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Justice System in Albania

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CIVIL CODE OF THE REPUBLIC OF ALBANIA¹

Pursuant to Article 16 of Law No. 7491, dated 29.4.1991 "On the fundamental constitutional provisions", on the proposal of the Council of Ministers,

THE PEOPLES ASSEMBLY

OF THE REPUBLIC OF ALBANIA

DECIDED:

PART I GENERAL PART

TITLE I SUBJECTS OF CIVIL LAW

CHAPTER I NATURAL PERSONS

¹ Adopted by Law no. 7850, dated 29.07.1994
Amended by Law no. 8536, dated 18.10.1999
Amended by Law no. 8781, dated 03.05.2001
Amended by Law no. 17/2012, dated 16.02.2012
Amended by Law no. 121/2013, dated 18.04.2013
Amended by Law no. 113/2016, dated 03.11.2016

A. Legal Capacity

Article 1

All natural persons are entitled to full and equal capacity to enjoy civil rights and obligations within the limits defined by law.

Article 2

The legal capacity begins with the birth of the person alive and ends with his death. The child when born alive shall enjoy legal capacity from the time of conception.

Article 3

Foreigners are entitled to the same rights and obligations as those recognised to Albanian citizens, with the exceptions provided for by law.

Article 4

The natural person shall not be limited of legal rights, except those provided for by law. The legal action limiting the legal capacity of a natural person is invalid.

B. Right to a name

Article 5

Any natural person has the right and obligation to have his forename and surname given to him in accordance with the law. The person, who is deprived of the right to use them, or is infringed by the unjust use that the others make to them, may request in the court the use of his forename or surname, the cessation of the infringement as well as the compensation of the relevant damage.

This request can be submitted even by persons, who although do not bear the infringed, or unjustly used forename or surname, have family interests worthy to be protected.

When the court accepts the lawsuit, it orders the publication of the decision in the Official Journal. At the request of the plaintiff, the court may order the publication of its decision in other newspapers, as well. The nickname used by the natural person enjoys the same protection.

C. Capacity to act

Article 6

At the age of eighteen, a person acquires full capacity to assume rights and bear civil liability through

his own actions.

A married woman, who has not reached the age of eighteen, acquires full capacity to act through marriage. She does not lose this capacity even when the marriage is declared void or it is dissolved before she reaches the age of eighteen.

Article 7

A minor child, who has reached the age of fourteen, can perform juridical acts only with prior consent of his legal representative. However, he can take part in social organisations, own what he earns with his work, deposit his savings and be in possession of these savings himself.

Article 8

A minor child, who has not reached the age of fourteen, is incapable to act. He can perform juridical acts that fit his age, acts that are accomplished on the spot and acts of benefit to him without any compensation in return. Other juridical acts on his behalf are carried out by his legal representative.

Article 9

By court order, a minor of the age of fourteen to the age of eighteen, who is unable to take care of his work due to mental illnesses or mental deficiency, may be deprived of the capacity to perform juridical acts. These acts can be carried out only through his legal representative.

Article 10

By court order, an adult who due to mental illness or mental deficiency is wholly or partially unable to take care of his work, may be deprived of or limited to his capacity to perform juridical acts.

Article 11

The juridical act that limits the capacity to act is not valid.

Ç. Domicile and residence

Article 12

Domicile is the country where the person due to work or permanent service, location of assets or realisation of his own interests, normally or most of the time stays.

Every adult person has the right to freely determine his domicile. A person may not have more than one domicile at the same time.

This provision shall not apply to the domicile of the trader's activity.

Article 13

The minor child who has not reached the age of fourteen has the same domicile as that of his parents. When the parents have different domiciles, their child under fourteen years of age has the domicile of the parent he lives with.

The person who is deprived of the capacity to act and the children placed under guardianship have as domicile that of their legal representative.

Article 14

The domicile of a person is the place where he is located to perform certain jobs or duties, to attend a certain school or course, to obtain medical care, to serve a criminal sentence, and for other cases of this nature.

D. Declaration of disappearance and death of a person

Article 15

A person who is absent from his domicile and his last place of residence and for whom there is no news for more than two years, at the request of any interested person, he can be declared missing by court order.

When the day of the last news cannot be determined, the above-mentioned period begins from the first day of the following month on which the last news have been taken. When the month cannot be determined, the period begins from 1 January of the following year.

With the announcement of the disappearance of a person, a trustee is appointed for the administration of his assets.

The court decision, by which a person is declared missing, is published in the Official Journal and it is submitted for registration to the relevant civil registry office.

Article 17

A person who is declared missing, at the request of any interested person, can be declared dead by a court order, when four years have passed without any notice from the day he has been declared missing.

Article 18

A person, missing during military actions and this loss is verified by the competent military authorities, when two years have passed without any news from the date the peace agreement has entered into force or three years from the end of military actions, may be declared dead by a court order, with no need to have been previously declared missing.

Article 19

A person, missing during a natural disaster or in circumstances that led to believe that he is dead, can be declared as such by a court order, when two years have passed without any news from the day the disaster has occurred, with no need to have been previously declared missing.

When the date on which the disaster has occurred is not determined, the period of two years starts from the first day of the month following that in which the disaster has occurred and, when the month cannot be determined, the period begins from the first day of January of the following year.

Article 20

When two or more persons have died and it cannot be proved who of them died first, for legal purposes, it is considered that they have died at the same time.

Article 21

When announcing the death of a missing person, the day when it has occurred is determined. When this day is not possible to be correctly verified, the court determines it according to the rules provided for in the articles of this Code.

At the request of any interested person, the court that issued the decision may change the date of death, when it is proved that the person has died in another day.

Article 22

Death announced by court decision is equal in all legal consequences to the true death.

The decision of the court by which a person is declared dead, is published in the Official Journal and it is submitted for registration to the relevant civil registry office.

Article 23

When the person declared dead appears to be alive, at his request or at the request of any interested person, the decision is revoked by the court that has issued it.

The person who appears to be alive has the right to seek his property and the assets acquired through it, even from third persons who have acquired it from those, whom the assets have passed to because of the declaration of his death, in the limits and conditions provided for by this Code and the Family Code.

CHAPTER II LEGAL PERSONS

A. General Provisions

Substance of legal person

Article 24

Legal persons are public legal persons and private legal persons.

Article 25

Public legal persons are state institutions and enterprises, which are self-financing or financed by the state budget, as well as other public entities recognized by law as a legal person.

State institutions and entities that do not follow economic purposes, do not register.

Article 26

Private legal persons are companies, associations, foundations and other entities of private character, which acquire legal personality in the manner prescribed by law.

The name of a legal person

Article 27

A legal person has its full name and its abbreviated name. The name of any other company or organization that conducts economic activities is the firm, which shall express the particular purpose of this activity.

The seat of a legal person

Article 28

The seat of a legal person is where its governing body is, unless it is provided otherwise in the statute or in the founding act.

The capacity of a legal person

Article 29

The legal person has the capacity to acquire rights and assume civil obligations from the moment it is founded and, when the law requires it to be registered, from the moment it is registered.

Article 30

A legal person may conduct any legal activity permitted by law, in its founding act or statute.

Article 31

A legal person acts through its bodies provided for by law, in its founding act or statute which express its will.

Legal actions performed by the legal persons' bodies within their competences are considered as legal actions performed by the legal person.

Liability of a legal person

Article 32

A legal person is liable for damages caused by its bodies in the performance of their duties. The legal person is liable for its obligations within the limits of its property. Persons who have acted with the quality of the body of a legal person, are personally liable to compensate the damages caused by their fault.

Article 33

State and the state legal persons are not liable for each other's obligations, unless it is accepted by them or it is expressly provided for by law.

Termination of a legal person

Article 34

A legal person shall terminate in the manner specified in the establishment act, in the statute or by law.

Article 35

Upon termination, the legal person ceases its operations and is put into liquidation.

Article 36

Transfer of rights and obligations in the event of termination of a legal person, for which registration is required, shall take effect from the time of registration.

When registration is not required, the transfer of rights and obligations in cases envisaged by the above mentioned paragraph, shall take effect from the time of approval of the relevant balance sheet, in the manner provided for by law, by the appropriate body that has created it or by the statute.

Liquidation of a legal person

Article 37

Liquidation of a legal person that has terminated is done with the realization of rights and payment of obligations by the liquidators appointed by the body that has determined its termination.

The Commission makes liquidation under the relevant legal provisions, the statute or the founding act.

Article 38

When a legal person terminates because of conducting illegal activity, assets remaining after liquidation pass to the state.

The liquidation of the bankrupt legal person is governed by law.

B. Associations

Establishment of associations

Article 39

(Amended by law no.8781, dated 03.05.2001, Article 1)

The association is a legal person established by the free will of five or more natural persons or not less than two legal persons that follow a particular, lawful, purpose for the good and in the interest of the public or its members.

Article 39/1

(Added by law no.8781, dated 03.05.2001, Article 2)

An association has the right to ownership of movable and immovable property, to generate income through the management of these assets and to exercise other activities in accordance with the law and with the purpose and scope of activity of the association provided for in its statute.

Income generated from an association shall be used only for the activities provided in the purpose and scope of the activity provided for in its statute.

It is not allowed for an association to carry out any profit activity.

Article 40

(Amended by law no.8781, dated 03.05.2001, Article 3)

The founding act of an association is registered in the court at the request of its founders.

Rules for the organization and functioning of an association are defined in its statute, which must be in writing and contain especially:

- a) Name and purpose of the association, its seat and the territory in which it will develop its activity;
- b) Conditions of admission and dismissal of its members as well as their rights and duties;
- c) Governing bodies of the association, the manner of establishment and their powers;
- ç) Terms, manner of calling and powers of general meetings and delegates;
- d) The sources of its material assets as well as contributions and dues that every member should give;
- dh) The manner of changing the statute and termination of association.

Article 41

(First paragraph amended by law no.8781, dated 03.05.2001, Article 4)

The association is founded by a meeting its founders in which the statute is approved and its governing bodies are elected. An association, at its request, is registered in the court in the manner prescribed by law.

The court controls the conformity of the statute with the law.

Article 42

(Amended by law no.8781, dated 03.05.2001, Article 5)

The association acquires the quality of a legal person from the date of its registration in the court. Until the day of registration, the founders of the association can perform actions that are necessary for establishing and meeting the conditions for its registration.

Article 43

(Amended by law no.8781, dated 03.05.2001, Article 6)

An association has the right to establish its branches wherever it deems it reasonable to achieve the purpose and scope of activity of the association.

Article 43/1

(Added by law no.8781, dated 03.05.2001, Article 7)

Cases and ways of monitoring the activity of associations by competent state authorities are expressly provided for by law.

Organization of an association

Article 44

The general meeting of members or their representatives, is the highest body of the association. It is called by the governing body under the relevant provisions of the statute and when one fifth of the members require it.

Article 45

The general meeting decides on the admission or dismissal of the members and for any other matter that is not within the competence of another body of the association.

It supervises specifically the income and actions of the association as well as its property facilities.

Article 46

(Paragraph II is changed and paragraph III is added by law no.8781, dated 03.05.2001, Article 8)

All members of an association have equal voting rights at the general meeting.

A member of the association does not participate in discussions and voting where he himself or his spouse, children, relatives or in-laws are in conflict of interest with the association regarding an issue on the agenda.

Decisions on amending the statute and dissolving the association are approved by a majority of all the members of the association, unless the statute provides for a higher voting majority.

Article 47

The governing body has the right and duty to take care of the interests of the association, to protect them and to represent the association under powers conferred by statute.

Membership in an association

Article 48

Admission of new members, who fulfil the necessary conditions may be allowed at any time.

The right to resign is guaranteed, but on condition that it be submitted at least six months before the end of the calendar year or within the period provided for in the statute.

Article 49

The right of membership in an association cannot be transferred or assigned by inheritance.

Article 50

(First paragraph is changed by law no.8781, dated 03.05.2001, Article 9)

A member who leaves or is expelled from the association is responsible for its obligations to third parties until the time of his leaving and has no rights over its movable and immovable property.

They have the duty to pay dues for the time they have been part of the association.

Article 51

Each member has the right to challenge in the competent court decisions of the association that come into conflict with the law or statute.

This objection can be made within one month from the day the member has received notification of the decision.

Dissolution

Article 52

(Reformulated by law no.8781, dated 03.05.2001, Article 10)

An association is dissolved:

- a) By decision of the general meeting of its members;
- b) When the number of its members is below the minimum required by this Code or the statute;
- c) When the purpose of the association is fulfilled or cannot be fulfilled;
- ç) When it is proved that the association has conducted illegal activities;
- d) In other cases provided for by law.

The court, in cases provided for by law, may decide on dissolving an association, at the request of any member of the association, its decision-making bodies and relevant state bodies.

Article 53

(Amended by law no. 8781, dated 03.05.2001, Article 11)

When the dissolution of an association is decided, it is put in liquidation and is deregistered under the rules provided for in the law.

Article 53/1

(Added by law no. 8781, dated 03.05.2001, Article 12)

The court, after taking the opinion of the entity that has sought dissolution of the association, decides on the destination of the assets that remain after its dissolution in accordance with the rules provided for in the statute, and considering their destination and the fundamental purpose for which the association was established.

C. Foundations

Method of creation

Article 54

(Amended by law no. 8781, dated 03.05.2001, Article 13)

The Foundation is a legal person without membership, whose object is to achieve a legitimate aim by allocating assets to the benefit and interest of the public.

Article 55

(First paragraph amended by law no. 8781, dated 03.05.2001, Article 14)

Foundations are created by natural or legal persons with a notarial act or by testament.

The act for the creation of the foundation, at the request of the founders, is registered in the court. Names of the founders, purpose of the foundation, the assets (cash, securities, movable and immovable property), resources and financing, governing bodies, their powers and names of members of the administration are specifically determined in the act of creation.

Article 56

(Amended by law no. 8781, dated 03.05.2001, Article 15)

A foundation acquires the quality of a legal person from the date of registration in the court. Until the day of registration, the founders of the foundation or executor of the testament can perform actions that are necessary for the establishment and fulfilment of conditions for its registration.

Article 56/1

(Added by law no. 8781, dated 03.05.2001, Article 16)

A Foundation has the right to ownership of movable and immovable property, to generate income through the management of these assets, and to exercise other activities, in accordance with the law and the purpose and object of the activities provided for in the statute of the foundation.

The income generated by the foundation shall be used only for realisation of the activities prescribed in the purpose and object of the activity provided for in its statute.

A foundation is not permitted to perform profit activity.

Article 57

The act of creation of the foundation may be invalidated by the founders prior to the registration or when the relevant activity has not started.

The act of creation of the foundation may be challenged by the heirs or creditors of the founder.

Activity of a foundation

Article 58

Bodies of a foundation, methods of creation and competencies are determined by the act of creation. Each foundation conducts its activities under the provisions of the legislation in force and its act of creation.

Article 59

(Amended by law no.8781, dated 03.05.2001, Article 17)

Cases and ways of monitoring the activity of foundations by the competent state authorities is expressly provided for by law.

Article 60

(Repealed by law no.8781, dated 03.05.2001, Article 18)

Article 61

Property disputes, in which the foundation is a party are resolved by a competent court.

Article 62

(Amended by law no.8781, dated 03.05.2001, Article 19)

A foundation is dissolved:

- a) By decision of its highest decision-making body;
- b) When the purpose for which it was created is fulfilled or when its purpose cannot be fulfilled;
- c) When it is proved that the foundation has begun to conduct illegal activities; ç) In other cases provided for by law.

The court, in cases provided for by law, may decide on dissolving the foundation at the request of its founder, the foundation's decision-making bodies and competent state bodies.

Article 63

(Amended by law no.8781, dated 03.05.2001, Article 20)

The court, after taking the opinion of the entity that has sought dissolution of the foundation decides on the destination of the assets that remain after its dissolution in accordance with the rules provided for in the statute, and considering their destination and the fundamental purpose for which the foundation was established.

TITLE II REPRESENTATION

CHAPTER I MEANING AND TYPES OF REPRESENTATION

Meaning of representation Article 64

By way of representation, a person (representative) conducts legal actions within the titles conferred by law, by Power of Attorney or by the court, in the name of and on behalf of any other natural or legal person (the represented person).

Representation is not allowed when the legal transaction must, by law, be carried out by that person. The person who has no full capacity to act cannot act as representative.

Limits and consequences of representation Article 65

The powers of legal representation are determined by the provisions of the law that confer this quality, while the powers of the representative appointed by the represented person are determined by Power of Attorney.

The powers of representation may be determined by the circumstances in which concerned legal operations are performed.

Article 66

Legal transactions carried out by a representative within the powers given to him, create direct

consequences for the represented person.

Article 67

The representative cannot perform legal transactions on behalf of the represented person neither by himself nor with other persons represented by him, unless the represented person has allowed this explicitly, or when the content of the legal transaction does not affect his interests.

Article 68

When two or more representatives are assigned to conduct a legal transaction, each of them could conduct it without the participation of the other representatives, unless it is otherwise provided in the Power of Attorney.

Article 69

The representative must act personally and may not appoint a substitute representative, unless it is permitted by the represented person, when the property referred to in the Power of Attorney is located outside the territory of the district where the representative lives, and when the appointment of the substitute representative is deemed necessary for protection of interests of the represented person.

The representative shall immediately notify the represented person for the substitute representative he has appointed, otherwise he is responsible for the actions of the substitute representative.

The substitute representative may be revoked at any time by the represented person or by the representative who has appointed him.

Representation by Power of Attorney

Article 70

Power of Attorney is a document in which the principal (grantor), with his free will determines the character and scope of the titles he has given over to the attorney-in-fact.

Article 71

The Power of Attorney is general when the principal has given over to the attorney-in-fact powers to carry out varied legal transactions, which have to do with a set of rights of the principal, except those expressly excluded by him.

The Power of Attorney is special when the principal has given over to the attorney-in-fact the power to conduct one or more certain legal transactions, which are characterized by a common goal.

Article 72

The Power of Attorney is always done in writing.

Any Power of Attorney made for concluding a contract, which by law can only be made by a notarial act, shall be made in this form, otherwise it is invalid. Also the Power of Attorney made for performing actions before the courts and other state institutions must be made by a notarial act, unless by legal provisions it is allowed that it be made by a simple document.

The Power of Attorney on behalf of public and private legal persons may be made by just the signing of its executives and its relevant stamp, unless the law requires that the legal act be performed by a notarial act.

Article 73

The Power of Attorney made for collecting postal delivery or money from post offices or banks up to a certain amount of them, the Power of Attorney made for collecting salaries and other remuneration derived from labour relations, as well as the Power of Attorney made for collecting pensions, assistance and scholarships can be attested by:

- a) Administrator of the city quarter or the village elder;
- b) The head of the legal entity or of its branch, where the principal is in employment relations or attending school;
- c) Director of the health institution where the principal is being treated; ç) Command of the military unit where the principal is serving;
- ç) Director of the institution where the principal is detained or serving an imprisonment sentence.

Article 74

Changes to the Power of Attorney must be made known to third parties by appropriate means. In the absence of such notices, these changes cannot be directed against third parties, unless it is proved that they were aware of those changes in the Power of Attorney at the time of the legal transaction.

Article 75

The principal may revoke the Power of Attorney and the attorney-in-fact may resign at any time. Any agreement to the contrary is void.

Termination of Power of Attorney

Article 76

Power of Attorney terminates when:

- a) The attorney-in-fact has accomplished the legal acts for which it was granted;
- b) The period of time for which it was granted expires;
- c) The principal or the attorney-in-fact die, or when one of them has lost the capacity to act; ç) The representative legal person or the represented legal person terminate;
- d) The principal revokes the Power of Attorney or the attorney-in-fact resigns. Upon the termination of the Power of Attorney, the attorney-in-fact, at the request of the principal, shall turn back the Power of Attorney to the principal.

Representation after changes or termination of Power of Attorney

Article 77

Legal acts carried out by the attorney-in-fact, after changes made to the Power of Attorney or after its termination, are compulsory for the principal or his heirs, if the third parties with whom those legal transactions have been carried out have not been aware of the changes or the termination of the Power of Attorney.

Representation without rights

Article 78

When a natural or legal person acts as a representative without having this quality, as well as when the representative exceeds the rights conferred to him, the legal acts carried out in these conditions are not compulsory for the person on whose behalf they have been conducted, unless he has approved them later.

When approval is not given, the third party acting in good faith, has the right to request compensation of the damage from the representative.

TITLE III

LEGAL TRANSACTION

CHAPTER I

GENERAL PROVISIONS

Definition of legal transaction

Article 79

A legal transaction is the legal expression of the will of a natural or legal person, which aims to create, modify or extinguish rights or civil liability.

A legal transaction may be unilateral or bilateral.

Forms of legal transactions

Article 80

A legal transaction can be done in writing, orally and in any other undoubtable expression of the will. The document can be simple or a notarial act.

Article 81

A written legal transaction must be signed by the person who conducts it.

Article 82

The person who does not know to, or because of illness or physical handicap cannot sign, appoints another person for this purpose.

The signature of this person must be certified by a notary, explaining the reason for which the person who has conducted the legal transaction has not been able to sign it himself.

For transactions performed in banks and other credit institutions, in post offices or customs offices, the signature of this person is certified by an authorized official of these institutions.

Article 83

The legal transaction made for the transfer of ownership of immovable assets and of the real rights over them, must be notarized and registered, otherwise it is not valid.

The legal transaction that is not made in the form expressly required by law is not valid. In other cases, the legal transaction is valid, but it cannot be proved by witnesses.

Conditional legal transactions

Article 84

A legal transaction is conditional when the arising or termination of rights and obligations provided for in it depend on an event which is not known whether it is going to happen or not.

Article 85

The condition is suspensive when the rights and obligations arise if the event occurs. The condition is resolutive when the rights and obligations terminate if the event occurs.

Article 86

When the verification of the condition is prevented in bad faith by the party that would benefit from the lack of verification, the condition is considered substantiated.

When the verification of the condition is caused in bad faith by the party that would benefit from its verification, the condition is considered unsubstantiated.

Article 87

When the right that depends on verification of the condition is violated or lost because of the actions of the party obliged upon condition, the later must compensate the damage caused in case the condition is substantiated.

Article 88

The consequences related to the verification of the condition begin from the moment the condition is

verified, unless when by the content of the legal transaction it results that these consequences should start at an earlier time.

Legal transactions under a deadline

Article 89

The deadline of a legal transaction is the certain moment from which the legal power or some of its effects start or cease.

Article 90

The deadline is suspensive when the legal transaction provides that its consequences start from a certain moment.

The deadline is resolvable when the legal transaction provides that its consequences cease at a certain moment.

Calculation of deadlines of legal transactions

Article 91

When the deadline is defined in days, the day on which the event takes place or the time from which it should start is not calculated.

The deadline defined in weeks, months or years, ends with the passage of that day of the last week or last month which has the same name or number with the day it started. When there is no such day in the last month, the period ends at the end of the last day of this month.

When the last day of a deadline falls on a holiday, the deadline expires on the working day following that holiday.

CHAPTER II

INVALIDITY OF LEGAL TRANSACTIONS

Invalid legal transactions

Article 92

Invalid legal transactions do not create any legal consequences. As such are those which:

- a) Come in conflict with a mandatory provision of law;
- b) Are performed to deceive law;
- c) Are committed by minors under the age of fourteen;
- ç) Are made in agreements between the parties without aiming to bring legal consequences (fictitious or simulated).

Article 93

When a legal transaction is intended to cover another legal transaction, the latter is valid if it fulfils all the conditions necessary for its validity.

A fictitious or simulated legal transaction does not harm third parties that have acquired rights in good faith based on it.

Legal transactions declared void

Article 94

Legal transactions, which are valid until the court with the request of the interested party declares them invalid, are considered cancellable. As such are the legal transactions carried out by:

- a) Minors over fourteen years of age, when the legal transaction is carried out without the consent of a parent or guardian;
- b) Persons who, because of mental illness or mental deficiency have been deprived of or limited the capacity to act, when the legal transaction is performed without the consent of the guardian;
- c) Persons, who at the time of performance of the legal transaction, were not aware of the importance of their transactions, although at that time they were not deprived of the capacity to act;
- ç) The person who has carried out the legal transaction being defrauded, under duress, in error or because of the great need.

Cancellation of these transactions may be required even after the death of the person concerned, but only when the deprivation of its capacity to act is required before death.

Article 95

Fraud can cause that a legal transaction be declared invalid when the lie used by one party to lead another party to the error is as such that without it the party would have not carried out the legal transaction.

When fraud is committed by a third party, the defrauded party may demand the invalidation of legal transaction only when at the time of its commission the other party was aware or should have been aware of the fraud.

Article 96

Duress may cause that a legal transaction be declared invalid if it is such as to intimidate the person that he himself, his spouse, descendants or his predecessors will undergo an unjust and serious physical or material damage.

Duress can be committed by a third party that does not take part in the legal transaction.

Article 97

Error can cause the legal transaction be declared invalid only if it is related to quality of the thing, identity or qualities of the other person, or circumstances so essential that without them the party

would have not carried out the legal transaction.

Article 98

An error in calculation does not lead to the declaration of the legal transaction as invalid, but only its rectification, unless the amount of error has been determining for the agreement.

Article 99

A legal transaction can be declared invalid in the event that because of the great need, the obligations assumed by one party are negligible compared to the benefits received by the other party from the legal transaction.

Article 100

A legal transaction carried out by the representative can be declared invalid at the request of the representee, when the will of the representative is flawed.

When the flaw is related to elements defined by the representee, a legal transaction can be declared invalid only if the will of the latter was flawed.

Article 101

When the definition of good faith or bad faith, of knowledge or ignorance of certain circumstances that constitute valid or invalid determining conditions of a legal transaction are important in the legal transaction, the representative as a person is taken into account, except when it comes to circumstances determined by the represented person.

The represented person who acts in bad faith cannot benefit in any case from the ignorance or good faith of the representative.

Article 102

A legal transaction carried out at the detriment of the represented person due to bad faith agreement between the representative and a third person can be declared invalid for the represented person.

Lawsuit statute of limitation

Article 103

A lawsuit seeking a legal transaction be declared invalid, lapses within five years.

Article 104

The deadline to bring a lawsuit begins:

- a) For legal transactions carried out by people who have been deprived of or have had limited capacity to act, from the day they become adults or regain the capacity to act;
- b) For legal transactions carried out by fraud, duress or error, from the day the fraud or error are disclosed, or duress has ceased, but in any case not more than three years from the day the legal transaction is carried out;
- c) In other cases, from the day the legal transaction is carried out.

Article 105

A legal transaction that is declared invalid is considered as such from the moment it was carried out.

Consequences of invalidity of a legal transaction

Article 106

When a legal transaction is invalid for the reason that it comes into conflict with the law, or is intended to defraud the law, anything that the parties have given to each other is taken and shall be passed to the state revenue and where it is not possible to take the same thing, it is required its value.

When one of the parties has acted in good faith, the court may decide that anything that this party has given be turned back to this party and where the return of the same thing is not possible, they must pay its value to the party.

Article 107

When a legal transaction is declared invalid because it is carried out by fraud, duress, great necessity or because there is no form required by law, each party must return to the other party anything they have taken from the other party and, where the return of the same thing is not possible, they must pay its value to the other party.

Article 108

When a legal transaction is found to be invalid for the reason that it has been carried out by a minor who has not attained the age of fourteen or it is declared invalid because it is carried out by a minor who has reached the age of fourteen, but without the consent of a parent or guardian, each party must return to the other party anything they have taken from the other party and where the return of the same thing is not possible, they must pay its value to the other party. In addition, the party that has had the capacity to act is obliged to compensate the minor for the damage he has suffered for the reason that the legal transaction is found or declared invalid.

Article 109

When a legal transaction is declared invalid for the reason that it is carried out by a person who is totally deprived of the capacity to act or because it is carried out by a person whose capacity to act is limited and without the consent of his guardian, or for the reason that it is carried out by a person

who at the time of executing the legal transaction was not aware of the importance of his transactions, each party must return to the other party anything they have taken from it and, where the return of the same thing is not possible, they must pay its value to the other party. In addition, the party that has had the capacity to act is obliged to compensate to the other party the damages that this party has suffered because of the legal transaction declared invalid, if they knew or should have known that the other party had not the capacity to act or was not aware of the importance of its transactions.

Article 110

When a legal transaction is declared invalid for the reason that one of the parties was in error, each party must return to the other party anything they have taken from the other party and where the return of the same thing is not possible, they must pay its value to the other party. In addition, the party that has requested the legal transaction be declared invalid is obliged to pay the other party the damage suffered by that party for the reason that the transaction is declared invalid, except the case where they prove it that it is not their fault that they have fallen into error or that the other party knew or should have known about the error.

Article 111

When the cause of invalidity affects only a part of the legal transaction, it remains valid in its other parts, unless, according to the content of the legal transaction, these parts represent an indivisible relationship with the invalid part of the legal transaction.

TITLE IV LAPSE OF LAWSUITS AND DECLINE OF RIGHTS

CHAPTER I GENERAL PROVISIONS

Article 112 Content

The right of a lawsuit that is not filed within the period of time prescribed by law, is extinguished and cannot be realized by the court or other competent body.

Lawsuits that do not lapse

Article 113

Do not lapse:

- a) The lawsuit for reinstatement or protection of a personal non-property right, besides the exceptions as provided by law;
- b) Recognition claims;
- c) The lawsuit of division between the co-owners;

- c) The lawsuit for return of the amount deposited in the bank;
- d) Other lawsuits prescribed in special legal provisions.

Requirements for the mandatory execution of the decisions that are related to lawsuits, for which the statute of limitation does not apply.

Time limits for statute of limitations

Article 114

When it is not otherwise provided in the law, all lawsuits between legal persons, between them and natural persons and between natural persons themselves lapse within ten years.

Article 115

(Letter "e" is added by law no.17/2012, dated 16.2.2012, Article 1)

Lapse within the time limits of:

- a) six months, lawsuits for the payment of penal evaluating conditions;
- b) one year, lawsuits arising from contracts of delivery;
- c) six months, lawsuits arising from direct transportation of goods and passengers by rail, vehicle or aircraft and one year for the same lawsuits arising from maritime or mixed transports;
- ç) two years, lawsuits for payment of compensation under the contract of insurance and reinsurance, as well as the respective amount deriving from compulsory insurance;
- d) three years, lawsuits for payment of rent of apartments, shops, bars and other real estate;
- dh) three years, lawsuits for compensation of non-contractual damage and lawsuits for the restitution of property benefits gained without a title.
- e) one year, lawsuits for compensation of non-property damage, for violation of honour, personality or reputation.

Other lawsuits lapse within certain specific time limits defined in this Code or other laws.

Article 116

The agreement of the parties to amend the time limits of the statute of limitations and any provisions of this chapter is invalid.

Article 117

The limitation period starts from the date when the subject acquires the right to sue.

Article 118

In the contractual obligations concluded with an execution deadline, the statute of limitation to file a lawsuit starts from the day when this deadline is met.

When the obligation consists of periodical payments, for each of them the limitation period shall start separately.

For contractual obligations concluded without a deadline and for obligations executed at the creditor's request, the limitation period starts from the day the obligation arises.

Article 119

For the revendication of a thing, the limitation period to file a lawsuit starts from the date when the owner has been or should have been aware of the infringement and the infringer of his right.

Article 120

Regarding the request for the compensation of non-contractual damage, the limitation period to file a lawsuit starts from the date when the injured party has been or should have been aware of the damage suffered and of the person who has caused it.

Article 121

For the restitution of the amount of money or the thing that is earned or saved without cause, the limitation period to file a lawsuit starts from the date when the injured party has been or should have been aware of the profit or savings without cause that the person concerned has realized.

Article 122

To request an inheritance, the limitation period to file a lawsuit starts from the date of opening of the inheritance.

Regarding lawsuits for restitution, the limitation period to file a lawsuit starts from the date when the plaintiff has paid voluntarily, based on a legal or contractual obligation, the third party, for the guilt of the defendant, the amount of money or the thing that is requested through this lawsuit, or from the day the decision of the court or relevant arbitration is given from which the lawsuit of regression arises.

Article 124

A statute of limitations for the main request of the lawsuit causes the statute of limitations even for requirements derived from the main request, although the relevant deadline for them is not met.

Request of the interested party

Article 125

The expired statute of limitations cannot be considered by the court or other competent authority on its own initiative, but only at the request of the interested party.

Waiver of statute of limitations

Article 126

Waiver of statute of limitations is allowed only after its limitation period has expired.

Article 127

The claim that the limitation period has expired can be exerted by the creditors and by anyone who has an interest, in cases where the concerned party has exerted it itself.

Fulfilling the obligation after the limitation period has expired

Article 128

The debtor who has fulfilled his obligation after the statute of limitations had expired, cannot request the restitution of the amount of money or the thing given voluntarily even if he was not aware that the limitation period had expired.

CHAPTER II

SUSPENSION AND TERMINATION OF THE STATUTE OF LIMITATIONS

A. Suspension of the statute of limitations

Article 129

The statute of limitations is suspended:

- a) Between spouses until the day the judicial decision on the dissolution of marriage is final;
- b) Between children and parents while they exercise parental rights;
- c) Between persons who are under guardianship and their guardians until the guardianship continues;
- ç) For the claims of persons whose property has been put into administration, against the respective administrators appointed by the court or other competent state authority, until the final accounts report is approved;
- d) For claims of minors and other persons who do not have the capacity to act, until their representative is appointed or they acquire this capacity and for six months after their representative is appointed or they have acquired the capacity to act;
- dh) For claims of a legal person against its administrators, while they continue this task at it;
- e) For claims with object the relevant compensation stemming from injury or by causing death, suspension of the limitation continues from the day the request is submitted to the state social security body and up to the day the pension is assigned or that request is rejected;
- ë) Due to force majeure.

Article 130

The period of suspension is not counted in the period of limitation. When, after the disappearance of the cause of suspension, the time left for the period of limitation to expire is shorter than six months, it shall be extended up to six months.

B. Interruption of the statute of limitations

Article 131

The statute of limitations is interrupted:

- a) By every obligatory transaction of a natural or legal person that expresses the recognition of accurate and complete right of the creditor;
- b) By presentation of the claim, counterclaim or objection, even in a court or arbitration that is not competent from material or territorial perspective to review the case;
- c) By any transaction that puts the debtor in behind time;
- ç) By submitting a request for mandatory execution of the judicial decision or concerned arbitration and any other executive title.

Article 132

Interrupted statute of limitation against one of the solidary debtors, or one of the spouses in an indivisible obligation, extends even to each of these other debtors.

Article 133

The interrupted statute of limitation against the principal debtor extends to the respective trustee.

Article 134

The time elapsed before verification of the cause of interruption is not counted and after the disappearance of this cause, a new period of limitation begins.

Article 135

When the statute of limitations is interrupted due to submission of a claim or counterclaim, the new period of limitation begins from the day that the decision by which the case has been settled on its merits becomes final.

When the claim is rejected without the case being solved on the merits, or the case is suspended, the statute of limitation is not considered as interrupted.

Calculation of limitation periods

Article 136

The limitation period of the claim, which is set in weeks, months or years expires with the passing of that day of the last week or last month that has the same name or number with that of the day on which the limitation period has started and when there is no such a day in the last month, the period ends at the end of the last day of this month.

When the last day of the limitation period falls on a holiday, the working day following that holiday is called as the last day.

CHAPTER III PRECLUSIVITY

Article 137

When a right must be exercised within a preclusive period, the provisions governing the termination of the statute of limitations do not apply. Also, causes of suspension do not apply, aside from exceptional cases, when the law itself allows the suspension of the preclusive period.

Article 138

Any agreement, wherewith preclusive periods are determined, that make it extremely difficult for one of the parties to exercise its respective rights, is invalid.

Article 139

The parties cannot change the legal precepts governing preclusivity, nor can they waive completed preclusive period when this period is defined by specific legal provisions.

Article 140

Completed preclusive period is taken into consideration by the court or competent arbitration on its own initiative, even without being asked by the interested party.

PART II THINGS AND OWNERSHIP

TITLE I THINGS

Legal definition of a thing

Article 141

A thing is any object within the scope of the right of ownership or other real right.

Types of things

Article 142

Things are movable and immovable.

Immovable things are land, water sources and flows, trees, buildings, other floating constructions connected to the land and anything that is embodied steadily and continuously to the land or building. All other things, including any other natural energy, are movable things

Article 143

The provisions dealing with immovable things shall also apply to the real rights that have as their object immovable things, as well as related claims, unless otherwise provided by law.

The provisions dealing with movable things apply to all other rights.

Registration of things

Article 144

Immovable things and real rights over them are recorded in the real estate registers.

Those movable things, the registration of which is expressly required by law, are also registered.

Fruits of the thing

Article 145

Natural fruits of a thing are the products derived from it. While not separated from the thing, they are part of it.

Civil fruits are derived from things as a result of the enjoyment of rights that people have on them.

Civil fruits are obtained on the basis of duration of rights and when they become claimable.

Components of the thing

Article 146

Everything that is attached to the thing and cannot be separated from it without causing substantial damage is a component of this thing.

Accessories

Article 147

Accessories are those movable things that are intended to serve a principal thing consistently or to

decorate it.

This designation is made by the owner of the principal thing or the person who has a real right over it.

Article 148

Any ownership over the principal thing includes also its accessories, unless it is otherwise provided. Accessories can also be the subject of a separate ownership. Accessories do not lose this quality when they are temporarily separated from the principal thing.

TITLE II OWNERSHIP

CHAPTER I GENERAL PROVISIONS

Ownership Article 149

Ownership is the right to enjoy and possess things freely, within the limits defined by law.

Ownership on components of the thing Article 150

The ownership of the components of a thing belongs to the owner of the thing.

Ownership on the fruits of the thing Article 151

The natural fruits produced by the thing belong to the owner of the thing, unless their ownership is passed to others. In this case, the ownership is acquired after the fruits are separated from the thing. The person who gets the fruits shall, within their value, compensate the expenses made for their production and gathering.

Affiliation of things Article 152

The things belong to natural persons, legal persons and the state. Types of public property are defined by law.

The rights and obligations of the owner Article 153

(Amended by law no.8781, dated 03.05.2001, Article 21)

No one may be expropriated or restricted to the right to exercise the right to property which is equivalent to expropriation, unless this is required in the public interest and always against fair compensation.

Article 154

The land ownership rights extend to such heights and depths that are useful for the exercise of such ownership, under the conditions defined by law.

Article 155

The landowner, after first asking the neighbour to cut the branches and roots of trees that extend into his land, has the right to cut them himself, if they cause harm, as well as collect fruits and use them for himself.

Fruits that fall from the trees on the land, belong to the owner of the land where they have fallen.

Article 156

The owner of a land that is located near streaming waters or a public water source has the right to use them to the extent that it does not harm the interests of other landowners, unless the use is regulated by specific provisions.

Article 157

The owner of a land may request the owner of the adjoining land at any time, to place at common expenses visible marks at common boundaries of their lands or fix them when they are damaged. When the boundary between the two lands is unclear, and the owners do not define it themselves, each of them may require its correction by the court.

Article 158

When trees and shrubs are planted in borders of the properties, the owners are required to keep the distances defined by specific provisions, and when there are no such provisions, defined by the customs of the country, unless the neighbouring owner has allowed it himself or when the boundary line is a road or public water stream.

