cheque are joint and several debtors in relation to the cheque holder and in relation to any person that applied on the cheque the instruction of cheque payment, signed by the payer. The action filed against one of the persons bound under the cheque does not bar filing action against other joint and several debtors.

(2) The cheque holder may request from the person against whom the action is filed payment of:

a) the unpaid cheque value;

b) a 6% interest for the period of non-payment;

c) costs for issuance of the deed of protest or any other similar act, for sending of notices, and other costs relating to the court action.

(3) The person that has effected cheque payment may demand from the rest of the debtors payment of:

a) the amount paid based on cheque;

b) a 6% interest for the period that lapsed from cheque payment;

c) costs relating to cheque payment.

(4) Any person against whom a recourse action is filed according to the provisions of par.(1)-(3) may condition cheque payment on the receipt from the person that filed the recourse action of the cheque, together with the deed of protest or any other similar deed (as the case may be), with written confirmation that the latter received payment under the cheque. Any endorser that effected cheque payment may erase his endorsement note and the following endorsements from the cheque.

(5) Actions filed with a view to receiving the amounts indicated in para.(2) and (3) are subject to a 6-month period of limitation. Interruption of the running of the period of limitation shall apply only in relation to the person in whose regard there are grounds to do this.

Article 1278. Force Majeure

(1) Where the submittal of cheque for payment, the issuance of the deed of protest or of any similar deed within the set terms is barred by an event of force majeure, the mentioned term shall be extended for the duration of this event, contingent on the notification by the cheque holder of his endorser about the occurrence of the force majeure event and contingent on the note about performance of such notification, written on the cheque.

(2) Where an event of force majeure occurred, provisions of art.1275 shall also apply to the fulfillment of the duty to notify.

(3) Where the duration of the force majeure event exceeds 15 days from maturity, the right of recourse may be exercised without cheque submittal or without issuance of the deed of protest or of any other similar deed.

SECTION 7**PAYMENTS BY BILL OF EXCHANGE OR BY PROMISSORY NOTE****Article 1279. Bill of Exchange and Promissory Note**

(1) The bill of exchange is an instrument of credit that consists in a written claim, issued in accordance with legal provisions, containing the unconditional order given by the drawer (issuer) to the drawee (payer) to pay immediately or upon maturity a certain amount to the presenter of the bill of exchange or to the person indicated in the bill, or at the order of that person.

(2) The promissory note is an instrument of credit, issued in accordance with legal provisions, by which the drawer undertakes to pay immediately or upon maturity a certain amount to the presenter of the deed or the person indicated in it, or at the order of that person.

(3) The bill of exchange and the promissory note do not depend on transactions on which claims paid by such means are based.

(4) Payments by bill of exchange and by promissory note are regulated by this Code, the Law on Bill of Exchange and by other normative acts, as well as by bank usages.

SECTION 8

PAYMENTS BY DOCUMENTARY LETTER OF CREDIT

Article 1280. Documentary Letter of Credit

(1) The documentary letter of credit is an arrangement, however named or described, by which a bank (issuer bank), acting upon the request of its client (accreditor) and according to his instructions, or in its own name, makes a payment to a third party (beneficiary) or at the order of the latter, or accepts and makes payments under bills of exchange drawn by the beneficiary, or authorizes another bank to effect such payment or to accept and make payments under such bills of exchange.

(2) The documentary letter of credit is an agreement separate from the transaction on which it is based. In operations based on letter of credit, all parties involved operate only with documents, and not with goods, services or other assets that the documents may refer to.

(3) Payment under documentary letter of credit is regulated by this Code, other normative acts, as well as by bank usages.

Article 1281. Presumption of Irrevocability of Letter of Credit

(1) The letter of credit must clearly indicate that it is revocable. Otherwise, the letter of credit shall be deemed irrevocable.

(2) The irrevocable letter of credit represents a firm commitment of the issuer bank, contingent on that the documents are submitted to the appointed bank or to the issuer bank and are in compliance with the terms and conditions of the letter of credit. The irrevocable letter of credit may be altered or cancelled without the consent of the issuer bank and the endorsing bank, if there exists one, and of the beneficiary only in cases provided by this Code.

(3) The revocable letter of credit may be altered or cancelled by the issuer bank at any moment without prior notification of the beneficiary, contingent on provision of compensation to the bank that made the letter of credit usable, for any payment, acceptance or receipt of documents (in case of letters of credit with fixed-term payment), if such actions are in compliance with the terms of the letter of credit and have been made before receiving the note regarding alteration or cancellation of the letter of credit.

Article 1282. Use of Letter of Credit

(1) The letter of credit must clearly indicate whether it is usable by payment upon request, by deferred payment, or by acceptance.

(2) Besides the case when the letter of credit stipulates that it is usable only by the issuer bank, it must appoint the bank authorized to make payment or to assume a deferred payment commitment or to accept bills of exchange (appointed bank). Save for the case when the appointed bank is the endorsing bank, the appointment by the issuer bank shall not constitute a commitment for the appointed bank.

(3) The documents must be submitted to the issuer bank or to the endorsing bank, if there is one, or to any other appointed bank.

Article 1283. Endorsement of Letter of Credit

(1) The endorsement of an irrevocable letter of credit by another bank (endorsing bank) based on authorization or request of the issuer bank consists in assuming a firm commitment by the endorsing bank, in addition to that of the issuer bank, contingent on the fact that the stipulated documents are submitted to the endorsing bank or to any other appointed bank and are in compliance with the terms and conditions of the letter of credit.

(2) Where another bank is authorized to add its endorsement or is demanded to do so by the issuer bank, but is not prepared to do this, it must give immediate notice to the issuer bank.

(3) The endorsing bank is not bound to add its endorsement to the ratification of beneficiary's letter of credit, if the issuer bank does not specify otherwise in the authorization or in the request to add the endorsement.

(4) The endorsing bank may choose to endorse an alteration towards the beneficiary without extending its endorsement over the altered letter of credit, conditional on the immediate notification of the issuer bank and the beneficiary.

Article 1284. Transferable and Assigned Letter of Credit

(1) The letter of credit may be transferred only where the issuer bank expressly defines it as transferable. The fact that the letter of credit does not specify its transferable character, does not deprive the beneficiary of the right to assign any amount to which he is or will be entitled under the letter of credit, as provided by applicable legal provisions.

(2) By virtue of a transferable letter of credit, the beneficiary (primary beneficiary) may demand from the appointed bank (transferring bank) to assume a commitment of deferred payment or to accept or, in case of free negotiations, to make the letter of credit usable partially or in its entirety for one or several beneficiaries (secondary beneficiaries).

(3) The transferring bank does not have any obligation to make transfer over the limit and in other manner than that to which it assented.

(4) Where the letter of credit does not provide otherwise, the transferable letter of credit can be transferred just once.

SECTION 9
PAYMENT BY DOCUMENTARY COLLECTION

Article 1285. Documentary Collection

(1) The documentary collection is a commitment by which a bank (remitting bank) undertakes to manipulate, according to the instructions given by its client (issuer), financial documents (bills of exchange, promissory notes, cheques and other similar instruments used for making payments), accompanied by commercial documents (invoices, transport documents, securities, other similar documents that are not financial documents), with a view to accomplishing, also by mediation of another bank (bank assigned to effect collection), payment or acceptance of issued bills of exchange, or with a view to issuing documents against payment or acceptance of issued bills of exchange.

(2) Collection instructions must contain information regarding:

- a) issuer and drawee (name or denomination, address, telex, phone, fax);
- b) the bank from which the collection was received and the presenter bank (SWIFT code, in addition to the information requested from the issuer and the drawee);
- c) amount and currency of collection;
- d) list of documents attached and number of copies for each documents;
- e) terms and conditions regarding the order of carrying out payment and acceptance;
- f) costs to be covered;
- g) interest, as the case may be, with indication of rate, duration and period of accrual;
- h) method of payment and form of payment notice;
- i) instructions in case of non-payment, non-acceptance or non-confirmation of other instructions.

(3) The documentary collection is a contract separate from the transaction it is based on.

(4) Payments by documentary collection are regulated by this Code, by other normative acts and by bank usages.

Article 1286. Banks' Duties and Responsibilities

(1) The banks are not bound to put into action a documentary collection or any instruction for collection or later instruction related to a documentary collection. Where a bank decided, for any reason, not to put into action a documentary collection or any instruction for collection or a later instruction related to a documentary collection, it must give immediate notice to the party that received the collection or the respective instructions.

(2) Documents sent for collection must be accompanied by instructions for collection, while the banks are not empowered to act otherwise than in compliance with these instructions and with the provisions of this Code. The banks shall not examine the documents to obtain instructions.

(3) Without prejudice of the obligation to check compliance of the received documents with the list contained in the instructions for collection and to give immediate notice to the issuer in case of absence of documents or submittal of other documents than the enlisted ones, the banks shall not have any further obligation in this regard. The submitting bank must check whether the form of acceptance of the bill of exchange is correct and complete, but is not liable for the authenticity of signatures or for the validity of the right to sign of those who signed the bill of exchange.

(4) The banks shall not assume any obligation or liability regarding the authenticity of received documents.