In the absence of such rules, the distances are: three meters for high body trees and two meters for other trees.

These distances do not apply to trees and bushes, whose height does not exceed the height of the parting wall between the properties.

Article 159

The owner is free in using the thing, without prejudice to the rights of others and within the limits set

by law or by good customs. He cannot create disturbances to neighbours such as noise, vibration, intake of smoke, heat, steam, or other similar disturbances that impair their enjoyment of property by changing the courses, amount or quality of the water flowing in his land or groundwater, as well as to use waters which communicate freely with the land of others, unless those disturbances do not exceed their usual level.

The owner in the exercise of his rights, is forced to take action to preserve and protect the environment around.

Article 160

Owners must adhere to the rules defined in regulatory plans or specific provisions for the construction of new buildings, their reconstruction or change, for the distances between buildings, for opening the windows, wells, holes in the ground and other works of this kind.

Article 161

The owner is obliged to collect the water pouring off the roofs of his buildings, so that they do not drip on the land of others.

Spills in a public water stream can be done when not prohibited by the rules defined by the competent authorities.

The owner is obliged to ensure that water and debris coming from his land do not flow into the channel or the land of another, unless an agreement in the contrary exists between them.

CHAPTER II ACQUISITION AND LOSS OF OWNERSHIP

Transfer of ownership

Article 162

The right to ownership and other rights to things are transferable, unless prohibited by law or by the nature of the right itself.

Methods of acquiring ownership of property

Article 163

Ownership of property is acquired through manners defined in this Code and other manners defined by specific law.

Acquisition of ownership of property by contract

Article 164

Ownership of property is acquired by means of a contract, without having to hand over the thing.

For things defined in numbers, weight of measure, the handover is required.

Acquisition of ownership of property by inheritance

Article 165

Acquisition of ownership of property by inheritance is done in accordance with the conditions provided for in the provisions of part three of this Code.

A bona fide acquisition of movable things

Article 166

The person who on the basis of a legal transaction for the transfer of ownership has acquired against compensation in good faith a movable thing, becomes the owner of the thing, even if the alienator was not the owner.

However, the acquirer, even in good faith, does not become the owner of the thing, if it is stolen.

The acquirer in good faith becomes the owner of money and securities to the bearer, even if they were stolen to or lost by the owner or the public legal person.

The above provisions do not apply to movable things which are listed in public registers.

Property may be acquired free of the rights of others over the thing, if these rights are not derived from the title and the good faith of the acquirer.

Article 167

If the ownership over a movable thing passes to several people through contracts, the owner becomes the person who has gained possession of the thing in good faith, even if the contract is of a later date.

Adverse possession

Article 168

A person, who has acquired a thing in good faith, based on a legal transaction to transfer ownership and which is not prohibited by law, becomes the owner of this thing, after continuous possession for five years when the thing is movable and ten years when it is immovable.

When possession is not in good faith, the terms of uninterrupted possession double. Possession is considered uninterrupted even when the acquirer of the thing has given the possession to another person.

A thing which is an inalienable public property cannot be acquired by adverse possession.

Article 169

The person who quietly and continuously possessed by behaving as if he owned an immovable property for twenty years becomes its owner.

Registration of the thing acquired by adverse possession

Article 170

A person who has acquired an immovable thing by adverse possession has the right to file a lawsuit against the former person or his heirs for recognition of his ownership and, according to the relevant court decision, to request the registration of the thing by the competent state body.

Suspension and termination of adverse possession

Article 171

Suspension and termination provisions for the limitation of lawsuit also apply to adverse possession. Adverse possession is interrupted by loss of possession. It is not called an interruption when the possessor comes back in possession within six months or later through a lawsuit filed within six months.

Ownerless things

Article 172

Ownerless things are those things that have no owner or their owner has abandoned the right of ownership.

Ownerless things fall to the state. Passage of ownership to the state is made by decision of the competent court.

Acquisition of ownership by connection and mixture

Article 173

Crops, buildings and any other object that is on or under the surface of the land belong to the land owner, unless otherwise provided in this Code and other legal provisions.

Article 174

The owner of the land who has made constructions and other works and planting with material belonging to another person is obliged to pay their value, unless their separation and return is not required and when it can be done without causing substantial damage to the buildings or planting performed.

When the separation of materials is possible and when the owner of the land has acted in bad faith, he must compensate the owner of the material for the damage suffered.

Article 175

When buildings and other works and plantings are made by a third person with his own materials on the land of another person, the respective owner has the right to retain them or require the obligation of the other person to take them away at his own expenses, and, where appropriate, to compensate

the damage.

When the owner of the land agrees to retain them, he is obliged to pay the value of the materials and labour or the increase in value of the property.

The owner of the land cannot require the removal of buildings and plantings when they are done at his knowledge or good faith by a third person, and when six months have passed since the day when the owner received notice of these buildings and plants.

When a building is constructed in good faith on the land of another person and its value is greater than the value of the land, the person who constructed the building can be recognized as owner of the land by decision of the competent court.

Article 176

When two or more movable things belonging to different owners have been connected or mixed into a single thing that cannot be separated without causing great harm to each other, or when such separation requires work and excessive costs, the owners of each thing become co-owners of that new thing in proportion with the value that the parts of the thing had at the time of their connection or mixture.

When a movable thing is connected to or mixed with another thing in such a way as it seems to be an accessory part of it, the new thing belongs to the owner of the principal part, who is obliged to pay the respective value and, when appropriate, to compensate the damage caused.

Acquisition of ownership by processing

Article 177

A person who creates a new movable thing through his work using materials belonging to another person, regardless of whether the material can take its first form or not, becomes the owner of the new thing, if the value of the work is greater than that of the material, provided that he pays the value of the material.

Otherwise, the new thing is acquired by the owner of the material, by paying the value of work.

When the creator has acted in bad faith, the new thing passes to the owner of the material by court decision, even if the value of the work is greater than that of the material, but by paying the value of the latter.

Addition to land by alluvium

Article 178

Addition to land by deposition and addition of soil through the operation of natural causes over the banks of rivers and watercourses belong to the riparian owner, unless otherwise provided by law.

Relicted lands

Article 179

The dry land uncovered by a watercourse which withdraws through the operation of natural causes

from one bank to the other bank of the watercourse belongs to the owner of the land from which the watercourse is withdrawn.

Relicted lands arising from river beds

Article 180

Islands and relicted lands arising from river beds are public property.

Article 181

When a river or water stream changes its bed and leaves the old channel, the dry land uncovered is owned by the riparian owners of both banks of the river or water stream, who own it to the centre of the dry stream bed.

LOST OR FOUND THINGS

Reporting found things

Article 182

Any person who has found a thing lost including livestock separated from the bunch is obliged to immediately inform the owner or the person who has lost it and, if the owner is unknown, turn it over to the municipality of commune in the territory of which the thing was found.

The municipality or commune is obliged to announce immediately the thing found.

Claiming the thing and compensation of costs

Article 183

The owner or the person who has lost the thing has the right to claim it within six months from the day the respective municipality or commune has announced the finding, after having paid the expenses incurred for the preservation of the thing and a reward for the person who found the thing at the extent of 10% of the value of the thing, or of the price obtained, when because of the circumstances presented, selling it was necessary.

If there are objections for the value of the thing, the dispute is resolved by the court.

The municipality or commune may permit the person who found the thing to temporarily keep it, who is compensated for the expenses incurred for the preservation of the thing.

The things lost must be stored and maintained with proper care.

Acquisition of ownership by the finder

Article 184

When the owner or the person who has lost the thing do not appear to receive it within the period prescribed in Article 183, the thing or the sale price passes under the ownership of the person who

found it, who compensates costs of preservation.

Things found in a premises

Article 185

Things found in a public and private premises as well as in a means of transportation, must be immediately handed over to the administrators of the premises where they were found, who save it for three days. When the owner or the person who lost the thing do not appear, the administrators submits it to the relevant municipality or commune.

Treasure

Article 186

Any precious thing, which seems clearly to have been in the ground or hidden for a long time and the owner cannot be traced back is called a treasure.

The treasure belongs to the owner of the moveable or immovable thing where it was found, except from the things of scientific, cultural, archaeological value as provided by Article 187 of this Code. The person who finds the treasure has the right to a reasonable compensation that should not exceed half of its value.

State ownership on a category of movable things

Article 187

Movable things with cultural, historical, archaeological, ethnographic value and rare natural objects of scientific importance that are discovered, break or extracted from the ground or water, are transferred into state ownership.

The owner, in whose property such items have been discovered, is obliged to allow the excavation being compensated for damages suffered.

The person who discovered or found such things is entitled to receive a reasonable reward from the state.

Acquisition of property by occupancy

Article 188

Ownership of abandoned movable things and ownership over wild animals, birds, fish, wild fruits and the other movable things of nature is acquired by occupancy under the terms defined by law or in specific provisions.

Swarm of honey bees

Article 189

The owner of a swarm of honey bees has the right to track and take it from the land of another, awarding the damages caused.

When the owner of the swarming honey bees did not track it within three days, or when it has entered into another beehive, the ownership on the swarming honey bees is transferred respectively to the owner of the land where the swarming honey bees stayed or to the owner of the beehive.

Acquisition of property through expropriation

Article 190

(The first sentence is amended by law no. 8781, dated 03.05.2001, Article 22)

Things may be expropriated only in the public interest recognized by law and only against a fair compensation.

They become the property of the state or other public entities in favour of which the expropriation is done.

Loss of ownership

Article 191

Ownership is lost when it is acquired by another or when it is renounced.

Renunciation of ownership of immovable property in favour of another is valid when it is done by a notarial act and registered.

CHAPTER III

REGISTRATION OF IMMOVABLE PROPERTY

Article 192

Immovable things and facts relating to their legal status are recorded in the real estate registry. Registration is based on a public act, a decision of a court or other competent state body, as well as in other cases provided by law.

Article 193

In the real estate registry must be registered:

- a) Contracts for the transfer of ownership of immovable things and acts to their voluntary division;
- b) Contracts by which ownership rights are created, recognized, modified or terminated over immovable things, the rights of usufruct, use and lodging, emphyteusis and servitude and other real rights;
- c) Acts by which the above ownership rights be relinquished;
- ç) Court decisions by which the quality of heir is recognized and the inherited property is acquired;
- d) Acts by which is created a corporation or another entity of law that owns real estate or enjoys other rights in rem over them;
- dh) Decisions of courts or competent state bodies that respectively contain the acquisition or recognition of ownership over immovable property, the division of immovable property or that declare legal transactions invalid for the transfer of ownership previously duly registered, as well as

acts of judicial bailiffs for seizure of immovable property or selling them at auction.
The court verification of the fact of ownership is not registered.

Article 194

In the contract of donation of immovable property, registration takes the date on which the receipt is recorded, if this is contained in a separate act.

Article 195

Immovable property and real rights over them which are acquired or recognized under the provisions of this Code shall not be alienated and, where appropriate, be charged with burden, if they are not registered in public registers.

Article 196

The courts, notaries, judicial bailiffs and other state bodies are obliged to send for registration to the registration office that administers the immovable property register, a copy of the decision or act that contains acquisition, recognition, modification, termination of an immovable property right or a real right over it, or which declare legal transactions invalid for the transfer of ownership previously registered.

Article 197

The following must also be registered:

- a) Leasing contracts for immovable things for a time over nine years;
- b) Lawsuits for acquisition, recognition, modification or termination of property rights or other rights in rem over immovable property;
- c) Lawsuits for division of common immovable property.

Article 198

The Ministry of Justice administers the activities of the public registry for immovable property. Conditions, manner of registration and organization, as well as any procedure relating to this activity is regulated by a special law.

TITLE III CO-OWNERSHIP

CHAPTER I SHARED CO-OWNERSHIP

Definition and content

Article 199

There is co-ownership whenever one or more things and other real rights belong commonly to two or more persons.

The portions belonging to the co-owners shall be equal, unless the contrary is proved.

The rights and obligations of the co-owners shall be determined in proportion with their respective portions.

Rights of co-owners

Article 200

Each co-owner shall have the following rights:

- a) To benefit from the income coming from the thing owned in common in proportion to his/her portion;
- b) To use the thing owned in common in accordance with the purpose for which it is intended and in such a way not to prevent the other co-owners from using it according to their rights;
- c) To alienate or dispose of in any other way his/her part in the thing owned in common, but when it is an immovable thing, he/she may sell his/her part only by respecting the right to pre-emption that the other co-owners have under Article 204 of this Code;
- ç) To demand the partition of the thing owned in common, even if there is an agreement to the contrary, unless this division hurts the respective purpose or it is prohibited by law;
- d) To demand the restitution not only of his/her part, but all the thing owned in common provided that it be delivered to all co-owners.

Obligations of co-owners

Article 201

Each co-owner is obliged that in proportion to his/her part to pay the necessary expenses for the preservation and enjoyment of the thing owned in common.

Article 202

When the thing owned in common is used for their own benefits by one or several co-owners, they are obliged to pay compensation to the other co-owners for the use of their share from the date the request for this compensation was notified in writing to them, or from the date of filing the lawsuit in the competent court.

Administration of the thing owned in common

Article 203

All co-owners, regardless of the value of their respective share, have the right to take part in the administration of the thing owned in common.

The thing owned in common shall be administered in accordance with the way approved by agreement of all co-owners, and when this agreement has not been reached, in accordance with the way defined by decision of the co-owners that own more than half of its value. The resolutions of the majority of the co-owners shall be binding even for the co-owners that will remain a minority. This majority may decide to mortgage or leave in pawn the thing owned in common when this is necessary to ensure the return of the sums borrowed for its maintenance or reconstruction. When this majority is not reached, or when its resolution is prejudicial to the thing owned in common, the competent court at the request of any of the co-owners shall order such measures as it may deem proper and, where appropriate, appoint a guardian for the administration of the thing.

Pre-emption right
Article 204

A co-owner, before selling his share in the immovable thing to a person who is not a co-owner, is obliged to notify the other co-owners in writing whether they want to buy the share under the same conditions that he would sell it to a third person. If they do not respond within three months that they want to buy the share, the co-owner is free to sell his share to a third party. He should make the new co-owner known to the other co-owners.

Creditor's right on the share of the co-owner
Article 205

Each creditor has the right to realize his credit on the portion belonging to the co-owner in the thing owned in common.

Article 206

Creditors and heirs of any of the co-owners may at their own expense take part in the division of the thing owned in common, but they cannot impugn any partition already executed, unless they have announced their impugnement before the division.

In the division of immovable property, notification for the impugnments mentioned in the preceding paragraph shall be registered before the registration of the request for division. Also, all the creditors, who have registered their claims or have acquired rights to the property that is being divided, should be called in such a division prior to the registration of the act of partition or the registration of the request for division.

Division of the thing owned in common
Article 207

Partition of the thing owned in common shall be made by agreement of all co-owners. When it is an immovable thing, the agreement shall be made by a notarial act. When this agreement is not reached, the partition shall be made by the court, calling all the co-owners in the trial. Partition of the thing owned in common is made with its physical division in accordance with the parts belonging to the co-

owners, if such a division is possible and does not prejudice the relevant purpose of the thing. Inequality of the shares resulting from the physical division of the thing is compensated by a reward in cash.

When the thing owned in common cannot be physically divided, the court orders that it be sold at auction and its value be divided between co-owners according to the relevant parts, calculating the amounts they have to pay each other because of co-ownership relations.

However, instead of selling it at auction, the court, when some of the co-owners require it, orders that the thing be left with them, forcing them to pay the co-owner who requires the division the value of his share in the manner and within the time periods specified in the court decision.

When the thing that cannot be physically divided is a dwelling house, the court leaves it under the above mentioned conditions to the part of the co-owner who lives there or is in need of this residential area more than others.

Alienation of the thing owned in common

Article 208

Alienation of the thing owned in common can be made only at the consent of all co-owners.

CHAPTER II

CO-OWNERSHIP IN GENERAL

A. Obligatory co-ownership

Shared facilities in buildings

Article 209

On the floors or separate units of the floors of a building that are owned separately to different owners, the following facilities, unless stated otherwise in the ownership act, shall be in their obligatory co-ownership:

- a) The land on which the building is built, foundations, main walls, internal partition walls, stairs, halls, roof or terrace, chimneys, as well as all objects of the building that have such character and serve for shared use;
- b) Wells, installation of water, electrical, gas, telephone and central heating installations, including pipelines and related lines, as well as various channels to the point of the branches inside separate units of floors.

Article 210

The right of each co-owner on the objects mentioned in the Article above is in proportion to the value of the floor or parts of the floor that belong to him, unless the title provides otherwise.

Relinquishment of the right on the objects above does not relieve the co-owner from the obligation to contribute to the costs of maintaining them.

Inseparability of shared facilities

Article 211

It is not allowed to divide shared facilities of the building, unless the division of any of them can be carried out without causing any difficulties in its use to any of the co-owners.

Composition of the Assembly and election of chairmanship

Article 212

The Assembly is composed of the owners of each floor or separated units of each floor, who own in common the shared facilities of the building.

At the first meeting of the Assembly, the members elect the chairmanship from among their ranks, which is charged to perform, in the name and on their behalf, all necessary actions for the ordinary administration and maintenance of shared facilities, except the actions that are only under the authority of the assembly, and to represent them in competent judicial bodies and in arbitration.

Meetings of the Assembly and the validity of decisions

Article 213

After the first organizational meeting, the meetings of the Assembly are convened once a year. Other meetings can be called by its chairmanship or on the initiative of not less than 20% of its members.

Assembly can be opened and make decisions when the co-owners who have at least two thirds of the total shares are present in person or represented by proxy. When this number is not present, the meeting shall be adjourned and the next meeting will be held if the common majority of the co-owners participate.

Assembly decisions are made by a simple majority vote of the co-owners, unless a qualified majority is required in the provisions of this chapter or by specific provisions. When the number of votes is equal, the vote of the chairman is decisive.

Core competences of the Assembly

Article 214

The Assembly has the following core competences:

1. Approves regulations governing the apartment house, which is compiled by the model regulation approved by the Council of Ministers.
2. Creates the reserve fund for common expenses, setting the annual amount thereof.
3. Approves the expenditure estimates decided to be spent during the year, and the allocation of the amount between the co-owners.

Common expenses for ordinary maintenance, repairs and upgrades to these facilities are approved by the Assembly with a simple majority vote, while expenditures for major improvements or qualitative renovations are approved by a qualified majority of the co-owners that reaches at least 75% of the shares.

4. Appoints, when deemed necessary, the custodian of the building, setting his powers and salary.

5. Authorizes the chairmanship to insure, within reasonable limits, the facilities owned in common as well as to enter into other necessary contracts for maintenance, repairs and ordinary renovations, or, where appropriate, for major improvements or renovations of these facilities.

Article 215

Decisions made by the Assembly in accordance with the aforementioned provisions are obligatory for all co-owners.

The lawsuit against decisions of the Assembly

Article 216

When a decision of the Assembly is unlawful or prejudicial to the interests of any of the co-owners of these apartment houses, each co-owner has the right to file a lawsuit before the competent court for the invalidation of that decision within thirty days of its issuance. The filing of the lawsuit does not suspend implementation of the decision of the Assembly, unless the court has decided otherwise.

Obligations of the co-owners

Article 217

Each co-owner has the following obligations:

1. To pay the expenses for the preservation and enjoyment of the shared facilities of the building, for the rendering of services to joint benefit and for the changes imposed by the majority of co-owners in proportion to their share, unless otherwise agreed.

For facilities that serve the co-owners at different extent, the costs are borne to the proportion that everyone is using them.

2. Not to do constructions on the floor or the separation unit of the floor owned separately, which can cause damage to the shared facilities of the building.

3. To repair the damage to any of the shared facilities or pay the cost of its replacement that he or a member of his family has caused with guilt.

4. Not to do additions or modifications without the prior permission of the Assembly on the floor or separated unit of the floor owned separately, that could adversely affect the external appearance of the building.

Extensions on the top floor

Article 218

Construction of other floors or extensions on the top floor of a building can be realised by decision of a majority of 3/4 of the co-owners of the building.

Article 219

Awarding permission to make extensions or such constructions on the top floor is forbidden if the

static conditions of the building do not allow it.

The co-owners may oppose the permission issued by the competent state authority for making extensions or such constructions on the top floor even when it is proved that they reduce the air or light for the lower floors or violate architectural appearance of the building.

Article 220

Those who are allowed to make extensions or other constructions on the top floor are forced to rebuild the terrace, which all or a part of the co-owners had the right to use.

Total or partial collapse of the building

Article 221

When the building collapses completely or in part that constitutes not less than three-quarters of its value, each co-owner may request that the land and materials be sold at auction, unless otherwise agreed.

When the building is damaged to a smaller extent, the Assembly decides on reconstruction of shared facilities of the building and each co-owner is obliged to contribute in proportion to its rights on those facilities.

Co-owner who does not want to participate in the reconstruction of the building, must sell the facilities owned only by him to the other co-owners or to one of them, according to the assessment to be made.

B. Co-ownership between farm family members

Article 222

Ownership on the property of the farm family members shall belong as a whole to its members, who through work or other rights acquired have contributed to the development and preservation of the agricultural economy.

Article 223

The farm family consists of persons who are related between them by gender, marriage, adoption or acceptance as its member.

Article 224

The farm family is represented in property relationships with third parties by the head of the family, who is elected by its members.

Article 225

Personal use items of the members as well as items which the member has earned through his personal income, by gift or inheritance are not included in the farm family property.

Article 226

The farm family member cannot alienate any part of the farm family property while it has not been divided.

Article 227

Each member of the farm family can request his/her own portion of the farm family property. It shall be determined by taking into account in particular:

- a) The property that belongs to the whole family;
- b) The number of family members;
- c) His/her contribution to the creation or increase of the family's property, given the amount or effectiveness of this contribution, as well as the work and equipment given for the creation and maintenance of agricultural economy.

Article 228

Partition of the farm family property is made according to the rules specified in Article 207 of this Code.

When particular members request their own portion, it shall be evaluated and given in cash. When the partition is required by more members of the farm family, in order to create another farm family, the portion can be given in kind, provided that agricultural land remaining with the separated families, must not be below the minimum of the unit's minimum for cultivation.

Minimum unit for cultivation means the agricultural land which is necessary for maintaining an agricultural economy according to the natural conditions of the respective area or region.

Article 229

The farm family shall be held responsible for illegal actions carried out by its members in the exercise of duties resulting from the economic activity of the farm family itself.

Article 230

The farm family shall not be held responsible for the personal economic obligations of its members, including the head of the family. Creditors have the right to be paid by the share in the farm family income belonging to the debtor member and the part that belongs to him/her in the farm family property.

C. Co-ownership between spouses

Article 231

Co-ownership between spouses is governed by Family Code provisions.

TITLE IV USUFRUCT

CHAPTER I GENERAL PROVISIONS

The content of usufruct Article 232

Usufruct is the right of a person (usufructuary) to enjoy a thing that is owned by another with the obligation to preserve and maintain it.

Creation of usufruct Article 233

Usufruct is created by law or by a legal transaction. It can also be created by adverse possession.

Duration of usufruct Article 234

Usufruct can be with or without terms, but in any case it cannot exceed the life of the usufructuary. When the right of usufruct is enjoyed by a legal person, it cannot last more than thirty years.

Modes of creating usufruct Article 235

Usufruct that is created by legal act must be notarized, but when it is acquired by testament, there shall be acted according to the relevant provisions.

Usufruct over an immovable thing must be registered in the immovable property registry.

Joint usufruct Article 236

Usufruct may be in favour of more than one person. When the right of one of them ends, the share will be added to the remaining usufructuaries in proportion with their shares. It shall be acted in this way until the right of the last remaining usufructuary has ended.

CHAPTER II
RIGHTS ARISING FROM USUFRUCT

Limits of enjoyment of the property in usufruct

Article 237

The usufructuary enjoys the property put in usufruct, but cannot change the economic destination it has had at the beginning of usufruct without consent of the owner or without the authorization of the district court, when the owner and usufructuary do not agree.

During the course of usufruct or at the end of it, the usufructuary may remove the additions made to the thing, in terms of the first paragraph of this article, which can be separated without damaging it, turning it in its initial state, unless it is otherwise provided in the act of creation.

Improvements of property in usufruct

Article 238

The usufructuary, at the end of usufruct, has no right to seek compensation for improvements made to the thing during use even if its value is increased, unless it is otherwise provided in the act of creation of the usufruct.

The addition of value can be compensated for damages that may have been caused to the thing through no fault of the usufructuary.

When there is no room for compensation, the usufructuary may remove the additions made without damaging the thing, unless the owner agrees to pay their value, as if they were separated from the thing.

Belonging of fruits

Article 239

The usufructuary is entitled to natural and civil fruits that are produced by the thing during the usufruct.

Natural fruits that are not separated from the thing at commence of the usufruct belong to the usufructuary and conversely, when they are not separated from the thing at the termination of the usufruct, belonging to the owner.

The transfer of the right of usufruct

Article 240

The Usufructuary can transfer this right to another for a time or all the time of its existence, unless it is otherwise provided in the act of its creation.

The transfer must be notified in writing to the owner, otherwise the previous usufructuary and a person who has acquired such rights are jointly responsible to the owner.

The right of alienation

Article 241

The usufructuary has the right to alienate things subject to usufruct to the extent that they are intended to be alienated in accordance with their nature.

In other cases, the usufructuary cannot alienate things subject to usufruct without consent of the owner, or without the authorization of the district court, unless it is otherwise provided in the act of its creation.

The authorization shall not be granted when the interests of the owner, the usufructuary or third parties are affected.

Replacement of the thing subject to usufruct

Article 242

When things subject to usufruct are alienated or replaced with other things, they belong to the owner and at the same time are subject to usufruct.

The above rule applies to everything that is collected from the debt-claim subject to usufruct, from compensation for reimbursement of damages or from depreciation of assets, when replacing or improving assets that are subject to usufruct.

All advantages, derived in the course of the usufruct other than its fruits, are also subject to usufruct.

Investments

Article 243

The owner and the usufructuary must agree that money subject to usufruct be productively invested, or be spent on the interest of other property subject to usufruct.

Lease

Article 244

The usufructuary has the right to lease things subject to usufruct, unless otherwise provided in the act of its creation.

When the usufruct expires, the owner must respect the lease normally started earlier, unless its extension has been done without his consent. When the usufructuary or tenant have requested consent of the owner for the lease and the latter has not replied within the deadline, the consent is deemed granted.

When the usufruct expires, leases for a term of five years are valid only for five years from the day the lease has started.

Enjoyment of servitudes

Article 245

The usufructuary enjoys the rights of servitudes related to the property over which he/she has the

usufruct and to other real rights to be enjoyed by the owner, except the limitations provided for in the act of creation or the law.

CHAPTER III
OBLIGATIONS ARISING FROM USUFRUCT

Replacement of damages
Article 246

The usufructuary is obligated to compensate the value of the thing lost or of the damages caused to it, unless he/she proves that they are not caused because of his fault.
He/she is obliged to replace the things that, according to usufruct, he/she had no right to consume.

Inventories
Article 247

The usufructuary receives the things in the condition they were before commencement of the usufruct.
Things subject to usufruct shall be taken over inventory made by notarial act in the presence of the owner, after having been notified at an appropriate time. It is the right of parties that all the details relating to the definition and condition of the things subject to usufruct be listed in the inventory.
The inventory can also be performed by private act, when both parties, who are present during its performance, come into agreement. The cost of the inventory are borne by the usufructuary, unless otherwise provided in the act of creation.

Periodic reports
Article 248

The usufructuary shall be obligated to send the owner at the end of each year a detailed written notice signed by him about the things that no longer exist or for the things that have replaced them, as well as for other benefits from the things subject to usufruct that do not fall under the category of fruits.
The cost of the annual notice are borne by the usufructuary, unless otherwise provided in the act of creation.

Providing a guarantee
Article 249

The usufructuary shall be obligated to give the owner a written guarantee for the fulfilment of obligations deriving from the usufruct, unless he/she is discharged by such obligation in the act of creation, or where the interests of the owner over the things subject to usufruct are adequately secured by an institution charged with this job.
Parents who have the legal usufruct over the things owned by their children are exempted from the provision of such a guarantee.

When the usufructuary is discharged from the obligation to provide a guarantee, the owner shall be entitled to ask the usufructuary to tell him every year the things given in usufruct, or get acquainted with the notification of a credit institution for the money or securities deposited.

The usufructuary cannot acquire possession of the things given in usufruct, without fulfilling the obligations arising from this article.

Consequences of the failure to provide a guarantee

Article 250

When the usufructuary does provide a guarantee, measures are being taken for the administration of the things subject to usufruct.

Immovable things shall be leased or entrusted to an administrator selected by agreement between the owner and administrator and when such an agreement is not reached, the administrator shall be appointed by the district court.

The usufructuary has the right to keep an apartment (a house) subject to usufruct as a residence for himself and his family.

The money involved in usufruct shall be invested with interest.

Movable things that wear out or get damaged because of use or foodstuffs likely to decay, shall be sold and their value is given with interest or is used for things subject to usufruct.

The usufructuary may require that sufficient movable things be left with him for personal use.

Maintenance costs

Article 251

The expenses necessary for the preservation, maintenance and administration of the thing are borne by the usufructuary. Expenses for non-common repairs, when they are the result of failure to fulfil his obligations to the thing subject to usufruct are also borne by him.

Extraordinary repairs are borne by the owner. If the owner refuses to conduct these repairs or other repairs that have been imposed on him, or unreasonably is delaying their commission, the usufructuary conducts them with his own expense, which shall be reimbursed until the end of the usufruct. The usufructuary has the right to keep the repaired thing till the repayment of expenses.

Securing usufruct

Article 252

The usufructuary must secure the things subject to usufruct in favour of the owner for the risks that usually they must be secured or that are required by law. In case of damage, the usufruct lies on remuneration paid.

When the usufructuary does not meet such an obligation, the owner has the right to secure the property and the usufructuary is obliged to pay the relevant costs.

Expropriation of things in usufruct

Article 253

When the thing is expropriated for reasons of public interest, the usufruct shall pass over on to the corresponding remuneration.

Payment of taxes and other obligations

Article 254

Taxes, fees, compensations, land rents and other annual obligations relating to revenues in the course of the usufruct are borne by the usufructuary.

Taxes, fees and other obligations relating to the property in the course of the usufruct, are borne by the owner.

CHAPTER IV

EXTINGUISHMENT OF USUFRUCT

Article 255

Usufruct is extinguished:

- By the death of the usufructuary or the dissolution of that legal person;
- By the expiration of the period set in the act of creation;
- By the merger of the qualities of the owner and the usufructuary in a single person;
- By the total destruction or loss of the thing subject to usufruct;
- By the failure to use the usufruct for twenty consecutive years.

Cessation of usufruct

Article 256

The usufruct may cease when the usufructuary abuses the rights or does not fulfil the obligations arising from the usufruct.

However, the court, under circumstances that will result, may order the usufructuary to provide a guarantee, in case he has been discharged from such obligation, or at the request of the owner to leave the administration of the thing subject to usufruct to the owner or to another person or order the renting of the property.

Renunciation of the usufruct

Article 257

The usufructuary may require, at his own expense, to renounce the usufruct because of the encumbrance and obligations arising from it.

Return of the things subject to usufruct

Article 258

After the usufruct has ended, the usufructuary or his heirs are compelled to place the things subject

to usufruct at the disposal of the owner.

**TITLE V
USE AND INHABITATION**

Article 259

A person who is only entitled to use a thing, shall use it and enjoy its fruits to the extent he needs them for himself and for his family.

When the subject of the right of use is an apartment (house), the person has the right to live there according to his and his family needs. The thing or apartment that is used under this provision may not be alienated, encumbered or used by other persons.

Article 260

Provisions relating to the usufruct shall apply to the right of use and the right of inhabitation, to the extent consistent with these rights.

**TITLE VI
SERVITUDES**

**CHAPTER I
GENERAL PROVISIONS**

Article 261

A servitude is an encumbrance imposed upon a property for the use and benefit of a property belonging to a different owner.

Article 262

A servitude is established by law or by the will of man.

Article 263

The owner of the servient estate is not obliged to perform any action to enable the exercise of servitude, unless provided otherwise by the law or the title.

Article 264

The owner, in whose favour the servitude is established, shall be obliged to pay the owner of the servient estate the damage caused by establishment of the servitude.

CHAPTER II
COMPULSORY EASEMENTS

Article 265

The owner of an estate, who under the law, has the right to require the owner of another estate the establishment of an easement, in the absence of an agreement, may request the court.
Compulsory easements may be established by an act of the state body, in cases provided by law.
The decision must define the rules of the exercise of easement and compensation of the damage concerned.

Flowing waters

Article 266

The owner is obliged to receive in his estate the waters coming from rain, snow or unused resources, which flow naturally from the higher estates. The owner cannot change the natural flow at the expense of another.
Water flowing over a lower estate can be held by the owner of the higher estate only to the extent that is necessary for that estate.

Article 267

In cases where the banks and slopes of an estate serving to stop the waters are destroyed or damaged and because of the water it becomes necessary to build a barrier, but the owner of that estate refuses to build or to repair them, the owners of the estates that are damaged or are likely to get damaged, may build or repair them at their own expense.
These constructions and repairs must be carried out without causing the owner of the servient estate any damage, by respecting special rules, if there are any. When the owner of the servient estate has objections, the dispute shall be resolved by the court.

Article 268

The provisions of the preceding article shall also apply when it is necessary to remove a barrier materials formed in another estate or in a ditch, water flow or drainage, which affect neighbouring estates.

Article 269

An owner who has a water source on his estate is free on its use, but without prejudice to the rights that may be acquired by the owner of the lower estate under a title or by prescription.

Article 270

If a watercourse prevents owners of contiguous estates from accessing these estates or continuous irrigation or drainage, those who use this watercourse shall be obliged, in proportion to profits earned from it (water), to construct and maintain bridges and other crossing means so conveniently and safe, as well as underground pipes or other works of this nature for continuous drainage and irrigation.

Article 271

The owner of an estate is obligated to accept without any compensation the drainage water coming from a higher estate when they flow naturally on his estate.

When this flow causes damages, he has the right to request compensation for the damage caused and measures to be taken to avoid it in the future.

Easements arising from construction works

Article 272

Rules for the construction of houses and other buildings, the distance between them, admission of light and view, construction of balconies and other construction works of this nature are governed by a special law considering the owner's rights provided in this Code and special laws.

Easements arising from the right to draw water

Article 273

The passage of waters through another's estate should be carried out in the most affordable and convenient way, with less damage, but without hindering the normal exercise of the servitude.

Article 274

When the passage of waters is required for a period of no longer than nine years, the payment of value and compensation of damages mentioned in the above provision is made at half of this value, with the obligation that at the expiry of the period, everything should be returned to the previous state.

This easement can become permanent if it is requested before the expiry of the period, through the payment of the other half, the value together with legal interest, from the date that the conversion started.

When the request is made after the expiry of the period, the payments made for the temporary establishment of this right shall not be taken into account.

Article 275

When the passage of waters should be carried out through public streets or rivers and other public buildings, the rules laid down in specific provisions shall apply.

Article 276

When in a house or its other facilities lacks the water necessary for the human life and livestock and when it cannot be provided otherwise, or large expenditures are required, the owner of the neighbouring estate must allow that a quantity of surplus water be used in the extent necessary for the purposes above, and the other party shall pay the water value and costs required to be made for this purpose, and where appropriate, compensate the damage that can be caused.

Easement of the right of way

Article 277

The owner, without outlet to a public road, who cannot provide it except at great expense and with difficulty, is entitled to have the right of way through the neighbouring estate for the appropriate use of his property.

The passage should constitute the shortest way to the public road and with less damage to the servient estate.

This provision shall apply even when the owner, who was given the right of way through the estate of another, requires a reasonable expansion of the pathway for vehicles, including the passage of mechanical means.

Article 278

The owner must permit the neighbour to enter and pass on his estate whenever there is a need to build or repair a wall or any other building. He should permit the person to search and receive the livestock and everything else belonging to him that happen to be there by chance or as a result of wind, water, avalanches and other major forces, which are located on his estate or merged together with his stuff.

The owner may not permit entry when he undertakes to deliver himself the item located on his estate. Where appropriate, the owner is compensated for the damage caused.

Article 279

The person who is entitled the right of way through the estate of another must pay the value of the occupied estate, without deducting taxes and other encumbrances related to the estate, and compensate for the damage caused, including the damage arising from the division of land, non- use of land, deposition of materials generated and the dumping of waste. The owner of the servient estate has the right to remove the latter and use the soil's surface, but without damaging the normal exercise of servitude.

Easement for the placement of pipes, cables and wires

Article 280

The owner must permit others to build on his estate channels or put pipes for water or gas, and

telegraphic or electric cables and wires and other installations of this nature, but only when there are no other possibilities to make these works otherwise or without making large expenditures. The owner, when damage is caused, has the right to be compensated.

CHAPTER III

VOLUNTARY SERVITUDES

Article 281

The owner can establish any servitude on his estate or in the favour of his estate provided that it is not contrary to the legal order.

Voluntary servitudes are established by contract or by will.

Article 282

Easements are continuous when the use of which is done without the need for occasional acts of man, such as water lines, water falling from roofs and other acts of this nature.

Easements are discontinuous when the use of which requires the performance of current acts of man, such as the right to draw water, to graze livestock and other acts of this nature.

Easements can be apparent and non-apparent.

Non apparent are easements for which no apparent or permanent works are required, which are necessary for their exercise.

Article 283

Continuous and apparent easements are established by title or by prescription of ten years. Continuous non apparent easements and discontinuous easements, apparent or non-apparent can be established only by title.

Article 284

When two properties cease to be in possession of one person, the servitude shall exist actively or passively in favour or against each separated property, unless there is a contrary agreement.

CHAPTER IV

MODES OF EXERCISING SERVITUDES

Article 285

The right of servitude extends to all that is necessary for its exercise.

Article 286

The owner, without the consent of the usufructuary cannot charge the property with servitudes that infringe the rights of the usufructuary.

Article 287

Servitude on a property that belongs to several people in joint ownership can be established only with the consent of all co-owners. The servitude established by only one or several co-owners takes effect when the other co-owners together or separately have consented to its establishment.

Article 288

A person who has a right of servitude must use it according to his title or possession thereof. When there are doubts about the scope and manner of the exercise of servitudes, it is considered that the servitude is established in such a way as to meet the needs of the dominant estate, causing the least burden on the servient estate.

Article 289

The right of servitude shall be exercised at the time and in a manner that brings less difficulties and concerns for the owner of the servient estate.

Article 290

When the property for the benefit of which a servitude is established shall be divided, the servitude will serve each portion, provided that the burden of the servient estate is not increased.

Article 291

The owner, with his actions or omissions should not reduce the use of servitude or make it more difficult.

Despite this, if the conditions have changed and the owner of the servient estate is burdened or impeded in the exercise of property rights, he may ask the owner in the benefit of whom the easement has been to change the venue of the servitude.

The owner of the other estate has the same right when proved that this change will bring benefits and does not damage the servient estate.

Protection of servitude

Article 292

A person who exercises a servitude has the right to demand judicially by anyone who opposes this right, demanding as appropriate the full restoration of this right, the termination of infringement, as

well as compensation for damages caused.

CHAPTER V EXTINGUISHMENT OF EASEMENTS

Article 293

Easements are extinguished:

- a) When the ownership of the dominant and servient estates merge in the same person.
- b) When it is not used for more than ten years.