(5) The bank assigned to execute a documentary collection must give notice of its further evolution in conformity with the instructions of the remitting bank.

Article 1287. Execution of Documentary Collection

(1) The bank assigned to collect the paid amount shall submit (make available according to issuer's instructions) the documents to the person to whom the submittal must be made (drawee) in the form in which those documents were received, save for the case when the banks are authorized to apply necessary stamps and seals, to make any necessary endorsements and to apply all identification elements or usual symbols, required by the collection operations.

(2) Amounts that must be paid are made available to the issuer without delay. Where it is not established otherwise, the bank assigned to perform collection shall make payment of the owed amounts only towards the remitting bank, even in the case provided by art.1286.

(3) Partial payments are allowed in the case of a documentary collection only if this is specified in the collection instructions, and the documents are issued only after the entire payment is made, unless collection instructions provide otherwise. In the case of partial payments made under this paragraph, the submitting bank is not liable for the consequences of tardy issuance of documents. Partial payments shall be made according to the requirements of par.(1).

Article 1288. Interest, Commission and Costs

(1) Interest is paid only if this is stipulated in the collection instructions. Where the payments of interest, costs and commission are eluded by the drawee, these shall be borne by the issuer. Where, in accordance with the collection instructions and this Code, the payment of commission, costs and of other expenses must be borne by the issuer, the bank assigned to make collection is entitled to recovery of such expenses from the bank that received the collection instructions, while the remitting bank is entitled to recovery from the issuer of any amount paid thereby, regardless of the further evolution of the collection. The banks participating in the execution of the collection instructions may demand advance payment of commission, costs and other expenses and, contingent on the receipt of the advance payment, reserve the right to put or not to put into action the instructions received.

(2) Where the drawee refuses to pay the established interest, the submitting bank may issue the documents without collecting interest, against payment or acceptance of issued bills of exchange or on other terms, save for the case when collection instructions clearly specify that the payment of interest may not be avoided. The submitting bank does not bear liability for the consequences of the refusal to pay interest and is bound to give immediate notice to the remitting bank about the refusal, as provided by art.1286.

(3) Where the collection instructions provide for payment of collection costs and commission by the drawee and the latter refuses to pay, the provisions of art.1286 par.(5) shall apply *mutatis mutandis*.

SECTION 10 PAYMENT BY BANK CARD

Article 1289. Bank Card

(1) The bank card is a payment instrument issued by a bank (issuer) that allows the card holder to withdraw cash, to make transfer payments within the limits of account balance in the issuer bank or on account of a credit line accorded by the latter.

(2) The holder of the bank card may make payments for goods and services rendered by commercial enterprises which, based on contracts concluded with the issuer, accept to be paid by card. The commercial enterprise recovers the amounts for performance towards the holder of the card by assigning the claim against the holder of the card to the issuer.

(3) Payments by bank card are regulated by the provisions of this Code, in particular the norms regarding the payment order, the current bank account, the overdraft credit and by other normative acts and bank usages.

CHAPTER XXV FACTORING

Article 1290. Contract of Factoring

(1) By a contract of factoring, the party that is the provider of goods and services (assignor) undertakes to assign to the other party, which is a factoring company (factor), actual or future claims under contracts of sale of goods, service rendering and contracts for work, while the factor undertakes at least 2 of the following obligations:

- a) financing the assignor, including by loans and advance payments;
- b) accounting of claims;
- c) ensuring warning procedure and collection of claims;
- d) assuming the risk of debtor's insolvency for claims that have been taken over (*delcredere*);

(2) The contract of factoring shall be concluded in writing.

(3) Assignment of claims must be notified to the debtor.

(4) The parties are bound to specify the size, volume, field and properties of claims that form the object of contract, as well as the elements for determining the payment amount.

(5) Provisions governing assignment of claims shall apply to the contract of factoring, inasmuch as the provisions of this Chapter do not provide otherwise or it does not follow otherwise from the essence of factoring.

Article 1291. Duty to Give Notice

Both parties undertake to provide each other with the needed information, with a view to contract unfolding in conformity with the interests of each party.

Article 1292. Assigned Claims

(1) The contract may provide for the transfer of all assignor's rights deriving from the contracts with the debtors or only some of them.

(2) The contract may provide for the assignment of actual, future, conditional claims, and claims determined upon conclusion of contract or determinable at the latest upon their arising.

(3) The contract clause by virtue of which future claims are assigned shall operate their transfer to the factor upon their arising, without a new deed of transfer being needed.

Article 1293. Nullity of Prohibition of Assignment

The assignment or assignor's claim to the factor may be accomplished even if there is an agreement between the assignor and the debtor prohibiting such an assignment. This provision is without prejudice to assignor's liability towards the debtor for damage inflicted by the assignment operated contrary to contractual provisions.

Article 1294. Assignor's Liability

(1) The assignor is liable for the existence of claims, as well as for the performance of contractual obligations by the debtor.

(2) The assignor is liable for debtor's solvency, if the risk has not been taken over by the factor according to art.1290 par.(1) let.d).

Article 1295. Payment Owed to Factor. Guaranty

(1) The contract is void if it does not expressly provide the amount that is to be paid to the factor. The amount is computed based on the given circumstances, focusing in particular on the eventual *delcredere* fee and, additionally, on the share held by total deductions from the assigned claims.

(2) Where the factor demands a part of the amount of claim as guaranty for covering risks related to contract unfolding, he must expressly provide the content and amount of the sum. The guaranty may not exceed 20% of the amount of claims.

Article 1296. Rights of Guaranty in Relation to Debtor

Assignor's rights and guaranties in relation to the debtor pass to the factor concomitantly with the conclusion of claim transfer to the factor, inasmuch as this is provided in the contract of factoring.

Article 1297. Debtor's Rights

(1) The debtor may oppose to the factor all objections and defenses that he had against the assignor.

(2) The debtor may demand from the factor compensation for his claim against the assignor, if that claim was mature at the moment of claim assignment to the factor.

(3) In cases provided by par.(1) and (2) the assignor is liable towards the factor for losses inflicted. In case of additional damage, the assignor is liable to pay compensation only inasmuch as the damage were inflicted by imputable conduct.

Article 1298. Debtor's Right of Recourse

Where the debtor has paid to the factor, the latter made payment towards the assignor, and the assignor does not perform his contractual obligations, the debtor shall be entitled to demand reparation of damage only from the assignor. The debtor may also demand reparation from the factor, where the latter made payment to the assignor, while being aware that the latter did not perform his obligations under the contract.

Article 1299. Open or Covered Factoring

(1) The contract of factoring may provide for parties' obligation and right to notify the debtor about the assignment of claim, as well as the means by which he should be notified.

(2) Where the debtor has not been notified about the assignment of claim and the type of the claim, the factor may be opposed debtor's payment to the assignor. In such case, the assignor is bound to forthwith deliver the obtained amount to the factor.

(3) Debtor's payment to the factor is exonerative, regardless of the performance of the duty of notification, save for the situation when the debtor was aware that the assignment is ineffective.

Article 1300. Other Assignments

Where the factor, in turn, assigns claims taken over from the assignor, the provisions of this Chapter shall apply accordingly, the latest assignor being considered factor.

CHAPTER XXVI

INSURANCE

Article 1301. Contract of Insurance

By a contract of insurance, the insured undertakes to pay to the insurer the insurance premium, while the latter undertakes to pay to the insured or to a third party (insurance beneficiary) the insured sum or the compensation, within the agreed limits and terms, upon occurrence of the insured risk.

Article 1302. Types of Insurance

Insurance comprises personal insurance and insurance for damage.

Article 1303. Personal Insurance

- (1) In case of personal insurance the insured's life and health (including mental sanity) may become object of insurance.
- (2) Personal insurance may be individual or collective.

Article 1304. Insurance for Damage

- (1) The insurance for damage secures the insured person against the consequences of an event that may affect his property.
- (2) The insurance for damage comprises insurance of assets and civil liability insurance.

Article 1305. Reinsurance

- (1) By concluding the contract of reinsurance:
 - a) the reinsurer contributes, according to obligations undertaken and in exchange for reinsurance premiums received, to the payment of indemnifications which the reinsured is bound to pay upon realization of the reinsured risk;
 - b) the insurer, as reinsured, assigns a part of the insurance premiums, in exchange for which the reinsurer contributes, according to the obligations undertaken, to the payment of indemnifications which the reinsured is bound to pay upon realization of the reinsured risk.
- (2) The contract of reinsurance has effects only between the reinsurer and the reinsured.

Article 1306. Conclusion of Contracts in the Republic of Moldova

Persons from the Republic of Moldova shall conclude insurance contracts with societies registered in the Republic of Moldova, save for cases when the needed insurance type is not operated on the internal market.

Article 1307. Insured Risk and Insured Event

- (1) The insured risk is a possible, but uncertain future event, which may affect the life, health or property of a person.
- (2) Insurance of the following risks is prohibited:
 - a) illegal interests;
 - b) damage inflicted by participation in lotteries, games and bets;
 - c) potential costs to which a person may be subject in order to set free hostages.
- (3) The insured event is the event for removal of the consequences of which the insurance was concluded, and at the occurrence of which insurer's obligation to pay the insured sum or the compensation arises.

Article 1308. Conclusion of Contract of Insurance

- (1) With a view to concluding a contract of insurance, the insured shall submit to the insurer a written proposal (request), where he shall indicate his own and beneficiary's interest or shall declare by word of mouth the intention to conclude a contract of insurance.
- (2) The contract of insurance may be concluded in favor of several beneficiaries.
- (3) The contract of insurance shall be concluded in writing.
- (4) The contract of insurance shall comprise:
 - a) the name or denomination, domicile or premises of the contracting parties;
 - b) object of insurance: asset, person or civil liability;
 - c) insured risks;
 - d) start and duration of insurance;
 - e) insured sums;
 - f) insurance premiums, place and term of payment;

g) other information, as under law or contract.

(5) The contract of insurance may not be proved by witness testimony, even if there exists a tentative of written proof.

(6) The proof of conclusion of the contract of insurance may also be inferred from the sending of an insurance document, as well as from the insurance policy (certificate), from the request for premium payment or from the deed that confirms this payment or from any other document from which the conclusion of contract may be inferred.

Article 1309. Insurance Policy

(1) The insurer is bound to hand over to the insured a copy of the insurance policy signed by him.

(2) The insurance policy shall comprise:

a) name or denomination, domicile and premises of the contracting parties;

b) Object of insurance: asset, person or civil liability;

c) insured risks;

d) Start and duration of insurance;

e) Insured sum;

f) Insurance premium, place and term of payment;

g) Other information, as under law or contract.

Article 1310. Duty to Hand over Documents

(1) The insurer is bound to hand over, together with the insurance policy, copies of the written proposals submitted by the insured or on his behalf.

(2) In case of discrepancy between the insurance policy and the proposals, the latter shall have priority, save for the cases when the insurer indicates to the insured in a separate document the elements on which discrepancies exist.

Article 1311. Setting Rights and Obligations in Case of Mutual Insurance

(1) Several persons can insure their assets on mutual principles, by association, based on their free will, through societies of mutual insurance.

(2) The certificate of participation in a society of mutual insurance may set members' rights and duties by reference to the document of society's incorporation.

(3) Each member is entitled to obtain a copy of the document of society's incorporation.

Article 1312. Opposability of Defenses

Where an insurance policy is issued as nominal, bearer or at one's order, the insurer may oppose to the holder of the policy all defenses opposable to the initial insured. Exceptions may not be opposed if the holder of the policy notifies the insurer about the assignment of rights that arise under insurance and the insurer does not forthwith notify him of the existent objections.

Article 1313. Duration of Contract of Insurance

(1) The insurance takes action on the moment of payment of the insurance premium or of the first installment of the premium and terminates at 12 pm of the last day of the agreed term of insurance, unless the contract or the law does not provide otherwise.

(2) Where the validity of the insurance contract extends over a period preceding the payment of the insurance premium, such insurance is valid contingent on the non-occurrence of the insured event before and upon conclusion of insurance.

(3) Where the contract of insurance is concluded for a period exceeding 5 years, the parties may cancel the contract upon the lapse of the fifth year or of every following year, with a 3-month notice term.

(4) Where the contract is concluded for an undetermined period, both parties are entitled to cancel the contract, contingent on compliance with a term of prior notice of at least one month and 3 months at most.

(5) The agreement by which the contract of insurance is deemed tacitly extended for a period longer than one year is void.

(6) The insurance period is the time interval of maximum 1 year or less, if insurance premiums are accordingly calculated.

Article 1314. Insurance Premium Increase

Where, in accordance with a contractual clause for updating the insurance premium, the insurer increases the amount of the premium, the insured may cancel the contract, with an 1 month term of prior notice. Insignificant increases do not give right to cancel the contract.

Article 1315. Insurer's Duties

(1) The insurer is bound:

a) to familiarize the insured in an adequate form with the terms of insurance;

b) where the right of the insured or of the insurance beneficiary to collect the sum insured or the insurance compensation arose, to make payment within the term established under insurance provisions;

c) to compensate the insured for costs incurred due to efforts made to avoid occurrence of the insured event or to mitigate damage subject to compensation;

d) to keep confidential the information about the insured and insured persons, of which he became aware in the course of insurance.

(2) The law and contract of insurance may also provide other obligations for the insurer.

Article 1316. Insured's Duties

(1) The insured is bound:

a) to inform the insurer, upon conclusion of contract, of all essential circumstances regarding the extent of the risk to be insured;

b) to inform the insurer of other contracts of insurance concluded with regard to the same object;

c) to timely pay insurance premiums;

d) to take actions in his power to avoid the occurrence of the insured event or to mitigate the damage caused by the occurrence of that event;

e) to inform the insurer immediately of the occurrence of the insured event.

(2) The law and the contract of insurance may also provide for other duties of the insured.

Article 1317. Insurer's Notification of Extent of Insured Risk

(1) Upon concluding the contract of insurance, the insured is bound to notify the insurer of all the circumstances known to him, which might be important with regard to then assumption of the insured risk. Circumstances deemed to be important are those dangerous circumstances that could influence insurer's decision to conclude the contract or to conclude it under the agreed terms.

(2) In case of doubt, a circumstance with regard to which the insurer expressly formulated written inquiries shall be deemed important.

(3) Where, contrary to the provisions of par.(1) and (2), the mention of an important circumstance was omitted, the insurer may cancel the contract. He is also entitled to cancel the contract if the mentioning of an important circumstance has been omitted because the insured was not aware of that circumstance for reasons imputable to him.

(4) Cancellation is excluded where the insurer was aware of the mentioned circumstance or the mention is omitted without the insured's fault.

Article 1318. Cancellation of Contract Due to Certain Inaccuracies

(1) The insurer may also cancel the contract where an inaccurate mention was made in relation to an important circumstance.

(2) Cancellation is excluded where the inaccuracy is known to the insurer or the mention is inaccurate for reasons not imputable to the insured. The insurer may cancel the contract only within a month from the moment when he became aware of the inaccuracy.

Article 1319. Term of Cancellation

(1) The insurer may cancel the contract at his own initiative within a month from the moment when he became aware of the circumstances that entitle him to cancel contract.

(2) The cancellation shall be made by written declaration towards the insured.

Article 1320. Cancellation of Contract after Occurrence of Insured Event

Where the insurer cancels the contract after the insured event occurred, his obligations will remain valid inasmuch as the circumstance in relation to which the duty of notification has been breached did not influence in any way the occurrence of the insured event or the extent of the obligation owed by the insurer.

Article 1321. Suspension of Guaranty

Nonperformance of a formal obligation that aggravates the risk suspends insurer's guaranty towards the insured. The suspension ceases in the case where the insurer consents on this or the insured complies again with his obligations.

Article 1322. Payment of Insurance Premium

(1) The insured is bound to pay the insurance premium only upon issuance of the insurance policy.

(2) If the insured interest does not exist upon the beginning of insurance or if it is not possible already for the future interest to become real, the insured is liberated from his obligation to pay the insurance premium. Where the insured interest is extinguished, the insured owes to the insurer only that part of the premium that corresponds to the duration of the risk. The insurer may demand an according fee for the costs and operations undertaken for the conclusion of contract.

Article 1323. Effect of Non-Payment of Insurance Premium Installment

(1) Where one of the installments of the insurance premium is not paid, albeit payment in installments was agreed upon, the insurer may set a 2-week term for the insured, at the expense of the latter. In such case, the legal consequence of non-payment in time must be specified.

(2) Where, after the lapse of the term provided for at par.(1), the insured event occurs, while at the moment of occurrence the insured has delayed payment of premium or of owed interest, the insurer is liberated from his obligation.

Article 1324. Cancellation of Contract in Case of Non-Payment of Insurance Premium Installment

Where the insured delayed payment of a installment of the insurance premium, the insurer may cancel the contract, conditioned on compliance with a one-month term of prior notice.

Article 1325. Insured's Right to Refuse Payment of Insurance Premium

The insured may refuse payment of insurance premium if, after conclusion of contract, it becomes known that insurer's economic standing became so difficult that there exist justified expectations to consider that upon occurrence of the insured event the insurer will not be able to perform his obligations.

Article 1326. Notification of Dangerous Circumstances

(1) The insured is bound to inform the insurer immediately of the dangerous circumstances that have appeared or of which he became aware after conclusion of contract.

(2) Where the dangerous circumstance is willfully caused by the insured or if non-awareness of circumstances that already existed upon conclusion of contract is due to insured's fault, the insurer is entitled to cancel the contract without prior notice.

Article 1327. Notification about Insured Event Occurrence

(1) The insurer is bound to immediately notify the insured about the occurrence of the insured event.

(2) After occurrence of the insured event, the insurer may demand from the insured provision of any information needed to ascertain the insured event or for establishing the extent of his obligation.

(3) The insurer cannot invoke an agreement by which he is liberated from his obligation, if the insured did not perform his obligation of notification accordingly, unless and to the extent that insurer's interest are seriously harmed by nonperformance.