The limitation period for discontinuous easements starts from the day on which the servitude ceased to be used, while for continuous easements it starts from the day on which an act took place or a fact that prevents the exercise of easement was verified. To the effect of extinguishment of easement, the time that it has been exercised by the previous holder is also computed.

- c) When the things are damaged or deteriorated to a degree that they cannot be used for their purpose.

The return of these things to a state that they can be used again brings consequently the revival of easements, unless this right is prescribed.

Article 294

When the dominant estate is under joint ownership, the use of the easement from one of the co-owners, prevents prescription with respect to the other co-owners.

Article 295

Suspension or interruption of prescription in favour of one of the co-owners, has also effects in favour of the others.

TITLE VII PROTECTION OF ASSETS

Legal claim to demand the asset

Article 296

The owner has the right to file a lawsuit to demand his property from any possessor or holder. This applies also to any co-owner for the joint property, so that it be delivered to all co-owners.

Right of the possessor in respect to revenues

Article 297

The separated natural fruits and obtained civil fruits that have become acquirable belong to the

possessor in good faith until the day he was informed that he is an illegal possessor, or was notified of the lawsuit of the owner for the return of the asset. He is not obliged to compensate the owner for the loss, damage or impossibility of returning the asset for any other reason, but after this day, he is responsible for the fruits obtained or that he should have obtained, acting with care until the time of returning the asset, for the compensation for the use of the asset, as well as for the loss, damage or impossibility of returning because of his fault.

Article 298

The possessor in bad faith, for the entire time of his possession, is obliged towards the owner to return the asset together with the separated natural fruits and obtained civil fruits or those that have become acquirable, and other revenues he should have obtained, and compensate the owner for the use of the asset and for the loss, damage or impossibility of returning the asset even without his fault. He is discharged of the liability when he proves that the damage would have been caused even if the asset had been returned at the right time, unless it was obtained unlawfully.

Right of the possessor in respect to expenses

Article 299

The possessor in good faith has the right to demand the payment of necessary and useful costs made in regard to the asset to the extent that these have increased its value, if it continues to exist at the time of returning the asset.

The possessor in good faith is entitled to deduct from the proceeds of the asset, the expenses recognized under this provision. He has the right to hold the asset, until the necessary and useful expenses are paid back to him.

Article 300

The possessor in bad faith is entitled to demand only the payment of necessary expenses made in regard to the asset.

Article 301

The possessor in good faith and the possessor in bad faith, except the expenses recognized under the articles of this Code, are not entitled to demand payment of other expenses made in regard to the asset, but they have the right to remove from the asset what they have added and what can be separated without damaging the asset, unless the owner agrees to repay their value.

Negating lawsuit

Article 302

The owner has the right to demand from anyone who disturbs him in his possession, but without being deprived of his possession, to cease the disturbance and not to repeat it in the future, and where

appropriate, to compensate damages he might have caused to the owner.

Claims against new constructions or potential damages

Article 303

The owner, the person who enjoys another real right or the possessor, who have reason to worry that because of new constructions begun by others on their own land or on another's land may cause damage to the asset in his ownership or possession, might address the court provided that this construction is not completed or not a full year have passed since its inception.

The court, as the case may be, decides to ban the construction, demolish or reduce it and, where appropriate, order compensation for the damage, or refute the claim ordering compensation of the damage when it turns out that the construction was unjustly banned.

TITLE VIII POSSESSION

CHAPTER I GENERAL PROVISIONS

Meaning of possession

Article 304

Possession is the effective domination of a person over an asset and other real rights over it. Possession may be exercised directly or by a person holding the thing.

Kinds of Possession

Article 305

Possession by a person who is not the owner can be legal or illegal.

Possession is legal when the holder has got possession from the owner on the basis of a legal transaction, under the law, or an administrative act.

In all other cases, possession is illegal.

Article 306

Illegal possession can be in good faith or in bad faith.

Possession is in good faith when the owner is not aware or is not obliged to be aware of his possession being illegal.

Good faith is presumed and it is sufficient to have been at the time of acquisition of possession.

Presumption of possession

Article 307

The current possessor, having had possession at an earlier time, is presumed to have held possession also during intermediate time.

Article 308

The current possession does not presume the previous possession, unless the possessor has a title that is the basis of his possession.

In this case, the possessor is presumed to have been possessed by the date of the title.

Acquisition of possession

Article 309

Possession is acquired by legal transactions, by inheritance and by occupation.

A person who has acquired possession in good faith can add in his possession the time of possession in good faith of the person from whom he has obtained the asset.

CHAPTER II

PROTECTION OF POSSESSION AND KEEPERSHIP

Immediate protection

Article 310

The possessor has the right to object immediately, using appropriate protection, any action that is intended to affect or deprive him of possession. When the asset is taken forcibly or secretly, the possessor has the right to take it back straightway or while giving chase, but avoiding acts of violence that are not compatible with the circumstances of the event.

Article 311

The holder of the asset is also entitled to the right to protect the possession against any person other than the one from whom these rights come.

Cessation of disturbance in possession

Article 312

The person who is disturbed in his possession of an asset, may request within six months the cessation of disturbance in possession and no repetition of it in the future.

When the possession is gained by force or secretly, the claim can be filed within six months from the day the violence or secrecy have ceased.

The cessation of disturbance in possession cannot be claimed by the person who has acquired the possession by force or secretly.

Restoration of possession

Article 313

The possessor, who illegally is deprived of possession, has the right to demand, within six months, restoration of his possession.

The possessor who has acquired possession by force or secretly is not entitled to this right. When the deprivation has taken place secretly, the deadline for demanding restoration of possession begins from the date the deprivation is identified.

Article 314

Restoration can be claimed against a person who has acquired possession through a title, but had been aware of the deprivation occurred.

Article 315

During the consideration of the claim for cessation of disturbance or restoration of possession, the defendant cannot claim that he is the owner or that he has a better title than the possessor.

PART III

TITLE I

GENERAL PROVISIONS

Meaning of inheritance

Article 316

Inheritance is a transfer by law or by will of property (inheritance) of a deceased person to one or more persons (heirs) according to the rules set out in this Code.

Article 317

Inheritance by operation of law applies when the decedent has not left a will, or has made a will only for a portion of his property, or when such will is fully or partially invalid.

Article 318

Time of opening of an inheritance

(Amended by law no. 121/2013, Article 1)

An inheritance is opened when the testator dies.

In case of declaration of the death, the inheritance is opened on the day when, according to the court decision, the person is considered dead.

Article 318/1

Place of opening of an inheritance

(Added by law no.121/2013, Article 2)

An inheritance shall be opened in the last place of residence of the decedent. When the decedent's last place of residence is unknown, the inheritance shall be opened in the place where all his property or the major part thereof is located.

Article 318/2

Applicable law

(Added by law no.121/2013, Article 2)

An inheritance shall be regulated in conformity with the law of the time when it is opened.

Article 319

Any agreement by means of which are acquired or used the rights arising from a succession that has not yet been opened is invalid.

Capacity to inherit

Article 320

A person has capacity to inherit when at the time of opening of the inheritance he is alive, or has been conceived before the death of the decedent and born alive.

A person who is born within 300 days after the death of the testator shall be presumed to have been conceived at the time of opening of the inheritance.

Article 321

When two or more persons are called to inherit from each other and it cannot be proved whom of them died first, they are deemed to have died at the same time and no rights can be transferred from one to another.

Unworthiness

Article 322

Unworthy to inherit is:

- A person who has intentionally killed or attempted to kill the decedent, his/her spouse, children and parents;
- a person who has made a false accusation or testimony against the decedent for committing a criminal offense punishable by death or imprisonment over 10 years, when the accusation or testimony are declared false in a criminal trial;
- A person who by fraud, intimidation and violence has forced the decedent to make, amend or

revoke a will, or has drafted himself a false will, or has used it to his interests or to the interest of others;

- A person who has behaved in a humiliating manner towards the decedent and has mistreated him.

Article 323

Unworthiness of a parent or ascendants does not exclude children or their descendants, when they inherit themselves or when they come to inheritance by substitution. In such a case, the unworthy parent cannot enjoy the rights of usufruct and administration in the inherited share that comes to his children, which the law recognizes parents on their children's assets.

Pardon of unworthiness

Article 324

A testator has the right to pardon an unworthy person to inherit, provided that the pardon is granted expressly by notarial act or by will, or when the pardon, although it is not granted expressly, the testator has noted in the will that he/she has recognized the unworthiness and yet designates him as heir.

Obligations of an unworthy heir

Article 325

A person excluded from inheritance as unworthy must return the fruits and any other income received from property inheritance after the opening of the inheritance.

Substitution

Article 326

Substitution allows the substituents to be put in the place, degree and the rights of the person they substitute.

Article 327

Substitution in the straight line descendants is without limits and in all cases, be it when the child of the decedent competes with the descendants of another child died earlier, or when the children of the decedent have died before him and their descendants be or not on the same degree, or by their number according to birth.

Article 328

To straight-line ascendants there is no substitution; the closest exclude others.

Article 329

In indirect line, the substitution is accepted in favour of children and descendants, brothers and sisters of the decedent, even if they compete with their uncles or aunts or their descendants to the same degree or not.

Acquiring inheritance

Article 330

Inheritance is acquired after the death of the testator.

Article 331

With the opening of inheritance, the decedent's possession of the estate passes to the heir, without the need to lay hands on it.

Article 332

The heir can acquire all the decedent's property or a part thereof, or only a specific thing or another property right.

Article 333

Renunciation of inheritance

(Amended by law no. 121/2013, Article 3)

Renunciation of inheritance shall be done with a written statement, which is registered to the notary of the local government unit where the inheritance is opened, or by a notarized declaration edited by a notary.

The renunciation may also be done by a representative with special power of attorney.

After recording the renunciation of inheritance, the notary ex officio issues a new certificate of inheritance, which reflects the change in the circle of heirs, as well as the parts belonging to them, which he sends to the person who has requested the issuance of the initial certificate of inheritance.

Article 334

A person who has renounced the inheritance, is deemed as never to have been called to inherit. Renunciation of inheritance does not exclude the heir from the right to seek legacies.

Article 335

Renunciation of inheritance can be made within 3 months from the opening of the inheritance and, when the heir is abroad, no later than 6 months.

For the heir who was not born at the time of opening of the inheritance, the period for renunciation

of inheritance begins from the date of birth.

The period for renunciation of inheritance is suspended for reasons that are valid for the prescription of the claim.

Article 336

(Amended by law no.121/2013, Article 4)

When it is not known whether there are heirs, or when the heirs are missing and there is no news about them, the notary of the local government unit where the inheritance is opened, ex officio or at the request of any interested person shall set a time, not less than six months from the opening of the inheritance, within which they must declare whether they are renouncing the inheritance. If within this period no such a statement is made, it is presumed that the decedent has left no heirs.

Article 337

The renunciation of inheritance, made before the opening of the inheritance, or when done on condition, with a deadline, or for a part of the inheritance, or in favour of one of the other heirs, is invalid.

Article 338

Renunciation of inheritance cannot take place when during the three-month period the heir by his actions has behaved as heir.

Actions performed only to preserve the inheritance, are not considered behaviour as heir.

Heirs who have removed or hidden things from the inheritance, lose the right to renunciation and remain heirs even if they have declared renunciation of inheritance.

Article 339

The heir who has correctly declared the wish to renounce inheritance or not, cannot annul the declaration later.

Article 340

When the heir dies before the period for renunciation of inheritance expires, the right to renounce is transferred to his heirs.

Payment of debts

Article 341

Heirs are liable for debts encumbering the inheritance in proportion to their shares, up to the value of the property they have inherited.

The decedent's debts, burial costs and expenses necessary for the preservation and administration of

the inheritance are counted as debts encumbering the inheritance, until it is transferred to the respective heirs.

Article 342

When in an inheritance, one or several immovable assets are encumbered with a mortgage, each heir is entitled to require that these assets be exempted from mortgage before the formation of inheritance parts.

However, the heir who has paid the debt arising from a mortgage encumbered on an immovable asset in his inheritance part, is entitled to return it to the other heirs, in proportion to their shares.

Article 343

Measures securing inheritance

(Amended by law no. 121/2013, Article 5)

When deemed necessary to protect the interests of the heirs, of persons who can benefit from dispositions by will, of creditors of the decedent or the state, the notary of the local government unit, where the inheritance is opened, ex officio, or at the request of any interested person, makes an inventory of the inheritance.

The notary who makes the inventory may appoint a person as a trustee of the inheritance.

As long as the measures above remain, the heir who could have commenced with the administration of the inheritance, cannot alienate it without prior permission of the court.

Article 344

(Amended by law no.121/2013, Article 6)

When it is not known whether there are heirs, or when the heirs are missing and there is no news about them, or when the legal or testamentary heirs have renounced the inheritance and their heirs are not known, the notary of the local government unit, where the inheritance is opened, ex officio, or at the request of any interested person, shall appoint a custodian of the inheritance.

A summary of the notarial act of appointment of the guardian is published in the Official Journal.

Article 345

The custodian shall require that an inventory of the inheritance be carried out, takes measures to administer the property, exercises the right to sue and answers charges in connection with this property, deposits in bank the inheritance money or the money derived from it, performs other actions of this nature and shall be accountable at the end of administration.

Article 346

With the approval of the court, the custodian shall pay the obligations encumbering the property, perform liabilities related to legacies and burdens and, where necessary, alienate even inheritance

property.

Article 347

A custodian's duty shall cease with the appearance of an heir.

Article 348

Certificate of inheritance

(Amended by law no.121/2013, Article 7)

Quality as heir and inheritance shares are determined in a certificate of inheritance issued by a notary, after the presentation of the decedent's death certificate, according to the rules set out in this Code and the law on notary.

The certificate of legal inheritance shall be issued by the notary of the local government unit where the decedent resided last. When the decedent's last place of residence is not known, the certificate of legal inheritance shall be issued by the notary who operates at the local unit where all his property or most of it is located.

The certificate of testamentary inheritance shall be issued by the notary, with whom the testament was edited by a notarial act, or the holographic will or the special testament were deposited for safekeeping. If the same testator has left more than one testament, the certificate of testamentary inheritance shall be issued by the notary, with whom the last testament was edited or deposited for safekeeping.

The certificate of testamentary inheritance, in cases where the holographic will or the special testament are not sent to the notary for safekeeping, shall be issued by the notary who operates at the local unit where the decedent resided last. When the decedent's last place of residence is not known, the certificate of testamentary inheritance, in cases where the holographic will and the special testament are not sent to the notary for safekeeping, shall be issued by the notary who operates at the local unit where all his property or the main part of it is located.

The certificate of inheritance shall be edited in a number equal to the number of heirs defined in it. The notary, at the time of editing, shall issue the certificate of inheritance in a number equal to the number of applicants, while the other edited copies shall be stored by the notary and may be taken from the other heirs, upon their request.

More detailed rules for the issuance of a certificate of inheritance and registration of wills are defined in the law on notary.

Lawsuit to demand an inheritance

Article 349

An heir may demand in a lawsuit from anyone who possesses wholly or partly the inheritance property, his recognition as an heir and the delivery of inheritance property and the assets acquired by it, under the rules of possession in good faith and bad faith.

Article 350

The lawsuit to demand the inheritance may be brought against the person who holds the inheritance property according to a certificate of inheritance, even when it is the state. A person, who has acquired a thing of the inheritance property in good faith by such an heir, shall not be obliged to return the thing, even if it was acquired against payment.

The possessor in good faith who has also in good faith alienated things from the inheritance, shall only be obliged to refund the price of the things to the plaintiff accompanied by the relevant invoice. When the latter has not been paid, he is entitled to demand their payment.

Article 351

The lawsuit to demand the inheritance shall not prescribe, except the effects of adverse possession on separate things.

Article 352

Provisions relating to possession shall also apply to possession of inherited things in terms of demanding the fruits, or expenses incurred for improvements and additions made.

Division of inheritance

Article 353

Each of the co-heirs have the right to request the division of inheritance at any time, even if the testator has ordered otherwise.

Article 354

(Amended by law no. 121/2013, Article 8)

Division of the inheritance property is done by agreement among the heirs, which is approved by notarial act.

If the heirs do not agree on the division of inheritance, the notary, on the basis of the principle of impartiality and taking into account the rules of the division of property under this Code, shall provide the heirs with legal options for the division of the inheritance to achieve an agreement among themselves. In this case, the notary shall explain them their rights and duties, and shall warn them of the consequences that come from the signing of the agreement, so that their interests are not harmed because of their ignorance of the law.

When the heirs do not agree even with the solutions offered by the notary, the division of the inheritance is made by a court competent to deal with claims arising from inheritance.

Article 355

Division of the inheritance is done according to the rules provided for in Article 207 of this Code and

other provisions of this chapter.

Article 356

In the creation of respective shares there should, as far as possible, be in each of them parts from the same quantity of movable or immovable property, rights in rem or credits, which have the same nature and value.

Article 357

When creditors have sequestered the movable assets of the inheritance, or have opposed the division of inheritance under Article 206 of this Code, or the majority of the co-heirs consider it necessary to pay the debts encumbering the inheritance, the movable assets shall be sold at auction.

Article 358

The spouse of the decedent has the right to demand the portion belonging to him/her from the joint property obtained by work by the spouses during the marriage.

The co-heirs, who by their work or incomes have helped to increase the inheritance, have the right to demand their share of the increased property, according to the contribution made.

Article 359

The portion of a deceased member of the farm family's property shall be transferred to his heirs, regardless of their membership or not in the agricultural economy.

When the last member of the agricultural economy dies, the property shall be transferred to his/her heirs according to the rules set out in this Code.

TITLE II

SUCCESSION BY OPERATION OF LAW

Article 360

Legal heirs are the children, grandchildren, spouse, parents, siblings and children of the siblings who have died earlier, grandparents and other ascendants, disabled persons dependent on the decedent, other relatives up the sixth degree, and the state. They are called to inherit in the order specified in this Code.

Article 361

(Third paragraph amended by law no.8781, dated 3.5.2001, Article 23)

In the first row shall be called to inherit the children and the spouse able or unable to work, each

inheriting in equal parts.

When one of the children had died before the decedent, has become unworthy to inherit, has renounced the inheritance, or has been exempted from inheritance, his children shall be called in his place to inherit by substitution and when because of the reasons above they cannot be heirs, their descendants shall be called to inherit without limitation. In this case, the portion of the parent who does not inherit shall be divided into equal parts among his descendants.

When besides the spouse, there are no other heirs of the first degree, the heirs of the following degree shall be called to inherit as provided for in Article 363 of this Code and when there are no such heirs, the heirs of the next degree shall be called to inherit as provided for in Article 364 of this Code.

In any case, the spouse receives half of the inheritance.

When there are no heirs of the degrees above, the inheritance passes to the surviving spouse.

Article 362

(First paragraph amended by law no. 8781, dated 3.5.2001, Article 24)

Children born out of wedlock, when the fatherhood or motherhood is duly recognized and children adopted are equivalent to children born in wedlock.

A child adopted does not inherit from his family of origin and neither does the family of origin inherit from him.

Article 363

In the second row shall be called to inherit the decedent's parents and disabled persons, who at least 1 year prior to the decedent's death, have lived together with him as family members and as his dependents.

Article 364

In the third row shall be called to inherit the disabled persons dependent on the decedent referred to in Article 363 of this Code, when there are no other heirs of the second degree, grandparents, siblings, and children of the siblings who had died earlier. The heirs above inherit in equal parts, without making distinction between the brothers and sisters of a father or only of a mother, or between grandparents from the father's or mother's side.

Article 365

When the testator has left no descendants, no parents or other ascendants, no brothers or sisters or descendants of the latter, the property of the testator passes to the relatives nearest to him, without making a distinction between paternal or maternal line, however no further than the sixth degree.

Article 366

When the testator has left no heirs to the extent of the sixth degree, the State shall be called to inherit.

Article 367

The State shall not be liable for the obligations of the testator beyond the value of the property acquired.

The right to add household items

Article 368

Heirs who lived together with the testator at the time of his death, when called to inherit, in addition to the portion of the inheritance that belongs to them, they get the household items of common use, unless the testator has provided otherwise in the testament.

Inheritance according to the degree of inheritance

Article 369

Heirs of a lower degree shall be called to inherit only when there are no heirs of a higher degree, or when they all have become unworthy or have renounced the inheritance or is exempted from inheritance, unless when from heirs of the second degree shall remain the heirs unable to work and heirs of the third degree.

Right to additions

Article 370

When one of the co-heirs called to inherit has died before the testator, or has become unworthy, or has renounced the inheritance, or is exempted from inheritance and there are no persons to inherit by substitution, the share belonging to him shall be added to the shares of co-heirs of that degree.

Heirs unable to work

Article 371

Heirs unable to work are those who at the time of the decedent's death have not attained the age of 16, or the age of 18 if they continue studies, the men who have reached the age of 60 and women who have reached the age of 55 and, regardless of age, those who are invalids of the first group and second group.

TITLE III

TESTAMENTARY SUCCESSION

Meaning of testament

Article 372

Testament is a legal unilateral transaction carried out by the testator, by which he disposes of his property for the time after his death.

The testament cannot be done by two or more persons in the same document, nor to the benefit of a third party, or by reciprocal dispositions.

Capacity to dispose by testament

Article 373

Any person who has reached the age of 18, and a woman under this age when she is married may make a testament.

A minor from 14 to 18 years of age can make a testament only to the property acquired through his work.

The person, who by a court decision is deprived of the ability to act, and the one who at the time of making the testament is not able to understand the significance of his action, cannot make a testament (will).

Capacity for succession under testament

Article 374

Persons who are incapacitated by law to succeed are incapable for succession under testament except the non-direct children of a certain and alive person at the time of death of the testator, even if those children were not yet conceived.

Article 375

In no case can the custodian benefit from the testamentary dispositions of the person in custody when they are made before the approval of the final account, even if the testator had died after the approval of the account.

Dispositions made in favour of the custodian are valid, when the custodian is an ascendant, descendant, brother, sister or spouse of the testator.

Article 376

Testamentary disposition in favour of incapable persons referred to in Articles 374 and 375 of this Code shall be void even if it is hidden under the form of a contract award or be made under the name of an interposed person.

Shall be interposed persons: father, mother, descendants and spouse of the incapable person.

Institution of heir

Article 377

The decedent who leaves no descendants or ascendants, or no siblings, has the right to dispose of his property by testament in favour of any natural or legal person.

Exemption from succession

Article 378

A testator even without instituting any heirs in the testament, may exclude from legal succession one or more of his heirs.

Legal reservation

Article 379

A testator cannot exclude his children from legal succession, who are minors or other minor heirs inheriting by substitution (Article 361, second paragraph), as well as his other heirs unable to work if called to inherit, nor can he undermine by testament in any way whatsoever, the share belonging to these heirs on the basis of legal succession, unless they have become unworthy to inherit.

Article 380

When a testator disposes a usufruct or a life tenancy by testament, the proceeds of which exceed those of the disposable part, the heirs entitled to legal reservation may execute this disposition or renounce the right to disposable part.

Persons who benefit from the legal reservation have the same right of choice, if the testator has disposed of the bare ownership of a portion that exceeds the disposable share.

Substitution

Article 381

The testator may designate in the testament, if the heir should die before him or should become unworthy, or should renounce the inheritance, one of the other heirs as indicated in articles 361, 363 and 364 of this Code to receive the inheritance and, when there is none of these, another person to receive it.

But the testator cannot compel the heir to safeguard and, after his death, to deliver all or a part of the inheritance received to another person.

Right to additions

Article 382

If the testator has left all his property to the heirs designated in the testament and one of those heirs should die before him, or should become unworthy, or should renounce the inheritance and the testator has not designated another substitute heir for these cases, and when an heir is exempt from succession, the portion belonging to him shall be added to the shares of the other co-heirs designated by testament in proportion to their hereditary shares.

If some of the heirs are jointly designated in a piece of property, the addition is made only to those co-heirs.

Article 383

If the testator has disposed of by testament only a part of his property, even if he had jointly designated several heirs in this part, the share of those who for reasons stated in the preceding article cannot or will not inherit, passes to the legal heirs of the testator.

Legacy and burden

Article 384

The testator may charge the heir or heirs designated in the testament, from those indicated in articles 361, 363 and 364 of this Code, to provide one or more legal heirs with a profit from the inheritance, without making them heirs (legacy).

If the testator, who has no heirs from those indicated in articles 361, 363, 364, has designated in the testament other persons as heirs, he may charge them with legacies for the benefit of everyone. Dispositions for capacity to inherit apply also to the legatee.

Article 385

A legatee has the right to demand fruits or interest resulting from the legacy from the date he has been designated to the delivery of legacy and, at its absence, from the date of notification of the claim. They can be demanded from the testator's date of death, if the testator has disposed of expressly or if the legacy is a cash deposit.

Article 386

The testator may charge the heir or heirs designated in the testament to carry out any action beneficial to society or any other action without giving the right to a specific person on this action (burden). When the testator disposes of the property by testament to the State, its organs, or different entities, he has the right to specify the purpose for which the property must be used.

Article 387

If the heir charged with a legacy or burden should die before the testator, or should become unworthy, or should renounce the inheritance, and the testator has not designated another heir in his place, the co-heirs or the legal heirs, who were added or transferred the part thereof and for the reasons above cannot or will not inherit, shall be charged for the execution of the obligations related to the legacy or burden.

If the performance of obligations related to the legacy or the burden is closely connected to this person, who for the reasons above cannot or will not inherit, the legacy or burden shall not take effect.

Article 388

If among the heirs, none of them has been charged by the testator to settle legacy, each heir shall be

obliged to contribute to its settlement in accordance with their share.

Article 389

When the thing given by way of legacy is shown only as a kind or as a measure, the right of choice belongs to the inheritor, but the things cannot be below average quality.

Article 390

If the legatee should die before the testator or should become unworthy, or should renounce the legacy and the testator has not designated another person in his place, the legacy goes in favour of the heir charged with that legacy.

But if the legacy is left to more persons jointly, the share of those who cannot or will not get the legacy shall be added to partakers thereof in proportion to their shares.

Article 391

The legatee has the right to demand the execution of the obligation related to the legacy from the heir charged thereof.

Execution of the heir's obligation regarding the burden may be demanded by the executor of the testament, the co-heirs, the relevant state or private organizations.

Obligations related to the legacy and burden shall be executed after obligations encumbering the property.

Form of testaments

Article 392

Testaments are in two forms: holographic or by notarial act.

Holographic testament

Article 393

A holographic testament is entirely written by the hand of the testator, including the date and his signature.

Date of the testament must indicate the day, month and year. The signature is placed at the end of dispositions.

Article 394

The person who is not capable to read his own handwriting cannot make holographic testament.

Article 395

Persons who cannot hear (deaf) or who cannot hear and speak (deaf and dumb), can dispose of by holographic testament or by testament received from the notary, according to the rules stipulated in the Law "On Notary".

Article 396

The holographic testament may be deposited with a notary for safekeeping in accordance with provisions for storage of documents at the notary.

Testament by notarial act

Article 397

Testament by notarial act shall be edited by a notary and signed by the testator in the presence of a notary.

If the testator does not know how to, or because of illness or physical handicap cannot sign, the testament shall be signed in accordance with the rules stipulated in the Law "On Notary".

Special testaments

Article 398

(Words "or the secretary" are repealed by law no.8781, dated 3.5.2001, Article 25)

In places where there is no notary, the testament may be certified by the mayor or the head of commune.

Article 399

The testament of a person in military service may be certified by the commander of the military unit which he is part of and, when hospitalized for treatment, by the director of the hospital.

Article 400

The testament of a person on board of an Albanian ship navigating or that had arrived at a foreign port, may be certified by the captain of the ship.

Article 401

Testamentary disposition made by a suspense condition shall take no effect, if the person in whose favour it was made should die before the testator.

Revocation of testaments

Article 402

The testament of a later date shall revoke a testament of an earlier date in whole or only the part that is incompatible with the new one.

The testament shall also be revoked by a statement made by the testator to the notary.

Invalidity of testaments

Article 403

The testament shall be void if made by a person who cannot make a testament (Article 373).

Article 404

The testament shall be void if it is not made in the form required by law.

Article 405

The testament shall be void if the testamentary disposition is made to the benefit of persons who cannot inherit (articles 374, 375).

Article 406

The testament shall be void if the testamentary disposition is contrary to Articles 377 and 384 of this Code.

Article 407

The testament shall be void if the testamentary disposition made by the testator, excludes his minor heirs or heirs unable to work from legal succession, or prejudices their legal share.

Article 408

The testament shall be void if the testamentary disposition is made contrary to the law or by fraud.

Article 409

The testament shall be void if the testamentary disposition is made under the influence of fraud, intimidation or violence, or because of a mistake, without which the testator would not have made this disposition.

Article 410

When the testament is declared void by the court, legal heirs shall be called to inherit, unless it is the case of adding in the benefit of the heirs designated in the testament under Article 381.

When only some of the testamentary dispositions are declared void, the other dispositions take effect.

Article 411

A claim for invalidity of a testament or testamentary disposition can be filed by an heir or any other interested person within three years from the opening of the inheritance.

Article 412

If the testamentary disposition is void for the reason that the disposition made by the testator excludes his minor heirs or heirs unable to work from legal succession, or infringes their legal share (Article 407), the heir, who is excluded from succession or infringed in his legal share has the right to demand from the other heirs, as appropriate, the delivery or completion of the portion attributable to him under the legal inheritance.

Article 413

For the assignment of this share, all assets of the testator at the time of his death shall be gathered, by subtracting liabilities encumbering the inheritance and it shall be divided by the number of heirs who would be called to inherit, if the testator would not have made a testament.

Executor of the testament Article 414

The testator can appoint one or more persons to execute the testament.

The appointment as executor must be accepted by the person himself in the testament or with a separate declaration attached to the testament.

If the testator does not appoint an executor of the testament, the execution of the testament is charged with the heirs designated in it.

Article 415

The executor of a testament must make the inventory of the hereditary property, inviting the heirs and other persons who benefit from the testament to attend.

The executor of a testament shall administer the hereditary property, carrying out actions that are necessary for the execution of the testamentary dispositions, but he cannot alienate the hereditary property, unless the need arises and with the permission of the court, which decides after having heard the heirs first.

Article 416

The district court, at the request of the heirs or persons who have an interest, may dismiss from duty

the executor of a testament for serious violations of his duty or incompetence in administering the hereditary property.

Article 417

The powers of the testamentary executor shall not be transmitted to his heirs.

Article 418

When there are several testamentary executors, in the absence of others, even one of them can act, but they are all solidary liable for the assets entrusted to them, unless the testator has divided duties among them.

**PART IV
OBLIGATIONS**

**TITLE I
GENERAL PROVISIONS**

**CHAPTER I
MEANING AND ARISING OF OBLIGATIONS**

**Meaning of obligation
Article 419**

An obligation is a legal relationship through which one person (the debtor) is obliged to give something or to perform or not to perform a specific action to the benefit of another person (the creditor), who has also the right to demand to be given something, or the action be performed or not performed.

**Arising of obligations
Article 420**

Obligations arise from contracts or by law.

**Economic nature of obligations
Article 421**

The object of the obligation must have an economic assessment and must respond to the interests of the creditor, even to his interests not related to property.

Correctness of participants in obligation

Article 422

The creditor and the debtor should act towards one another correctly, impartially and according to reason.

**CHAPTER II
SOLIDARY OBLIGATIONS**

Article 423

Solidary liability is when a creditor or each of the creditors has the right to demand the execution of the same obligation completely or partly by the debtors together and by each of them separately.

Article 424

There is a solidary liability when the obligation comes from the will of the parties or when provided by law.

Article 425

There is a solidary liability even when the debtors are bound each in a different manner or when the joint debtor is bound to each creditor in a different manner.

Article 426

Execution of the liability by one of the solidary debtors shall discharge all other debtors.
The solidary debtors shall be discharged of the obligation even by providing an object in the execution of the liability or by compensation of the credit from one of the solidary debtors to the creditor.

Article 427

The tardiness of a creditor against one of the solidary debtors shall extend the effect to all other debtors.

A solidary debtor cannot compensate his obligation with the credits that the other debtors have to the creditor.

A solidary debtor cannot claim against the creditor the personal objections of other debtors.

Each one of the solidary debtors should not encumber the position of others with his actions, unless otherwise provided by law.

Article 428

The debtor has the right to choose to pay one or another solidarity creditor, unless previously prevented by written notice from any of them.

There is a solidarity of solidary creditors when each of them has the right to demand payment of all obligations and, the payment made to one of them releases the debtor from all creditors.

Article 429

Renewal of the obligation made by the debtor with one of the creditors shall release all other debtors, unless the creditor has retained the rights to them.

Remission of the obligation made to one of the solidary debtors shall release all other debtors. When remission is made only to the share which affects one of the debtors, the obligation of other debtors is reduced to the extent of the remitted share.

Merger of qualities of creditor and solidary debtor in a single person, extinguishes the obligation of the other debtors, for the share of this debtor.

Article 430

In their relations, the solidarity debtors participate in settlement of the obligation each according to his share.

The debtor, who has executed a solidary obligation, has the right to demand from other debtors the payment in equal parts of the obligation executed by him, unless the law or the contract provides otherwise.

When the solidary debtor, who has executed the obligation, could not be reimbursed by a debtor for his share of liability, such share shall be borne by all his co-debtors as appropriate in equal parts or proportionally among the other debtors, including him.

Article 431

Solidary debtors are bound to cover in proportion to their shares all the expenses proven to have been necessary to perform by the debtors who have executed the obligation.

Article 432

A solidary debtor, who executes the obligation, should claim against the creditor the common objections of all debtors, otherwise he shall lose the right to demand from the other debtors the share they are entitled for settlement of the obligation. Also, he shall lose this right even if he has not notified the other debtors that he has executed the obligation and, as a consequence one of the other debtors has executed it separately.

Article 433

Interruption of prescription through the actions of the creditor towards one of the solidary debtors, as well as interruption of the prescription by one of the solidary creditors towards the mutual debtor,

shall affect other debtors as well as other creditors.

Suspension of prescription towards one solidary debtor or towards one solidary creditor, shall not affect the others.

Renunciation of prescription in accordance with Article 126 of the Code made by one of the solidary debtors, shall not affect the others, while the renunciation of prescription by one of the solidary creditors, shall affect the others.

Article 434

A solidary debtor, who is requested to pay his share of the obligation, cannot claim the prescription of the creditor's claim against the debtor who paid it, unless he himself and the debtor who demands the share had had the opportunity to claim the prescription completed.

This paragraph shall not apply where by agreement the solidary debtors have decided otherwise.

Article 435

If execution of the obligation has become impossible for the fault or continuing delay of one or more solidary debtors, the other debtors shall not be released of the obligation to complete it.

The creditor may seek compensation for damages caused to such a cause only from the solidary debtors or by each of them, for whose fault the execution of the obligation has become impossible, or from those who have been in delay. The other debtors remain as solidary debtors only to the first obligation.

Delays of one of the solidary debtors shall not bring any legal consequences for other debtors.

CHAPTER III ALTERNATIVE OBLIGATIONS

Article 436

An alternative obligation is one wherein the debtor is released from the obligation, by completing one of the kinds of the obligation to the creditor or to a third party as mentioned separately according to his desire. The debtor cannot demand from the creditor to accept the completion of the obligation partly from one kind and partly from the other kind.

Article 437

The right to choice belongs to the debtor, unless provided for by law or contract to be left to the creditor or a third party.

The choice becomes irrevocable upon the completion of one of the kinds of obligation, or upon notice of the declaration of choice to the other party or both parties, if the right of choice belongs to a third party.

When the right of choice belongs to many people and they cannot agree, the court assigns them a

deadline. When the choice is not made in due time, then it is made by the court.

Article 438

If in an alternative obligation, the debtor does not execute any of the kinds of obligations in due time, the right of choice passes to the creditor.

If the right of choice is left to the creditor and he fails to exercise it within the deadline specified in the agreement or by the debtor, the choice passes to the latter.

If the right of choice is left to a third party and he does not exercise it within the deadline set, the choice shall be made by the court.

If this right is left to several persons, the court assigns them a deadline. If the choice is not made within the deadline set, it is made by the court.

Article 439

The alternative obligation is simple when one of the two kinds of obligation cannot be subject to the obligation, or when its completion has become impossible through no fault of either party.

Article 440

If the right of choice is left to the debtor, the alternative obligation shall become simple if one of the two kinds of obligation becomes impossible even for his fault. If this impossibility occurred because of the fault of the creditor, the debtor is released from liability if he refuses the other obligation be applied and claim compensation for the damage.

If the choice is left to the creditor, the debtor is released from liability if the impossibility to complete one of the two kinds of obligation occurred through the fault of the creditor and he does not accept the other kind of obligation be executed and claim compensation for the damage. If the choice is left to the creditor and the impossibility is charged to the debtor, the creditor may choose the other obligation or claim compensation of the damage.

Article 441

If the two kinds of obligation have become impossible and the debtor is held responsible to one of them, he must pay the value of the obligation that is made impossible the last, if the choice is left to him.

If the right of choice is left to the creditor, he has the right to claim the value of one or the other kind of obligation.

CHAPTER IV DIVISIBLE AND INDIVISIBLE OBLIGATIONS

Divisible obligations

Article 442

When many debtors or creditors take part in the same obligation and the obligation is divisible, each debtor is bound to execute and each creditor has the right to demand an equal share of the liability, unless the contract or the law provides otherwise.

Indivisible obligations

Article 443

When there are many debtors in the same obligation that is indivisible, all the debtors are called solidary debtors.

The obligation is indivisible by its nature and as such even by the intention of the parties to the contract. In such cases, the obligation remains indivisible even to the heirs of the debtors.

Article 444

Indivisible obligations are governed by the provisions relating to solidarity obligations, except as provided in this chapter.

CHAPTER V MONETARY OBLIGATIONS

Article 445

Obligation to deliver a sum of money is paid to its nominal value, unless otherwise provided by law or by contract.

Article 446

Monetary obligation is fulfilled in the currency that is in circulation in the country where payment is made or in the currency stipulated in the contract.

Article 447

If the creditor has a current account in the country where the obligation should or could be paid, the debtor may discharge his obligation by crediting the respective amount in this account, unless the creditor has excluded payment on this account.

Payment is considered complete at the time it is credited to the account.

Article 448

Payment is made at the residence of the creditor at the date of payment. The creditor may designate

another place within the borders of the state where he resides at the time of payment or at the time the obligation arises.

Article 449

If the payment must be made in a place other than the residence of the creditor at the time the obligation arises and the fulfilment of this obligation would become exceedingly difficult, the debtor may suspend payment until the creditor has assigned another country which would avoid surplus costs.

Article 450

Compensation for any damage caused as a result of the delay in the payment of a sum of money, consists of matured interests from the date of commencement of the debtor's delay in the official currency of the country where the payment is made. The rate of interest is determined by law.

At the end of each year, matured interests are added to the sum of the obligation on the basis of which their calculation is made.

Legal interest is paid without the creditor being obliged to prove any damage. When the creditor proves that he has suffered a greater loss than the legal interest, the debtor is obliged to pay him the rest of the damage.

Article 451

When the obligation is related to the payment of a sum of money in a currency for which there is no official exchange rate in the country where payment is made, the debtor is entitled to execute the obligation in the currency that there is an official exchange rate in the country where payment is made, unless the law or the contract provides otherwise.