Article 1328. Maturity of Insurer's Obligation

(1) Insurer's obligation becomes due from the moment of ascertaining the insured event and the extent of insurer's obligation.

(2) If inspection lasts over a month, the insured is entitled to demand an advance payment according and proportionate to the probable payment obligation, contingent on that insurer's obligation to pay the indemnification and its extent is beyond doubt.

(3) Agreements by which the insurer is relieved from the obligation of payment of delay interest are void.

Article 1329. Taking over of Insured's Rights by Insurer

(1) The insurer who has paid the insurance money takes over, within the limits of this amount, the right of claim, which the insured or another person that collected the insurance money holds against the third party responsible for the damage, unless the contract or the law provide otherwise.

(2) Where the insured relinquishes his claims against the third party or the rights that are the basis for those claims, the insurer shall be spared from payment of the part of the insurance money that he could have claimed from the third party, on legal grounds.

Article 1330. Applicable Regulations

Terms and regulations regarding various forms and types of insurance shall be set in accordance with this Code and other normative acts.

CHAPTER XXVII SETTLEMENT

Article 1331. Settlement

(1) The settlement is the contract by which the parties prevent a trial about to begin, terminate a trial that already started or solve difficulties appeared in the course of performance of a court judgment.

(2) In order to conclude the settlement it is necessary to have civil capability to dispose of the object of settlement.

(3) The settlement may set a penalty for the one who fails to perform it.

Article 1332. Prohibition of Settlement

(1) No settlement can be done in regard of the capability of a person or of other issues that pertain to public order.

(2) Conclusion of settlement in regard of a civil suit deriving from a criminal offence is allowed.

Article 1333. Effect of Settlement

(1) Settlement's effects between its parties are equivalent to those of a court judgment.

(2) The settlement is not susceptible of enforcement unless it is ratified.

Article 1334. Nullity of Settlement

(1) The transaction may be declared null under general grounds of transaction nullity.

(2) Error of law is not a ground for nullity of settlement.

Article 1335. Effect of Nullity of Title

(1) Where the settlement is based on null title, it shall also be subject to nullity, save for the case where the parties have expressly covered the case of nullity.

(2) The settlement based on a title that is later acknowledged as forged is void.

Article 1336. Nullity of Settlement in Case of Definitive Judgment

The settlement regarding an already started trial shall be null where the parties or one of them know that the dispute has been ended by a definitive court judgment.

Article 1337. Settlement regarding All Affairs

(1) Where the parties concluded a settlement regarding all affairs between them, later detection of a document of which they were not aware is not a ground for nullity of settlement, unless it has been concealed by one of the parties or, with that party's awareness, by a third party.

(2) The settlement shall be void only where it has only one object and the documents detected demonstrate that one of the parties did not have any rights.

Article 1338. Computation Errors

Errors in computation admitted by one of the parties upon conclusion of settlements shall not prejudice either of the parties and should be removed.

CHAPTER XXVIII CIVIL PARTNERSHIP

Article 1339. Contract of Civil Partnership

By a contract of partnership, two or more persons (associates, partners) mutually undertake to pursue common economic or other goals, without constituting a legal person and with distribution of profit and losses.

Article 1340. Object of Contract of Civil Partnership

The contract of civil partnership must have a licit object, set in the common interest of the associates.

Article 1341. Form and Content of Contract of Civil Partnership

- (1) A contract of partnership may be concluded either in writing or by word of mouth.
- (2) A contract of partnership concluded in writing must contain:
 - a) name or denomination, addresses or premises of the partners;
 - b) Rights and duties of each partner;
 - c) Establishment and functions of management;
 - d) Distribution of profit and losses between partners;
 - e) Procedure of exclusion from partnership;
 - f) Duration of society;
 - g) Procedure of partnership dissolution and distribution of property.
- (3) The contract of civil partnership may not be amended, in the absence of a contrary clause, otherwise then by joint agreement of all partners.

Article 1342. Partners' Contribution

- (1) Partners must deliver contributions agreed under contract. In the absence of certain provisions in this regard, partners shall be bound to equal contributions.
- (2) Contributions may consist of assets, including property rights.
- (3) Where the contract does not provide otherwise, contributions become joint property of the partners. Assets acquired based on a right that pertains to the joint property shall also enter into that property, as well as amounts received as compensation for loss, destruction or deterioration of an object of that property.
- (4) Partner's contribution may not be increased without his consent.

Article 1343. Liability for Contributions

- (1) The associate is liable for the asset conveyed as contribution in accordance with the rules regarding seller's liability.
- (2) The associate that owes an amount of money which he did not depose, is in delay, *ope legis*, being under the obligation to pay interest set at art.619, without prejudice to the obligation to compensate for damage, if required. This rule shall also apply to amounts of money belonging to the partnership and taken over for personal purposes, where the interest shall be calculated from the day of taking over.
- (3) Where the right of use over an asset was conveyed as contribution and this right is extinguished before the term it was transmitted for, the associate is bound to compensate in money for the cost of the use that the partnership did not exercise.
- (4) The associates that jointly undertook to provide personal work as contribution to the partnership shall convey all earnings from such work to the partnership.
- (5) Upon partnership liquidation, each associate has a priority right in relation to other associates to receive the asset he conveyed as contribution.

Article 1344. Conveyance of Shares to Third Parties

- (1) Shares in the partnership's property or other rights arising under contract cannot be conveyed to third parties without the consent of the other associates. Refusal to consent must have serious grounds.
- (2) In case of alienation of shares in partnership's property, the other associates have a right of preemption.

Article 1345. Administration and Representation

- (1) Where the contract does not provide otherwise, the associates manage together the acts of the civil partnership and shall jointly represent it. Where the associate is excluded from partnership management, he may demand at any time information from those exercising the management.
- (2) Each associate is entitled to participate in joint decision-making.
- (3) Where, under contract, the management of the civil partnership is entrusted to one or several associates, each of them is entitled to act by himself. Any other associate may, however, object to the conclusion of an act on behalf of the partnership. In such a case, it shall be deemed that the act was not concluded on partnership's behalf.
- (4) Inasmuch as an associate has, according to the contract, the function to manage the civil partnership and unless there is a stipulation to the contrary, he is also entitled to representation in relations with third parties.
- (5) The function granted under contract to one of the associates may be withdrawn only by unanimous decision in case of nonperformance of his obligations. The associate may decline to participate in partnership management. At the same time, he may demand explanations from the management at any time.
- (6) Where the contract does not provide otherwise, the rights and duties of the participant in the civil partnership that holds management and representation powers shall be determined in conformity with the norms concerning the contract of mandate.

Article 1346. Participation in Earnings and Losses

(1) Where the contract does not provide otherwise, the associates participate in earnings and bear losses in proportion to their shares in partnership's property.

(2) The clause that attributes all earnings obtained by the partnership to a single associate or that liberates the associate from bearing all losses, which excludes an associate from distribution of income or charges him with all the losses, shall be void.

(3) Each associate is entitled to demand from any other associate to pursue the goal of the civil partnership with the diligence needed in relation of such kind.

Article 1347. Concurrence of Claims

(1) Where the creditor of a due amount in relation to a person is also debtor in relation to the association, the associate is bound to distribute what he receives from such debtor both in the interest of the association, as well as in his own interest, proportionate to both claims, even in the case where the receipt specifies that the payment was made only in favor of debtor's particular creditor.

(2) Where the receipt specifies that the payment be made only in favor of the partnership, such specification shall be complied with.

Article 1348. Impossibility to Assign Associates' Rights

Associate's rights and claims arising under contract in relation to the other associates are non-transmissible.

Article 1349. Prohibition of Compensation

The associate remains liable towards the partnership for the damage caused by his fault. This damage cannot be compensated for with advantages brought to the partnership by associate's performances in other affairs.

Article 1350. Duty of Confidentiality

The participants in the civil partnership are under the obligation to keep confidentiality.

Article 1351. Joint and Several Liability

The associates are jointly and severally liable for the obligations of the civil partnership. Internally, the liability is determined by shares in partnership's property, unless the contract provides otherwise.

Article 1352. Cancellation of Contract of Civil Partnership

(1) Where the contract does not provide a fixed duration for the civil partnership, each associate may cancel the contract with a 3-month notice period. The cancellation may not take place at the moment or under circumstances that would damage the civil partnership.

(2) Where a contract sets a certain period, early cancellation is admissible only for serious reasons.

(3) Withdrawal of an associate triggers partnership's dissolution. The contract may provide that the withdrawal of an associate does not lead to partnership dissolution, but only to the exclusion of the one who cancelled the contract. In such case, the share in partnership's property of the one who cancelled the contract shall be added proportionately to the shares of the remaining associates.

(4) The associate who cancelled the contract has the right to receive compensation in money for his share. With a view to calculation of the compensation, the acts in course of execution at the moment of withdrawal shall be also taken into account.

(5) Where at the moment of withdrawal, the value of the property of the civil partnership is insufficient to cover common debts, the one who is withdrawing is bound to pay to the other associates an amount proportionate to his share in property with a view to covering the deficit.

(6) The clause that limits or excludes the right of withdrawal is void.

Article 1353. Grounds for Dissolving Civil Partnership

(1) The grounds for civil partnership dissolution are:

- a) expiry of term for which it was constituted;
- b) Associates' decision;
- c) Commencement of procedure of judicial liquidation of the property of civil partnership;
- d) Impossibility of further pursuit of the goal.

(2) Where the contract does not provide otherwise, the following may also serve as grounds for dissolution of the civil partnership:

- a) Death of one of the associates;
- b) Commencement of the procedure of judicial liquidation of the property of one of the associates;
- c) Legal incompetence of one of the associates;

d) Cancellation.

Article 1354. Effects of Dissolution of Civil Partnership

(1) The civil partnership is to be liquidated upon dissolution. Unfolding acts must be finalized. An inventory shall be drafted and the partners shall meet to discuss the state of the property.

(2) In the course of discussions about the property, civil partnership debts must be defrayed. Where the property is not sufficient, the associates are bound to cover the deficit proportionate to their shares in the property. Eventual surplus amounts shall be distributed between partners in proportion to their shares.

CHAPTER XXIX JOINT RIGHTS

Article 1355. Regulations Applicable to Joint Rights

Where a right belongs to several persons jointly (joint owners), the provisions of this Chapter apply, unless otherwise provided by law.

Article 1356. Presumption of Equality of Joint Owners

Unless specially stipulated otherwise, shares shall be deemed distributed equally between the joint owners.

Article 1357. Distribution of Fruits

(1) A fractional part of the fruits accrues to each participant in proportion to his share.

(2) Each joint owner is authorized to use the common object insofar as the use by other participants is not thereby interfered with.

Article 1358. Common Right of Asset Disposal

(1) The disposal of the common asset belongs to the owners jointly.

(2) Each participant is entitled to take any measure necessary for the preservation of the asset without the consent of the other owners.

Article 1359. Order of Management and Use

(1) By a majority vote, the joint owners may decide upon the management and use of the common asset, depending on its properties. The majority vote shall be determined in accordance with the size of the shares.

(2) Each joint owner may, if the management and use are not regulated by an agreement or majority decision, demand management and use according to a fair assessment, taking into account the interests of all the participants.

(3) The participant's right to a fraction in the fruits proportionate to his share may not be prejudiced without his consent.

Article 1360. Opposability of Order of Management and Use to Successors

If the joint owners established the management and use of the common asset, the regulations made are also effective as against successors in title.

Article 1361. Disposal of Share

Each participant may dispose of his share.

Article 1362. Charges over Common Object

Each participant is bound as against the other participants, to bear the charges over the common asset, as well as preservation, management and common use costs, in proportion to his share.

Article 1363. Right to Demand Dissolution of Community

(1) Each participant is entitled to demand dissolution of the community anytime.

(2) If the right to demand dissolution is excluded by agreement the dissolution may, nevertheless, be demanded if a serious cause exists.

(3) An agreement whereby the right to demand dissolution is excluded or limited contrary to par.(2) is void.

Article 1364. Division in Kind

The dissolution of the community is carried out by division in kind, if the common asset can be divided without diminution of value, in accordance with the shares of the joint owners. The distribution of equal shares among the participants is made by lot.

Article 1365. Sale of Common Asset

(1) If division in kind is impossible, the dissolution of the community is performed by sale of the common asset, in compliance with the rules concerning sale of pledged assets, in the case of a land plot - by auction, and by distribution of the proceeds. If alienation of the common asset to a third party is not permitted, the asset shall be sold by auction among the joint owners.

(2) If the attempt to sell the object has no result, each joint owner may demand a second attempt. He shall, however, bear the costs if the second attempt fails.

Article 1366. Sale of Joint Claims

The joint claim may be sold before its performance was requested. Where the claim may be realized, every joint owner may realize it on behalf of all joint owners.

Article 1367. Debt Coverage on Account of Joint Asset

(1) If the joint owners are liable as joint and several debtors for an obligation, which they have to perform in proportion to their shares, in conformity with article 1362 of this Code, or where they agreed on performing such an obligation, each owner may, upon dissolution of the community, require that the debt be satisfied out of the common asset.

(2) Where a sale of the common object is necessary for the satisfaction of a debt, the sale shall be made in the manner provided by art.1365.

Article 930. Satisfaction of Participant's Debts from Common Asset

If one participant has a claim, which is based on the community, against another participant, he may, upon dissolution of the community, require satisfaction of his claim out of the part of the common property accruing to the debtor.

Article 1369. Warranty in Case of Conveyance of Asset to Joint Owner

If, upon dissolution of the community, a common object is allotted to one of the participants, each of the other participants shall be liable for defects in the asset pertaining to his share, in the same manner as a seller.

Article 1370. Non-Prescriptible Character of Claim to Dissolve Community

The claim for dissolution of the community is not subject to period of limitation.

CHAPTER XXX PUBLIC PROMISE OF REWARD

Article 1371. Obligation to Pay Reward

(1) A person, who announces by public notice a reward for the performance of a licit act specified in the announcement, within a certain term, is bound to pay the reward to any person that performed the act under the set terms, even if that person has not acted with a view to receive the reward.

(2) The obligation to pay reward shall arise when the person that announced the reward can be determined with certainty. The person that intends to perform the act in exchange for the promised reward is entitled to demand written confirmation of the promise, otherwise bearing the risk of the possibility that the author of the promise is not the person specified in the announcement.

(3) Where the public promise of reward does not indicate the amount of reward, this shall be established jointly with the promisor or by the court, in case of a dispute.

(4) Where it does not follow otherwise from the reward announcement or from the character of the action set, the correspondence of the performed action to the terms set forth in the announcement shall be determined by the person who promised the reward or by the court, in case of a dispute.

Article 1372. Distribution of Reward

(1) If different persons have performed the act, for which the reward had been promised, the reward belongs to the person who has first performed the act.

(2) If the act shown in the announcement is performed by several persons and it is impossible to establish who performed first or if several persons have performed the act simultaneously, the reward shall be divided between those persons in equal shares or as those persons decide by joint agreement. If the reward is indivisible in its nature, or if by the terms of the promise only one person is to receive it, the decision shall be taken by lot.

(3) Where several persons contributed to performance of the act for which the reward is promised, it shall be divided between them by the promisor contingent on the degree of participation of each of those persons and, in case of dispute, the reward shall be parted by the court.

Article 1373. Contest

(1) The public promise of reward in the form of an award for the best execution of a work is valid only if the term for work execution is fixed.

(2) The modification of the terms of the contest to the detriment of the competitors is impermissible.

(3) The right to decide on the correspondence of the contest realized within the term set to the public promise of reward (terms of contest) or on the establishment of the winning work belongs to the person specified in the announcement, or, if such person is not specified, to the person that announced the reward. The decision is mandatory in relation to all participants in the contest.

(4) Where the works submitted have the same value, provisions of art.1372 par.(2) shall be applied to awarding the prize.

(5) The promisor of the reward may demand to be conveyed the right of ownership over the works executed under the terms of contest only if such clause was included in the public announcement. The copyrights belong to the author of the work in any case.

(6) The person that announced the contest is bound to return the works to the participants in the contest if the announcement regarding the contest did not provide otherwise.

Article 1374. Revocation of Public Promise of Reward

(1) The person that publicly announced the granting of a reward is entitled to revoke the promise in the same manner, save for cases when:

- a) the announcement provides for impossibility of revocation or the formulation infers this with certitude;
- b) a certain term is set for performing the action for which the reward is promised;
- c) at the moment of revocation of promise, the action indicated in the announcement is already performed and its author claims the promised reward.

(2) The revocation of the public promise of reward does not deprive persons that answered the announcement of the right to demand compensation, within the limits of the announced reward, for costs incurred upon performance of the respective action.

**CHAPTER XXXI
GAMING AND BETTING**

Article 1375. Validity of Contract concerning Gaming and Betting

(1) The contract on gaming and betting is valid only in cases expressly provided by law.

(2) The contract is valid if it refers to licit exercises and games, which require physical skills and exercises from the participants, save for cases when the amounts in the game are excessive under the circumstances, as well as in relation to parties' condition and capabilities.

Article 1376. Contract of Lottery and Other Similar Contracts

(1) The contract of lottery and other contracts for similar games produce legal effects only if the lottery or the game has state authorization.

(2) Relations between organizers of sweepstake lotteries (mutual bets) and other games of chance who obtained license in the manner established by law, and the participants in the games shall be set in the respective contract.

(3) In cases provided by the rules of game organization, the contract between the organizer of the game and the participant shall be concluded by issuance of a lottery ticket, a receipt or another document by the organizer to the participant.

(4) The proposal to conclude a contract provided at para.(1) must contain clauses regarding the term of carrying out the game, the order of determining the gains and their amount.

(5) Where the organizer refuses to carry out the game within the established term, the participants to the game are entitled to demand compensation for real damage caused by postponement or cancellation of the game.

(6) The gains obtained by the person that, according to game terms, is recognized as winner, must be awarded to that person by the organizer of the game, in the amount, form and within the terms provided by game conditions, or, if there is no fixed term for payment of gains, not later than 12 days from announcing the results of the game.