Article 452

When the obligation is related to the payment of a sum of money in a currency different from that of the country where payment must be made and the debtor claims that he is unable to pay the debt in that currency, the creditor may accept payment in the currency of the country where payment must be made.

The above rule also applies when the debtor is obliged to pay in the currency initially accepted.

Article 453

If the obligation must be executed in a currency other than the one initially accepted, the conversion should be done with the official exchange rate of the day of payment.

Article 454

Article 450 of this Code does not deprive the creditor of the right to seek compensation for damage incurred from the fact that from the date of default by the debtor the exchange rate of the currency defined in the obligation has changed.

TITLE II
EXECUTION AND EXTINGUISHMENT OF OBLIGATIONS

CHAPTER I
EXECUTION OF OBLIGATIONS

Article 455

The debtor and creditor must exercise due diligence and be punctual in fulfilling the obligation in accordance with its content.

Article 456

Obligation to deliver a specific thing contains even the care that must be taken to preserve it until its delivery.

Article 457

When the object of the obligation is the delivery of the thing specified as to its kind, they cannot be of lower quality than average quality.

Article 458

Delivery of things is conducted in the manner specified in the contract and when it is not defined, it is conducted:

- a) By handing the thing over to the person who has acquired ownership of it or the person who has acquired rights over it;
- b) By giving it to the carrier or post office to deliver it to the winner, at the place indicated by him;
- c) By handing it over to the winner or sending the documents by mail (charge sheet, certificates of deposit) that give him the right to dispose of the goods.

Article 459

The debtor cannot execute the obligation in parts even if it is divisible, without the consent of the creditor.

Article 460

The obligation can also be performed by a third person who is not a debtor, unless the creditor is concerned that the execution be done by the debtor, or when the creditor has been notified to the debtor's opposition.

Place of compulsory execution

Article 461

If the place where the obligation should be performed is not defined by the contract, by law or is not understood by the nature of the obligation, the performance is done:

- a) For the delivery of an immovable thing, it is performed in the place where it is;
- b) For things that are defined individually, it shall be performed at the place where the thing was at the time the obligation arose;
- c) For the delivery of a thing determined as by kind and quantity, it is performed at the place where the debtor carries out his professional activity or at his residence;
- d) For obligations in cash, it is performed according to rules set out in Chapter V of Part IV of this Code.

Article 462

The creditor cannot be obliged to accept a thing different from those defined in the scope of the obligation even if the value of the thing offered be greater.

Time of performance of the obligation

Article 463

Execution of the obligation must be done within the time specified in the contract. When the contract does not specify the time, or execution of the obligation is left at the request of the creditor, he may require the execution of the obligation at any time and the debtor must execute it within fifteen days from the day the creditor has requested it.

Article 464

The time defined in the contract is presumed to have been set to the benefit of the debtor, unless from the will of the parties or the nature of the obligation it appears otherwise. Execution of the obligation before the deadline shall not be considered invalid, unless the deadline is set in favour of the creditor.

Article 465

The debtor cannot claim the right of time when:

- a) He has gone bankrupt;
- b) He has not given the promised guarantees;

c) Guarantees that provide credit insurance have been reduced due to his fault, unless they remain and still constitute a sufficient insurance for the execution of the obligation.

Execution for the benefit of the creditor

Article 466

Execution of the obligation must be made to the creditor himself, or to his representative, or to a person authorized by the creditor, by law or by the court.

Execution of the obligation made to a person not authorized to accept it, shall release the debtor only if the creditor has accepted the execution later, or it is evidenced that he has benefited from it.

Execution for the benefit of a third party

Article 467

The debtor, who executes an obligation for the benefit of a person, who under unmistakable circumstances seems to be authorized to accept it, shall be released from the obligation if he proves that he has been in good faith.

The person who has accepted the execution of the obligation, is obliged to return what he has taken from the execution of the obligation to the real creditor.

Execution for the benefit of the creditor unable to act

Article 468

If the execution of the obligation is made to a creditor who is unable to act, it shall release the debtor as much as it has gone in favour of the creditor, or of his legal representative.

Execution on behalf of many obligations

Article 469

When the execution is carried out on behalf of many obligations and to the same creditor, the debtor may determine at the time of execution which of the obligations he is executing.

If the debtor does not determine the order of execution, the obligation that has expired shall be executed first, if there are more such obligations, execution starts with the obligation having the highest value and, if there are more such obligations, it starts with the oldest and when they have the same seniority, the execution is done proportionally.

Article 470

Execution in cash on behalf of a specific obligation firstly contains payment of expenses, then payment of matured interest rates and then payment of the obligation itself and common interest to it.

The creditor may refuse payment if the debtor during the execution assigns a different order or may not accept full payment of the value of the obligation; without receiving matured interests, ongoing interests as well as related expenses.

Article 471

The creditor may refuse execution of the obligation for the delivery of a thing different from what is stipulated in the contract even if the value of the thing being offered is equal to or greater.

Costs of execution and relevant certificates

Article 472

The costs are borne by the person who executes the obligation, while costs of the certificate are borne by the person in favour of whom it is issued.

Article 473

For every payment done in execution of the obligation, the creditor gives a receipt, unless otherwise defined by the contract.

If the creditor has a document from the contents of which results the obligation, the debtor who has executed it may request the return or destruction of that document, unless the creditor has reasonable interests to maintain it, provided that he notes execution of the obligation in the document.

If the creditor refuses to comply with the obligation under the preceding paragraph, the debtor may suspend the execution of the obligation. If the creditor claims to have lost the document, he is obligated to give the debtor a written statement in which the execution of the obligation is accepted. The declaration must be notarized if required by law.

Article 474

When identical payments to settle the obligation should be done periodically, the receipts issued for two consecutive payments presume the previous payments.

The receipt issued by the creditor for the main obligation, presumes that interest rates and the costs of this obligation are also paid.

Release of things from guarantees

Article 475

A creditor who has accepted the execution of the obligation, should release the things from real guarantees provided for the execution of the obligation and from any other obstacle that may limit the use of property.

CHAPTER II

EFFECTS OF NON-PERFORMANCE OF OBLIGATIONS GENERAL PROVISIONS

Article 476

Any shortcomings in the execution of obligations oblige the debtor to compensate the creditor for the damages incurred, unless he proves that the failure to perform the obligation has not come because of his fault.

In this case, the creditor is entitled:

- a) To demand the execution in kind of the obligation, particularly the delivery of a thing or the execution of works, as well as compensation for the damage caused by delay of the execution; or
- b) The compensation for damage incurred by non-execution of the obligation.

Article 477

The debtor who is using the work of third parties for the execution of the obligation shall be held responsible for their actions, committed with guilt, as if they were his own.

Article 478

When the obligation is related to actions that can also be performed by other persons and the debtor does not execute the obligation, the creditor is entitled to request to conduct these actions himself on behalf of the debtor.

Article 479

Any agreement that excludes or restricts the parties from the liability for non-execution of obligations is void.

Article 480

If execution of the obligation is made impossible for the fault of the debtor, the creditor is entitled to request from him compensation for the damage incurred.

The debtor is guilty when, intentionally or negligently, has created circumstances that made the execution impossible, or when he has not taken measures to stop it.

Delay of the debtor

Article 481

If the debtor fails to fulfil an obligation within the time set, it is deemed to be in default (morë) unless the non-execution is the result of circumstances not related to the fault of the debtor.

The debtor gets in default by a notice in writing. It is not necessary to put the debtor in default if:

- a) The debtor has declared in writing that he does not wish to exercise the obligation;
- b) The time within which the obligation would be executed has expired.

If the debtor dies and the deadline set for execution of the obligation ends after his death, his heirs are deemed to be in default at the end of 15 days after a written notice from the creditor.

c) If the obligation is derived from an illegal act.

Article 482

The debtor in default shall not be released of by the unexpected impossibility of performance of the obligation, even though it should not be caused through his or the creditor's fault, unless he proves that the object of the obligation would be destroyed or damaged even if it was under the auspices of the creditor.

Loss or damage of the thing taken illegally, does not discharge the person who received it from the obligation to return its value.

Article 483

The provisions on delays do not apply to obligations containing omissions. Any action contrary to them constitutes a breach of the obligation.

Article 484

The creditor may not accept the offer of the debtor in default for the execution of the obligation, if it does not include the compensation of the damage incurred and expenses incurred during the delay, or when the creditor due to default of the debtor has no interest for the execution of the obligation.

Article 485

The debtor who has a credit payable by his creditor, may suspend the execution of the obligation up to the payment of the credit, provided that there are sufficient connections between the loan and the obligation, such as could be among others, the existence of a single legal report, or relationships that the parties have had on a regular basis.

The suspension of the execution of the obligation cannot be required when:

- a) The execution of the obligation by the other party becomes impossible due to the delay of the creditor, or it is impossible on a permanent basis;
- b) The credit of the other party is unseizable.

Article 486

Damages to be compensated by the debtor for non-execution of the obligation consist of all losses incurred by reduction of the property and the profit to be drawn in terms of the common market (missing profit). As a part of the compensation for damages repair are also the reasonable and necessary costs to prevent or reduce the damage, which are related to the circumstances which the liability of the party is based on, reasonable and necessary costs to determine the damage and liability, and those that are needed to find a solution out of the court for the fulfilment of the obligation.

Article 487

In a contract with mutual obligations, the parties must execute their obligations at the same time, unless the contract or the nature of the obligation states that one party must execute its obligation before the other.

Article 488

If in a contract of mutual obligations, the execution of the obligation of a party is made impossible through no fault of either party, none of them has the right to demand from the other party to execute the obligation or compensate the damages, unless the law or contract provides otherwise. Each party has the right to demand from the other party to return what was given for the execution of the obligation.

Article 489

If in a contract with mutual obligations, the execution of the obligation of one party is made impossible, because the other party has fallen into insolvency or bankruptcy, or for any other circumstances occurring for its fault, the other party has the right not to execute its obligations until the execution of the obligation to its benefit is ensured, or seek compensation for the damage incurred by the failure to execute the contract.

Article 490

If it is decided that the compensation for non-execution of the obligation or its delayed execution must be paid to the creditor, the court taking into account the property status of the debtor, can set a different deadline for payment of this compensation, or allow it to be paid in instalments.

Delay of the creditor

Article 491

The creditor is in default when by no legal reason refuses the execution of the obligation by the debtor, or due to circumstances created by the fault of his own, does not fulfil the obligation to the debtor, without which the latter cannot execute his obligation .

Article 492

When the creditor is in default, the debtor has the right to demand compensation for the damage incurred by it and shall be released from the obligation, if later on the execution of his obligation becomes impossible, unless the impossibility of execution of the obligation is due to his fault.

In cash obligations, if the creditor is in default, the debtor does not pay interest.

Article 493

When the damage incurred by the non-execution of the obligation is also caused or increased by acts or omissions due to the fault of the creditor, or if the latter has not shown due diligence to reduce this damage, the court, as appropriate, may reduce the amount of compensation or completely discharge the debtor from his obligation to pay.

Article 494

The creditor in default cannot demand undertaking of actions for a forced execution.

Article 495

If the creditor is in default or is not found, the debtor is entitled to execute the obligation by depositing the thing with a person who carries out deposit activities or in a place determined by the court of the district of the execution of the obligation. When the object of the obligation is money, securities or valuable documents, or precious items, they must be deposited in the bank. Making the deposit suspends the running of the interest.

In cases where depositing requires large expenses, is hard to do, or the item put on deposit is perishable, or due to its nature cannot be left on deposit, the debtor, after having informed the creditor, requires the court to be allowed to sell the preceding item and to deposit the value obtained from the sale to the State bank on behalf of the creditor.

If the debtor draws the deposited item before it is accepted by the creditor, the deposit is deemed as not made.

The depositor delivers the item to the creditor only after the latter has paid all the expenses for the execution of the obligation.

CHAPTER III

SUBSTITUTION AND TRANSFER OF CREDIT

Substitution of debtor

Article 496

Substitution of the debtor for another person, who assumes the obligation, can be done only with the consent of the creditor. The substituted debtor shall be discharged from his obligation to the creditor. Guarantees provided by third parties to the obligation shall extinguish, if the latter have not given consent for the guarantees to remain with the new debtor. The pledge or mortgage given by the previous debtor remains in force.

Article 497

The new debtor may claim against the creditor all the objections arising from the obligation he has undertaken and which could also be claimed by the previous debtor, other than those associated with

the latter as a person.

Article 498

The agreement, by which the debtor and a third person become co-debtors in an obligation, when the consent of the creditor has been received, cannot be annulled or amended without the consent of the creditor. Both co-debtors are jointly liable.

Transfer of credits

Article 499

(Third paragraph added by law no.8536, dated 18.10.1999, Article 1)

The creditor may transfer his credit to another person without the consent of the debtor, provided that the credit does not have close personal character and the transfer is not prohibited by the law. Especially, the transfer of credit to another person is not allowed, when derived from causing death or injury to health, as well as from credits that cannot be sequestrated.

The parties to an agreement may exclude the transfer of the credit, but the agreement cannot be claimed against the person the credit is transferred to, unless it is proven that he was aware of that at the time of transfer.

Provisions for credit transfer do not apply to credits related to financial transactions encumbered by insurance, according to criteria established by a separate law.

Article 500

The credit is transferred along with the rights, guarantees and other accessories, including interest on the passed time, unless the contract provides otherwise.

The person making the transfer of credit cannot transfer the other person the possession of the pledged property without the approval of the other party (the pledger). Otherwise, the creditor remains the guardian of the pledge.

Article 501

Transfer of credit must be made in writing, otherwise it is not valid.

Article 502

The transfer of credit shall have effect on the debtor and on third parties from the date that the debtor has admitted or has been notified by the former creditor or the new creditor.

The debtor who has performed his obligation, before he was notified of the transfer of credit, shall be released from the obligation.

Article 503

When the credit has been transferred to some specific persons, the transfer notified earlier to the debtor, or admitted earlier by the debtor, with a document (requisition) with the correct date, even if the date could be a later date, shall be preferably for the settlement.

Article 504

Transfer of credit does not affect the debtor's protective remedies.
The debtor may claim against the new creditor objections that may be claimed against the previous creditor, at the time he will be notified about the transfer of credit.
He may seek to be compensated for a credit towards the first creditor, even if still not due at that time, provided that it does not become due after cessation of credit.

Article 505

When the transfer of credit is made when the title is encumbered, the creditor guarantees the existence of the credit at the time of its transfer.
When the transfer is free of charge, the creditor does not guarantee the existence of the credit.

Article 506

The creditor who transfers the credit is not responsible for the insolvency of the debtor, unless he has assumed warranty.
In this case, he shall be responsible for what he has assumed. In addition to that, he shall be responsible for the interests, the costs of transfer, and those that the person, whom the credit has been transferred to, has made for the prosecutions against the debtor and to compensate the damage.
The agreement that intends to aggravate the responsibility of the person who transfers the credit shall be void. When the creditor who transfers the credit has guaranteed the solvency of the debtor, the guarantee ceases, if the non-execution of the credit because of the insolvency of the debtor has come from the negligence of the new creditor to pursue the case against the debtor.

Article 507

A creditor who makes the transfer of credit must submit the other creditor documents proving the credit, which are in his possession.
When only a portion of the credit is transferred, the creditor is obliged to submit an authentic copy of the documents to the other creditor.

CHAPTER IV EXTINGUISHMENT OF OBLIGATIONS

Renewal Article 508

Obligations are extinguished by renewal when the parties will replace the original obligation with an obligation other than the first one.

Article 509

Bailment, pledge and mortgage of the original credit shall be extinguished, unless the parties explicitly have agreed to preserve them for the new credit.

Article 510

Renewal is void if the initial obligation is void.

When the initial obligation results from a nullifying title, the renewal is valid if the debtor has assumed the new obligation recognizing defects of the initial title.

Remission of the obligation

Article 511

The written statement of the creditor for the remission of the obligation shall extinguish the obligation when it is notified to the debtor, unless the latter declares within a specified deadline that he does not want to benefit from the remission.

Article 512

If the debtor has the private document that proves the obligation, it is presumed that the obligation is extinguished by remission, unless it is proved that the document was not willingly returned by the creditor.

Article 513

Removing the guarantee to the obligation, does not presume his remission.

Compensation

Article 514

When two persons owe each other money or things of a kind that are substitutable and their obligations are demandable, accurate and determined in amount or quantity, the obligations of both parties are extinguished by making the compensation between them. The obligations are extinguished up to the sum or the amount of the smallest obligation.

Article 515

Compensation extinguishes the two obligations from the date of their merger.

When for one of the credits or both of them are paid interests, the compensation is made up to the last time on which interests are paid.

Prescription does not prevent compensation if it is not completed on the day of the merger of the two obligations.

Article 516

The compensation is made by means of a statement that one of the parties sends to the other party. The statement cannot set deadlines or conditions.

When the compensation does not cover the entire credit or when the creditor needs to hold the title of credit in order to exercise his other rights, he may hold it on condition that he notes in the title the content of the statement and delivers a copy of the title of credit to the other party.

Article 517

If the compensation statement sent by one party is not admitted by the other party, the latter shall be obliged to immediately notify the party that has sent the declaration, explaining the causes of refusal.

Article 518

Without the consent of the creditor, cannot be compensated:

- a) Credits arising from death or harm of health;
- b) Credits that cannot be sequestrated;
- c) Credits arising from taxes and fees.

Article 519

Compensation cannot be performed if it is to the detriment of third parties who have acquired the right of usufruct or pledge on the credit.

Article 520

The guarantor may claim compensation of the creditor's obligation against the principal debtor. The principal debtor cannot claim compensation of the creditor's obligation against the guarantor.

Article 521

If two obligations are not payable at the same place, the compensation cannot take place, unless the costs required to transfer them to the place of payment are taken into account.

Article 522

If credits and monetary obligations are included in a single account, they shall be compensated immediately in the order that the parties have agreed in the agreement and in its absence according to the rules stipulated in Articles 469 and 470 of this Code.

The party that administers the account, after closing it through the compensation made, shall notify the other party what is the balance, the exact date of the calculation, and the items that make up the account and which are not yet communicated to the other party.

If the other party does not reject it within a reasonable time, the balance notified shall be regarded as accepted by the parties.

Article 523

If a compensation statement does not adequately show the obligations contained in the compensation, the rules provided for in Article 470 of the Code shall apply.

Each party may immediately object the compensation made, if the calculation of obligation, expenses and interest costs is not carried out according to the rules mentioned above.

Merger of qualities of creditor and debtor in the same person

Article 524

The obligation is extinguished from the time the qualities of creditor and debtor are merged in the same person.

When this merger terminates, the obligation arises again.

Article 525

Merger cannot take place when performed to the detriment of third parties who have acquired the rights of usufruct or pledge on the credit.

Extinguishment due to impossibility of execution

Article 526

The obligation is extinguished when its execution becomes impossible without the fault of the debtor and before he has been put in default.

The obligation is also extinguished when the debtor, though in default, proves that the impossibility would exist even if the creditor was in his place.

In these cases, the debtor must return what he has won without cause to the creditor.

Article 527

If the impossibility to execute the obligation is temporary, the debtor shall not be responsible for the delay of execution for the time it lasts.

But, the obligation is extinguished even when the impossibility lasts for as long as under the title of obligation and its nature, the debtor cannot be obliged to accomplish it, or the creditor has no longer interest.

Article 528

If execution of the obligation becomes impossible only partially, the obligation is executed on the part that it can be executed.

Article 529

If the object of the obligation is the delivery of a thing and it will be completely damaged, or lost through no fault of the debtor and before he is put in default, the creditor takes the rights of the debtor regarding this thing, depending on the fact that has caused the impossibility of execution of the obligation. The creditor has the right to demand from the debtor what he has received as a result of compensation.

TITLE III

MEANS TO ENSURE THE EXECUTION OF OBLIGATIONS

CHAPTER I

GENERAL PROVISIONS

Article 530

The creditor may be compensated with all the present and future property of his debtor, unless otherwise provided by law.

A property can be encumbered by its owner, in order to ensure payment of an obligation.

Article 531

Creditors have equal rights to be compensated with the property of the debtor, except for legitimate reasons of preference.

Legitimate reasons of preference are privileges, pledges and mortgages.

Article 532

Pledge and mortgage may be imposed only for an effective obligation.

Pledge and mortgage may be imposed as an obligation of the owner of the thing pledged or mortgaged, as well as to an obligation of another person.

Article 533

Pledge or mortgage may guarantee an existing credit or a future credit. The credit for which the guarantee is given must be clearly defined.

The pledge or mortgage can also be imposed on a conditional obligation.

Article 534

The pledge or mortgage shall extend respectively on all the works that increase the value to the property, the credits and bonuses that are added to or substitute the encumbered property, including what is compensated from depreciation.

Article 535

Should the things pledged or mortgaged lose or depreciate, the payment of the amounts for which insurers or third parties liable for compensation are obliged to, shall be extracted from the payment of credits associated with the pledge or mortgage, except for the case where they are used for the repair of loss or depreciation of the things.

Article 536

Should the thing pledged or mortgaged lose or damage even due to chance, in order to preserve the rights of the creditor, the latter may demand that he be given a full guarantee on other things and, in its absence, may demand the immediate payment of his credit.

Article 537

Pledge and mortgage are indivisible even if the obligation is divisible.

Article 538

If a pledge or mortgage is imposed to secure an obligation of another person, the owner of the thing pledged or mortgaged may claim against the creditor all the objections that the debtor could claim and seek the compensation of obligation by the credits that the debtor owes to the creditor.

Article 539

Should the creditor not be paid entirely by the thing pledged or mortgaged, he is entitled to receive the outstanding credit from any other property of the debtor, but without the right of preference over other creditors, which he had to the thing pledged or mortgaged.

Article 540

It is void any agreement according to which it is established that in the failure to pay the credit in due time, the ownership over the thing mortgaged or pledged is transferred to the creditor.

CHAPTER II PENALTY CLAUSE

Article 541

For non-execution or non-adequate execution of obligations, the parties may provide for in the contract the payment of a sum of money or the performance of another liability, to repair the damage or to promote the execution of the obligation.

Article 542

The creditor cannot demand at the same time the payment of the penalty clause and the execution of the obligation.

Article 543

When a penalty clause is assigned to the case of non-execution of the obligation and the debtor does not perform his obligation, the creditor is entitled to demand payment of the penalty clause, and compensation for the portion of the damage exceeding the penalty clause.

When a penalty clause is assigned to the case of non-adequate execution of the obligation and the debtor has not executed his obligation properly, the creditor has the right to demand the execution of the obligation and the payment of the penalty clause, as well as compensation of the portion of the damage exceeding the penalty clause.

Article 544

When a penalty clause is too large compared to the damage incurred by the creditor, the court at the request of the debtor can reduce the penalty clause to the level of the damage incurred.

Article 545

Agreement on the penalty clause should be made in writing, regardless of its size and the form required for the main contract.

CHAPTER III LIEN

Definition

Article 546

(Second paragraph added by law no 8536, dated 18/10/1999, Article 2; Sentence added at the end of the second paragraph, by law no 121/2013, Article 9)

Lien may be granted over a movable property item, over a right to the holder, upon order or over the usufruct over this property or right. The lien shall emerge by granting to the creditor or to a third party, determined upon mutual agreement of parties, possession over the property item or title.

The provisions regulating the lien do not apply to the credits connected to financial transactions, whereon security interest has been granted, under the criteria set out by specific law.

The provisions regulating the lien shall not apply even in the instances of financial collateral agreements, which are regulated by specific laws.

Form of contract

Article 547

The lien contract shall be documented by the notary, otherwise it is invalid. It shall also include a description of the property item whereon lien has been granted. In the event of lien over the parties, it shall be registered in the book of the members of the company. In the event of lien over the shares, it shall be registered in the book of shares, regarding the shares whereon lien has been granted.

Lien can be granted over the whole or a part of the property items being used in an enterprise acting as an operational corporation. In such an instance the lien shall be effective upon the property items being entrusted to a third party or to a creditor, the latter, on his behalf, managing them as a unified acting corporation.

Protection of creditor

Article 548

The creditor having lost the possession of the property item whereon lien has been granted, he may, in addition to the possession lawsuit, he may also assume the revendication lawsuit, as long as this belongs to the lienee.

Rights and obligations of parties

Article 549

The creditor shall be bound to safekeep the property item whereon lien has been granted and he shall be liable under the general rules regarding its loss and harm.

The lienee shall be bound to pay the expenses incurred for safekeeping and maintaining the property item.

Article 550

Upon the property item, whereon lien has been granted, yielding fruits or income, the creditor shall

be entitled to appropriate them, by way of initially making use of them for the expenses and interest and then for the credit, unless it has been provided for differently in the contract.

Article 551

The creditor may not make use of the property item whereon lien has been granted, unless the use is necessary for safekeeping and maintaining it.

He may not grant lien over the property item or give it over to others for use.

Article 552

Upon the creditor abusing with the property item whereon lien has been granted, the lienee may seek imposing attachment over the property item.

Article 553

The person having granted lien cannot seek the return of the property item, as long as the credit, interests and expenses related to the obligation and the lien have not been paid in full.

Where the lien has been granted by a debtor, the latter being liable to the same creditor regarding another obligation emerging after granting the lien and becoming due prior to the previous obligation, the creditor shall only be entitled to keep the property item until both credits are repaid in full.

Article 554

Where the property item whereon lien has been granted gets harmed or its worth reduces to such an extent that it is doubtful whether it is going to be sufficient as security to the creditor, the latter may, after notifying the lienee, seek authorisation from the court to sell the item.

The court granting authorisation for sale shall also decide on the depositing of the purchase proceeds as a security for the credit.

The lienee may avoid the sale and seek from the court to return the item, by way of providing another real security, which the court holds sufficient.

Where the harm or the reduction of worth of the property item whereon lien has been granted, the lienee may request an authorisation from the court to sell the item, as long as he encounters a favourable opportunity.

The court granting the authorisation for sale shall also determine the conditions for the sale and depositing the purchase proceeds.

Article 555

Upon the property items whereon lien has been granted being spoiled, harmed or expropriated in public interest, the creditors being secured by way of lien shall be entitled to being reimbursed with preference, referring to the preference ranking of their credit, out of the proceeds of reimbursement of the item or out of the expropriation proceeds.

Sale procedure

Article 556

Prior to proceeding with the sale, the creditor shall, through the court, submit to the debtor the request for the payment of the obligation and its accessories, by way of warning that the sale shall occur on the contrary. This notification shall be addressed also to the third party having granted the lien, as long as this party exists.

Where the request is not objected within five days, the creditor may sell the property item in auction or, upon the item having a market value, may even sell it at this price, by way of a person authorised for such sales.

Upon lien extending over many items, the court shall, referring to the objection of the lienee, restrict the sale only to the item, the worth of which compared to other items is sufficient for paying the debt. The parties may, regarding the sale of the property item whereon lien has been granted, agree to make use of other forms.

Article 557

The creditor may ask the court to leave the property item with him against charge until the obligation has been performed, referring to the assessment made by the experts or market price, as long as the property item has a market price.

Article 559

Upon the credit whereon lien has been granted emerging out of a document, the lienee shall be bound to give this document to the creditor.

CHAPTER IV MORTGAGE

Definition of mortgage

Article 560

Mortgage is a real right being put on the property of the debtor or a third party, to the benefit of the creditor to secure the performance of an obligation.

Mortgage eligible property items

Article 561

Mortgage eligible shall be:

1. Immovable property items;
2. Usufructs over these property items, except the legal usufruct of parents, as well as the emphyteusis related rights over these items.

Types of mortgages

Article 562

Mortgage shall be imposed based on the contract or the law and upon its registration. The contract shall be documented by the notary.

Legal mortgage

Article 563

Mortgage based on the law shall be granted to:

- a) seller and any other alienator over the immovable property items being alienated for performing the obligations emerging out of the alienation;
- b) co-heirs, members of the companies of economic activities and other partners over the joint immovable properties, to the shares belonging to them for the payment of certain amounts for equalising and fulfilling their shares.

Article 564

Servitudes being registered following the registration of a mortgage cannot be referred to towards the mortgage creditor.

The above paragraph shall apply even to the right to usufruct, usage and residence.

Judicial mortgage

Article 565

The court decision regarding the payment of an amount of money to the effect of performing the estimated obligations or for reimbursing the damages due to emerge subsequently shall consist a title for obtaining the mortgage granted over the debtor property.

Mortgage can be granted even based on an arbitration decision consisting an executive title.

Article 566

Upon the mortgage being granted by a person not being the owner of the property item, its registration shall be considered to be valid upon the item being acquired by him.

Mortgage on upcoming property items

Article 567

Mortgage over an upcoming property item may be registered upon the existence of the item.

Mortgage extension

Article 568

Mortgage secures the credit as long as it is on its repayment duration, including the interests, reimbursement of the damage incurred due to the enforcement delay, as well as the expenses sustained for the issue of the credit.

Article 569

Mortgage put on the own part by one of the members in co-ownership shall yield effects with regard to that property item or part of the item which will be acquired by him after the division.

If during the division one member is awarded another property item and not encumbered by mortgage by him, the mortgage shall be assigned to this item at the same registration scale as the original and within the worth of the property being encumbered by mortgage earlier, provided that the mortgage be registered again within 90 days of the registration of the same division.

Venue of registration

Article 570

Mortgage shall be registered at the office of immovable property registration office of the venue where this property is located.

Article 571

The obligations stemming from the titles upon order or of the holder may be secured by mortgage.

Effect of the inaccuracies of the act

Article 572

Mortgage shall be invalid if, in the mortgage contract or in the basic act of granting mortgage or in the request of granting under the law, irregularities exist concerning the person of the creditor, debtor, owner of the property item encumbered with mortgage, for the property item or amount of credit secured by mortgage.

Registration expenses

Article 573

Mortgage registration expenses are to be defrayed by the debtor, unless it has been provided for differently, however, they have to be prepaid by the requesting party.

Preference of mortgages

Article 574

Mortgage shall yield effects and obtain preference on the date of its registration even if the title refers to an upcoming or conditional credit.

Article 575

The serial number of registration sets out their preference.

Where concurrently many persons lodge a request for registering a mortgage referring to the same person and over the same property items, the registration shall occur with the same number and this fact shall be noted down in the certificate that the registrar gives to each of the requesting persons.

Article 576

Mortgages being registered with the same number and over the same property items shall compete with each-other, proportional to their respective worth.

Article 577

The registration of a credit serves to put the expenses of the act, registration and renewal, as well as other expenses needed for the executive procedures at the same preferential scale.

The registration of a credit in cash yielding interest has the effect of the interest standing at the same preference scale, provide that the interest be set out at registration.

The interest in such an instance shall be restricted to two preceding years, as well as to the current year, to the day that it has been disposed of until the day of completion of proceedings of foreclosure.

Mortgage impact

Article 578

Mortgage registration shall be of effect for a period of 20 years since the date of its accomplishment. The effect shall cease if it is not renewed prior to the expiry of the deadline. Following the expiry in indicated above, the creditor may affect a new registration, however, the mortgage in such an instance shall be ranked and be of effect towards the third parties referring to the new date of registration.

Article 579

The assignment of the credit secured by mortgage to another person and imposing the attachment on this credit shall be of effect following the entering of the respective note at the mortgage registration.

Article 580

Where the creditor holding mortgage over one or more property items incurs damages since their proceeds were used to pay in full or in part a previous creditor, whose mortgage extended over other property items of the same debtor, may be subrogated to the mortgage registered to the benefit of the paid creditor, in order for him to assume the mortgage lawsuit over those properties, being of preference to the other creditors following him in succession. The creditors sustaining harm due to the subrogation referred to above shall be entitled to the same right.

Reduction of mortgage

Article 581

Mortgage reduction shall occur by way of restricting it to the part of the property indicated in the registration or by reducing the amount whereon the registration has been entered.

Article 582

The request for the re-education of mortgages according to the above articles shall not be admitted, as long as the entirety of assets or amount was determined by way of agreement or court decision.

However, upon partial payments being made, thus lapsing at least one fifth of the initial obligation, a proportional reduction of the amount may be requested.

Upon a building being encumbered by mortgage, the mortgagor may, following the registration having made additional constructions, request that the mortgage be reduced so that additional constructions be exempted.

Lapse of mortgage

Article 583

The mortgage shall lapse:

- a) upon the lapse of the obligation;
- b) upon the loss of the property item encumbered by mortgage, abiding by the rights provided for in Article 536 of this Code;
- c) upon the relinquishment of the creditor;
- ç) upon the payment of the sale price by way of foreclosure to the creditors secured by mortgage, referring to their rank preference;
- d) upon the expiry of the period to which mortgage was restricted.

Deletion of registration of mortgage

Article 584

The registration of mortgage shall be deleted:

- a) upon the consent of the creditor granted by notarial act;
- b) upon a final court decision ordering the deletion.

The deletion of registration shall lapse mortgage. Where the cause of the lapse of obligation is declared invalid, mortgage shall emerge and be registered again, however, with a new serial number.

CHAPTER V

SURETY

Contents

Article 585

Surety is a legal transaction wherewith a person (guarantor) shall be obliged to secure the performance of an obligation of a third person (main debtor) to the creditor.

Surety shall be valid even where the debtor is not aware of it.

Article 586

Surety shall be in place just for an effective obligation.

Surety may be granted for an upcoming obligation, as well as for a conditional obligation.

Article 587

Surety shall be documented.

Article 588

Surety shall not be valid as long as the main obligation is not valid. It can be granted for the main debtor, as well as for his guarantor.

Effects of surety and obligations of parties

Article 589

The guarantor shall be liable to the extent of the obligation of the main debtor, including the payment of the interests, damages incurred due to the delays in enforcement and other expenses that the contractor has sustained to collect his credit, unless it has been accepted in the agreement that the surety is granted even for one part of the obligation, or with milder or less strict conditions than the main obligation.

The surety subrogating the obligation or granted at more severe conditions than the main obligation shall be valid to the limits of the latter.

Article 590

The guarantor shall be jointly liable above the main debtor for performing the obligation, unless it has been provided for differently in the agreement.

Parties may agree that the guarantor shall not be liable to make any payments prior to undertaking all the necessary arrangements binding the debtor to perform the obligation. Where the guarantor is sued and he seeks to refer to such an entitlement, he shall indicate the assets of the main debtor due to be subject to enforcement. The guarantor shall be bound to prepay the necessary expenses, as long as the parties have been agreed otherwise.

Article 591

Upon many persons becoming guarantors for the same debtor and to secure the same obligation, each one of them shall be liable for the entire obligation, unless there is an agreement for the division.

Article 592

The guarantor shall be entitled to refer to all the demurrers to the creditor that the debtor would be entitled to refer to and seek the reimbursement of all that the creditor owes to the debtor, even if the latter has relinquished these rights or assumed the obligation.

Article 593

The guarantor having performed the obligation instead of the debtor shall assume the position of the creditor regarding all his rights to the debtor.

Article 594

Upon many main debtors being jointly bound by the same obligation, the guarantor having granted security for all of them shall be entitled to the lawsuit of reinstatement to each of them for collecting the amount he has paid.

Article 595

The guarantor having performed the obligation of the debtor while not being sued and falling short of giving notice to the main debtor, the latter may refer to the guarantor the entire demurrers, which he would do to the creditor at the time of performing the obligation.

The guarantor having performed the obligation of the debtor shall not be entitled to take legal action against the debtor regarding what he has enforced, as long as the debtor has performed his obligations since the guarantor did not give notice to him regarding the performance of the obligation he has affected.

The guarantor shall, in both cases, be entitled to take legal action against the creditor and seek what he has performed for the main debtor.

Article 596

The debtor having performed the obligation shall forthwith give notice to the guarantor. Otherwise, the guarantor having enforced the obligation of the debtor does not forfeit his right to seek from the debtor what he has performed for him. The debtor shall, in such a case, be bound to perform his obligation for the second time, however, he shall be entitled to take legal action against creditor for all what he has benefited unjustly.

Lapse of surety

Article 597

Surety shall lapse with the lapse of the main obligation.

Article 598

The guarantor shall be relieved of his liability as long as the creditor has relinquished his privileges, lien or mortgage securing the credit and, due to this ground, the guarantor cannot be subrogated to his position regarding these rights.

Article 599

Upon the creditor accepting voluntarily any property items or any other assets against the performance of the main obligation, the guarantor shall be relieved of his liability even if an instance of foreclosure emerges to the creditor.

Article 600

The surety shall lapse if the creditor fails to take legal action against the guarantor within six months of the date of expiry of the time period for performing the obligation.

The time period for performing the obligation not having been set out either in the surety contract nor in any other agreement, the surety shall lapse with the expiry of one year since the date of entering into the surety contract.

CHAPTER VI DOWNPAYMENT AND PRIVILEGES

A. Downpayment

Contents

Article 601

Downpayment is the pecuniary amount that one of the parties gives to the other on the account of which shall be paid under the contract, to the effect of establishing the conclusion of the contract and ensuring its enforcement.

Legal effects

Article 602

Where the contract is not enforced due to the culpable conduct of the party having made the downpayment, the same party shall forfeit the downpayment; where the contract is not enforced due to the culpable conduct of the party having received the downpayment, the same party shall be obliged to pay back the double amount of downpayment. The party being culpable for the non-enforcement of the contract shall be obliged to indemnify the other party, calculating within this indemnification also the downpayment amount, unless the contract has provided for differently.

B. Preferences (Privileges)

Article 603

Preference is an entitlement granted by law taking account of the credit basis. The credits being assigned as preferred shall prevail over all other credits.

In the event of many preferred credits, the priority in enforcement is set out by law, according to the type of preference.

Article 604

The credits being of the same preference shall compete among each other proportionally in terms of the amount of each credit.

Ranking of preference

Article 605

(Amended by law no 8536, dated 18/10/1999, Article 3; amended by Law No. 113/2016, dated 03.11.2016, Article 1)

Paid by way of preference, referring to their ranking, the following credits:

- a) credits emerging out of the financial transactions being insured by encumbrance concerning the purchase price of a specific asset;
- b) credits emerging out of the salaries in employment or service relations and alimonies, however, no longer than 12 months;
- c) credits of social insurance regarding the unpaid contributions along with the interests, as well as credits of employees regarding the damages sustained due to the failure of the employer to pay the above mentioned contributions;
- ç) credits emerging out of the remunerations due to death or health impairment;
- d) credits of authors or their heirs concerning the remunerations emerging out the full or partial alienation of their rights in the intellectual field concerning the obligations emerging during the two recent years;
- dh) state credits emerging out of the liabilities to the budget and the credits of the state insurance institute for the mandatory insurance, set out by law;
- e) credits emerging out of financial transactions, insured by encumbrance, under the criteria set out by law;
- f) mediation remuneration emerging out of the agency contract, where it emerges during the last year of remuneration;
- g) credits secured by mortgage or lien not amounting to encumbrance, according to law, from the value of the things in mortgage or lien.
- gj) credits emerging out of the judicial proceedings expenses for preserving the asset and those for the executive arrangements, undertaken to the joint benefit of creditors, out of the proceeds of the sales of assets;

h) credits granted by banks not falling under letter 'e' and the credits emerging out of voluntary insurances;

i) credits for supplying seeds, fertilizers, insecticides, water for irrigation and for the works for cultivating and harvesting the agricultural products, on the annual agricultural products (yields), where for the credits have been applied.