Article 1377. Futures Bargain

If a contract for delivery of goods or securities is entered into with the intention that the difference between the prices agreed upon in the contract and the stock exchange or market price at the time of delivery shall be paid by the losing party to the winning party, the contract shall be deemed to be a gaming contract. This also applies if only one of the parties intended to pay the difference, while the other party knew or should have known of this intention.

CHAPTER XXXII MANAGEMENT WITHOUT MANDATE

Article 1378. Duties of Person that Manages Affairs of another Person

(1) The person (agent) who takes care of some matters for another (principal) without having received a mandate from him or being otherwise bound to do so and without the knowledge of the latter, is under the obligation to act with the diligence of a good owner and in conformity with principal's interests, having regard to his actual or presumptive wishes.

(2) Where the agent was or should have been aware that he acted contrary to the actual or presumptive will of the principal, he shall be bound to compensate for damage caused by management of affairs even if he has no other fault. This rule shall not apply where, contrary to the will of the principal, the obligation of maintenance of other persons, whom he is bound to provide maintenance, is performed.

Article 1379. Duty to Notify Principal

(1) The agent shall notify the principal as soon as practicable of the management undertaking and continue the acts started, as long as the principal needs for taking over the management.

(2) Where the agent cannot notify the principal about the management undertaking, the former is bound to finalize the acts started.

Article 1380. Consequences of Acceptance of Acts Performed by Principal

If the principal tacitly or explicitly accepts the management of his affairs, provisions regarding mandate shall apply accordingly.

Article 1381. Consequences of Non-Acceptance of Acts Performed by Agent

(1) Acts performed by the agent after being notified of their non-acceptance by the principal do not generate obligations for the principal, either in relation to the agent, or in relation to third parties.

(2) With a view to prevent a danger threatening the life of a person, acts may be performed even without that person's consent, while performance of maintenance obligations may take place contrary to the will of those that are bound by such an obligation.

Article 1382. Reimbursement of Costs Incurred by Agent

(1) The agent may demand from the principal reimbursement for costs relating to management, inasmuch as these are deemed necessary and useful, under the circumstances.

(2) The agent is entitled to reimbursement of costs even if he did not manage to preserve the assets and defend principal's interests, although the acts undertaken have been useful and he had no fault in the loss.

(3) Reimbursable costs may not exceed the value of the assets for the preservation of which they have been made.

(4) Costs incurred by the agent in relation to the acts performed after acceptance shall be reimbursed in accordance with the rules regarding mandate.

Article 1383. Refusal to Reimburse Agent's Costs

The agent may not claim reimbursement of costs if the management acts were made contrary to the will of the principal or if they do not correspond to his interests, save for cases when the will of the principal is contrary to legal provisions.

Article 1384. Compensation for Damage Caused to Agent

Where the agent suffered damage as a consequence of undertaking actions to avert a danger threatening principal's property, the agent may claim compensation from the principal or the one who caused the danger.

Article 1385. Agent's Liability

The agent is liable towards the principal only for damage caused by willful conduct or by gross negligence.

Article 1386. Duty to Return Assets Received as Result of Management

The agent is bound to provide to the principal a report on his acts, as well as to deliver and hand over all that he received as a result of management.

Article 1387. Rights and Duties Arising from Acts without Mandate

Rights and duties arising from necessary and useful acts performed in the interest of another person without mandate are effective with regard to the person in whose interest they have been performed.

Article 1388. Non-application of Rules on Management of Affairs

The rules of this Chapter do not apply to actions performed in the interest of another person by the one who acted with the belief that he manages his own affairs and neither to actions undertaken by public authorities where such acts are included in their terms of reference.

CHAPTER XXXIII UNJUST ENRICHMENT

Article 1389. Duty to Demand Return of Performance

(1) The person who, without legal or contractual grounds, acquires something through an act performed by another (performer), or accomplished savings in any other manner at the expense of the latter, is bound to return to the performer what he has received or saved. The fact that the unjust enrichment occurred as a result of the conduct of one of the parties or a third party or as consequence of an event independent from their will is irrelevant.

(2) The person that undertook an act of performance with a view to perform an actual or a future obligation may claim return of performance if:

a) The grounds for the obligation have disappeared afterwards;

b) The obligation is barred by an exception that excludes the possibility of execution for a long me.

(3) The claim of return is barred if:

a) The performance was in accordance with a moral obligation;

b) The recipient proves that the performer was aware of the non-existence of the obligation, but performed anyway or that he performed for philanthropic and charity purposes;

c) The claim to return what was performed for performing a void contract would contradict the protective character of the norm that instituted the voidance.

Article 1390. Return of Conditional Performance

(1) The one who makes a performance towards another person not for the purpose of performing an obligation, but with the intention, acknowledged by the acceptor, to determine the latter to have a certain conduct, may claim return of performance if the recipient did not have the conduct desired by the one who performed.

(2) The claim for return of conditional performance is excluded when:

- a) Achievement of the goal was impossible from the very beginning and the performer was aware of this;
- b) Contrary to the principle of good faith, the performer impeded the achievement of the goal.

Article 1391. Return of Performance Made under Threat or Constraint

The person who performs not for the purpose of performing an obligation, but under threat or constraint, may claim return of performance, save for the case when the recipient proves that he was entitled to the performance.

Article 1392. Restitution in Kind of Unjust Enrichment

(1) The property acquired by unjust enrichment shall be returned in kind.

(2) The recipient is liable to the injured person for any deficiency or deterioration of unjustly acquired property, including accidental deterioration, if they occurred after the recipient obtained knowledge or should have obtained knowledge of the unjust enrichment. Until that moment, he is liable only for willful conduct or gross negligence.

Article 1393. Compensation for Value of Unjust Enrichment

(1) If it is impossible to return the unjustly acquired property in kind, then the recipient shall compensate the injured person for the real value of that property as of the time of its acquisition and for the losses caused by later diminution in property's value, unless the recipient has compensated for its value immediately after he obtained knowledge of the unjust enrichment.

(2) A person, who has unjustly and temporarily used another's property, having no intention to acquire it, or another's services, must compensate the injured person for what has been saved through such use, at the price which existed at the time when the use ended, and at the place where the use came about.

Article 1394. Effect of Unjust Assignment of Right

A person, who has transferred his right to another person by assignment or in any other manner, on the basis of a non-existent or invalid obligation, is entitled to demand restoration of the previous condition, including return of documents that confirm the transferred right.

Article 1395. Fruits of Performance

(1) The person that unjustly acquired property is bound to convey or to compensate the entitled person for the fruits that he obtained or should have obtained from the moment when he became or should have become aware of the absence of grounds for the received performance.

(2) Interest accrues on the amount owed under par.(1), as provided for in art.619.

Article 1396. Reimbursement of Costs on Property Subject to Return

With the return of the unjustly received property or replacement of its value, the recipient is entitled to demand that the performer reimburses him for the necessary and useful costs incurred for property maintenance and preservation as of the moment the recipient became bound to return the income, having regard of the profit earned by him. The right to reimbursement for costs is lost when the recipient willfully retains the property subject to return.

Article 1397. Disposal by Person without Title

(1) If a person without title to an asset disposes of it, the act being opposable against the person having title, the former is bound to hand over to the latter what he has obtained by the act of disposal. If the disposal is made gratuitously the same obligation is imposed upon the person who acquires a legal advantage directly through the act of disposal.

(2) If an act of performance, effective against the person entitled, is done for the benefit of a person not entitled thereto, the former is bound to hand over to the latter the value of such performance.

CHAPTER XXXIV

OBLIGATIONS ARISING FROM CAUSATION OF DAMAGE

SECTION 1

GENERAL PROVISIONS ON OBLIGATIONS ARISING FROM INFLICTION OF DAMAGE

Article 1398. Grounds and General Conditions of Liability

- (1) A person who commits an illegal and imputable act towards another person is bound to compensate him for damage caused to property, and, in cases provided by law, also for the moral damage.
- (2) The damage caused through legal acts or without fault shall be compensated for only in cases expressly provided by law.
- (3) A person other than the author of the damage shall be bound to compensate for it only in cases expressly provided by law.
- (4) The damage shall not be compensated for, where it was caused upon the request or with the consent of the damaged person and if author's deed does not contradict the norms of ethics and morality.

Article 1399. Liability between Contracting Parties

The provisions of this Chapter also apply in the case of damage caused in contractual relations, save for situations when provisions regarding debtor's liability for nonperformance of contract and special rules for certain contractual relations are applied.

Article 1400. Prevention of Damage

- (1) The danger of future damage gives grounds to prohibit acts that may generate such danger.
- (2) Where the existence of a danger is a consequence of the exploitation of an enterprise, an installation or of a productive activity that continues to cause damage or to pose a threat of new damage, the court may bind the defendant to cease the activity, if the cease does not contravene to public interests.

Article 1401. Damage Caused in State of Legitimate Defense

- (1) The damage caused by a person in state of legitimate defense is not subject to compensation if the limits of legitimate defense are not exceeded.
- (2) Where in the course of defending against an unjust attack damage was caused to a third party, the damage is to be compensated for by the attacker.

Article 1402. Damage Caused in State of Extreme Necessity

- (1) Damage caused to a person in state of extreme necessity shall be compensated for by that person.
- (2) Having regard of the circumstances under which the damage was caused, the court may bind the third party in whose interest the author of the damage has acted to compensate for the damage or to liberate both the author and the third party from the obligation of compensation, in whole or in part.
- (3) The damage caused as a consequence of extinguishing or localizing a fire shall be compensated by the one responsible for starting the fire.

Article 1403. Principal's Liability for Act of Agent

- (1) The principal is liable for the damage caused by imputable act of his agent during exercise of the functions that have been entrusted to him.
- (2) The principal keeps only a right of recourse against the agent. The agent may liberate himself if he proves that he complied exactly with principal's instructions.

Article 1404. Liability for Damage Caused by Public Authority or by Official

- (1) Damage caused by an illegal administrative act or by non-solving of a request within the legal term by the public authority or an official from that authority shall be compensated for in whole by the public authority. The official shall be jointly and severally liable in case of willful conduct or gross negligence.
- (2) Natural persons are entitled to demand compensation for moral damage caused by actions shown at par.(1).
- (3) The obligation to compensate for the damage does not arise inasmuch as the injured person omitted, willfully or by gross negligence, to remove the damage through legal means.
- (4) Where the public authority has an obligation imposed by an act adopted with a view to ensuring protection against the danger of causation of certain damage, the authority shall be held liable for damage of this kind, caused or not prevented by failure to perform the obligation, save for cases when the public authority proves that it attempted to perform with reasonable diligence.
- (5) The public authority does not bear liability for damage caused by adoption of a normative act or omission to adopt it, or by omission to put a law into application.

Article 1405. State's Liability for Damage Caused by Actions of Bodies of Criminal Investigation, Preliminary Inquiry, Prosecutor's Office and Courts

(1) The damage caused to the natural person by illegal conviction, illegal imputation of criminal liability, illegal application of preventive measures under the form of preventive arrest or written declaration not to leave the respective locality, by illegal application of arrest or correctional labor as administrative sanction, shall be compensated for entirely by the state, regardless of the fault of officials from the bodies of criminal investigation, preliminary inquiry, prosecutor's office or courts.

(2) The state shall be exonerated from liability where the injured person willfully and voluntarily contributed to the causation of damage by confession.

Article 1406. Liability for Damage Caused by Minor under Age of 14

(1) Damage caused by a minor under the age of 14 shall be compensated for by the parents (adoptive parents) or by the guardian, unless they prove absence of fault in supervising or educating the minor.

(2) Where the minor under 14 caused the damage while being under the supervision of an educational or medical institution or of a person bound to supervise the minor under contract, these entities shall be liable for the damage caused, unless they prove that the causation of damage is not imputable to them.

(3) The obligation to compensate for the damage caused binding on the parents (adoptive parents), guardians, educational or medical institutions does not cease upon minor's attaining full age or upon acquisition by the minor of assets sufficient to cover the damage.

Article 1407. Liability for Damage Caused by Minors between 14 and 18 Years of Age

(1) The minor between 14 and 18 years of age bears personal liability for damage caused, in accordance with the general rules.

(2) Where the minor between 14 and 18 years of age does not have assets or income sufficient to compensate for the damage inflicted, this should be compensated for, in whole or in the uncompensated part, by the parents (adoptive parents) or the trustee, unless they prove that the occurrence of damage is not imputable to them.

(3) The obligation to compensate for the damage binding on the parents (adoptive parents) or the protector ceases when the minor attains full age, as well as if, before attaining full age, the minor acquires assets or income sufficient to compensate for the damage.

Article 1408. Liability for Damage Caused by Incapable Person

(1) Where an incapable person caused damage, liability shall lie on the guardian or the institution bound to supervise that person, unless they prove that the causation of damage is not imputable to them.

(2) The obligation to compensate for the damage caused by an incapable person binding on the guardian or the institution does not cease where that person reacquired legal capability.

(3) Where the guardian brought to account in conformity with para.(1) for injury caused to life and health, has deceased or does not dispose of means sufficient to compensate for the damage, while the author of the damage has such means at his avail, the court, having regard of the material state of the injured person and of the author of damage, as well as other circumstances, is entitled to decide on total or partial compensation of the damage on account of the author.

Article 1409. Liability for Damage Caused by Person while Unable to Realize or Direct Own Actions

(1) The capable person that caused damage while being unable to realize or direct his own actions is not liable for that damage.

(2) Where the damage concerns the life or health of a person, the court is entitled, having account of the material state of the injured person and of the author of the damage, as well as of other circumstances, to bind the latter to compensate for the damage in whole or in part.

(3) The author of the damage shall not be liberated from liability if being himself responsible of getting into such a state due to consuming alcohol, drugs or other substances affecting mental functions or due to any other cause.

Article 1410. Liability for Damage Caused by Source of Increased Danger

(1) Persons whose activity is related to a source of increased danger for those around it (exploitation of vehicles, installations, mechanisms, use of electric energy, explosives, construction works etc.), are bound to compensate for the damage caused by the source of increased danger, unless they prove that the damage is due to a force majeure (save for cases when the damage occurred as a consequence of exploitation of air vehicles) or to the fault of the injured person.

(2) The obligation to compensate for the damage pertains to the person that possesses the source of increased danger based on the right of ownership or on other legal grounds, or to the person that undertook surveillance of the source of increased danger.

(3) The possessor of the source of increased danger shall not be liable for the damage caused, if he proves that the source of increased danger got out of his possession as a consequence of illegal acts of third parties. In such case, the liability pertains to the

person that illicitly acquired the source of increased danger. Inasmuch as the fact that the source of increased danger got out of the possession of the legal holder is imputable to him, he shall be liable for the damage jointly and severally with the person that obtained illegal possession of the asset.

(4) The possessors of sources of increased danger are jointly and severally liable for the damage caused to a third party by interaction of those sources (collision of vehicles etc.).

(5) The damage caused to the possessors of sources of increased danger as a result of interaction of those sources shall be compensated for in accordance with art.1398.

Article 1411. Liability for Damage Caused by Animals

(1) The owner of an animal or the person that is using an animal during work is liable for the damage caused by it, either if he were under his surveillance or escaped from it. The obligation to compensate does not arise where the damage was caused by a domestic animal designated for professional activity, for business activity or for obtaining means for owner's maintenance and the owner has ensured due care for animal's surveillance, while the damage would have been caused even in case of such due care.

(2) The person that undertook to supervise the animal, by a contract concluded with its possessor, shall be liable for the damage caused by the animal, unless he proves that the damage is not imputable to him.

Article 1412. Liability for Damage Caused by Collapse of Building

(1) The owner is bound to compensate for the damage caused by general or partial collapse of a building, where the collapse is due to the lack of according maintenance or a defect in construction.

(2) The person that undertook by contract with the owner to ensure building's maintenance in an adequate state, by virtue of the right of use that has been accorded to him, shall be jointly and severally liable for the damage caused by the collapse of the building or of a part of it.

Article 1413. Liability in Case of Falling or Spill from Building

Where the damage has been caused due to the fact that something fell or spilt from the building, the person having the building in possession shall be held liable. This rule shall not apply in the case when the damage was caused by force majeure or due to the fault of the injured person.

Article 1414. Liability for Jointly Caused Damage

(1) Where the damage was caused jointly by several persons, they shall bear joint and several liabilities.

(2) Liability for damage is borne not only by the author of the deed that caused the damage, but also by the one who instigated the former or supported him, as well as by the one that knowingly benefited from the damage caused to another person.

(3) Where it is impossible to determine the compensation shares owed by the joint and several debtors in accordance with par.(1) and (2), they shall be liable in equal shares.

Article 1415. Right of Recourse towards One Who Caused Damage

(1) The person that compensated for the damage caused by another person is entitled to a recourse action against the latter, within the limits of compensation amount paid to the injured person, unless the law or contract does not provide otherwise.

(2) In case of compensation for damage under art.1405, the state has a right of recourse against officials from bodies of criminal investigation, preliminary inquiry, prosecutor's office or from the court, inasmuch as their fault is proved by judicial sentence.

(3) Parents (adoptive parents), guardians or protectors, as well as organizations provided at art.1406-1408 that compensated for the damage caused by a minor or an incapable person do not have a right of recourse against those persons.

Article 1416. Order of Compensation for Damage

(1) The court establishes the type of compensation contingent on the circumstances. The court shall take a decision differing from the injured person's request only for grounded reasons.

(2) While adopting the decision regarding compensation for damage, the court will bind the author of the damage to deliver an asset of the same type and quality, to repair the asset that he has deteriorated or to compensate in money the entire damage caused.

(3) The court shall establish the amount of compensation in money equivalent, contingent on the extent of the damage on the date of judgment issuance.

(4) The compensation for damage in monetary equivalent shall be made by collection of a lump sum in favor of the injured person or by establishing a periodical payment. Where periodical payments are set, the debtor may be bound to provide guaranties.