Upon the existence of many credits under letter 'a' and 'e' of this Article, the preference ranking shall be determined under the criteria set out by specific law. Where the specific law does not provide to a credit preference ranking above letter 'e', the credit under letter 'a' shall be assigned a preference under letter 'e'.

Exempt from the preference ranking under this article shall be the credits under letter 'e' having been currently granted, which shall be assigned a higher preference than letter 'dh', in the following cases:

- credit under letter 'e' was registered under the law, while the credit under letter 'dh' was not registered;
- credit under letter 'e' was registered under the law, prior to the registration of the credit under letter 'dh'.

The order of preference, provided in this article, does not apply to the procedure of bankruptcy, as provided by special law.

Article 606

The creditor may withhold the asset being subject to the privilege until he is reimbursed for his credit and he may sell it under the rules set out for selling the pledge.

Contesting the legal transactions of the debtor

Article 607

(Amended by Law No. 113/2016, dated 03.11.2016, Article 2)

The creditor is entitled to seek declaring the legal transactions performed by the debtor to the effect of reducing the quantity or value of the property to the detriment of the creditor invalid, provided that the credit has emerged prior to the legal transactions being performed.

Where the legal transactions has been carried out against reimbursement, the person that the debtor has performed this transaction with shall have to know the intention of the debtor to cause damage. However, where this person is a spouse, parent, grandfather, child, grandchild, brother or sister of the debtor, the knowledge on the impairment intention shall be presumed, as long as the opposite is not established.

Upon the legal transaction being declared invalid, the rights benefitted by third persons by way of reimbursement in good faith prior to filing the lawsuit for declaring the invalidity of the legal transaction shall not be impaired.

This article does not apply to the procedure of bankruptcy, as provided by special law.

TITLE IV
LIABILITY IN TORTS

CHAPTER I
GENERAL PROVISIONS

Liability in torts
Article 608

The person culpably and illegally causing damage to another in person or in rem shall be obliged to indemnify the caused damage.

The person having caused the damage shall not be liable upon proving that he is not culpable. The damage shall be illegal where ever it emerges out of the breach of impairment of the interests of rights of others, being protected by the legal order or good customs.

Article 609

The damage shall be direct and immediate consequence of the action or omission of the person. Failure to avoid an occurrence by a person being legally obliged to avoid it shall render him liable in torts.

Article 610

The agreement excluding or restricting in advance the liability of the person having culpably caused damage shall be invalid.

Article 611

The person causing damage to another due to his own necessary protection or of a third person shall not be held liable.

Article 612

The person having caused the damage while being forced by the need to rescue himself or others against an imminent danger of a severe damage, which danger was not caused and could not be avoided by him, shall be obliged to indemnify the damage. The court may, by way of taking account of the specific circumstances of the case, relieve this person in part or in full from the obligation to indemnify the damage.

Article 613

Torts by minors or persons without capacity to act

The minor not having reached the age of fourteen and other persons being fully incapacitated to act

shall not be held liable in torts.

The parents, custodians and those being entrusted with or warding persons incapacitated to act shall be liable for the damage incurred due to the illegal conduct of children under fourteen, of persons under their custody and those overseen by and living with them, but being incapacitated to act, unless they prove that they could not manage to avoid the occurrence of the damage.

Article 614

The minor having reached the age of fourteen shall be liable in torts.

The parents or custody shall be liable for the above damage, as long as the minor does not generate income out of his own occupation or does not possess property, unless they prove that they could not manage to avoid the occurrence of damage.

Article 615

Damage by persons under ward

The teachers and other persons warding minors or the persons teaching others a handcraft or profession shall be liable for the illegal damage caused to others by the students or persons warded by them, or by the persons being trained in this handicraft or profession with them, incurred during the time period they were directly warded by them, unless they prove that they could not manage to avoid the occurrence of damage.

Article 616

Liable for the damage shall be also the person having incurred it while, at the same moment, he was not conscious of his conduct.

The court may reduce the amount of indemnification, taking account of the age, degree of awareness for the committed acts, as well as the economic situation of the parties, except when he has culpably brought himself to this situation.

Article 617

Fraudulent or inaccurate publications

Upon being established that a person is liable towards another person because he has published inaccurate, incomplete or fraudulent data, the court shall, upon the request of the impaired person, force the other person to publish a dementi, in the way it would deem appropriate.

The court may rule the publication of this dementi even upon being established that the publication of the data is not illegal and carried out culpably, since the author was not aware about the inaccurate or incomplete character of these data.

Article 618

Liability of employer

The employer shall be liable for the damages caused to third parties due to the guilt of employees being in his service, in the course of performing the tasks assigned to them by him.

The legal entity shall be liable for the damages caused by his structural bodies in the course of performing their tasks.

Article 619

Where a person is carrying out an activity in the framework of the task of another and sticking to the latter's instructions, not being his employee, shall be liable for the damage caused to third parties in the course of this activity.

The other person is also liable to the third party.

Article 620

Liable of representative

Where the activity of the representative in the course of assuming the powers assigned to him incurs culpable liability to a third party, the represented person shall also be liable to this third party.

Article 621

Liability due to the use of animals

The owner of an animal or the one using it shall be liable to the damage caused by it, unless he proves that he had controlled the conduct of the animal having caused the damage and could not manage to avoid it.

Article 622

Liability due to carrying out a hazardous activity

The person carrying out a hazardous activity, regarding its very nature or the nature of items applied, and causing damage to third parties, shall be obliged to indemnify the damage, unless he establishes that he has made use of all the appropriate and necessary arrangements for avoiding the damage.

Article 623

The owner of a building or construction shall be liable for the damages caused due to the deficiencies and any other flaw in connection with the building or maintenance.

The owner of the building or construction shall be entitled to seek the indemnification of the damage sustained from the persons liable to him.

Article 624

Liability for the environment

The person having culpably affected the environment by way of deteriorating, changing or impairing

it, in full or in part, shall be obliged to indemnify the sustained damage.

Liability for non-pecuniary damage

Article 625

(Amended by law no 17/2012, dated 16/02/2012, Article 2)

The person sustaining a non-pecuniary damage shall be entitled to indemnification upon:

- a) sustaining a health, physical or psychical integrity damage;
- b) his honour, personality or reputation being impaired;
- c) his right to his name being impaired;
- ç) his privacy observation being impaired;
- ç) the remembrance of a deceased person being impaired. The spouse or the relatives of the deceased up to the second degree may seek the indemnification of the non-pecuniary damage.

Article 626

Joint liability

Where the damage is caused by a number of persons jointly, they shall be jointly liable to the impaired person.

Article 627

Action for recourse

The person having indemnified the damage shall be entitled to seek from everyone having caused the damage their respective share proportional to the degree of guilt of everyone and the entirety of the ensuing consequences. Where this cannot be defined, it is assumed that the degree of guilt is equal. The parents or custodians having defrayed the damages caused by the minors or persons having been deprived of their capacity to act shall not be entitled to seek from the latter the recovery of the damages they have defrayed.

CHAPTER II

LIABILITY STEMMING FROM THE PRODUCTS

A. Producer liability

Article 628

The producer shall be liable for the damage being caused due to the defects of his products, unless:

- a) the producer has not put the products in the market;
- b) referring to the established circumstances, it is deemed that the defects having caused the damage could not exist at the time of putting the product in the market, or they have emerged later;
- c) the product has not been designated for sale or any other form of distribution, for a certain commercial purpose of the producer, neither produced or distributed in the context of an undertaking

or professional activity;

d) the defects relate to the fact that the product has been in compliance with the rules set out by the public bodies;

e) the scientific or technical knowledge did not manage to detect the defects at the time of putting the product in the market;

ë) it is about the production of raw material or manufacturing a constituent part of a product, which turn put flawed within the composition of the product, or as a consequence of the erroneous instructions provided by the producer of the product.

Article 629

The liability of the producer shall be reduced or lifted, where, under circumstances, the damage has been caused due to the defects of the products, as well as due to the guilt of the impaired person or of another person, whereof the impaired person is responsible.

The liability of the producer shall not be reduced as long as the damage is a consequence jointly of the defects of the product and conduct of a third party.

Article 630

A property item is defective as long as it does not provide the assurance expected thereof, taking account of the circumstances jointly and severally:

a) appearance of the product;

b) reasonable use going with the product;

c) time of putting the product in the market.

The product can not be said to be defective referring to the fact that a more sophisticated product has been put in the market subsequently.

Article 631

“Product” in the sense of this Code shall be any movable property item, even if it is incorporated into a movable or immovable property item, as well as electricity, excluding the agricultural products and the products emerging out of hunting.

Agricultural products shall be the land, livestock and fishing products, unless they have gone through a preliminary processing.

“Producer” in the sense of this Code shall be the producer of a manufactured product, of a raw material, or manufacturer of a constituent part of a product, as well as any other person appearing as such (manufacturer), putting his name, trademark or another distinguishing mark on the product.

Notwithstanding the liability of the producer, ‘producer’ shall be referred to any person importing a product intending its sale, rent, leasing, or any other distribution form, in the context of his commercial activity. His liability in such a case shall be the same as that of the producer.

Article 632

Where the producer cannot be identified, every supplier shall be a producer, unless within a reasonable time period he shows to the impaired person the identity of the producer or the person having supplied the product.

Article 633

Where, under the first paragraph of Article 628 of this Code, many persons are liable for the same damage, each of them shall be liable for the entire damage.

Article 634

1. The lawsuit regarding the indemnification of the damage filed against the producer under the first paragraph of Article 628 of this Code shall lapse upon the expiry of three years, starting from the day that the impaired person has been informed or should have been informed about the damage, deficiencies and identity of the producer.
2. The right of the impaired person against the producer regarding the indemnification of the damage under the first paragraph of Article 628 of this code shall forfeit upon the expiry of ten years, since the day that the producer has put the product having caused the damage in the market.

B. Fraudulent publication

Article 635

The person publishing or makes arrangements for making a notification public regarding the products or services he offers himself in the event of a professional activity or of an enterprise or of a person on whose behalf he is acting carries out an illegal conduct as long as the notification is fraudulent in one or some of the following respects:

- a) nature, composition, quantity, quality, characteristics or eventual uses;
- b) origin, fashion or date of production;
- c) size of its stock production;
- ç) price or method of calculation;
- d) reason or purpose of special offers;
- dh) qualities assigned, other certificates or evaluations made by third parties, or declarations issued by them, applied professional or scientific terminology, electronic or statistical data;
- e) circumstances of circulating the products, providing services or making of payment;
- f) extension, contents and duration of guarantee;
- g) identity, qualities, powers or competences of the one manufacturing or having manufactured the products, offering them to the one providing the service, managing, supervising or assisting these activities;
- gj) compared to other products and services.

Article 636

The person having conducted himself illegally according to the above provision is responsible for the caused damage, unless he establishes that he is not culpably involved with its emergence.

Article 637

Where the fraudulent publication, being provided for in Article 635 of this Code, has caused or endangers causing a damage to a person, the court shall, upon his request, order its immediate ban and the obligation of the liable person for making a public dementi, in the fashion that the court finds it appropriate.

C. Unfair Competition

Article 638

Pursuant to the provisions connected to the protection of the trademarks and patent rights, the unfair competition conduct is affected by everyone:

1. making use of the names or trademarks which might be mixed up with the names or trademarks used legitimately by others or imitate the products of a competitor or affects conduct which may cause them appear like the products and the activity of a competitor;
2. considering the qualities of the products or enterprises of a competitor like his own;
3. making use directly or indirectly of any other means which does not coincide with the principles of professional fairness and may impair the activity of others.

Article 639

The decision establishing the conduct of unfair competition shall prohibit their duration and set out the necessary measures to the effect of eliminating the consequences.

Where this conduct has been affected culpably, the person having done this shall indemnify the damage.

CHAPTER III INDEMNITY

Article 640

The property damage being indemnified shall consist of the incurred damage and the lost profit. Indemnified shall also be the expenses incurred reasonably to avoid or to diminish the damage, those being necessary for setting out the liability and the damages, as well as the reasonable expenses incurred to ensure indemnification in extra-judicial proceedings.

Article 641

The person having inflicted harm to the health of another person shall be obliged to indemnify the damage, taking account of the loss or restriction of the ability of the impaired person to work, expenses having been made for his medication, as well as other expenditure bearing a connection to the incurred damage.

Article 642

The extent of damages may change in the future, depending on the improvement or worsening of the health or improving or aggravation of the ability of the impaired person to work, as compared to the time of setting out the indemnity and the changes, which the salary of the impaired person might have gone through.

Article 643

Upon the death of a person being caused, the damages due to be indemnified shall consist of:

- a) living expenses of the minor children, spouse and parents being incapable to work, having been dependants of the deceased, in full or in part, as well as of the persons having lived with the family of the deceased and being entitled to the right of alimony from him;
- b) appropriate expenses for the internment of the deceased, to the extent that they are proportional to the personal and family circumstances of the deceased.

The person having inflicted the damage may make use of the same legal remedies that he could have applied to the deceased.

The court may, taking account of the entire circumstances of the case, decide for the indemnity to be granted in kind, in pecuniary means or in instalments.

Article 644

Where the person having affected the illegal act or omission has had, along with the incurred damage, an evident benefit, the court may, upon the request of the impaired party and taking account of the nature of the damage, the degree of guilt as well as other circumstances of the case, calculate into the damages also this benefit, in full or in part.

Article 645

Upon the death or harm to the health of a person benefiting social insurance being caused, the damages shall be indemnified in the fashion set out by law.

Article 646

The extent of damages stemming from the death or harm to the health of a person not having been in employment or insurance relations, shall be set out by the court, based on the salary that an employee of that category is obtaining, wherewith the work done or which might have been done by the impaired person is equated.

Article 647

Upon the impaired minor reaching the age of 16 and receiving no salary out of his employment, the same shall be entitled to seek indemnification in connection with his loss of ability to work referring to the average salary of an employee, under the criteria of Article 646 of this Code, instead of the allowance he is receiving for his living.

Upon reaching the age of eighteen years, he shall be entitled to seek, instead of the allowance he is receiving, to be indemnified referring to the average salary of an employee of the category that he would obtain or should have obtained, in the event the harm to the health had not occurred.

Article 647/a

Ways and criteria of setting out civil liability and extent of non-property damage

(Added by Law no 17/2012, dated 16/02/2012, Article 3)

The indemnification of the non-property damage in connection with the impairment of the honour, personality or reputation of a person aims at reinstating the impaired right, proportional to the incurred damage, and it shall be set out based on the circumstances of the case. In connection with setting out the civil liability and the extent of non-property damage, the court shall take account of:

- a) way, form or time of distribution of the statements or commission of actions;
- b) degree of abiding by the rules of the professional ethics by the perpetrator of the statements;
- c) forms and degree of guilt;
- ç) the fact whether the statements have been quoted or referred accurately to the statements of a third person;
- d) the fact whether the statements are false, specifically in the event of impairing reputation;
- dh) the fact whether the statements pertain to the privacy issues of the impaired person and their relationship to the public interest;
- e) the fact whether the statements consist in opinions or assertions containing only insignificant factual inaccuracies;
- ë) the fact whether the statements are hear a connection to the public interest or persons in state offices or being candidates in elections;
- f) conduct of actions to prevent or reduce the extent of damage, such as expressing a dementia for the false statements, as well as any other measure applied by the perpetrator of the statements to the effect of reinstatement of the honour, personality and reputation of the impaired person;
- g) the fact whether the perpetrator of the false statements has benefitted due to their dissemination, as well as the extent of this benefit;
- gj) the fact whether the indemnification aggravates the financial situation of the perpetrator of the damage significantly.

TITLE V

AGENCY OF NECESSITY

Article 648

The person, despite being under no obligation, consciously and for a reasonable purpose undertaking to attend to the affairs or interests of others shall be obliged to continue this until the interested person becomes able to attend to on his own.

Article 649

The interested person shall perform the obligations that the agent of necessity has assumed on the behalf of the former, exempt the agent of necessity from the obligations he has assumed on his own behalf and reimburse him for the necessary and useful expenses since the day they have been incurred and, as appropriate, reimburse him for the damage that he might have sustained as a consequence of the agency, provided that the actions performed by the agent should not have been banned by the interested person.

Where the agent of necessity was, in addition to attending to the affairs, in need of practicing a profession to this effect, he shall be entitled to reimbursement in compliance with the prices and fees set for such activities.

Article 650

The agent of necessity shall be entitled to perform legal transactions on behalf of the interested person, to the extent that the interest of the latter is met in the most appropriate way.

Article 651

The agent of necessity shall be subject to the same obligations stemming from an order contract. The court may, by way of taking account of the circumstances having had an impact on the agent of necessity to undertake agency by necessity, reduce the damages in connection with the damage, which has been culpably incurred by him.

Article 652

The interested person may, by way of consenting to the activity of the agent of necessity, withdraw his right to seek damages from the agent of necessity under the above provision. The interested person shall, to this effect, be granted a reasonable time.

TITLE VI UNWARRANTED PAYMENT

Article 653

Anyone having made an unwarranted payment shall be entitled to seek the restitution of what he has paid, as well as to enjoy the yields and interests accruing as of the date of payment, if the person having benefited the payment is in bad faith, and as of the restitution request, if that person is in good faith.

Article 654

The person having paid for the obligation of another by way of believing that he is a debtor, due to being in error and without guilt, may get what he already paid restituted, provided that the creditor has not been deprived of the credit title and guarantees in good faith.

The restitution of payment shall be associated with the yields and interests, under the conditions provided for in the above provisions.

TITLE VII UNJUST ENRICHMENT

Article 655

The person having benefited or saved something in absence of legal grounds and to the detriment of another shall be obliged to reimburse the latter in connection with the property-related losses he has sustained, within the limits of enrichment.

Article 656

Where the unjust enrichment pertains to a certain property article, the person having obtained it should restitute it in kind, along with the income currently or supposed to have yielded, and he shall be entitled to seek the reimbursement of expenses he has made, under the provisions regulating seeking the property article from the illegal possessor.

Article 657

All what a person has given voluntarily for the purposes of performing an obligation, which, despite not being reclaimable, is not invalid, cannot be sought back.

Article 658

The lawsuit in connection with the unjust enrichment cannot be filed, as long as the impaired person can file another type of lawsuit for seeking the indemnification of the sustained damage.

PART V CONTRACTS

TITLE I CONTRACTS IN GENERAL

CHAPTER I PRELIMINARY PROVISIONS

Contents of contract

Article 659

The contract is a legal transaction by way thereof one or more parties create, change or end legal relationships.

Article 660

The parties to the contract dispose freely of its contents, within the limits set out by the legislation in effect.

Contracts of unilateral and bilateral obligations

Article 661

The contract is of unilateral obligations, as long as one party assumes obligations towards the other party, while the latter having no obligations to the former.

Article 662

The contract is of bilateral obligations, as long as the parties mutually assume obligations to each other.

Necessary conditions for concluding and validity of the contract

Article 663

The conditions necessary for the existence of a contract are: consent of a party assuming the obligation, legal grounds whereon the obligation is building, scope making up the contents of the contract and its form required by law.

Conclusion of contract

Article 664

Where the contract contains just the obligation of the bidder, the recipient may refuse the proposal within a specified time period or emerging from the nature of the agreement. In absence of such a refusal, the contract shall be deemed concluded.

Article 665

The person proposing the conclusion of the contract shall be bound by the proposal, unless this relationship is excluded. Where the proposal is rejected or it is not admitted within the specified period, it shall be considered to be rejected.

Where no such time period has been set out, the bidder shall be bound by the proposal as long as it is necessary to receive the answer of the other party, normally or under the circumstances.

Article 666

The proposal made to a person being present to conclude a contract, whereby falling short of setting out a deadline for the acceptance, shall lapse, as long as the person being present does not accept the proposal immediately.

Article 667

Upon the proposing party setting out a deadline for the acceptance, it is necessary for the response to be received within by the deadline.

The proposing party may consider the delayed acceptance valid, however, he shall forthwith notify the other party.

Upon the acceptance being sent in time, however, being received by the proposing beyond the deadline and the latter not wanting to be bound by it, he shall notify the accepting party instantly.

Article 668

The proposal to conclude a contract shall lapse as long as the proposing party notifies the other party that he has withdrawn it, prior to the proposal being received.

This rule is valid also for the withdrawal of the acceptance by the other party.

Article 669

Where upon the request of the proposing party, or taking account of the nature of the agreement and the circumstances bearing a connection to it, it emerges that it was not necessary to wait for the confirmed acceptance of the proposal, or the obligation would be performed regardless of whether a preliminary response was received, the contract shall be considered to be concluded at the time and venue where its implementation has started.

The party performing the obligation shall notify the other party forthwith about the institution of the enforcement of the contract, otherwise he shall be bound to indemnify the damage.

Article 670

The acceptance of the proposal not matching its contents shall be considered a non-acceptance and simultaneously a new proposal.

Article 671

The bid shall be considered as a proposal where it contains the essential elements of the contract being sought to be concluded, unless it emerges differently out of the circumstances of the case.

Article 672

The contracting party may abandon the contract within seven days since its conclusion, not indicating any grounds, where:

- the contract has been concluded at the work station or residence of one party, in the course of an excursion organised in public premises, or under such circumstances not accommodating a normal situation of negotiations;
- the seller shall, in the contract with the scope granting a credit for purchasing consumption items, notify the purchaser in writing about the right to abandon the contract entered into under the above circumstances, or the time period for abandoning it shall be one year.

Article 673

An enterprise assuming a dominant position in the market shall be bound to contract with anyone seeking an obligation, falling under the scope of its activity, in compliance with the laws and good commercial customs.

The conclusion of a contract cannot be denied in absence of legitimate grounds.

Article 674

The parties shall, in the course of negotiations for drafting the contract, conduct themselves in good faith to each-other.

The party knowing or who should have known the grounds for the invalidity of the contract and falling short of disclosing it to the other party shall be bound to pay the damages being sustained by the latter due to the fact that it innocently relied on the validity of the contract

Article 675

Where a contracting party disposes of professional knowledge and the other party induces full trust with them, the former shall be bound to the latter information and instructions in good faith.

Article 676

The contract shall be considered to be concluded where the parties have mutually expressed their will, agreeing on all its essential conditions.

The expression of the will may be explicit or implicit.

Unlawful grounds

Article 677

The legal grounds of a contract shall be unlawful where they are at variance with the law, public order or where the contract becomes an instrument to avoid the implementation of a norm.

Scope of contract

Article 678

The scope of the contract shall be possible, lawful, defined or definable.

Article 679

The contract being concluded upon a suspending condition or connected to a deadline shall be valid as long as the obligation, being initially not possible, becomes possible prior to the condition being met or deadline expiring.

Article 680

The contract may provide for the accomplishment of transactions over property items in the future, unless explicitly prohibited by law.

CHAPTER II
INTERPRETATION OF CONTRACT

Article 681

While interpreting a contract, there needs to be explained which was the real and joint intention of the parties, while not focusing on the literal meaning of the words, and assessing their conduct in general, prior to and following the conclusion of the contract.

Article 682

The conditions of the contract shall be interpreted in their relationships, while assigning to each of them the meaning stemming from the entirety of the act.
The contract shall be interpreted by the parties in good faith.

Article 683

In a situation of suspicion, the contract and its conditions shall be interpreted in the meaning which might yield any effects and not in the one having no effects at all.

Article 684

The conditions of the contract which may be considered to have two meanings shall be interpreted taking account of the place where the contract has been concluded.
Where one of the parties is an entrepreneur, the conditions with two meanings shall be interpreted taking account of the practice of the place where the seat of the enterprise is located.

Article 685

The words and phrases, which may have two meanings, shall be considered to have the meaning being most appropriate to the nature of contract.

General Conditions

Article 686

The general conditions of the contract being drafted by one contracting party shall have effect towards the other party, as long as the latter has acknowledged them or should have acknowledged at the moment of concluding the contract, by way of demonstrating a normal care. Invalid shall be the general conditions of the contract incurring a disproportionate loss or damage of the interests of the contracting party, specifically where they essentially diverge from the principles of equality and impartiality spelled out in the provisions of this Code regulating the contractual relationships.

The conditions providing for to the benefit of the party having drafted them in advance, shall yield no legal effects, limitations to liability, possibility to abandon the contract, to suspend its implementation or set out expiry deadlines to the other party or restrictions to the right to file a defence, to the contractual freedom in relations with third parties, arbitration conditions or circumventing the powers of the judicial authorities, unless they have been specifically approved in writing by the other party.

Article 687

With regard to contracts being concluded by way of signing up to the modules or forms aiming at streamlining certain contractual relations uniformly, the conditions added up to these modules or forms shall have a priority to the initial conditions of the modules or forms referred to above, as long as they do not comply with them, although they have not been repealed.

Article 688

The conditions being inserted into the general conditions of the contract or in modules or forms, being handed out by one of the contracting parties shall, in a situation of doubt, be always interpreted to the benefit of the other party.

Article 689

Where the contract remains clear, despite the application of the norms contained in this chapter, it shall be considered to be at the less aggravated meaning for the debtor, as long as it is free of charge, and in the meaning being instrumental to meeting the interests of parties impartially, as long as it is subject to charge.

CHAPTER III EFFECTS OF CONTRACTS

Article 690

The normally concluded contract shall have the effect of the law on the parties. It can be terminated or amended subject to the mutual consent of the parties or due to causes provided for by law.

Article 691

The contract shall be of effect to the third parties in the events provided for by law.

Article 692

The legal effects of the contract shall extend over to the heirs with universal title, unless the contract provides for differently.

Article 693

The contract binds the parties not only with regard of its contents, but also to all the consequences stemming from the implementation of the law.

Contract to the benefit of a third party

Article 694

The contract to the benefit of a third party shall be valid where the person concluding it is interested therein.

The person having accepted the promise to the benefit of the third party or the latter, or other persons assuming the latter's rights shall be entitled to seek the enforcement of the contract, unless another agreement exists.

The contract cannot be terminated or amended next to the moment that the third party has declared their consent to benefit out of the conclusion of the contract, unless the proposing party has made a reservation of this right.

In the event of the revocation of the conclusion of the contract, or refusal of the third party to benefit thereof, the obligation shall remain to the benefit of the proposing party, unless it emerges differently from the will of parties or nature of contract.

Article 695

The party having made the promise to the benefit of a third party may recourse to remedies towards them stemming from the contract, however not those stemming from the relations with the other party.

Right to abandon the contract

Article 696

Where the right to abandon the contract has been granted to one of the parties, this right may be assumed for as long as the contract has not started to be implemented.

With regard to the contract of continuous or periodic performance, this right may be assumed even beyond this limit, however, this shall not have any impact on the completed or pending performance. Where the payment of an indemnity has been provided for in the contract for the withdrawal, it shall enter into effect upon the payment being made, unless a different agreement exists.

Promise for performing an obligation

Article 697

The person having promised to another that a third person shall perform an obligation or shall accomplish a transaction to his benefit, shall be obliged to indemnify the other party, as long as the third person does not consent to perform the obligation or accomplish the promised transaction.

Termination of contract

Article 698

In the event of contracts with mutual obligations, where one of the contracting parties does not meet his own obligations, the other contracting party may, as appropriate, seek the performance of the obligation or termination of the contract in addition to the indemnification.

Article 699

The contract cannot be terminated, as long as the failure of one of the parties to perform the obligation is of insignificant importance for the interests of the other party.

Article 700

The contracting party may give notice to the other party having failed to perform the obligation to perform it within an appropriate deadline, declaring that upon the failure to enforce the contract within this deadline, it shall be definitely considered to be terminated.

Article 701

Where the deadline set out for the performance of the obligation by one of the parties is considered to be essential for the interest of the other party, the latter shall, if they wish to seek the performance despite the expiry of the deadline, give notice to the other party within three days, unless a different agreement exists.

Article 702

The parties may provide for in the contract to have it terminated as long as a certain obligation is not performed under the foreseen conditions.

The contract shall, in such a situation, be terminated, as long as the interested party declares to the other party that it is going to recourse to the pertinent condition for terminating the contract.

Article 703

The termination of the contract due to the failure to perform the obligations shall have retroactive effect between the parties, except the contracts of continuous or periodic enforcement, whereof the termination effect shall not extend over the previously accomplished transactions.

The termination of the contract, be it even by way of the mutual consent of parties, does not affect the rights obtained by third parties, except the effects of registering the request for terminating the contract.

Article 704

The provisions of the general part of the obligations shall apply for the purposes of terminating the contract, in addition to the provisions regulating the special contracts.

TITLE II SPECIAL CONTRACTS

CHAPTER I SALE

GENERAL PROVISIONS

Article 705

The scope of the sale contract is the transfer of ownership over a property item or the transfer of a title against the payment of a price.

Article 706

The acquisition of ownership in the event of a sale, the scope whereof is the acquisition of a property item or title in the future, shall occur as soon as the property item or title are accepted to exist.

Except where the parties wanted to conclude a contract conditional on a suspending ground, the sale shall be ineffective as long as the property item is not accepted to exist.

Article 707

Where the parties have set no price and they did not agree on a way to set it, it shall, in absence of any act of public competent authorities, be assumed that the parties intended to refer to the price applied normally by the seller at the time of concluding the contract.

Where it is about property items having a stock exchange or market value, the price shall be set based on the market lists of the place where the delivery shall occur, or of the place being closest to it.

Where the price has been set based on the weight of property items, it shall, to the effect of avoiding any doubt, be set based on its net weight.

The party may entrust setting the price to a third party, being nominated in the contract or eventually being nominated later.

Article 708

The expenses of the sale contract and the other related expenses shall be incumbent on the purchaser, unless the agreement provides for differently.

Specific bans to purchase

Article 709

Banned to purchase directly, through a third party or in auction shall be:

- a) the persons administering or guarding foreign property items based on the law or on the appointment by the state, the property items they administer or guard;
- b) official persons being assigned to affect the sale by way of foreclosure, the property items that they sell;
- c) judges, prosecutors, bailiffs, notaries and advocates, the property items being under scope of conflicts before the court, wherein they are involved or assume their functions, unless they are co-owners thereon.

Obligations of the seller regarding the sale of the immovable property

Article 710

The main obligations of the seller are:

1. handing the property item over to the purchaser;
2. where the acquisition of the ownership over the property item or of real rights thereon is not an immediate consequence of the contract, he shall hand over the entire pertinent documentation regarding the acquisition of the ownership thereon, under the conditions contained in the contracts or in the law;
3. guarantee the purchaser against deprivation, flaws or inconsistency concerning the qualities of the property item under the contract.

Article 711

The property items shall be delivered as they stand at the moment of concluding the contract. The property items shall be delivered along with their accessories, additional parts and yields since the day of concluding the contract, unless the parties have provided for differently in the contract.

Where the seller is not bound to deliver the property items at another specific place, he shall satisfy his obligation to surrender by way of handing the property items over to the first transporter to carry them over to the purchaser, as long as the sale contract includes the transport of property items.

Where the contract does not include the transport of the property items and it refers to property items defined individually, or in type or quantity, due to be taken from a certain quantity or to be manufactured or produced, and as long as, at the moment of concluding the contract, the parties knew that the property items were situated or they had to be manufactured or produced in a certain place, the seller shall be bound to make the property items available at that place.

In other instances, the seller shall be bound to make the property items available at the purchaser at the place they were situated at the moment of sale or, where such a place cannot be defined, at the place where the seller had his residence or the seat of his activity.

Article 712

The seller shall deliver the property items:

1. on the date set out in the contract or which is determinable based on the contract;
2. at any moment of the time period being set out or being determinable under the contract, unless it emerges from the circumstances that it is incumbent on the purchaser to choose the date;
3. under any circumstances, within a reasonable deadline since concluding the contract.

Article 713

The seller being bound to issue the documents pertaining to the property items, he shall do so at the time, venue and form foreseen in the contract. Upon issuing the documents prior to this moment, he may rectify any shortcomings in them up to the moment foreseen for their issue, as long as the assumption of such a right does not inflict any distress or unreasonable expenditure to the purchaser. He shall in such instances, maintain the right to seek indemnity.

Article 714

Regarding the document-based sales, the seller shall be relieved of his obligation to hand over the sold property items by way of handing over the sales and other documents set out in the contract or law to the purchaser.

Article 715

The seller shall deliver the property items in the quality, quantity and type set out in the contract, as well as put and wrapped up in the way set out in the contract.

The property items shall be deemed not to be in compliance with the contract as long as they are not appropriate for the specific use set out in the contract, unless a different agreement exists. Such a determination not being possible to be made, the property items shall be deemed to be inconsistent with the contract, as long as they are not appropriate to the use that property items of the same type normally are.

The sale being affected based on a model or sample, the seller shall deliver property items being of the same quality as the model or sample.

The contract falling short of mentioning the rules of putting or wrapping up the property items, these property items shall be deemed to be inconsistent with the contract as long as they are not put or wrapped up in the ordinary fashion for property items of the same type or, in absence of such an ordinary fashion, in such a fashion that it is appropriate to preserve and to protect the property items. The seller shall not be held liable for the flaws of property items, whereof, at the moment of concluding the contract, the purchaser was knowledgeable or he was not informed due to his own fault, unless the flaws affect the quality that the property items should have under the contract or referring to the notification of the seller.

Article 716

The seller shall be liable for any flaw or inconsistency, which existed at the moment of cession of risk over to the purchaser, even if the flaw appears subsequent to this moment.

The seller shall be held liable even for the inconsistency being established after the moment indicated in the above paragraph and emerging due to the failure to meet any obligation of his, including the guarantee, whereunder the property items shall, for a period of time, remain appropriate for their normal use or for any specific use, or shall maintain the quality or certain characteristics.

Article 717

The purchaser shall forfeit his right to demur regarding the flaws of the property item, as long as he does not complain with the seller, by way of specifying their nature, within ten days of the detection, unless the parties or the law has set out another deadline.

The purchaser shall, under any circumstances, forfeit his right to demur concerning the flaws of the property item, as long as he does not assume this right within two years of the date when the property items have been delivered, as long as this deadline is not at variance with the duration of a contractual guarantee.

Article 718

The rules contained in the above Article shall be of no avail to the seller, as long as the flaws pertain to facts whereof he is knowledgeable or should be knowledgeable and failing to inform thereof the purchaser.

Article 719

The seller shall deliver the property items, released of any title or claim of third parties, unless it has been foreseen differently in the contract.

Article 720

The purchaser shall inform the seller of the titles or claims of the third parties on the property item, by way of specifying their nature, within a reasonable time period of the moment he becomes knowledgeable or should become knowledgeable, otherwise he shall forfeit the rights provided for in the above Article.

The seller can also not refer to the provisions of the above paragraph, as long as he was knowledgeable of the titles or claims of the third parties, or their nature.

Article 721

The purchaser can suspend the payment of the price, as long as there is reason to fear that the property item or parts thereof may be reclaimed by third parties, unless the seller provides respective guarantees.

The payment can not be suspended, as long as the risk was known to the purchaser at the moment of the sale.

Article 722

Where the delivery of flawed property items consists of an essential failure to perform contractual obligations, the purchaser shall be entitled to seek:

1. at the moment of complaining, provided for in Article 717 of this Code or within a reasonable time period of that denunciation, the delivery of property items, being additional or replacement;
2. eliminating the flaws by way of amends, as long as this can be reasonably considered referring to the concrete circumstances. The request for amends shall be made at the moment of complaining under Article 717 or within a reasonable time period of this complaining;
3. price reduction;
4. declare termination of contract.

The purchaser may set a reasonable time period for the seller to meet these obligations. Depending on the deadline, the purchaser can avail himself of no legal remedies concerning the failure to perform, unless being notified by the seller that the latter shall not meet the obligation within the deadline being set out.

The purchaser shall under any circumstances not forfeit his right to seek indemnity.

Article 723

The delivery of the flawed property items consisting of an insignificant failure to perform the contract, the purchaser may seek:

1. eliminating or amending the flaws in delivered property items; or
2. price reduction.

The purchaser may set for the seller a reasonable time period to meet these obligations. Depending on the deadline, the purchaser may avail of no legal remedies due to this failure to perform, unless being notified by the seller that the latter shall not perform his obligation within the deadline been set.

The seller failing to meet the requirement set out in point 1 of this Article by a deadline set out by the purchaser, the latter may seek the reduction of the price for the above property items.

The purchaser shall, under no circumstances, forfeit his right to seek indemnity.

Article 724

In addition to the termination of the contract on grounds of law as a consequence of the deadline being an essential condition in the contract, the purchaser may, as long as the delivery of the property item has not occurred, declare the contract terminated, as long as the seller does not deliver the property items within the additional deadline set by the purchaser or he declares that he shall not affect the delivery by this deadline.

Article 725

The seller having delivered the property items, the purchaser shall forfeit the right to declare the contract terminated, where:

1. in the event of a delayed delivery, the purchaser has not sought the termination of the contract within a reasonable time period, however, not later than 15 days of his being informed that the delivery has occurred;
2. in the event of failure to perform, other than the delayed delivery, within a reasonable time period, however no longer than 15 days:
 - a) of his being informed or which ought to have been informed of this performance failure;
 - b) following the expiry of the additional time period eventually set out by him under Article 717 of this Code.

Article 726

Where the seller delivers only a part of the property items, or where only a part of delivered property items are in compliance with the contract, Articles 717, 720 shall apply with regard to the missing or non-compliant part.

The purchaser may only declare the contract entirely terminated, where the partial delivery, or being incompliant with its conditions, consists a performance failure of specific or essential significance.

Article 727

Where the purchaser has been deprived of the property item as a consequence of the titles of a third party being asserted thereon, the seller shall be obliged to indemnify under Article 744.

Where the purchaser has been deprived of the property item only partially and under such circumstances he would terminate the contract, the above paragraph shall apply.

Article 728

The purchaser, being sued by a third party claiming titles over the sold property item, shall invite the seller in proceedings. Upon failure to do so while a final decision has been rendered to his disadvantage, he shall forfeit his right of guarantee for eviction, as long as the seller establishes that sufficient grounds existed to reject the request.

The purchaser having voluntarily acknowledged the right of the third party shall forfeit his right to eviction, as long as he fails to establish that no sufficient grounds existed for hindering the acquisition of the property item.

Article 729

Where the purchaser has avoided the acquisition of the property item by way of paying a certain amount of money, the seller may be relieved by way of reimbursing this paid amount, its interest, as well as the entire expenses.

Obligations of the purchaser in the sale of the movable property

Article 730

The obligation of the purchaser to pay the price shall include making arrangements for abiding by the formal requirements of the contracts or specific provisions for making the payment.

Article 731

Where the purchaser is not bound to pay the price in another specified place, he shall pay it at the residence or official seat of the seller, or, where the payment shall occur concurrently with the delivery of the property items or documents, at the delivery place.

Article 732

Where the purchaser is not bound to pay the price at another specified moment, he shall pay it upon the seller making the property items or documents representing them available to him. Where the contract includes the transport of property items, the seller may accomplish the haulage, provided that the property items or documents representing them, be delivered to the purchaser prior to the payment of the price.

Article 733

The purchaser shall pay the price on the date being determined or determinable based on the contract or the law, notwithstanding the request of the seller.

Article 734

The obligation of the purchaser to take over shall be the accomplishment of any act expected of him reasonably to the effect of enabling the seller to do the delivery and the purchaser take over the property items.

Article 735

Where contractually provided for the purchaser to determine the form, size or other characteristics of property items, and upon him failing to make such a determination on the specified date or within a reasonable time period of receiving the request of the seller, the latter may do this determination on his own in compliance with the requirements of the purchaser, whereof he may be knowledgeable. Where the seller does this determination on his own, he shall notify the purchaser regarding the rules of this determination and set out a reasonable deadline within which the purchaser may make another determination. Where upon receiving this notice, the purchaser does not utilise this possibility within the deadline being set out, the determination made by the seller shall be binding.

Article 736

The seller may set out an additional reasonable deadline for the purchaser to meet his own obligations. Other than the situation where the seller did not receive any notification from the purchaser that the latter will meet his obligation within the deadline being set out during this period, the seller may not avail himself of any legal remedies for meeting the obligations. However, the seller shall not forfeit his right to seek indemnity for the delays in performance.

Article 737

The seller may declare the contract terminated:

1. upon the failure of the purchaser to perform an obligation stemming from the contract or the law consisting an incompliance of specific or essential significance;
2. upon the purchaser not meeting his own obligations to pay the price or take over the property items within the additional time period set out by the seller, or declaring that he will not do this by the deadline.

Where the purchaser has paid the price, the seller shall forfeit his right to declare the contract terminated, as long as this is not asserted:

1. in the event of a delayed performance of the obligations of the purchaser, prior to being notified on the enforcement of the obligation;
2. in the event of a different failure to perform than the delayed performance, within a reasonable time:
 - a) of the moment of being notified or which ought to have been notified of such a failure to perform;
 - b) following the expiry of the additional deadline being set out by him, or following the purchaser declaring that he will not meet his own obligations within this additional deadline.

Article 738

Notwithstanding divergent agreements or commercial customs, where the sold property items need to be conveyed from one location to another and the seller is not bound to do the delivery at a location specified in the contract, the risk shall be assigned to the purchaser upon the property items being handed over to the first transporter bound for the purchaser, even if the property items have been loaded falling short of being wrapped up.

Where the seller is bound to hand the property items over to the transporter at a certain location specified in the contract, the risk shall be assigned to the purchaser upon the property items being handed over to the transporter at the specified location. The fact that the seller is authorised to retain the pertinent documents of the property items does not have any impact on the assignment of the risk.

Article 739

Upon the seller incurring an essential failure in performing the contract, the provisions of the previous Article do not hinder the legal remedies available to the purchaser to the effect of performing the contractual obligations.

Joint provisions pertaining the obligations of seller and purchaser

Article 740

One party may suspend the performance of their own obligations as long as, following the termination of the contract, it becomes clear that the other party will not perform the essential share of their obligations, as a consequence of:

1. a serious incapacity to perform or of its insolvency;
2. the fashion they prepare to initiate or continue with the performance of the contract.

Where the seller sells the property items prior to the conditions referred to in the above paragraph appearing, he may demur the delivery of the property items to the purchaser even if the latter is in possession of a document legitimising him to get hold of them.

Such a demurrer shall be of exclusive impact on the relationship between the purchaser and the seller. The party suspending the performance shall forthwith inform thereof the other party and shall resume performance, upon the other party offering appropriate guarantees in connection with their own obligations.

Article 741

In the event of a sale contract containing partial deliveries, one party may, where the failure of the other contracting party to perform any of the obligations regarding a delivery consists an overall performance failure of specific importance of the contract connected to this delivery, declare the contract terminated regarding the same delivery.

Where the performance failure of one of the contracting parties regarding their obligations pertaining to a delivery gives the other party reasonable grounds to hold that an essential performance failure

will occur regarding the upcoming deliveries, they may declare the contract terminated, provided they do this within a reasonable time period.

The purchaser declaring the contract terminated in connection with a delivery may, concurrently, declare the termination even for the deliveries having occurred earlier or for the upcoming deliveries, as long as these deliveries could not, due to their interconnection, be used for the purpose designated in the contract by the parties.

Article 742

In the event of termination of contract, the seller shall give back the price and pay to the purchaser the expenses and payments made legally.

The purchaser has to hand the property item back, as long as the latter did not get lost or destroyed as a consequence of its flaws.

Article 743

Where one party delays the payment of the price or any other amount, the other party shall be entitled to seek the interest on these amounts in addition to the indemnity.

Article 744

The has to give the paid price back to the purchaser, even if the value of the property item has reduced or it has been harmed. Where the value reduction or harm emerge as a consequence of the conduct of the purchaser, the above amounts shall be deducted from the profit that the purchaser has acquired, in addition to the provisions of Article 640.

Article 745

Where the contract has been terminated and as long as, reasonably and within a reasonable time of such termination, the purchaser has made a replacement purchase or the seller has resold the property items, the party seeking the indemnity may acquire the difference between the price foreseen in the contract and the price of the replacement purchase, as well as any other indemnity which might be sought under the above Article.

Sale of property item with reservation

Article 746

Where the sale price is paid in instalments, the purchaser shall acquire the ownership over the property item upon the payment of the last instalment of the price, assuming the risks at the moment of handover. The transfer of ownership with the reservation of the above condition shall be reflected in the contract.

Article 747

The ownership transfer under the above provision may be referred to towards the creditors of the purchaser, as long as it emerges out of a written act containing the specific date prior to the measure of security interest.

Where the sale scope is composed of immovable or registered movable property items, the provisions on registration shall apply.

Article 748

The failure to pay one instalment, not surpassing one eighth of the price, shall not bring about the termination of the contract and the purchaser shall maintain his right to the deadline regarding the subsequent instalments, regardless of any other different agreement.

Article 749

Where the termination of the contract is a consequence of the failure of the purchaser to meet his commitments, the seller shall give back the payments already made, notwithstanding his right to a reward regarding the use of the property item, or any indemnity.

Where contractually foreseen that the payments having been made shall remain with the seller upon an indemnity title, the court may, depending on the circumstances of the case, reduce such indemnity.

Article 749/a

(Added up by Law no 8536, dated 18/10/1999, Article 4)

The rules contained in Articles 746, 747, 748 and 749 shall not apply to the sales of property items with reservation, regarding financial transactions secured by lien, whereof the rules contained in specific laws shall apply.

Sale of immovable property items

Article 750

The sale of immovable property shall occur in the way foreseen in Article 83 of this Code, otherwise it shall be invalid.

Article 751

The conditional sale of immovable property items shall be entered into the registers of immovable property, upon the condition being established.

Article 752

Where an immovable property item is being sold by way of identifying the measurements and a price

set on the basis of a payment for every measurement unit, the purchaser shall be entitled to a price reduction, as long as the actual size of the immovable property item is smaller than the one indicated in the contract.

Where the measurements of the property item turn out larger than the ones indicated in the contract, the purchaser has to pay the price excess, however, he shall be entitled to withdraw from the contract, as long as the excess exceeds one twentieth of the declared size.

Article 753

Where the price is set in connection with the immovable property item as such and not in connection with its size, even if this is indicated, no price reduction or increase is done, unless the real size is smaller or larger in excess of one twentieth of the size indicated in the contract.

Where an additional price has to be paid, the purchaser may choose between the withdrawal from the contract or the payment of the excess.

Article 754

Where two or more immovable property items have been sold based on the same contract for a single and same price, by indicating the size of each of them, and it emerges that the size of one is smaller and of the other bigger, the compensation to the appropriate amount shall be made; the right to the excess or reduction of prices shall be regulated by the provisions contained above.

Article 755

The right of the seller to the excess and of the purchaser to the reduction of the price or withdrawal from the contract shall lapse two years following the delivery of the immovable property.

Article 756

The right of the purchaser to demur regarding the flaws of the immovable property item shall lapse upon the expiry of five years since the moment of the delivery of the property item.

CHAPTER II SWOPPING

Article 757

Swopping is the contract the scope whereof is the mutual transfer of ownership over the property items or other titles from one contracting party to the other.

Article 758

The swopping party having sustained the acquisition of the property item and not intending to re-acquire it shall be entitled to acquire its value, under the specific provisions of sale, as well as the indemnity.

Article 759

The swopping and further additional expenses shall be imposed on both parties in equal shares, unless a different agreement exists.

Article 760

The rules contained in the sales contract shall also apply to the swopping contract, as long as they are in compliance with it.

**CHAPTER III
ENDOWMENT**

Article 761

Endowment is a contract by way thereof one party transfers the ownership over a certain property item or over a real right free of charge to the other party, which the latter accepts.

Waiver of a title prior to being acquired or waiver of succession shall not consist an endowment.

Article 762

Endowment can only contain the current property of the endowing party. Upon including the upcoming property, the endowment shall be invalid concerning this share.

Article 763

The endowment being restricted to recurrent commitments shall lapse upon the death of the endowing party, unless the contract provides for differently.

Article 764

The endowment of immovable property items shall occur by way of public act and registration, otherwise it shall be invalid.

The acceptance may occur in the same act or in a subsequent act. Endowment in such a case shall be considered completed since the moment when the acceptance act has been notified to the endowing party.

Upon movable property items falling under its scope, it shall be valid upon them being specified by

way of indicating their value in the endowment contract.

The endowing and accepting party may revoke their declaration prior to the conclusion of the contract.

Article 765

The endowment may be demurred on the error of grounds, as long as the latter is connected to the fact or the right and the grounds emerge from the act and having induced the endowing party to make the endowment.

Article 766

The endowing party shall, in connection with the failure to perform or the delay in endowment, be liable only for conducts affected intentionally or gross negligence.

Article 767

The endowing party may put the restitution of the endowed property items as a condition, on the grounds of the previous death of the party accepting the endowment or of the previous death of his descendants.

Restitution may only occur to the benefit of the endowing party.

The agreement to the benefit of others shall be considered as not concluded.

Article 768

Endowment may be dependant on a condition or encumbrance. The endowing party shall be bound to perform the encumbrance obligation within the limit of the worth of the endowed property item. Any interested party, in addition to the endowing party, may act to the effect of performing the encumbrance obligation.

The termination of the endowment contract due to the failure to perform the encumbrance obligation may be sought by the endowing party or their heirs, as long as this is foreseen in the endowment act. The illegal or infeasible encumbrance shall be held non-existent, however, it makes the endowment inexistent as long as it consisted the only decisive grounds in the contract.

Article 769

The endowing party shall be bound to provide security to the accepting party regarding the belonging of the endowed property item and the expropriation, which they might sustain from others regarding the endowed property items, in the following cases:

1. if they have promised the security explicitly;
2. where taking over the property item depends on the fraud or their personal attitudes;
3. where the endowment imposes an encumbrance on the accepting party or the endowment is made on grounds of remuneration, these being instances where the security is imposed up to the

worth of the encumbrance or the entirety of promises obtained from the endowing party.

Article 770

The security provided by the endowing party does not extend over the flaws of what has been endowed, unless the endowing party has acted fraudulently, or where a specific agreement exists.

Article 771

The endowing party may, with regard to the endowing acts not being ordinary or not being made against remuneration, seek the revocation of the endowment, as long as the accepting party:

- a) has intentionally murdered or tried to murder the endowing party, their spouse or children, or parents;
- b) unfairly refuses to provide alimony to the endowing party, upon legally being bound to do so. The lawsuit for revoking the endowment shall be brought within one year since the date that the endowing party was notified on the grounds entitling them to seek the revocation of the endowment.

The lawsuit being brought may be pursued even by the heirs of the endowing party or may be brought by the former, as long as the endowing party has died within one year, since the day when the grounds for bringing the lawsuit emerged.

An earlier waiver to bring the lawsuit shall be invalid.

The revocation of the endowment shall not affect the rights being acquired by the third parties over the endowed property item before the lawsuit being brought.

CHAPTER IV SUPPLYING

Article 772

Supplying contract is a contract wherewith one party shall, against the payment of a price, be bound to perform recurrent or continuous supplying of property items to the benefit of the other party.

The supplied property items maybe movable or immovable, while they may be in the form of energy or credit titles.

Article 773

Upon the quantity of the supplies not being determined, it is implied that the agreement refers to the quantity for meeting the normal needs of the party being supplied with up to the moment of the performance of the contract.

Upon the parties setting out just the upper and lower limit for the supplies or for specific services, it shall be incumbent on the party entitled to supplies to determine the appropriate quantity within the limits set.

Where the quantity of supplies shall be set out according to the needs beyond a minimum quantity

set out in the contract, the party being supplied with shall respond regarding the respective quantity according to the needs as long as the minimum quantity is surpassed.

Article 774

Where the price regarding the recurrent supplying shall be set out under Article 707 of this Code, the ending time of the specific supplies and the venue where they have to occur shall be taken into account.

Article 775

The price regarding recurrent supplying shall coincide with the document of specific supplies. The price regarding continuous supplying shall defrayed abiding by ordinary timing.

Article 776

The time period being set out in the contract regarding specific supplies shall be presumed to be set out to the benefit of both parties.

Where one party being supplied with has been granted the right to set out the timing for specific supplies, they shall inform of such a date the supplying party by way of an early notice at a reasonable stage.

Article 777

In the event of the failure by one party to perform their specific obligations, the other party may seek termination of the contract, as long as this failure is of specific significance and capable of harming the trust in the security of the upcoming performances.

Article 778

Where the party being entitled to be supplied with has not performed their obligation and this failure is of insignificant importance, the supplying party may not suspend the performance of the contract in absence of a reasonable advance warning.

Article 779

Where the condition of exclusiveness has been foreseen to the benefit of the supplying party, the other party cannot obtain supplies of the same kind from third parties, nor can they affect, of their own resources, the production of property items consisting the scope of the contract, as long as no different agreement is in effect or the law does not dispose of differently.

Article 780

Where the condition of exclusiveness has been imposed to the benefit of the party being entitled to supplies, the supplying party may not, directly or indirectly, provide supplies of the same kind and consisting of the scope of the contract, in the zone wherein the exclusiveness has been granted and within the contract period.

The exclusiveness condition being contained in a supply contract shall consist an encumbrance condition requiring specific written consent.

Article 781

The party being entitled to supplies shall, upon assuming the obligation to expand the sales of property items whereof it enjoys exclusiveness, be liable for damages being incurred due to the failure meet this obligation in the zone assigned to them, even if they have performed the contract for the minimum quantity being set.

Article 782

Where the duration of supplying has not been set out, each of the parties may withdraw from the contract, by way of notifying the supplying party in advance within the time period being set out by them and, in lieu thereof, within a reasonable time period, taking account of the nature of supplying.

Article 783

The provisions regulating the contract of specific supplies shall also apply to the supply contract, as long as they are not at variance with the above provisions.

CHAPTER V EMPHYTEUSIS

Meaning of emphyteusis

Article 784

Emphyteusis is a contract, whereof one person is granted the right to use and improve an immovable property, against a recurrent, in cash or in kind, remuneration.

Article 785

The duration of emphyteusis shall be set out in the contract.

Article 786

The emphyteusis contract shall be drafted in the form required for the transfer of ownership over

immovable properties.

Rights and obligations of the owner and emphyteusis lessee

Article 787

The emphyteusis lessee shall have full use of the property item as the owner, except the constraints provided for in the contract for the creation of emphyteusis.

However, they may not, in absence of the consent of the owner, use the property item in another designation.

Article 788

Belonging to the emphyteusis lessee shall be the *fructus naturales* being separated, *fructus civiles* where ever becoming due and the titles to use the soil within the bounds set out by law, unless foreseen differently in the contract.

Article 789

Where the property being under emphyteusis gets entirely lost, the emphyteusis shall forfeit while the emphyteusis shall be relieved of the respective obligation for the future.

Where the property gets lost or harmed in obvious and significant parts thereof to the extent that no sufficient income can be obtained to defray the remuneration set out in the contract, a reduction or termination of the contract maybe sought, with the parties performing their mutual obligations.

The request shall be made within one year of the day of the occurrence of the loss or harm of property under emphyteusis.

The emphyteusis lessee shall not seek his release from the obligation to pay the remuneration or its reduction due to non-production or loss of yields, be it even casually.

Article 790

Granting the property to under-emphyteusis shall be forbidden.

Article 791

The emphyteusis lessee may, at any time, seek the termination of the contract and end of emphyteusis, unless provided for differently in the contract.

The emphyteusis lessor may seek the termination of the contract and end of emphyteusis, upon the emphyteusis lessee failing to defray the respective duties for two periods in succession, or harming or failing to maintain and improve the property and evidently failing to meet the obligations stemming from the contract.

Article 792

The taxes and other duties charging on the property shall be imposed on the emphyteusis lessee, unless the law provides for differently.

Where these obligations have contractually been imposed on the owner, they cannot exceed the remuneration set out for the emphyteusis.

Article 793

In the event of alienation of the emphyteusis, the new emphyteusis lessee and the previous one shall jointly be bound to defray the residue of the emphyteusis remuneration, unless the previous emphyteusis lessee has been given notice of the alienation act of emphyteusis.

In the event of alienation of such an entitlement by the owner, the acquiring party may not seek the performance of obligations from the previous emphyteusis lessee, prior to the latter being given notice of the alienation act.

Article 794

Where the contract does not provide for differently, the emphyteusis lessee shall, in the course of duration of emphyteusis or upon its end, be entitled to remove the constructions, further works or cultivated plants being beyond the emphyteusis terms, or which have been bought from the owner, however, always not harming the property and reinstating it in the former situation.

Article 795

Upon the contract being terminated, the emphyteusis lessee shall be entitled to the improvements being affected at the extent of the worth increase of the property, as long as it exists at the time of return.

Article 796

The emphyteusis lessee shall be entitled to the retention of the property item granted under emphyteusis up to the defrayment of credits stemming thereof. Any contrary agreement shall be invalid.

The owner shall be entitled to retain the property items belonging to the emphyteusis lessee until the defrayment of the obligations due to him.

Article 797

Upon the emergence of the need to affect extraordinary renovations to the property granted to emphyteusis the emphyteusis lessee shall be bound to notify thereof the owner and provide to him the opportunity to accomplish them.

The emphyteusis lessor shall not be liable to perform the ordinary reparations.

Article 798

The persons enjoying jointly the emphyteusis title shall be jointly liable for the payment of the remuneration of emphyteusis.

Where the property granted under emphyteusis is divided and they enjoy parts thereof, each of them shall be liable for the obligations stemming from emphyteusis, proportional to the worth of the part each one is enjoying.

Article 799

The provisions of this chapter shall apply even if emphyteusis is enjoyed by one or more legal entities, unless this is prohibited by law.

Article 800

The emphyteusis lessee may, to the use of the property, acquire active easements, as well as encumber it with passive easements, for a duration foreseen in the contract, under all circumstances giving written notice to the emphyteusis lessor.

CHAPTER VI LEASE

GENERAL PROVISIONS

Article 801

Lease is the contract where one party (landlord) is bound to make available to the other party a certain property item, to temporary enjoyment against a certain remuneration.

Article 802

The landlord shall:

1. hand over the property item to the tenant at the specified time and in such a situation as to allow the use whereon they have agreed;
2. take care for maintaining the property item in the same situation;
3. guarantee the peaceful enjoyment during the lease period.

Article 803

The lease contract shall not be entered into for a longer period than thirty years, unless provided for differently by law. Where it has been entered into for a longer period or for an indefinite period, it shall be valid only for the period referred to above.

The lease contract for the buildings as residual tenure shall not be entered into for a longer period than five years.

The time period for the chattels made available as equipment for an immovable property item shall be equal to the lease duration of the latter.

The lease contract for a longer period than one year shall be made in writing.

Article 804

The tenant having performed the obligations stemming from the contract appropriately shall be entitled to a preference against other persons, as long as, upon the expiry of the lease period, a renewed contract shall be entered into.

Rights and obligations of the landlord

Article 805

The landlord shall, during the lease period, accomplish the entire repairing works, with the exception of works for the everyday maintenance, being incumbent on the tenant.

The expenses for guarding and the ordinary maintenance of the chattels shall be incumbent on the tenant, unless the agreement provides for differently.

Where the rented property item needs repairing not being incumbent on the tenant, the latter shall be bound to notify the landlord.

In the event of repairs being urgent, the tenant may accomplish them immediately against the reimbursement of expenses, provided that he notifies thereof forthwith the landlord.

Article 806

Where at the time of handover the rented property item is impaired by flaws diminishing the contracted usage worth evidently, the tenant may seek the termination of the contract or reduction of the lease price, unless he was knowledgeable about the flaws or it was easily discernable.

The landlord shall be bound to pay to the tenant for the damages incurred due to the flaws of the property item, as long as he does not establish that he was, not culpably, not knowledgeable about these flaws at the moment of handover.

Where the flaws of the property item pose a significant risk for the health of the tenant, of his family members or his dependants, the tenant may seek the termination of the contract, even if he had been aware of the flaws.

Article 807

The agreement, wherewith the liability of the landlord concerning the flaws of the property item is excluded or restricted, shall be of no effect, as long as the landlord has concealed them in bad faith to the tenant, or where the flaws are such as they hinder the enjoyment of the property item.

Article 808

The provisions of the above articles are applicable also in the instances of flaws of the property item occurring in the course of the rent.

Article 809

Where in the course of the rent the rented property item needs urgent repair, the tenant shall allow the accomplishment. Where the property item is not repaired within a reasonable time, the tenant shall be entitled to a proportional reduction of the rent amount.

Article 810

The landlord shall be bound to guarantee the tenant against the intrusions diminishing the usage worth and enjoyment of the property item, caused by third parties asserting titles over the same property item.

The landlord shall not be bound to guarantee the tenant against the intrusions of third parties not asserting titles over the property item. The tenant shall in such a case reserve his right to sue against the third parties on his own account.

Article 811

Where the intrusive third parties assert having titles over the rented property item, tenant shall be bound to give immediate notice thereof to the landlord, or he will be bound to pay the damages. Where the third parties take legal action, the landlord shall be bound to participate in proceedings, if summoned.

Rights and obligations of the tenant

Article 812

The tenant shall:

1. take over the property item and use it for the destination designed in the contract and, in lieu of such provisions, according to the destination emerging out of the nature of property item;
2. make payments within the determined timing.

Article 813

The tenant shall be held liable for the loss or damage to the property item occurring in the course of the lease contract.

Article 814

The tenant shall hand the property item back to the landlord in the same situation, in compliance with

the description made by parties in the contract, notwithstanding the ordinary harm or consumption due to the usage of the property item in compliance with the contract.

In lieu of the description in the contract, it is assumed that the tenant has taken over the property item in a good usage situation.

The tenant shall not be liable for the loss or inflicted harm as a consequence of depreciation. The chattels shall be return back where they were taken over.

Article 815

The tenant being in default for handing the property item back shall be bound to defray the payment determined until the hand-back moment to the landlord, in addition to the liability to pay respective damages.

Article 816

Unless provided for differently in the law, the tenant shall not be entitled to remuneration with regard to the improvements made to the rented property item. However, if he had the consent of the landlord granted, the latter shall be bound to pay a reimbursement equal to the smallest amount between the amount of expenditure and the value of the useful increased worth at the moment of delivery. Where the tenant is not entitled to reimbursement, the worth of improvements may indemnify the damage having occurred due to the grave carelessness of the tenant.

Article 817

The tenant having added parts to the rented property item shall be entitled to remove them upon the expiry of the lease period, as long as this is feasible without damaging the property item, unless the landlord agrees to keep these additional parts. The latter shall, in such a case, pay to the tenant an indemnification amount equal to the smallest amount between the amount of expenditure and the value of the additional parts at the moment of delivery.

Where the additional parts cannot be removed without damaging the property item and they consist an improvement of the latter, the rules provided for in Article 810 shall apply.

Article 818

Unless there is a contrary agreement, the tenant shall be entitled to sublease the rented property item, however, he shall not assign the contract to another person in lieu of the consent of the landlord. With regard to chattels, subleasing shall be subject of the consent of the landlord.

Article 819

Sparing his rights to the tenant, the landlord may take legal action against the sublease tenant to seek the sublease price, where of the latter is still owing at the moment of filing the lawsuit and to bind him to meet the entire obligations stemming from the sublease contract.

Declaring the lease contract invalid or its termination shall extend its effects even on the sublease tenants and the decision made between the landlord and the tenant shall extend its effects even on them.

Ending of lease contract

Article 820

The rent limited to a time period set out by parties shall cease upon the expiry of this time period, while declaration of its expiry not being necessary.

The rent not being limited to a time period shall not cease, as long as one of the parties gives notice to the other party that they withdraw from the rent prior to the time period set out under Article 803 of this Code.

Renewal of lease contract

Article 821

The rent shall be renewed as long as, upon its duration expiry, the tenant is granted the use of the rented property item in lieu of the objection of the landlord.

The new rent shall be regulated under the same conditions as the previous one, however, the duration shall be determined similarly to the rents limited to a time period.

Relations to third parties

Article 822

The lease contract may be referred to against the third parties having acquired the rented property item, provided that the contract have a specified date prior to the alienation of the property item.

The provisions of the above paragraph shall not apply to the rent of chattels not registered in public registers, as long as the acquiring party has ensured the possession in good faith.

The rent of unregistered chattels shall not be referred to against the third parties having acquired them, provided within the 9-year period since the effectiveness of the rent.

The acquiring party shall always observe the lease relationship if he has taken over the obligation towards the alienator.

Article 823

Where the lease relationship does not contain any specified date, however, the possession by the tenant in terms of time falls prior to the transfer of ownership, the acquiring party shall not be bound to observe the lease relationship, except the duration pertaining to the lease relationship of indefinite period.

Article 824

Where the tenant is excluded by the acquiring party, since the lease contract did not contain any

specified date prior to the transfer of ownership, the landlord shall be bound to pay the damages.

Article 825

The acquiring party shall, regarding the rights and obligations stemming from the lease contract, be bound to observe the lease contract since the acquisition date.

A. Lease over immovable property items of arable nature

GENERAL PROVISIONS

Article 826

The lease contract over the immovable properties being used for arable cultivation for a time period in excess of nine years shall be subject to notarial certification and it shall be registered with the public register.

Article 827

The landlord shall, by way of an inventory, hand over the immovable property, such as arable land, pasture grounds, residing or accessory buildings auxiliary to the arable or livestock activity, as well as the chattels auxiliary to such activity, to the tenant. The right to object the contents of the inventory and the presumption of its accuracy shall be regulated under the provisions of this chapter.

Article 828

The landlord shall defray the financial duties and taxes charging on the immovable property.

Article 829

The landlord shall permanently be entitled to check the rented property in order to establish whether the tenant is abiding by the agreement referring to the obligations inserted in the contract and to agro-technical nature and rules.

Article 830

The tenant shall defray the lease price in the time and the fashion set out in the contract. The lease price may be in kind or in pecuniary payment.

Right to cultivation

Article 831

The right to cultivation implies the right of one contracting party to decide what is going to be cultivated from one period to the other. This right shall be regulated upon the agreement of the parties.

Where the lease price consists entirely or overwhelmingly out of the arable products, being the products cultivated in the rented immovable property, the right to cultivation shall be vested with the landlord, as long as the contract or the local customs do not provide for differently.

Where the lease price consists entirely or partially out of a pecuniary amount to be given to the landlord, the right to cultivation shall be vested with the tenant, as long as the contract or the local customs do not provide for differently.

Article 832

Where the party having the right to cultivation fails to notify the other party of the cultivation plan at the right time and waiting further for such notice could bring about grave consequences in the arable cultivation, this right shall be transferred to the other party.

Time and expenses of cultivation

Article 833

The tenant shall, under his own responsibility, decide about the time of making the cultivation arrangements, as well as for the agro-technical ways and novelties he is to apply. The tenant may just make recommendations in this regard.

Article 834

The expenditure needed for the cultivation shall be defrayed by the tenant. Where the lease price consists entirely or overwhelmingly of the product being cultivated, the landlord shall pay in advance and free of any interest those expenses which might be needed for the cultivation to the tenant, as long as the latter cannot afford them on their own.

The advance payment shall be repaid to the landlord out of the upcoming harvest.

Defrayment of the lease price

Article 835

The lease price shall be defrayed according to the timing set out in the contract. In absence of such a provision, it shall be defrayed at the end of each contract year, if the price has been set out in pecuniary amount.

The lease contract year shall start on the day when the rented property item is delivered to the tenant.

Article 836

Where the lease price consists of a part of the agricultural products or proportional to it, the pertinent part shall be handed over to the landlord upon his request, after the harvest has been collected. In lieu of such an agreement, the local customs shall be abided by.

Article 837

The tenant may seek the lease price reduction or adjournment of payment, if unforeseeable circumstances or extraordinary events have slowed down production of one year to at least a half compared to the normal production.

Article 838

The tenant may seek the revision of the lease price to his advantage, taking account of the ordinary production, significance of the sustained loss, profits he already had in previous years and those, which he could ensure during the duration of the contract.

Article 839

In the event of the termination of the contract, the tenant is not bound to make available the seeds for the upcoming cultivation, unless the contract or the local customs foresee differently.

Article 840

The tenant does not enjoy the right to acquire the harvest, which at the time of the contract duration expiry, were not collected yet. However, the court may admit that the tenant be reimbursed the expenses which he might have incurred for cultivating the harvest. This reimbursement shall, however, not exceed the worth of the harvest benefitted by the tenant.

B. Lease of productive property items

Article 841

Where the scope of the rent is the enjoyment of a productive, movable or immovable, property item, the tenant shall arrange for its administration in compliance with the economic designation of the property item.

Article 842

Upon the parties not determining the lease duration, each of them may withdraw from the contract by way of giving prior notice to the other at an appropriate time.

Article 843

The landlord shall:

1. hand over the property item along with the accessories at an appropriate situation for the usage and production whereto it has been designated;
2. accomplish, on its own expenses, the extraordinary repair that the property item needs in the course of the lease duration.

Article 844

The landlord may seek the termination of the contract, as long as the tenant does not make available the necessary resources for the administration of the property item, as long as the technical rules are not applied, or the economic designation of the property item changes steadily.

Article 845

The tenant may launch initiatives for boosting the productiveness of the rented property item, suffice they do not incur obligations to the landlord, or not encroach upon his titles.

Article 846

Where, as a consequence of a law or a mandatory decision regarding the productive administration of the property item the contractual relationship changes essentially, to the advantage of one and the disadvantage of the other party, a lease price increase or reduction, or, as appropriate, the termination of the contract may be sought, unless the law provides for differently.

Article 847

The tenant cannot sublease the property item in lieu of the consent of the landlord.
Where the tenant breaches such an obligation, the landlord may seek the termination of the contract.
The right to assign the lease contract to another shall include the sublease, unless parties have disposed of differently in the contract.

Article 848

The lease contract provisions shall apply even to the lease of the productive property items, to the extent they are compatible therewith.

C. Leasing

Article 849

Based on a lease agreement, one of the parties shall be bound to make available to the other party,

for a certain period, a movable or immovable property, against a payment on recurrent periods, set out in connection with the worth of the property item, contract duration and eventually with other elements referring to the agreement of the parties.

The property item shall be acquired or constructed by the landlord in response to the wish and description of the tenant and the latter shall, upon the expiry of the contract duration, be entitled to acquire ownership over it, against the payment of predetermined amount.

The landlord shall be liable to the tenant under the general rules regulating the failure to hand over the property item or the delay in handing over the property item, as well as the flaws of the property item.

It may be provided for in the agreement that the tenant shall, prior to seeking his rights from the landlord, approach the person making the delivery (supplier) regarding his own rights or the rights assigned to him.

CHAPTER VIII

CONTRACTS FOR WORKS AND SERVICES

Contents

Article 850

Contracts for works and services are the contracts where one party (entrepreneur) is, out of their own resources and assuming the risk, bound to accomplish a work or provide a service or an independent accomplishment of works, while the other party is bound to accept it against a price set out in the contract.

Setting out the price

Article 851

Where the parties did not set out any price for the contract of works and services, neither determined the way for setting it out, it shall be calculated based on the existing fees or based on the local customs. In the event of a dispute, it shall be set out by the court.

Making materials available

Article 852

The materials being necessary for accomplishing the work shall be made available by the entrepreneur, as long as the agreement does not provide for differently.

Rights and obligations of the entrepreneur

Article 853

The entrepreneur shall warn the ordering party at the appropriate time of:

a) the material being made available by the ordering party and not being of good quality, as long as this is detected in the course of works and harms the quality of the works;

b) instructions of the ordering party not being possible to be applied or their application renders the works to be unstable or inappropriate;

c) circumstances, being out of the entrepreneur's reach, rendering the work to be unstable or inappropriate.

The entrepreneur shall be liable for the damage sustained by the ordering party, as long as he does not warn him as above.

Article 854

The entrepreneur shall be entitled to relinquish the implementation of the contract and seek damages regarding the damage he has sustained, as long as the ordering party does not replace the materials being of inappropriate or bad quality, or where the instructions for the accomplishment of the work are not changed, despite being warned by him at the right time.

Article 855

The entrepreneur shall be liable for the loss or harm to the material made available to him by the ordering party, unless it is established that the loss or harm has occurred of the material being of bad or inappropriate quality, or due to the implementation of the instructions of the ordering party for the accomplishment of the work, despite the entrepreneur warning the ordering party at the right time.

Article 856

The entrepreneur shall be entitled to seek the remuneration of his labour, where the work, prior to being handed over to the ordering party, gets lost or harmed due to the material being of a bad or inappropriate quality, or due to the implementation of the instructions of the ordering party for the accomplishment of the work, despite the entrepreneur warning the ordering party at the right time.

Article 857

The entrepreneur cannot subcontract the work or services further, in absence of the consent of the ordering party.

Article 858

The entrepreneur may not, in lieu of the consent of the ordering party, change the modes of operation set out in the contract with regard to accomplishing the work.

Even if the consent has been granted, the entrepreneur shall not, as long as the overall price of the work has been set out, be entitled to reimbursement regarding the changes and addenda, unless a different agreement exists.

Article 859

Where to the effect of accomplishing the work according the standards it is necessary for the project to be changed and the parties do not agree thereon, the dispute shall be resolved by the court.

Where the price differences exceed the amount of the respective price by one-sixth, the entrepreneur may seek the termination of the contract and, as appropriate, an appropriate reimbursement of the damages.

Where the changes are significant, the ordering party may withdraw from the contract by way of paying an appropriate indemnification.

Rights and obligations of the ordering party

Article 860

The ordering party may undertake changes to the project, provided that their size does not exceed one-sixth of the respective total price. The entrepreneur shall be entitled to be reimbursed for the main pieces of work having been carried out, even if the price of the work has been set out as a flat price.

The above paragraph does not apply to the changes to the project which, although they abide by the limits set out above, bring about considerable changes to the nature of the work or in terms of quantity of separate categories of pieces of work, provided for in the contract for the accomplishment of the same work.

Article 861

The ordering party shall be entitled to check the accomplishment of pieces of works and their compliance to his own expenses.

Where, in the course of the activity, it is detected that the accomplishment is not continuing in line with the terms set out in the contract and with the standards, the ordering party may set out a reasonable time limit, within which the entrepreneur shall agree to those terms. Where the deadline expires without any positive changes, the contract shall be terminated, while not impairing the right of the ordering party to damages.

Article 862

Where, as a consequence of contingent circumstances, increases or reductions of the cost of materials or labour have occurred, thus determining an increase or reduction of the respective total price in excess of one-tenth, the entrepreneur or the ordering party may seek the revision of the price. This revision may be set out just for the extent of the difference exceeding one-tenth. Where in the course of the works, difficulties of geological, hydric or other nature are encountered, not foreseen by the parties, and making the task of the entrepreneur very difficult, the latter shall be entitled to an appropriate compensation.

Article 863

The ordering party shall be entitled to check the accomplished work before taking it over.

The check shall be carried out by the ordering party, once the entrepreneur has made the appropriate arrangements for the check. Where, despite the invitation extended by the entrepreneur, the ordering party does not carry out the check in absence of reasonable grounds or he fails to notify the outcome of the check within a short time period, the work shall be considered to have been accepted.

Where the ordering party takes over the work without raising any reserves, it shall be considered to be accepted even if the check has not been carried out.

The entrepreneur shall be entitled to seek remuneration at the respective amount, if the work is accepted by the ordering party, unless a different agreement is in place.

Guarantee and denouncing the flaws of the work

Article 864

The entrepreneur shall be bound to offer a guarantee regarding the distortions and flaws of the work. The guarantee shall not be required where the ordering party has accepted the work and the distortions or flaws were known to him or were evident, unless they have been concealed in bad faith by the entrepreneur.

The ordering party shall notify the entrepreneur of the distortions and flaws within 60 days of their detection restricted to a forfeiture term, thus bringing about the lapse of the right. The notification is not indispensable where the entrepreneur has recognised the distortions and flaws or where he has concealed them.

The lawsuit against the entrepreneur shall lapse within two years of the date of delivery of the work. The ordering party being sued due to failure to pay may always make use of the guarantee, provided that the distortions and flaws be notified within 60 days of the date of detection and prior to the expiry of two year-period of the delivery date.

Article 865

The ordering party may seek that the distortions or flaws be eliminated upon the expenses of the entrepreneur or the price to be reduced proportionally, maintaining the right to indemnification in the event the entrepreneur has acted culpably.

Where the distortions or flaws of the work are such as to make it inappropriate for its designation, the ordering party may seek the termination of the contract.

Article 866

Where the scope of the contracts of works and services are buildings or other immovable property items, which of their nature, have a long-term designation and during a time period of ten years since the completion the work collapses in full or in part due to the land or shortcomings in construction or poses evident risk of collapsing or other grave shortcomings, the entrepreneur shall be liable to the ordering and other parties obtaining titles over it, provided that the denunciation be made within one

year of discovery.

The right of the ordering party shall lapse within one year of denunciation.

Article 867

The entrepreneur shall, to the effect of assuming the action of recourse against the sub-entrepreneurs, shall give notice to them of the denunciation within sixty days of being informed and being restricted to a forfeiture term, thus bringing about the lapse of such right.

Termination of contract and legal consequences

Article 868

The ordering party may withdraw from the contract even if the implementation of the work or providing of the service has started, provided that they shall reimburse the entrepreneur for the incurred expenses regarding the works done and the lost profit.

Article 869

Where the contract is terminated since the implementation of the work has become impossible due to a cause out of the reach of each of the parties, the ordering party shall defray for accomplished part of the work within the limits, which is useful for them, proportional to the price set out for the entire work.

Article 870

Where the material made available to the entrepreneur by the ordering party or the work accomplished with this material gets lost or harmed, as well as where the completion of the work becomes impossible for reasons beyond the reach of each of them, however, where the entrepreneur is always in default for delivering the work, the latter shall be bound to reimburse the ordering party for the value of the material and he shall not be entitled to seek payment from him for the works accomplished.

Article 871

Where the work prepared with the material of the entrepreneur gets lost or harmed, as well as where the completion becomes impossible prior to be expiry of the period for the delivery of the work, always for reasons beyond the reach of each of them, the entrepreneur shall not be entitled to seek from the ordering party to pay for the value of the material and the work accomplished.

Article 872

Where the work prepared with the material of the entrepreneur gets lost or harmed, as well as where the completion becomes impossible due to reasons beyond the reach of the entrepreneur or ordering

party, however, the ordering party being in default for taking over the work, the later shall be bound to pay to the entrepreneur the value of the material and work done.

Article 873

The contract for works and services shall not be terminated upon the death of the entrepreneur, unless the person of the entrepreneur was considered to be indispensable for the accomplishment of the work. The ordering party may always withdraw from the contract, as long as the heirs of the entrepreneurs cannot be trusted to accomplish the works or services appropriately.