Article 1417. Consideration of Fault of Injured Person upon Calculating Amount of Compensation

- (1) The damage caused by will of the injured person shall not be compensated for.
- (2) Where the gross negligence of the injured person contributed to the occurrence of the damage or to its aggravation, the compensation shall be reduced according to the degree of the fault of the injured person.
- (3) The gross negligence of the injured person shall not constitute grounds for reducing the compensation in cases provided for by art.1405 and neither in the cases when the damage has been caused by a minor under the age of 14 or by an incapable person.

Article 1418. Liability for Damage Caused by Bodily Injury or Other Injury to Health

- (1) In case of bodily injury or other injury to health, the author of the damage is bound to offer compensation to the injured person for salary or income lost as a result of loss or reduction of the work ability, as well as for costs incurred in relation to health injury – treatment, additional food, prosthesis, care, procurement of a special vehicle, professional retraining etc.
- (2) The calculation of the salary (income) lost due to bodily injury or other injury to health shall be calculated in accordance with legal provisions.
- (3) The pension for invalidity, established to the injured person in relation to the bodily injury or injury to health, as well as other indemnifications or amounts paid as social state insurance, shall not be taken into account while calculating the lost salary (income).
- (4) The volume of compensation pertaining, in accordance with this article, to the injured person may be increased by law or contract.

Article 1419. Liability in Case of Decease of Injured Person

- (1) In case of decease of the person as a consequence of grave bodily injury or other injury to health, the right to compensation belongs to:
 - a) Persons without work capability to whom the deceased provided maintenance or who were entitled to maintenance, on the date of his decease;
 - b) The child of the deceased person, born after his death;
 - c) one of the parents, the spouse or another member of the family of the deceased, regardless of whether he is able for work, but who does not work and takes care of the children, brothers and sisters for whom maintenance was provided by the deceased and who have not reached 14 years of age or who, although reached such age, need care due to health reasons, according to the conclusion of competent medical bodies;
 - d) Persons that have been provided maintenance by the deceased and who became unable for work within 5 years from the death of the latter.
- (2) The right to compensation is recognized to:
 - a) Minors, until they reach 18;
 - b) pupils and students that reached 18, until completion of studies (except for instruction by correspondence) in educational institutions, but at the most until they reach 23;
 - c) Women that reached the age of 55 and men that reached 60 years of age – for life;
 - d) Disabled persons – for the duration of their disability;
 - e) one of the parents, the spouse or another member of the family that takes care of the children, brothers and sisters that were provided maintenance by the deceased, until they reach 14 years of age or until their health improvement, confirmed by the conclusion of the competent medical bodies.
- (3) The calculation of the amount of compensation for loss of breadwinner shall be made in accordance with the law.
- (4) Persons bound to compensate for the damage caused by death shall be obligated to provide compensation for the necessary funeral costs to the person that incurred such costs, having regard of the social position of the deceased and the local customs.

Article 1420. Compensation for Damage Caused by Bodily Injury or Other Health Injury or by Decease

- (1) The payment of compensation for damage caused by bodily injury, by other health injury or by decease shall be made in monthly installments.
- (2) Compensation for costs to be incurred due to bodily injury, other health injury or decease may be set beforehand, based on the conclusion of the competent medical body, including costs for payment in advance for necessary goods and services, as are sanatorium ticket, travel tickets, special transportation means etc.
- (3) Upon request of the person entitled to receive compensation for the damage caused by bodily injury, by other health injury or by decease, the court may establish payment of compensation as a lump sum for a maximum period of 3 years, if there are grounded reasons and having regard of the possibilities of the liable person.
- (4) In case of liquidation of the legal entity liable for damage caused by bodily injury, by other health injury or by decease, the respective amounts shall be capitalized in accordance with the legal provisions.

Article 1421. Alteration of Amount of Compensation for Damage Caused by Bodily Injury, by Other Health Injury or by Decease

(1) Where, due to bodily injury or other health injury, the work capacity later decreased as compared to the work capacity which the injured person had as of the moment of compensation awarding, the person is entitled to demand an according increase in compensation amount.

(2) The person bound to pay compensation provided at par.(1) is entitled to demand its according reduction where the work capacity of the injured person as compared to the work capacity at the moment of compensation awarding.

(3) Amounts owed as compensation for damage caused by bodily injury, by other health injury or by decease shall be indexed in accordance with the law.

Article 1422. Compensation for Moral Damage

(1) Where the person were inflicted moral damage (mental or physical suffering) by acts that attempted to his personal non-property rights, as well as in other cases provided by law, the court is entitled to bind the liable person to compensate for damage in monetary equivalent.

(2) The moral damage shall be compensated regardless of the existence and extent of material damage.

(3) Compensation for moral damage shall be awarded even if the illicit deed is not imputable to its author, where the damage has been caused by illegal conviction, illegal imputation of criminal liability, illegal application of preventive measures under the form of preventive arrest or written declaration not to leave the respective locality, by illegal application of arrest or correctional labor as administrative sanction and in other cases provided by law.

Article 1423. Amount of Compensation for Moral Damage

(1) The amount of compensation for moral damage shall be determined by the court contingent on the type and gravity of mental and physical suffering caused to the injured person, the degree of the faultiness of the author of the damage where the fault is a condition of liability, and the extent to which such compensation may bring satisfaction to the injured person.

(2) The type and gravity of mental or physical suffering shall be assessed by the court, having regard of the circumstances under which the damage was caused, as well as the social status of the injured person.

Article 1424. Period of limitation

(1) The action for damage compensation shall extinguish upon the lapse of 3 years starting with the moment when the injured person became or should have become aware of the damage and of the person liable to compensate for it.

(2) Where the person liable to compensate for damage and the injured person negotiate in relation to the damage that must be compensated for, the course of the statute of limitation shall be suspended until one of the parties abandons negotiations.

(3) Where the person liable to compensate for the damage acquired something as a consequence of the illicit act, on account of the injured person, the former is bound to return what he has acquired, in accordance with the rules regarding unjust enrichment, even if the statute of limitation has lapsed.

SECTION 2

LIABILITY FOR DAMAGE INFLICTED BY DEFECTIVE PRODUCTS

Article 1425. Grounds for Liability for Damage Caused by Defective Products

(1) The producer incurs liability for the damage caused by a defective product, even in the absence of his fault, except where:

- a) he did not put that product into circulation;
- b) having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation;
- c) the product was manufactured neither for sale, nor for any other form of distribution for economic purposes, and is not being sold in the course of producer's professional occupation;
- d) the defect consists in the fact that at the moment when the producer put it into circulation, the product complied with mandatory legal norms;
- e) the state of scientific or technical knowledge at the time when the product has been put into circulation was not such as to identify the defect.

(2) The liability of the producer of a component is also excluded if the defect is attributable to the order of assemblage (construction) of the product into which the component has been fitted, or to the additions and connections made by the manufacturer of the final product. This provision shall also apply accordingly to the producer of raw materials.

(3) The producer's duty to make compensation may be reduced or disallowed, when the damage is caused both by a defect in the product and by the fault of the injured person or of any person for whom the injured person is responsible.

(4) The liability of the producer shall not be reduced where the damage is caused both by a defect in the product and an act of a third party.

Article 1426. Producer and Product

(1) For the purpose of this Section, 'product' means any movable asset, even when it is incorporated into another movable or immovable thing. Electric power is also regarded as product. Agricultural, soil-grown, zoo-technical, beekeeping or fish-farming products (natural agricultural products) that have not been subject to primary processing, as well as game, shall not be regarded as products.

(2) For the purpose of this Section, 'producer' means the manufacturer of a finished product, of raw material or of a component of a product. The person that presents himself as producer by putting his name, trademarks or other distinguishing signs on the product shall also be regarded as producer under this Section.

(3) Any person that imports or procures a product for sale, lease or distribution in any other manner, in the course of his business activity and within the sphere of regulation of this Section, shall also be deemed producer.

(4) Where the producer cannot be identified, each supplier shall be treated as producer, unless, within a month from the day when he became aware of the claims arising from product's defects, he provides information about the identity of the producer or of the person who has delivered that product to him. The same shall apply in the case of an imported product, if it is impossible to identify persons mentioned at par.(3), although the producer's name is known.

Article 1427. Defective Product

(1) A product is defective when it does not provide the expected safety, taking into account all circumstances, including:

- a) presentation of the product;
- b) use which the product could be reasonably expected to put to;
- c) time when the product was put into circulation.

(2) A product shall not be deemed defective for the sole reason that a better product is subsequently put into circulation.

Article 1428. Burden of Proof

The injured person shall be required to prove the damage, the defect, and the casual relationship between those.

Article 1429. Joint and Several Liability

If the duty to compensate for the same damage is imposed upon several producers, they shall be liable as joint and several debtors.

Article 1430. Terms for Compensation for Damage

(1) Where no term is set for making the compensation of damage, the damage shall be compensated if it occurs within 10 years from the moment of product manufacturing.

(2) Claims under art.1425 shall prescribe in three years from the moment when the injured person obtained or should have obtained knowledge of the damage and of the person bound to make compensation.

Article 1431. Prohibition to Exclude or Limit Liability Beforehand

Producer's liability for defective products may not be excluded or limited beforehand. Agreements to the contrary are void.