Article 874

In the event of the termination of the contract due to the death of the entrepreneur, the ordering party shall be bound to pay to the heirs the value of the performed works, building on the specified price, as well as the expenses incurred for enforcing the remaining parts, however, within the limits that the accomplished works and incurred expenses are useful to them.

The ordering party shall be entitled to seek the delivery against an appropriate reimbursement for the value of the prepared materials and the pending plans, to the extent that the provisions regulating the protection of inventions and intellectual property permit.

Article 875

The persons being under the authority of the entrepreneur and having carried out their activity for the accomplishment of the work or provision of the service may take legal action directly against the ordering party to acquire all what belongs to them at the time they file the lawsuit until the ordering party fulfils his obligation towards the entrepreneur.

Referring provision

Article 876

Where the scope of the contract for works and services is providing continuous or recurrent services, the provisions of this title shall apply to the extent that they are compatible with those regarding the supply contract.

CHAPTER VIII TRANSPORT

A. Transport of persons

Article 877

The transporter shall, upon a transport contract for persons, undertake to transport persons from one location to another.

Article 878

In addition to the liability for delays and failure to perform the transport, the transporter shall be liable for the entire calamities affecting the person in the course of the journey and for the loss or harm to the persons of the traveller, as long as he does not establish that he has made appropriate arrangements for avoiding the damage, referring to the specific circumstances of the case.

The conditions restricting the liability of the transporter regarding the risks affecting the traveller shall be invalid.

This provision shall apply also the transport contracts being free of charge.

Article 879

Regarding the transport containing interconnected itineraries, each transporter shall be liable for their own transport.

However, the damage due to the delay or interruption of travel shall be calculated taking account of the entire distance.

B. Transport of property items

Article 880

The transporter shall, upon the transport contract for property items, undertake to transport property items from one location to another.

Article 881

The transporter shall make the transported property items available to the recipient at the location, by the deadline and ways indicated in the contract.

Where the delivery shall not occur at the premises of the recipient, the transporter shall notify him of the arrival of transported property items immediately.

The sender having issued a bill of lading, the transporter shall show it to the recipient.

Article 882

The sender shall indicate to the transporter accurately the name of recipient and location of destination, type, weight, quantity and number of property items, to be transported, and other data being necessary for accomplishing the transport.

Where specific documents are needed for the accomplishment of the transport, the sender shall hand them over to the transporter at the moment handing over the property items to be transported.

The damages stemming from the missing or inaccurate data or due to the failure to handover or inappropriateness of documents shall be imposed on the sender.

Article 883

Upon the request of the transporter, the sender shall issue a bill of loading upon his own signature, the latter containing their own name, residing or employment location, venue and date of issue, the data referred to in the above Article and the conditions set out for the transport.

Where the bill of loading is issued in many counterparts, the number of counterparts has to be indicated in each counterpart. The remaining copies shall lose their validity once the property items are handed over to the owner of the title.

These data shall be reliable as long as the opposite is not established towards the transporter, the latter being bound to check them out, applying the professional diligence.

Upon the request of the sender, the transporter shall issue a second counterpart of the bill of loading upon their own signature, or, as long as the bill of loading has not been issued, a receipt counterpart, containing the same data.

Article 884

The transport contract shall be considered to be concluded of the moment the bill of loading has been compiled and the sender of freight has defrayed the transport payment, unless the contract or law provides for differently.

Article 885

Where the initiation or continuation of the transport is hindered or delayed significantly due to causes not attributable to the transporter, the latter shall immediately ask for instructions of the sender, making arrangements for preserving the property items being handed over to him.

The transporter retains his right to reimbursement of expenses.

Upon the transport being initiated, he shall be entitled to the payment of a price proportional to the distance performed, unless the interruption of transport has occurred due to the full loss of property items as a consequence of casual occurrence.

Upon the circumstances making reception of instructions from the sender impossible, or upon such instructions being inapplicable, the transporter may deposit the property items or, if endangered to be harmed, or upon consisting a considerable risk for the security of the premises where they are stored, he may make arrangements for their sale at the best price.

The transporter shall notify of the storage or sale immediately the sender.

The above rules shall apply even where the recipient is not located or upon refusing or delaying asking to take the property items over, even where a conflict emerges among many recipients or regarding the right of the recipient to take over or to accomplish it.

Article 886

The sender may suspend transporting and ask for having the property items given back, or may order the delivery to another recipient, being different from the one indicated at the outset, or may dispose of differently, always abiding by his obligation to reimburse the expenses and indemnifying the

damages emerging out of the second order.

Where the transporter issued a counterpart of the bill of lading, the supplier cannot dispose of the property items handed over for transport as long as he does not submit to the transporter the counterpart or the voucher indicating the new data.

These have to be signed up even by the transporter.

The sender cannot dispose of the transported property items once they have been made available to the recipient.

Article 887

The rights emerging from the transport contract to the transporter shall be assigned to the recipient, if, after the property items have reached the destination or the deadline for their arrival has expired, the recipient seeks to take them over from the transporter. The recipient may assume the rights stemming from the contract, provided he pays to the transporter the credits stemming from the transport as well as the vouchers associating the transported property items. In the event of a dispute over the amount due, the recipient shall deposit the difference falling in the scope of the dispute with a third party.

Article 888

The transporter handing the property items over to the recipient while falling short of collecting their own credits or amounts of vouchers associating the transported property items, or falling short of seeking the depositing of the amount falling in the scope of conflict, shall be liable to the sender regarding the amount he owes him and he cannot seek the latter to pay his credits. However, the right to sue the recipient shall be in place.

Liability for the loss or harm to property items during transport

Article 889

The transporter shall be liable for the loss or harm to the property items handed over to him since the moment he takes them over to the moment he hands them over to the recipient, unless he establishes that the loss or harm has been as a consequence of a casual occurrence, conduct of sender, recipient or owner of the property items being sent, or due to shrinkage or type or flaws of the property items themselves.

Where the transporter accepts the property items due to be transported without any reserve, it shall be assumed that the property items do not demonstrate any evident wrap-up shortcoming. The transporter shall, upon the request of the recipient, be bound to take down minutes concerning the loss or harm to the property items being handed over for transport.

Article 890

The transporter shall inform the recipient of the harm that the property items may have sustained immediately and prior to the delivery of the property items.

Article 891

Where the property items have got lost or been harmed, the damage shall, unless there is a different agreement, be calculated referring to the price at the time of loading by the transporter. If the property items are harmed, the transporter shall indemnify the damage at the extent of the difference between the value of property items at the moment of loading and the value at the moment of the delivery.

Article 892

The recipient shall, upon their own expenses, be entitled to be ensured about the identity and situation of the transported property items prior to taking them over.

Article 893

Taking over the transported property items without any reserve by way of paying the transporter for his due precludes the possibility of filing a lawsuit which stems from the contract, other than in the event of fraud or grave negligence of the transporter. The rights to seek the partial loss or further harms which cannot be discerned at the moment of take-over shall be upheld, provided that the transporter be immediately notified once the damages are detected and no later than 20 days of the date of take-over.

Article 894

Where the transporter is bound to transmit the transporter property items beyond their lines through other transporters and falling short of taking from the sender a direct bill of lading for the designated location, it shall be assumed that, with regard to the transport beyond his own lines, he assumes the obligations of a forwarding firm.

Transport performed by many transporters

Article 895

Regarding the transport of property items being jointly performed by many subsequent transporters based on a single contract, the transporters shall be jointly liable for fulfilling the contract from the starting to the designated location.

The transporter being sued in connection with a conduct he is not liable to shall be entitled to take legal action against the other transporters, be it severally or jointly. Where it emerges that the conduct having caused the harm has occurred within the distance of one of the transporters, the latter shall be bound to pay full damages; or otherwise, the other transporters shall be obliged to pay damages proportionally to their distance, excluding those transporters establishing that the harm has not occurred within their own distance.

Article 896

The subsequent transporters shall be entitled to declare, either in the bill of loading or in a separate act, the situation of the property items to be transported at the moment when they were handed over to them. In lieu of such statement, it is assumed that they have taken them over in a good condition and in compliance with the bill of loading.

Liability of the sender and of transporter for delays

Article 897

Where the delivery of the property items or the delivery of the property items to the recipient does not occur by the deadline set out in the contract, the party being in default shall pay for the respective damages.

Article 898

The claims emerging out of the transport may be satisfied over the transported property items, as long as these remain with the transporter. The transporter may retain the property item being subject to lien, until the claim is satisfied and he may even sell it according to the rules for selling the pawned items.

Liability of last transporter

Article 899

The last transporter shall represent the previous transporters in collecting the respective claims emerging from the transport contract and for assuming the lien over the transported property items. Upon failing to collect the claims or assume the lien, he shall be liable to the previous creditors regarding the amounts due, except the right to take legal action against the recipient.

Reference provision

Article 900

Regarding the water and airway transports as well as the railway and postal transports, the provisions of this contract shall apply, as long as the specific legislation is not in place.

CHAPTER IX USER CONTRACT

Article 901

Based on a user contract, one party (lender) lends the other party (borrower) free of charge a certain property item to temporal use and this latter party shall be bound to bring the same property item

back by the deadline set out in the contract. Where no such deadline has been set out, the property item shall be returned upon the request of the party having lent it.

Article 902

The user contract shall be considered concluded the moment that the property item has been delivered.

Article 903

The borrower shall be bound to possess and maintain the property item diligently. He may not use it differently from the use set out in the contract or emerging out of the nature of property item. The borrower cannot, in lieu of the consent of the lender, make available the property item to the use of a third party.

Where the borrower does not meet the obligations referred to above, the lender may, in addition to the damages, seek the immediate return of the property item.

Article 904

The borrower shall be liable for the loss or harm to the property item, unless he establishes that the loss or harm to the property item would occur even if it were not given out to the user agreement.

Article 905

Where the borrower uses the property item by way of diverging from the designation of the contract or its nature and for a longer period than appropriate, he shall be liable for the loss having occurred even due to the casual incidence, unless he establishes that the property item would equally get lost, despite being used differently or having been returned by the deadline set out in the contract.

Article 906

The borrower cannot seek the reimbursement of expenses he has made for using the property item.

Article 907

Where during the specified period or prior to the borrower having ceased using the property item under the contract the lender is encountering an emergent and unpredictable need of the property item, he may seek the termination of the contract and the immediate return of the property item.

Article 908

In the event of the death of the borrower, the lender may, even if a deadline having been set out, seek from the heirs the immediate return of the property item.

Article 909

The borrower shall be bound to affect the ordinary repair to the property item received in user agreement upon his own expenses, unless the contract has been provided for differently, while the other repair shall be made by the lender.

Article 910

Where in the course of the user agreement the borrower is, to the effect of maintaining the property item, bound to sustain extraordinary, necessary and emergent expenses and he could not thereof notify the lender, the latter shall reimburse thereof the borrower.

Article 911

Where the property item given out in user agreement contained such flaws as to harm the one using it, the lender shall be bound to indemnify for the damage as long as, although he was aware of the flaws of the property item, he did not notify thereof the borrower.

Article 912

Upon the expiry of the duration of the user agreement or upon the agreement being terminated ahead of time, the borrower shall be bound to return the property item to the lender in the same condition as it was taken over, with the ordinary changes incurred due to the usage, or in the condition foreseen in the contract. As long as the contrary is not established, it is assumed that the property item has been taken over in a good condition.

CHAPTER X ORDERING

GENERAL PROVISIONS

Article 913

Ordering is a contract whereon one party shall be bound to perform one or more legal transactions on the account of the other party.

Article 914

Where the contractor has been granted the power to act on behalf of the contracting authority, the agency provisions shall be applied.

Article 915

The contractor acting on his own behalf shall acquire rights and assume obligations emerging from the conduct applied by the third parties, even if the latter were knowledgeable about the ordering relationship.

Third parties have no connection to the contracting authority. However, the contracting authority may, by way of replacing the contractor, may assume the rights of the credit emerging out of the implementation of the order, unless it may affect the rights enjoyed by the contractor based on the following provisions.

Article 916

The contractor shall be bound to accomplish the tasks or legal transactions having been assigned under the instructions of the contracting authority. He may derogate from these instructions, only if this is indispensable for protecting the interests of the contracting authority and where it is not possible to agree with him in advance.

Article 917

Ordering encompasses not only the arrangements whereof it has been made, but also those measures, which are necessary for their accomplishment.

The general ordering does not exclude those measures, which exceed the ordinary administration of the work, as long as they are not explicitly named.

Article 918

The contracting authority may revendicate the movable property items acquired on his own behalf by the contractor having acted on his own behalf, however not affecting the rights that third parties have acquired regarding the impacts of possession in good faith.

Where the property items acquired by the contractor are immovable properties or movable properties registered in public registers, the contractor shall be bound to return them to the contracting authority.

Article 919

The creditors of the contractor may not assume their rights over the property items that the ordering authority has, in the course of performance of ordering contract, appropriated in their name, provided that whenever it is about movable properties or credits, the ordering has to be established through a documentary evidence containing an accurate date prior to the appropriation, or where it is about immovable properties or movable properties registered in public registers, the registration of the act of revendication or of judicial request intending the revendication referred to above contain a date prior to the appropriation.

Article 920

It is assumed that ordering is based on payment. The extent of payment shall, as long as it is not set out by the parties, be set out based on the professional or customary fees and, in lieu thereof, by the court.

Article 921

The contractor shall be bound to accomplish the order with loyalty and diligently. He shall give to the contracting authority notice of circumstances being created and which might bring about its revocation.

The contractor shall also be bound to accomplish the order personally, unless he has been commissioned to assign it to a third party, as long as he is forced to do so under the circumstances or representing the interests of the contracting authority.

Article 922

The contractor shall make arrangements for preserving the property items sent on behalf of the contracting authority and protect the rights of the latter towards the transporter, as long as the property items pose harming signs or upon arriving late.

Article 923

Unless it has been provided for differently in the agreement, the contracting authority shall be bound to supply the contractor with the necessary means for accomplishing the order and for performing the obligations that the contractor has, to this effect, undertaken on his own account.

Article 924

The contractor shall, upon being thereof asked, be bound to provide to the contracting authority the entire information regarding the accomplishment of the order, along with the supporting documentation, to render account to him once accomplishing the order, as well as returning to him all what he has taken for the purposes of accomplishing the order.

Article 925

The contracting authority shall reimburse the contractor all the advance payments, along with the legal interest of the day when made, as well as defray to him the appropriate remuneration. The contracting authority shall also pay the damages that the contractor has sustained due to the accomplishment of the assignment.

Article 926

The pecuniary claims emerging out the performance of the contractor shall prevail towards the contracting authority and his creditors.

Lapse of ordering **Article 927**

The order shall lapse upon the death, incapacity to act or bankruptcy of the contracting party or contractor, notwithstanding a different agreement or upon emerging differently out of the established circumstances.

However, upon the lapse of order not affecting the interests of the contracting authority, the contractor, their heirs or representatives shall be bound to continue with the administration until the contracting authority, their heirs or representatives are capable of dealing directly with these affairs.

Waiving the order and legal effects **Article 928**

The contractor may waive the contract, however, as long as the contrary has been foreseen in the agreement, he shall be liable for the damages, unless the waiver occurs for a just cause.

The order granted in the interest of the contractor or third parties shall not lapse upon the revocation of the contracting authority, unless it has been foreseen differently in the contract or it occurs for a just cause, however, it does not lapse due to the death or incapacity to act sustained by the contracting authority.

Article 929

Appointing a new contractor for the same agreement or its performance by the contracting authority brings about the deprivation of the order and it shall be effective of the day when the contractors have been notified.

Article 930

Waiving the order against payment and for a definite period of time or for a certain task shall oblige the contracting authority to pay the damages, as long as it has occurred prior to the expiry of the time period or accomplishment of works, unless a just cause exists.

Upon the order being of indefinite period, the waiver shall oblige the contracting authority to reimburse the damages, as long as no prior notice has been made at the appropriate time, unless there is a just cause for revocation.

Article 931

The contractor waiving the order in lieu of any just cause shall reimburse the damages to the

contracting authority. The order being of an indefinite period, the contractor waiving in lieu of any just cause shall be bound to reimburse the damages, as long as he has made no prior notice at the appropriate time.

The waiver shall always be made at such fashion and time that the contracting authority make arrangements for proceeding differently, notwithstanding the case of a significant difficulty on the side of the contractor.

Article 932

Where the order has been granted by many persons by way of a single act and for an issue of a joint interest, the waiver shall not be of any effect as long as it has not been made by all the contractors, notwithstanding the case of a just cause for the waiver.

Article 933

The activities carried out by the contractor prior to taking notice of the lapse of order shall be valid towards the contracting authority and their heirs.

Article 934

The order granted to some persons deemed to work jointly shall lapse as long as the cause of lapsing is connected to just one of the contractors, unless the agreement provides for differently.

CHAPTER XI COMMISSION

Contents Article 935

The agency contract is an order which scope is the purchase or sale of the property items on the account of the ordering party and on behalf of the commissioner.

Rights and obligations of parties

Article 936

The ordering party shall be bound to reimburse to the commissioner the entire expenses he has made for accomplishing the order and the remuneration foreseen in the agency contract, as well as to relieve them of any obligation that the commissioner has assumed towards the others for performing the agency order.

Article 937

The commissioner shall be assumed to be authorised to suffer delays in payments, in compliance with the local customs where the activity is being carried out, as long as the ordering party has not decided differently.

Where the commissioner suffers delays in payments, despite the prohibition of the ordering party or of local customs, the ordering party may seek from him immediate defrayment, notwithstanding the right of the commissioner to benefit the advantages emerging due to the delays in payment.

The commissioner having suffered the delay in payment shall identify to the ordering party the contracted party and the deadline being set, or the action will be considered to have been carried out in lieu of suffering the delay and the above paragraph shall apply.

Article 938

The commissioner shall not be liable for the enforcement on the side of the third party in the contract entered into by the commissioner with him on the account of the ordering party, unless the commission contract provides for differently.

Article 939

The commissioner having performed the legal transaction under more favourable conditions than contained in the instructions of the ordering party all that the commissioner has acquired on this occasion shall be assigned to the benefit of the ordering party.

Article 940

The commissioner shall be entitled to deviate from the instructions received from the ordering party only where, due to the changing circumstances, such a deviation is necessary for the interests of the ordering party, and the commissioner cannot contact the ordering party in advance or, although he has contacted him, no response has been provided at the right time.

Article 941

The commissioner shall be bound to enter into an insurance contract concerning the property items of the ordering party being with him only if foreseen in the commission contract, or if insurance is mandatory under the law.

Article 942

The ordering party may amend the sequence of conclusion of the agreement as long as the commissioner has not concluded it. In such an instance, a part of the remuneration regarding the brokerage shall belong to the commissioner, which is determined taking account of the incurred expenses and work carried out.

Article 943

The commissioner may include in the commission fee for the sale and purchase of goods, titles, currencies and other valuables whereof there is a price list or a price set out by the state authorities, as long as the ordering party has not decided differently, within the same amount, set out at the moment of enforcing the order, the property items he has to purchase or that he has to buy for the property items he shall sell, by way of preserving his entitlement to a brokerage fee.

Reference provision

Article 944

The provisions regarding the ordering shall apply even to the commission, as long as this chapter does not provide for differently.

CHAPTER XII FORWARDING AGENCY

Contents

Article 945

The forwarding agency contract is an ordering contract wherewith the forwarding agent assumes to be bound to enter into, on behalf and in the account of the ordering party, a transport contract and to accomplish the entire auxiliary arrangements.

Article 946

As long as the forwarding agent has not entered into the contract with the transporter, the sender may revoke the sending order, by way reimbursing the forwarding agent of the incurred expenses and providing to him an appropriate remuneration for the service provided.

Article 947

With regard to choosing the itinerary, vehicle and ways of transporting the freight, the forwarding agent shall be bound to abide by the instructions of the ordering party and, in lieu thereof, act in accordance with the latter's best interest.

The remunerations, price reduction and fee-related benefits achieved by the forwarding agent shall be credited to the ordering party, unless the agreement provides for differently.

Article 948

The remuneration amount for the forwarding agent regarding the accomplishment of the order shall, in lieu of any specific agreement, referring to the professional fees and, in lieu thereof, referring to the local customs where forwarding occurs.

The advance payments and reimbursements for the auxiliary services provided by the forwarding

agent shall be defrayed based on the underlying documentation, unless the re-payment or reimbursements have been set out in advance in a lump sum.

Article 949

The forwarding agent undertaking to provide the transport in full or in part with his own or third party vehicles shall assume the rights and obligations of the transporter.

CHAPTER XIII

AGENCY

(Amended by law no 121/2013, Article 10)

Article 950

General provisions

One party shall, based on the agency contract, undertake to conclude, continuously and against payment, the contract in a certain zone on the account of the other party.
Each party shall be entitled to receive from the other party a copy of the contract signed by them.

Article 951

Exclusiveness

The ordering party shall not have simultaneously more than one agent in the same zone or the same group of customers and for the same field of activity.
The agent shall also not process simultaneously, in the same zone or for the same group of clients and for the same field of activity, the contracts of many enterprises being in competition with each other.

Article 952

The rights and obligations of the parties

The commercial agent shall, in the course of carrying out their activities, attend to the interests of the ordering party and conduct himself appropriately and in good faith in order to perform their obligations. The commercial agent shall specifically:

- a) try to negotiate and, as appropriate, enter into the contracts wherewith he has been assigned;
- b) impart to the ordering party any necessary information he is in possession of;
- c) implement the reasonable instructions issued by the ordering party.

The ordering party shall, in their relations with the commercial agent, act appropriately and in good faith to perform their obligations. The ordering party shall specifically:

- a) make available to the commercial agent the necessary documentation pertaining to the contracts in question;
- b) ensure for the commercial agent the information necessary for performing the agency contract, specifically informing the commercial agent by a reasonable time period, once they estimate that the

volume of contracts shall evidently lower than the one that the commercial agent would normally accept.

The ordering party shall also inform the commercial agent by a reasonable time period regarding the acceptance, rejection or failure to enforce a contract that the commercial agent has ensured for the ordering party.

The parties cannot circumvent the application of the provisions of this Article.

Article 953

Remuneration of the commercial agent

In lieu of any agreement between the parties regarding this issue, the commercial agent is entitled to the remuneration that the commercial agents, designated for the contract making up the scope of his agency contract, normally benefit at the location where he is carrying out his activity. Where such a customary practice is missing, the commercial agent shall be entitled to a reasonable remuneration, taking account of the entire aspects of the contract.

Considered to be a remuneration of the agent shall be the entire elements of the payment that he is benefiting and that is depending on the number or worth of the commercial transactions.

In lieu of such customs, the commercial agent shall be entitled to a reasonable remuneration, taking account of all the elements pertaining to the transaction.

Article 954

The commercial agent is entitled to remuneration regarding the contracts completed during the agency contract:

- a) if the contract has been completed as a consequence of his activity;
- b) if the contract has been completed with a third party, whom he had acquired as a customer for the contract of the same type;
- c) if he has an exclusive right concerning a certain geographic zone or a group of customers and the contract has been performed with a client belonging to this zone and/or group.

Regarding a contract completed following the expiry of the agency contract, the commercial agency shall be entitled to remuneration:

- a) if the contract is mainly attributed to their attempts made in the course of the agency contract, regardless whether the contracts have been completed within a reasonable time period, following the expiry of the agency contract; or
- b) if the order of a third party has been received by the ordering party or the commercial agent prior to the expiry of the agency contract.

The commercial agent shall not be entitled to remuneration if they owe to the previous commercial agent, unless it emerges out of the circumstances that it is fair for the remuneration to be shared between the commercial agents.

The remuneration shall become due at the moment and to the extent one of the following circumstances emerges:

- a) the ordering party has enforced the contract;
- b) the ordering party had to have enforced the contract, in compliance with an agreement entered

into with a third party;

c) the third party has enforced the contract.

The remuneration shall be granted later if a third party has enforced their part of the contract or would have performed it, if the ordering party had enforced their own part of the contract.

The remuneration shall be paid no later than the last day of the month ensuing after the semester when it becomes due.

The application of this provision to the detriment of the commercial agent cannot be circumvented by way of agreement.

Article 955

The right to remuneration shall lapse upon the condition and at the extent that:

a) it is decided that the contract between the third party and the ordering party shall not be enforced, and

b) failure to enforce is not due to circumstances attributable to the ordering party.

The commercial agent shall pay back the reimbursement he has received as long as such right does not persist any longer.

The application of this provision cannot be avoided by way of an agreement to the detriment of the commercial agent.

Article 956

The ordering party shall submit to the agent an account extract of the remunerations belonging to him, no later than the last day of the month ensuing the semester, where they become due. The account extract shall indicate the essential elements, on which basis the calculation of remunerations has been made.

The agent shall be entitled to obtaining the entire information, specifically an extract of the accounting books, being available to the ordering party and necessary to verify the amount of paid remunerations.

The application of this provision cannot be avoided by way of an agreement to the detriment of the commercial agent.

Article 957

Ending and terminating the agency contract

Where the agency contract limited to a certain duration continues to be implemented by the parties even following the expiry of its time period, it shall be transformed into a contract of indefinite period. Where the agency contract is of indefinite period, each of the parties may withdraw from this contract, by way of notifying the other party in advance within a certain time period.

The preliminary notice period cannot be shorter than one month during the first year of the contract duration, two months for the current second year, three months for the third current year, 4 months for the fourth year, 5 months for the fifth year and 6 months for the sixth year and for the entire ensuing years. Where the parties agree of longer notice periods, the notice period to be abided by the ordering party shall not be shorter than the time period to be abided by the agent. Except where

the parties have determined differently by way of an agreement, the end of the notice period shall coincide with the last day of the calendar month. The same rules shall apply even for the agency contract of a definite period, transformed into a contract of indefinite period, provided that, in calculating the notice period, account shall be taken of the previous period.

Upon the expiry of the agency contract, the ordering party shall be bound to pay to the agent a proportional remuneration, if:

- a) the agent has acquired new customers for the ordering party or has developed considerably the contracts with the existing customers and the ordering party has still considerable benefits emerging out of the contracts with these clients;
- b) the payment of such remuneration is fair, taking account of all the circumstances, specifically the remuneration that the commercial agent forfeits and emerging out of the transactions with these customers, as well as due to constraining their professional activities, attributed to the existence of a non-competition clause.

The remuneration amount may not exceed an amount equal to the annual remuneration calculated out of the annual average of remunerations acquired by the commercial agent during the recent five years. Where the contract extends over a period shorter than five years, the remuneration shall be calculated over the average of the contract period. The acquisition of the remuneration shall not exempt the agent from the right to eventual reimbursement of damages.

The commercial agent shall be entitled to the reimbursement of the damage having sustained as a consequence of terminating the relations with the ordering party.

This damage emerges specifically where the termination of the contract has occurred under the circumstances:

- a) depriving the commercial agent of the remuneration that he might have acquired upon the appropriate performance of the contract, ensuring concurrently considerable profits to the ordering party with regard to the activity of the commercial agent, and/or
- b) depriving the commercial agent of the possibility to have the costs and expenses he has incurred for performing the contract, under the instructions of the ordering party, reimbursed.

The right to reimbursement also emerges where the agency contract ends as a consequence of the death of the commercial agent and it may be sought by his heirs. The commercial agent shall forfeit the right to reimbursement as long as, within a year of the end of the contract, he does not communicate to the ordering party his intention to have his rights represented.

Article 958

No remuneration shall be paid where:

- a) the ordering party terminates the contract due to a failure in performance being attributed to the agent, which justifies an immediate termination of the contract;
- b) the agent terminates the contract, unless the termination is justified by circumstances being attributed to the ordering party, or due to the age, incapacity or sickness of the commercial agent, whereof he may not reasonably be required to pursue his activity;
- c) the agent does not assume personally the rights and obligations he is bound to under the agency contract, but assigns them to a third party.

Article 959

The parties cannot, to the detriment of the commercial agent, avoid the application of Articles 957 and 958 prior to the ending of the contract.

Article 960

The agreement providing for a restriction of the professional activities of the commercial agent following the end of the contract shall be referred to as the clause of non-competition.

The agreement of non-competition shall be valid if concluded in writing. It shall belong to a geographic zone or group of clients, assigned to the commercial agent, as well as the type of contracts where of the commercial agent was assuming representation, under the agency contract.

The non-competition clause shall be valid for a period no longer than 2 years from the date of the end of the contract.

Article 961

Guarantee agreement signed up by the agent

An agreement whereof the agent guarantees that a customer shall pay the price of goods falling under the scope of the contract, which he has negotiated or concluded, shall be valid, provided and to the extent it has been done in writing, covers just the contracts specifically referred to in the agreement and is reasonable regarding the interest of the parties, specifically regarding the amount of remuneration benefitted by the agent. The amount offered as guarantee shall not be bigger than the remuneration that the agent would benefit under this contract.

CHAPTER XIV

ASSIGNMENT OF PROPERTY TO CREDITORS GENERAL PROVISIONS

Article 962

The assignment of property is the contract wherewith the debtor binds his creditors or some of them to defray for all or some of his activities to distribute among themselves the proceeds to the effect of satisfying their claims.

Article 963

The assignment of property shall occur in writing, otherwise it is not valid.

Where claims are among the assigned properties, the provisions of Articles 502 and 503 of this Code shall apply.

Article 964

The administration of the assigned property shall be incumbent on the respective creditors. They may file lawsuits for all the property related issues connected to that property, including the properties for maintaining the possession.

Article 965

The debtor may not dispose of the property items being assigned to the creditors.

The creditors, whose claims existed prior to the assignment of property and failing to intervene, may seek enforcement over the entire property.

The creditors having been assigned the property may not, as long as the assignment encompasses just some activities of the debtor, seek the enforcement for other activities prior to the defrayment of those related to the assignment of property.

Rights and obligations of parties

Article 966

The creditors having concluded the contract or acceding to it shall pay in advance the necessary expenses for the liquidation and shall be entitled to acquire the amount out of the proceeds of liquidation.

Article 967

The creditors shall share among themselves the proceeds proportional to their respective claims, except the cases of preferences. The remainder shall belong to the debtor.

Article 968

The debtor shall be entitled to check the administration and obtain an account of the financial situation upon the completion of liquidation, or at the end of each year if the administration lasts more than one year.

Where a receiver has been appointed, the latter shall make available the account also to the debtor.

Article 969

The debtor shall be relieved of his creditors on the day when they receive their pertinent share out of the liquidation proceeds and to the extent of the amount they have acquired, unless a contrary agreement exists.

Article 970

The debtor may withdraw from the contract by undertaking to defray the dues and interests to those

he has entered the contract with or having acceded to the contract. The withdrawal shall be of effect on the payment day.

The debtor shall be bound to pay for the expenses of the agency of necessity.

Termination of contract

Article 971

The contract may be terminated if the debtor has, after declaring that he is assigning his entire property, hidden a considerable part of it, or if he has hidden the losses or has asserted losses which did not exist.

Article 972

The contract may be terminated due to failure to perform under the general rules.

CHAPTER XV BROKERAGE

Contents

Article 973

Broker shall be the one arranging for the contact of two or more parties for concluding an agreement, without being related to any of them in cooperation, dependency or representation relationship.

Remuneration

Article 974

In lieu of any agreement or where the professional fees or the customs do not provide for any determination, the amount of remuneration and the proportion thereof weighing on each of the parties shall be set out by the court.

Rights and obligations of parties

Article 975

The right of the broker to remuneration shall emerge upon the brokerage contract yielding its effects, regardless of the subsequent occurrences.

The above paragraph shall not apply upon the brokerage contract being established invalid and the broker being aware of the invalidity grounds.

Article 976

The broker shall be entitled to being reimbursed regarding the expenses from the person on whose

behalf the expenses have been incurred even if the agreement has not been completed, unless the agreement or customs provide for a different solution.

Article 977

The agreement being concluded upon the involvement of many brokers, each of the latter shall be entitled to a remuneration amount.

Article 978

The broker shall inform the parties of the circumstances he is aware of and bearing a connection to the evaluation and certainty of the agreement, which might have an impact on its conclusion. The broker shall be liable for the authenticity of the signature on the documents and for the last assignment of titles transmitted through him.

Article 979

The tasks of the professional broker regarding the agreements for goods or titles shall be:

1. To preserve the types of the goods sold by way of samples, as long as the possibility of dispute regarding the identity of goods persists;
2. to make available to the purchaser a signed list of titles whereon discussion focused, indicating the serial and number;
3. to note down on the respective book the main data of the contract, pertaining to his involvement and, make available copies of each such note signed by him to the parties.

Article 980

The broker may be assigned by one of the parties to represent them in transactions regarding the implementation of the contract being entered into upon his involvement.

Article 981

The broker not disclosing the name of one contractor to the other shall be liable for the implementation of the contract and, upon implementing it, shall assume the rights towards the undisclosed contractor.

Where, following the conclusion of the contract, the undisclosed contractor appears before the other party or they are disclosed by the broker, each of the contractors may file a lawsuit directly against the other, however, not affecting the liability of the broker.

CHAPTER XVI SAFEKEEPING GENERAL PROVISIONS

Article 982

Safekeeping is a contract wherewith one party takes over from the other a movable property item, being bound to safekeep it and to return it in kind.

Article 983

The safekeeping contract shall be considered to be concluded at the moment the property item is handed over for safekeeping.

Article 984

The safekeeping shall be presumed to be against remuneration, unless the professional capacity of the safekeeper or other circumstances indicate a different will of the parties.

Rights and obligations of parties

Article 985

The safekeeper shall keep the property item diligently. He may not use it himself nor give it over to other, in lieu of the consent of the depositor. Upon using the property item in lieu of the consent of the depositor, he shall be liable for the loss or harm to it up to the casual occurrence. Where urgent circumstances so require, the safekeeper may assume safekeeping in a way different from the contract, by way of giving immediate notice to the depositor at the earliest opportunity.

Article 986

The safekeeper shall be bound to give back the property item left in safekeeping at any time that the depositor is seeking, even it a deadline has been set for its return, unless the deadline has been set to the benefit of the safekeeper.

Returning the property item left in safekeeping shall occur at the location where the property item had to be safekept, where, except the performance of parties, the return shall occur upon the expenses of the depositor.

Article 987

Where the safekeeping is free of charge, the court may reduce the extent of damages.

Article 988

The depositor shall be bound to pay to the safekeeper the entire expenses incurred for safekeeping the property item, as long as they have not been included in the remuneration.

Article 989

No deadline being set out for the return of the property item left in safekeeping, the safekeeper shall at any time be entitled to seek his release from the liability of safekeeping the property item, by way of giving notice to the depositor to take back the property item within a reasonable period which he sets out on his own.

Article 990

The depositor shall be bound to reimburse the damage which the safekeeper has sustained due to the hidden flaws of the property item, as long as he did not notify thereof the safekeeper although the he was aware of them.

Article 991

Where the depositors of the property item are more than one and they do not agree regarding the return, it shall be decided by the court.

This is the way of procedure even upon a sole depositor being succeeded by many heirs, as long as the property item is not divisible.

Where the safekeepers are more than one, the depositor shall be entitled to seek the return from the person keeping the property item, the latter being bound to notify thereof the others.

Article 992

Where the property has been deposited even in the interest of a third party and the latter has informed the depositors and safekeepers of his acceptance, the safekeeper shall not be released through returning the property item to the depositor, in lieu of the consent of the third party.

Article 993

The safekeeper shall be bound to return the fruits of the property item, which he has harvested.

Article 994

The heir of the safekeeper having alienated the property item in good faith, being unaware that it should be safekept, shall be bound just to give back the remuneration he has received.

Where this payment has not been done yet, the depositor shall assume the rights of the alienator.

Article 995

The safekeeper shall return the property item to the depositor or persons assigned to take it over, ignoring the need for the depositor to establish him being the owner.

Where the safekeeper is being sued by a person revendicating the ownership over the property item or claiming having titles over it, the safekeeper shall make this dispute known to the depositor and

seek to be exempt from the proceedings by way of indicating the person, otherwise he has to pay damages. In such a case he may be released of his obligation to return the property item, by way of depositing it in the ways set out by the court, upon the expenses of the depositor.

Article 996

Where the safekeeper is precluded of safekeeping as a consequence of a fact he is not culpable, he shall be released from the obligation to return the property item, however, he has to give notice to the depositor of the fact due to which he has lost safekeeping the property item, otherwise he shall pay the damages.

The depositor shall be entitled to acquire what the safekeeper has already ensured as a consequence of the fact and he shall assume the rights belonging to the latter.

Article 997

The credits emerging out of the safekeeping to the benefit of the depositor shall prevail over the property item given out to safekeeping. The safekeeper may withhold the property item, which has been encumbered, until he is reimbursed for his credit and he may sell it under the provisions regulating the lien.

Article 998

Where the property item given out to safekeeping has not been withdrawn by the deadline set out in the contract or following the notice given by the safekeeper, the latter shall not be liable for the loss or harm to the property item occurring following the expiry of the deadline, unless the loss or harm has been caused intentionally or due to grave negligence.

The safekeeper shall, in the above instances, be entitled to seek from the court to grant selling the property item given out to safekeeping under the foreclosure rules.

The proceeds out of the sale of the property item shall, following the deduction of the amounts owned to the safekeeper, be given to the depositor or they shall be deposited on his behalf in the bank.

Reference provision

Article 999

Where falling under the scope of safekeeping are an amount of money or other equal legal tender with the safekeeper having the right to use them, he shall acquire ownership and shall be bound to repay them in the same amount and out of the same kind and quality.

The provisions regulating the loans shall apply in such an instance, as long as they do not run counter the provisions regulating safekeeping.

A. Safekeeping in general stores

Article 1000

The general stores operating as safekeepers shall be liable to store the property items being safekept, unless it is established that the harm has emerged due to accidental incidence, nature of property items or defects of property items or wrapping.

The safekeeper shall, in each case, carry out the necessary activities to restrict the damage.

Article 1001

The safekeeping store shall store the safekept property items separated from each other, while assigning to them distinction marks to indicate the belonging of the property item to the depositor. Provided the explicit consent of the depositor, they shall not mix up among themselves property items as equal legal tender of the same type and quality.

The depositor shall be entitled to inspect the safekept property items and withdraw the samples of use.

Article 1002

Upon the general stores issuing a representation title for the safekept property items, the safekeeper shall give the property items back to the creditor being legitimised based on such title.

Article 1003

The general stores may, upon giving notice to the depositor, start with selling the property items with a higher price, where, upon the expiry of the contract duration, the property items have not been withdrawn, or safekeeping has not been renewed, and always where the property items are running the risk of getting lost or consisting a considerable risk for the safety of the locations where they have been stored.

The proceeds out of the sale shall, following deduction of the cost and remaining expenses of the safekeeping, be handed over to the depositor immediately.

B. Safekeeping in hotel

Article 1004

Hotel owners are liable for the harm, destruction or loss of property items that the clients have brought to the hotel.

Considered brought to the hotel shall be:

1. the property items which are there during the time the client is accommodated there;
2. the property items that the hotel owner, a member of his family or his assistant undertake to keep, outside the hotel premises and during the time period that the client is accommodated;
3. the property items that the hotel owner, a member of his family or his assistant undertake to keep

inside or outside the hotel premises, for a reasonable time, prior or after the client has checked in. The liability referred to by this Article shall be restricted to the worth of that which has been stolen, harmed or lost up to the equivalent of hundred times the rent price of accommodation for one day.

Article 1005

The liability of the hotel owner is unrestricted, if:

1. the property items have been handed over for safekeeping;
2. he has refused to take over safekeeping property items which he was bound to accept. The hotel owner shall be bound to accept the securities, cash or items of value; he may not accept to take them over if it is about dangerous items or, taking account of the significance and administration terms of the hotel, are of significant worth or of major dimensions. The hotel owner may require that the item being given over be wrapped up and sealed.

Article 1006

The hotel owner shall not be liable if theft, harm or loss emerge out of:

1. the client, persons accompanying him, serving him or visiting him;
2. force major;
3. nature of items.

Article 1007

The hotel owner failing to invoke the restrictions provided for in the last paragraph of Article 1004 shall be liable if the theft, harm or loss of property items brought by the client to the hotel have been caused culpably by him, members of his family or his assistants.

Article 1008

In addition to the case provided for in Article 985, the client cannot avail of the above provisions as long as, following the finding of theft, harm or loss, he notifies the fact to the hotel owner with an unjustifiable delay.

Article 1009

The agreement or statements aiming at exempting or restricting the liability of the hotel owner in advance shall be invalid.

Article 1010

The above provisions shall not apply to the vehicles, items left therein or living animals.

Article 1011

Regarding the assessment of liability or setting out the limit of reimbursement, the provisions for safekeeping in hotels shall apply even to the entrepreneurs of public and private health care clinics, institutions for public performances, resort houses, hotels, pensions, restaurants and in all the cases which, due to the specific activity carried out by the entrepreneur, the client cannot take personal care of safekeeping the property items.

Article 1012

The claims of the hotel owner regarding the reimbursement affected to the clients shall have encumbering title over the property items brought by them to the hotel in their possession and continuing to be there.

The encumbering title shall be of effect even to the detriment of the third parties having titles over these property items, provided that the hotel owner was knowledgeable thereof at the time when the items were brought to the hotel.

CHAPTER XVII CHECKING ACCOUNT

Article 1013

The checking account is a contract wherewith the parties are bound to register the mutual crediting transactions in an account, considering it non-disposable and non-repayable until the account is closed.

The remainder of the account shall be repayable upon the expiry of the term. Where the payment has not been requested, the remainder shall be renewed for an indefinite period.

Article 1014

The credits, which cannot be reimbursed, shall be exempted from the checking account.

Where the contract is in place between entrepreneurs, the foreign credits for the respective ventures shall be exempted from the account.

Article 1015

The interest accruing on the respective balance shall be paid at the extent set out in the contract and, in lieu thereof, by the law, however, always within the limits set out by law.

Article 1016

The commission and expenses incurred by the procedures related to depositing shall be paid regarding the checking account. These rights are not part of the account, unless the agreement provides

differently.

Article 1017

Including a credit into the checking account does not exclude the right to file a lawsuit and other rights connected to the transaction wherefrom the credit is emerging.

Upon the above transaction being invalid or declared as such or terminated, the respective amount of money shall be excluded from the checking account.

Article 1018

Where the credit included in the account has been secured by real or personal guarantee, the client shall be entitled to use this guarantee for the existing surplus to his benefit from the closing of the account to collecting the guaranteed credit.

The above paragraph shall apply even if a joint liability exists for the credit.

Article 1019

Unless the parties have provided for differently in the contract, inclusion of a credit towards a third party in the checking account shall be assumed to have been made upon the condition of payment. Where the credit is not repaid, the recipient shall be entitled to proceed with the collection, taking the cash amount from the account, by reintegrating the one having made the depositing. This amount of money may be taken from the account even after unsuccessfully attempting to assume the rights towards the debtor.

Article 1020

Where the creditor of a client has affected the attachment of the eventual remainder of the account belonging to his debtor, the other client cannot affect the rights of the creditor through new depositing. The depositing made in connection with the rights emerging prior to the attachment shall not be considered to be new depositing.

The client to whom the attachment or lien has been encumbered must give notice to the other party. Each of them may withdraw from the contract.

Article 1021

Closing the account by way of defraying the remainder shall occur upon the expiry of the time periods set out in the contract and, in lieu thereof, upon the expiry of each 6-month period calculated from the date of entering into the contract.

Article 1022

The transfer of transactions to the account from one client to another shall be implied to be admitted

as long as it has not been objected by the deadline set out by the parties or by the deadline, which may be considered appropriate referring to the circumstances.

The admission of the transaction does not include the right to object it due to writing or calculation mistakes, omissions or duplications.

The objections shall occur within 6 months of the date of the transfer of the account, regarding the liquidation and closing, which shall be sent by recorded mail. Reinstatement shall not be allowed.

Article 1023

Where the contract has been entered into for an indefinite period, each of the parties may be withdrawn from the contract in each closure of the contract, by way of giving at least a 10-day notice. In the event of Theban of carrying out this activity, incapacity to act, insolvency or death of one of the parties, each of them, or their heirs, shall be entitled to withdraw from the contract.

The termination of the contract shall prohibit including other amounts into the account, however, the payment of the remainder cannot be sought only after the expiry of the period foreseen in Article 1021.

CHAPTER XVIII BANK CONTRACTS

A. Bank deposits

Article 1024

Upon an amount of money being deposited with a bank, the latter acquires the ownership thereon and it shall be obliged to return it in the same currency, upon the expiry of the time period being set out or upon the request of the depositor, taking account of the notice period determined by the parties or banking customs.

Article 1025

Upon the bank issuing a savings bankbook, the depositing and withdrawals shall be noted down in the bankbook.

The notes on the bankbook signed up by the bank employee, assigned to provide this service, consist conclusive evidence between the bank and the depositor.

Any contrary agreement shall be invalid.

Article 1026

Where the savings bankbook is payable to the holder, the bank providing the service to the possessor, unintentionally and not gravely culpably, shall not be liable even if he is not the depositor.

The same provision shall also apply to the case where the bankbook of the deposit payable to the

holder has been issued in the name of a certain person.
The provisions of separate laws are herewith excluded.

Article 1027

The bank admitting and receiving the deposits of the titles under administration shall preserve the titles by way of collecting the interests and dividends, verify the trading in connection with the price or repayment of capital, being diligent for collecting the income in the account of the depositor and generally taking care of the rights pertaining to the title. The collected amounts shall be credited to the account of the depositor.

Where an option right shall be assumed regarding the deposited titles, the bank shall request the necessary instructions of the depositor in time and implement them, if, as appropriate, it has taken the necessary funds. In lieu of such instructions, the option rights shall be sold through the exchange agents on the account of the depositor.

A remuneration at the extent set out in the agreement between parties or the one ordinarily applied shall belong to the bank, in addition to the payment of expenses sustained by it.

Any agreement excluding the bank from safekeeping and administering the titles with a reasonable care shall be invalid.

B. Banking service and security safes

Article 1028

The bank shall, with regard to the security safes services, be liable towards the user regarding the solvency, maintaining the premises and inviolability of the safe, except any casual incidence.

Article 1029

Where the safe is in the name of many persons, access to it shall be acknowledged to each of them unless a contrary agreement exists.

In the event of death of the sole holder or one of these holders, the bank having received the notification may allow the opening of the safe with the agreement of all those being entitled, or in the way determined by the court.

Article 1030

Upon the expiry of the contract period, the bank may, following a notice to the holder or after six months of the expiry, seek from the court authorisation to open the safe. The notification may also occur through registered mail with confirmation.

Opening shall occur at the presence of a notary taking account of the measures that the courts deems necessary. The court may order taking the necessary measures for safekeeping the items found therein, including the sale of some of them, which is necessary to reimburse the expenses sustained by the bank.

C. Opening the bank credit

Definition

Article 1031

Opening the bank credit is a contract wherewith the bank is bound to keep available an amount of money for the other party, for a definite or for an indefinite period of time.

Article 1032

Notwithstanding a different agreement, unless otherwise agreed upon, the credit borrower may use the credit for a couple of times, according to the usage format and he can, by way of further depositing, reinstate his disposability.

Depositing and withdrawals shall occur at the bank where this relationship has emerged, unless it has been provide for differently by the parties.

Article 1033

Where for opening the credit real or personal security has been provided, this does not lapse due to the fact that the credit borrower ceases to be a bank debtor at the moment of ending this relationship. Where the security becomes insufficient, the bank may require a supplemental security or replacement of the guarantor.

Where the credit borrower is not abiding by the requirements, the bank shall reduce the credit proportionally to the extent of reduction of the worth of security or may withdraw from the contract.

Article 1034

The bank cannot withdraw from the contract prior to the expiry of the contract period, except in reasonable cases, or where a different agreement exists. The withdrawal terminates immediately the use of credit, however the bank shall determine a deadline at least of fifteen days for the repayment of the used or additional amounts.

Where granting of credit is for an indefinite period of time, each of the parties may withdraw from the contract through a notice within the period set out in the contract, which is usually applied or, in lieu thereof, within fifteen days.

Ç. Bank advance payment Disposal of pawned property items

Article 1035

In the context of bank advance payment on the lien over the titles or goods, the bank cannot dispose of the property items whereon the lien has been imposed, as long as it has issued a document

wherewith these items have been individualised.

A contrary agreement needs to be established based on documents.

Article 1036

The bank shall, on behalf of the contractor, make arrangements for insuring the goods under lien encumbrance, as long as, taking account of their nature, worth and location, the insurance falls under an ordinary maintenance.

Article 1037

The bank shall, in addition to the obligations it is bound to, be entitled to have the expenses it has incurred for maintaining the goods and titles reimbursed, unless it has committed itself to it.

Article 1038

The contractor may, prior to the expiry of the contract period, withdraw the titles and goods under lien encumbrance, by way of making a proportional payment between the amounts received as advance payment and the other amounts belonging to the bank under the above article, as long as the credit surplus turns out to be covered insufficiently with security.

Article 1039

Where the worth of security is reduced by at least one tenth as compared to its worth at the moment of entering into the contract, the bank may require the debtor an additional security, warning him that upon failure to do so it will proceed with the sale of these goods or titles under lien encumbrance. Where the debtor does not abide by the requirements, the bank may proceed with the sale under the provisions on pawn.

The bank shall be entitled to the immediate payment of the account surplus, which has not been fully covered by the proceeds out of sale.

Article 1040

Where money deposits, goods or titles, which have not been individualised, or whereof the bank has been granted the opportunity to dispose of have been frozen with the securities of one or more credits, the bank shall repay just the amount or a part of the goods or titles exceeding the amount of guaranteed credits. This surplus shall be determined in connection with the worth of goods or titles at the time of the expiry of the credits.

D. Bank transaction in checking accounts

Article 1041

Where the deposit, opening the credit or other bank transactions have been accommodated in the checking account, the client may dispose at any time of the amounts credited to him, unless the deadline reserve has been provided in the agreement.

Article 1042

Between the bank and the client existing a couple of relations or accounts in different currencies, the active and passive surplus shall be mutually be set off, unless a contrary agreement exists.

Article 1043

Where the liquidating account is in the name of many persons, entitled to carry out transactions even individually, these persons shall be referred to as contributory creditors or debtors of the accounts surpluses.

Article 1044

Where the transactions in checking accounts are for an indefinite period, each of the parties may withdraw from the account, giving notice to the other party within the time period set out in the contract, or, in lieu thereof, within 15 days.

Article 1045

The bank shall be liable according to the provisions regulating the works and services contract for performing the obligations assumed by the depositor or another client.

Where this obligation has to be performed where no bank branches exist, it can assign the enforcement to another bank.

Article 1046

Articles 1016, 1019 and 1022 shall also apply to the checking account.

E. Bank discount

Definition

Article 1047

Discount is the contract wherewith the bank, by way of applying the debt interest rate, grants the client the worth of the credit to third parties, which has not ended yet, by way of cession.

Discount of bill of exchange

Article 1048

Where the discount occurs by way of redeeming the bill of exchange or bank check, the bank shall, if payment is not made, enjoy, in addition to the rights stemming from the title, the right to repayment of advance payment.

The provisions of specific laws regarding the check and bill of exchange shall be maintained.

Article 1049

The bank having discounted the documented bills of exchange shall enjoy the same preference over the goods as the recipient has, as long as the representative title is under their possession.

CHAPTER XIX

LOAN

Article 1050

By way of a loan contract one party (lender) grants to the other party (borrower) ownership over an amount of money, or property items determined in number, weight or measure and the borrower shall be bound to repay to the lender the same amount of money, return the same amount of property items of the same type and quality, by the deadline set out in the contract or, where no deadline has been set out, upon the request of the lender.

Article 1051

Unless provided for differently in the agreement between the parties, the borrower shall pay the interest amounts to the lender.

The interest amounts, whereon it has been agreed, shall be paid each year, unless the parties have agreed differently.

Failure to pay the interest amounts consists of an essential failure to perform the obligation.

Article 1052

Where the parties agreed on the repayment of the amount of money or property items in instalments and the borrower does not meet his obligation for the payment of two instalments, or delays the payment of a single instalment for a period of more than three months, the lender may seek the immediate repayment of the borrowed amount of money or return of borrowed items.

Article 1053

Where the return of borrowed property items has become impossible or very difficult due to a reason

not attributed to the debtor, the latter shall be obliged to pay for their worth, taking account of the time and the location where the return would occur.

Article 1054

The lender shall be liable for the harm he has caused to the borrower regarding the flaws of the property items being borrowed, as long as he does not establish that it was not his fault that he was not aware of them.

Where the loan was free of charge, the borrower shall only be liable where, although he knew the flaws, he did not inform the lender thereof.

Article 1055

Whoever promising to grant a loan may refuse meeting this obligation, as long as the property situation of the other party are such that they make it difficult to repay and the lender has not been granted appropriate guarantees.

CHAPTER XX FRANCHISING

Definition Article 1056

The franchising contract contains a relationship of continuous obligations wherewith independent enterprises are bound to each other to encourage and develop the commerce jointly, provide services, performing specific obligations.

Obligations of franchisor Article 1057

The franchisor shall be bound to make available to the franchisee an entirety of standardised of immaterial rights, models, diagrams, profit, trading and organisation ideas, other appropriate knowledge for the development of commerce. While he shall be obliged to preserve this program of obligations against the intrusion of third parties, develop it constantly and support its implementation by the franchisee byway of instructions, information and improvements.

Pre-contractual relations Article 1058

In the context of negotiations to conclude the contract, the parties shall show to each-other the situation of the commercial affairs bearing a connection with the franchise contract and specifically with the program of franchise obligations, as well as inform each other based on the principles of good

faith. They shall be obliged to keep the secrecy of the confidential information, even if the contract is not concluded.

Anyone violating this obligation shall be obliged to pay the damages. This right shall lapse upon the expiry of a three year period since the day of the end of negotiations.

The party having participated at the negotiations may seek the reimbursement of the expenses incurred based on legitimate trust in concluding the contract, which as not concluded due to a malicious conduct by the other party.

Form of contract

Article 1059

The franchising contract shall be documented while, inter alia, containing an agreed definition of the mutual relations of parties, contract duration and other essential elements of the contract. The text of the contract shall contain a full description of the franchise obligations program.

Withdrawal from the contract

Article 1060

The duration of the contract shall be determined upon the agreement of the parties, while abiding by the requirements imposed by the commerce and respective services.

Where no period has been set out in the contract or the period is longer than ten years, each of the parties is entitled to withdraw from the contract, by way of giving the other party a one year notice.

In the event of termination of the contract as a consequence of the expiry of the time period or an withdrawal from it and prior to the submission of the respective report on the affairs, the parties, being oriented by the principles of good faith, shall endeavour to agree on the renewal of the contract under the same or different conditions.

Ban of competition

Article 1061

Even after the end of the contractual relations, the parties are mutually obliged to a fair competition. On this basis, the franchisee may be imposed a ban of local competition for a time period of up to one year.

Where a restriction of their professional activity emerges due to the ban of competition, the franchisee shall be granted an equivalent financial reimbursement, notwithstanding the termination of the contract.

Liability of the franchisee

Article 1062

The franchisor shall be liable for the existence of the rights and knowledge of the franchise obligations program. Where the rights do not exist or where the franchisor violates other franchise obligations culpably, the franchisee shall be entitled to reduce the remuneration. The reduced amount shall be

decided authoritatively by an impartial expert. The franchisee may seek the reimbursement of the damage being caused by the non-existence of the elements of the program of obligations and by the culpable violation of the contract by the franchisor.

Article 1063

The franchisor may seek the reimbursement of the damage caused by the culpable violation of the contract, specifically due to the inappropriate implementation of the franchise obligations program by the franchisee.

Relinquishment

Article 1064

In the event of the violation of contractual obligations putting the purpose and conduct of commerce at risk, the contracting party shall be entitled to relinquish the contract, without any reference to the deadline.

CHAPTER XXI

LIFE ANNUITY CONTRACT

Article 1065

The life annuity may be created against remuneration (by way of lien) through the alienation of movable or immovable properties or an amount of money.

The life annuity may be created even by way of donation or last will, thus abiding by the requirements of the law for such legal transactions.

Article 1066

The life annuity may be granted for the entire life of the beneficiary or another party. It may be created even for the whole life on one or more persons.

Article 1067

Where the life annuity has been created to the benefit of many persons, the share of a deceased beneficiary shall be added to the benefit of others, unless a different agreement exists.

Article 1068

The life annuity contract entered into to the benefit of one person, who at the time of the contract was dead, shall be invalid.

Impact of life annuity contract

Article 1069

The person to whose benefit the life annuity has been created by way of lien may seek the termination of the contract, as long as the issuer does not provide the security or reduces the security provided for in the agreement.

Article 1070

Failure to pay the due instalments of the life annuity does not entitle the person, to whose benefit the annuity has been created, to seek the termination of the contract; however, he may only seek the attachment and sale of all the property items of the debtor, and an amount of the proceeds out of the sale shall be used to ensure the payment of annuity.

Article 1071

The annuity debtor shall not be relieved of his obligation for its payment even if he offers for the repayment of the amount of money or return of the received item, be it even through relinquishing the repayment of the paid instalments.

He shall be bound to pay the annuity for the entire period that it has been created, regardless of the gravity of annuity obligation, unless a different agreement exists.

Article 1072

The life annuity shall be granted to the person, to whose benefit it has been created, proportional to the number of the days he has lived. In case the agreement provides for the advance payment in instalments, each of them shall be acquired on the day that the payment period expires.

Article 1073

Where the life annuity is created on the basis of a title without remuneration, it may be provided (determined) that this is non-attachable.

CHAPTER XXII SIMPLE COMPANY

GENERAL PROVISIONS

Article 1074

The company is a contract wherewith two or more persons agree to carry out an economic activity to

the effect of sharing the profit emerging thereof.

The person being a company member shall make available to this activity money, property items or services.

Article 1075

In the event of a simple company, the contract shall not be subject to any specific form, unless it is required due to the nature of property items being pooled.

The company is simple if it does not demonstrate distinguishing features of the commercial companies regulated in the Commercial Code.

Relations among members

Article 1076

The member shall be bound to pay the contributions set out in the contract of the company. It is assumed that the members shall be obliged to contribute in equal shares, to the extent necessary for attaining the purpose of the company, unless the contract provides for differently.

Article 1077

The company contract maybe amended only upon the consent of all the partners, as long as they have not agreed differently.

Article 1078

The security sought by the member and the subrogation of risks for the property items, whereon the ownership has been granted, shall be regulated in the provisions on the sale.

Article 1079

The member having contributed in credit shall be liable regarding the insolvency of the debtor, within the limits referred to in Article 506 of this Code regarding the case of acquiring the security upon agreement.

Article 1080

Unless the agreement provides for differently, the administration of the company shall be belong to each of the members, separate of others.

Where the administration belongs separately to many members, each of them shall be entitled to object the action with is intended to be carried by another, prior to being accomplished.

The majority of the members set out referring to the share of each member in the profit shall resolve the disputes.

Article 1081

Where administration belongs jointly to a number of members, the consent of the entire administering partner shall be necessary for the commission of the actions of the company.

Upon being decided that for the administration or for certain actions the consent of the majority is needed, this shall be determined under the last paragraph of Article 1080.

In the instances provided for in this Article, the specific administrations cannot carry out any action individually, unless in urgent cases, where a damage threatening the company is to be avoided.

Article 1082

The dismissal of the administration being appointed in the contract of the company may occur for a reasonable ground.

The administrator being appointed by a separate act may be dismissed under the provisions of the works and services contract. The dismissal in such a case may be sought also judicially by each member.

Article 1083

The rights and obligations of the administrators shall be regulated by the provisions on the works and services contract. The administrators shall jointly liable to the company for performing the obligations being assigned to them by law or the contract of the company, unless they establish that they are not culpable.

Article 1084

The members not involved in the administration shall be entitled to be informed by the administrators on the developments regarding the affairs of the company, to be consulted with the documents connected to the administration and be provided with a report subsequent to the works, wherefore the company has been established, being accomplished.

Where the accomplishment of the activity of the company lasts more than one year, the members shall be entitled to be provided with the administration report at the end of each year, unless the contract provides for a different time period.

Article 1085

Notwithstanding a contrary agreement, each member shall be entitled to obtain his share of profits following the approval of the report.

Article 1086

The pertinent shares of members in profits or losses shall be assumed proportional to the contributed amounts. Where the worth of these contributions are not set out by the contract, they shall be

determined by the court. Where the contract provides for only the part of each member in the profits, it is, at the same extent, assumed that the participation in the losses should be determined.

Article 1087

Any agreement excluding one or more members from the participation in profits or losses shall be invalid.

Relations with third parties

Article 1088

The company shall acquire rights and commit itself to obligations through the members having the right to represent it.

In lieu of other provisions in the contract, the representation shall be incumbent on any administrator member and extend on all actions falling under the scope of the company. The changes and forfeiture of representation powers shall be regulated by the provisions on the representation.

Article 1089

The creditors of the company may seek their rights referring to the assets of the company. Regarding the obligations of the company, the members having acted on behalf and on the account of the company shall also be severally and jointly liable and, if a different agreement exists, even the other members.

The agreement shall be made known to the third parties through appropriate media and, upon failure of receiving notice, the restriction of liability or exemption from the joint liability may not be referred to for those not being aware of it.

Article 1090

The member required to pay for the obligations of the company may seek, even if the company is in liquidation, the preliminary enforcement on the assets of the company, by way of indicating the property items whereon the creditor may be reimbursed best.

Article 1091

Anyone becoming a member of a previously established company shall be liable along with the other members for the obligations of the company prior to having obtained the capacity of the member.

Article 1092

The respective creditor of the member may, as long as the company lasts, seek his rights over the profits belonging to the debtor, as well as taking preserving (conserving) measures on the share belonging to the latter in liquidation.

Where the other property items of the debtor are insufficient to pay off the credit, the respective creditor of the member may, in addition, seek the defrayment of the share of his debtor. The share may be defrayed within three months of lodging the request, unless the dissolution of the company has been decided.

Article 1093

No set-off between the obligation of a third party to the company and the credit that he has to the member shall be permitted.

Dissolution of the company

Article 1094

The company shall be dissolved:

1. upon the expiry of the time period;
2. upon attaining the objective of the company or upon the impossibility to attain it;
3. upon the will of all the members;
4. due to other grounds provided for in the contract of the company.

Article 1095

The company contract shall be extended implicitly for an indefinite period of time, if, although the time period provided for in the contract has expired, the members continue to carry out the activity of the company.

Article 1096

Following the dissolution of the company, the administering members shall preserve the administration powers just for urgent matters, until the necessary actions of liquidation are undertaken.

Article 1097

Where the contract does not provide for the way of liquidation of the property and the members are not of the same opinion to determine it, the liquidation shall occur by one or many liquidators, being appointed with the consent of all the partners or, in the event dispute, by the court.

The liquidators may be revoked upon the will of all the members and always by the court upon the grounded request of one or more members.

Article 1098

The liabilities and obligations of the liquidators shall be regulated by the rules set out by the administrators, as long as it has not been provided for differently in the following provisions or by the

contract of the company.

Article 1099

The administrators shall hand over to the liquidators the assets and the documents of the company and submit to them the accounts of the administration for the period following the last reporting. The liquidators shall take over the assets and documents of the company, and draft, along with the administrators, the inventory, which is to reflect the active and passive situation of the assets of the company. The inventory shall be signed up by the administrators and by the liquidators.

Article 1100

The liquidators may carry out the necessary actions for the liquidation and, if the members have not provided for differently, they may sell *en bloc* also the assets of the company and enter into agreements and compromises. They shall represent the company in the judicial proceedings.

Article 1101

The liquidators cannot undertake further actions. Otherwise they shall be personally and jointly liable for the initiated activities.

Article 1102

The liquidators cannot divide the assets of the company among the members, be it in part, as long as the creditors of the company are not paid, or the necessary amounts for paying them off have not been reserved.

Where the funds available are insufficient for the payment of the obligations of the company, the liquidators may require the members to make the deposits which they still owe to the respective limits and, as appropriate, the necessary amounts within the limit of the respective liability, proportional to the part of everyone in losses. To the same proportion shall also the obligation of the insolvent member be divided among the members.

Article 1103

The members having contributed in assets to be used shall be entitled to get it back in the situation it is in. If the items have got lost or harmed due to the grounds attributable to the administrators, the members shall be entitled to the reimbursement of the damage out of the assets of the company, unless a lawsuit may be lodged against the administrators.

Article 1104

After the obligations of the company have been paid off, the remaining assets shall be designated to

pay the shares of contributions. The eventual surplus shall be divided among the members proportional to the share of every one in profits.

The worth of the shares of contributions which are not equivalent in amounts of money shall be determined according to the assessment made in the contract, or, in lieu thereof, according to the value they had at the moment when they were given up.

Article 1105

Where in the agreement it has been foreseen that the division of the property items occurs in kind, the provisions for the division of joint property items shall apply.

Termination of the relation of one member and the company

Article 1106

Any member may withdraw from the company if it has been set up for an indefinite period of time or for the whole life of one of the members.

In addition to this, he may withdraw in the instances provided for in the contract of the company or where a fair ground exists.

In the instances provided for in the first paragraph, the withdrawal shall be communicated to the other members at least three months in advance.

Article 1107

Unless the contract of the company provides for differently, in the event of death of one of the members, the others shall liquidate the share to the benefit of his heirs, unless they prefer to dissolve the company or the heirs take it over independently and they provide the consent.

Article 1108

The expulsion of the member may also occur due to the failure to meet significant obligations emerging from the law or the contract of the company, as well as due to the ban, incapacity or his punishment with a measure including the ban, be it temporary, from official offices.

The member having contributed to the company his work or the enjoyment of a property item may also be excluded due to the eminent inappropriateness to accomplish the work or loss of the item, having occurred due to reasons, which cannot be attributed to administrators.

The member having contributed by way of assignment of ownership over a property item may also be excluded, as long as it gets lost prior to being acquired by the company.

Article 1109

The expulsion shall be determined by the majority of the members, not encompassing into this number the member to be expelled and it shall be effective 30 days of the date when notice was made to the expelled member.

Within this timeframe, the expelled member may file an objection with the court, which may suspend the implementation of the decision.

If the company consists of two members, the expulsion of one of them shall be made by the court upon the request of the other.

Article 1110

Expelled from the company shall also be:

- a) the member being declared bankrupt;
- b) the member to whom a creditor has managed to obtain the right to the liquidation of the share according to Article 1092 of this Code.

The expulsion provided for in the first paragraph of this Article cannot be applied where the bankruptcy of the member is a consequence of the bankruptcy of the company.

Article 1111

Where just one member leaves the company, he and his heirs shall be entitled to just an amount of money representing the worth of his share.

The liquidation of the share shall occur based on the property situation of the company on the day when leaving of the member occurs.

Upon activities being pending, the member and his heirs shall participate at the profits and losses pertaining to these activities. Notwithstanding the provisions of Article 1092, the payment of the share belonging to the partner shall occur within 6 months of his day of leaving.

Article 1112

Where just one member leaves the company, he or his heirs shall be liable to third parties regarding the obligations of the company until the day of his leaving.

His leaving shall be notified to the third parties through appropriate media, otherwise, it cannot be referred to towards the third parties who, inculpably, were unaware thereof.

CHAPTER XXIII INSURANCE

GENERAL PROVISIONS

Article 1113

By way of the insurance contract, one party (insurer) shall, upon the event described in the contract being established, be bound to:

- a) in the event of property insurance, reimburse the other party or a third person, to whose benefit

the contract has been concluded, the damage sustained within the limits of the amount that has been provide for in the contract;

b) in the event of personal insurance, reimburse to the other party or a third person, to whose benefit the contract has been concluded, the insurance amount which has been foreseen in the contract.

The insured shall be bund to pay a premium (insurance price) set out in the contract. The insurer may be a public or private person.

Article 1114

The insurance contract shall be documented, through the insurance certificate (insurance policy) that the insurer issues for the insured, otherwise it is invalid.

Article 1115

The insurance certificate shall specifically indicate:

- a) name of insurer;
- b) name of insured person, in the insurance event, insured property, location where this property is, in the event of property insurance;
- c) the event, upon establishment of which the insurer shall perform the obligation he has assumed in the contract;
- ç) effectiveness and end of insurance contract (insurance period);
- d) time when liability of the insurer starts;
- e) evaluation of property in the instances when this is required for a certain type of insurance; ë) insurance premiums and their payment periods.

Where under the law or based on the contract the reimbursement of insurance or insurance amounts shall be paid not only to the insured person but also to a third person, to whose benefit this contract has been concluded, this condition shall be indicated in the insurance certificate.

Article 1116

Upon the insurance certificate getting lost, the insurer shall, upon the request and expenses of the insured, shall issue a duplicate copy.

Article 1117

The insured shall, upon entering into the contract, inform the insurer of all the circumstances that he is aware of and which are of material interest to determining the nature and extent of risk.

It is said to be of material interest all the circumstances whereof the insurer has inquired the insured in writing about.

The insurance contract entered into while falling short of receiving answers to these questions cannot be invalid due to this fact.

Article 1118

Where, following the conclusion of the insurance contract, it emerges that the insured has intentionally provided inaccurate information in the request or documents being submitted by him based on which the insurance contract has been concluded, the insurer shall, within three months of becoming aware, be entitled to:

- a) change the amount of insurance premium, insurance amount or insurance period;
- b) terminate the insurance contract, as long as such circumstances exist that if the insurer knew, he would not have entered into the contract. In such a case, the insurance premium pertaining to the period needed for terminating the contract, while under all the circumstances the insurance premium to be paid for the first year of the contract, shall not be reimbursed to the insured.

Upon the insurance event being established prior to the period indicated in the above paragraph starting, the insurer shall not be bound to pay the insurance amount.

Upon the insurance contract being entered into for more than one person or property items, it shall remain valid for those persons and property items bearing no reference to the inaccurate statements or non-disclosure.

Article 1119

Declaring inaccurate information in the request or submitted documents, based whereon the insurance contract has been entered into, or falling short of mentioning the information, while upon being established that they were not due to intention or grave negligence, does not consist a cause for terminating the contract, however, the insurer may withdraw from the contract, by way of notifying the insured in writing, within 3 months of becoming aware thereof.

Upon the insurance event being established prior to the insurer becoming aware of the inaccuracy of information or of falling short of mentioning them, or prior to the withdrawal from the contract being declared, the amount owed shall be proportionally reduced to the difference between the amount set out in the contract and those which would have been applied, as long as the true situation of facts were known.

Article 1120

Where the insurance contract is entered into on behalf of or on the account of third parties and the latter are aware of the inaccuracies in statements or falling short of mentioning the risk (insurance event), the provisions of Articles 118, 1119 of this code shall apply.

Article 1121

The insurance contract shall be invalid as long as it is established that the insurance risk has never existed or it has ceased to be prior to the conclusion of the contract.

Article 1122

The insurance risk shall be terminated if the insurance risk ceases to exist prior to the conclusion of the contract, however, the insurer has the right to the payment of the premiums, as long as the termination of existence of the insurance risk has been notified to him or until he has become aware thereof in another fashion.

Article 1123

The insured shall, while the insurance contract is in effect, be bound to notify the insurer of all the changes in the circumstances, of which he has become aware after the conclusion of the insurance contract and which can have an impact in increasing the risk.

Where the insured does not make the above notification, the insurer shall, starting from the moment of the increase of the risk, be entitled to change the extent or insurance premium, insurance amount, insurance period or to terminate the contract.

Where the insured does not admit the change or termination of the contract, he shall be entitled to lodge a lawsuit before the court.

Article 1124

The insurance contract shall enter into effect at 24:00hrs of the day of concluding the contract and it shall end at 24:00hrs of the last day of the contract duration.

Where the contract duration is above 10 years, the parties shall, upon the expiry of this period and as long as no contrary agreement exists, be entitled to withdraw from the contract, by way of making a 6-month notice.

The contract may be extended tacitly once or many times, however, at no case more than two years. This provision shall not apply to the life insurance contract.

Article 1125

The contractor shall be obliged to pay to the insurer the insurance premium by the deadline set out in the contract. Where the premium or the first instalment is not paid by the deadline, the insurance shall be suspended up to 24:00hrs of the fifteenth day following the expiry of the payment period and the insurer shall be entitled to seek the termination of the contract.

Article 1126

Upon the insurance event being established, the insured shall be bound to notify the insurer by the deadline provided for in the contract. Where the insured fails to make such a notice, the insurer shall be entitled not to pay the insurance remuneration or the insurance amount.

Article 1127

The insured of the third person, to whose benefit the insurance contract has been entered, shall be bound to establish that the insurance event has occurred and, in case of property insurance to

establish also the amount of damage, as well as to notify the insurer, upon the latter's request, the entire information he is knowledgeable of and bearing a connection to the insurance event. In the event of the insurance of the person, upon the loss of working capacity being established, the medical expertise shall also be made.

Upon the above conditions not being met, the insurer shall be entitled not to pay the insurance remuneration or the insurance amount.

Article 1128

The insurance reimbursement or insurance amount, which should be paid not to the insured by to the third person, to whose benefit the contract was entered into, cannot be attached in connection with the debts of the insured.

The insurer shall be entitled to withhold from the insurance reimbursement or from the insurance amount the amount, which the insured has to acquire from the same insurance contract (premium etc.).

Article 1129

The insurer may refer towards the person, to whose benefit the contract has been entered into, all the demurrers, which he may refer to towards the insured out of the same insurance contract.

Article 1130

Upon a person entering into an insurance contract on behalf of another, while being short of the authorisation to do this, the latter may admit the concluded contract even following the establishment of the insurance event.

The person having concluded the contract shall be bound to perform the obligation stemming from the contract himself, up to the moment when the insurer has received notice of the admission or non-admission from the person on whose behalf has been concluded.

The insurance price shall be paid to the insurer by the above contractor for the whole period up to the moment when the insurer has taken notice of non-admission of the contract.

Article 1131

The insurer shall not be liable if death or loss of capacity of the insured to work, as well as if loss or harm to property have been caused directly through the acts of war, unless in the insurance contract has been provided for differently.

Article 1132

The conditions about the various types of voluntary insurance of the person and property shall be set out in the contract.

Article 1133

The provisions of this Chapter shall not extend over the mandatory insurance, which is regulated by specific provisions.

The insurance of sea navigation shall be regulated in the Maritime Navigation Code.

Property insurance

Article 1134

The person entering into the property insurance contract or the third person, to whose benefit the contract is concluded, shall have a property interest on the asset being insured, otherwise the insurance contract shall be invalid.

Article 1135

Where following the conclusion of the insurance contract the property interest of the insured or of the third person, to whose benefit the contract has been entered into, lapses, this shall be considered to be terminated.

Article 1136

The insurance amount cannot be higher than the worth of property. This worth may, for some types of insurance, be set out in the insurance contract even by way of assessing the property.

By worth is to be understood the highest value that the property had at the time of establishment of the casual instance.

In the event of insuring the land products, the damage shall be determined in connection with the worth that the products would have at the time of being ripe or when they normally are harvested. Where just one part of the property worth has been insured, the insurance amount cannot be higher than the worth of the property being insured.

Upon the above conditions being infringed, the insurance contract shall be, as appropriate, valid for an amount equal to the worth or the part of the worth of the insured property.

Article 1137

Upon the insured property getting lost or harmed, its worth shall, as appropriate, be reimbursed within the limits of the insurance amount or the shortfall of the worth of the property, unless the insurance contract provides for differently.

The insurer shall be liable for the lost profit only if this is provided for explicitly in the contract.

Article 1138

Upon the insured property getting lost or harmed in part and the incomplete insurance amount has been respectively paid, the remaining property shall be considered insured to the end of the period

set out in the contract for an amount equal to the difference between the insurance amount and the remuneration having been paid.

Article 1139

Upon the insurance amount being smaller than the worth of the insured property, the remuneration of damage shall be set out proportionally to the relationship between the insurance amount and the worth of property being insured, unless the contract provides for differently.

Article 1140

The insured shall be bound to maintain the insured property carefully, abiding the provisions regulating firefighting, and agronomic and veterinary provisions. The insurer shall be entitled to check the insured property and ask the insured to make arrangements for preserving the property appropriately and for avoiding the irregularities having been found out. Upon the insured infringing the obligation referred to above, the insurer shall be entitled to terminate the insurance contract.

Article 1141

Upon the insurance event being established, the insured shall be bound to make all the arrangements depending on him to salvage and maintain the insured property to the effect of getting the damage stopped or reduced.

The insurer shall not be bound to pay reimbursement for the part of the damage which was caused due to the failure by the insured to make arrangements which could be made to salvage and maintain the insured property.

The insurer shall be bound to defray the expenses for the necessary measures which have been taken for salvaging and maintaining the insured property, regardless whether the purpose has been achieved or not, unless the insurer proves that the means applied and expenses incurred have been applied or used carelessly. The insurer shall be liable for the material damages caused on the insured property items by the means applied by the insured to avoid or reduce the harm having occurred at the insurance event, unless he establishes that these means have been applied carelessly, while not being indispensable.

Article 1142

The insurer having paid the insurance reimbursement shall be entitled to seek the repayment of the paid amount by the persons being responsible for having caused the damage.

Article 1143

The Insured shall be relieved of his obligation to defray the insurance reimbursement, as long as the insurance event has been brought about intentionally or due to grave negligence of the insured or of the person to whose benefit the insurance contract has been entered into.

In case of property insurance of persons, the insurer shall be relieved of his obligation to defray the remuneration amount even if the insurance event has been caused intentionally or due to grave negligence of the major members of the family of the insured.

Article 1144

Where the insured property is assigned to the ownership of another person, the insurance contract shall be considered to be terminated. In such a case the paid premium shall be repaid to the insured proportional to the time remaining until the expiry of the insurance contract duration.

Article 1145

Where for one and the same insurance risk separate insurance contracts have been concluded with various insurers, the insured shall notify each insurer of all the insurances.

Where the insured does not give the above notice intentionally, the insurers shall not be bound to defray the damage reimbursement.

Upon the insurance event being established, the insured shall notify all insurers, divulging to each of them the denomination of the other insurers.

The insured shall be entitled to seek from each insurer the reimbursement of the damage they are bound to under the contract, however, the total amounts being paid shall not exceed the worth of the damage.

Article 1146

The insurer having paid the damage amount shall have the right to recourse to other insurers for sharing the respective amount under the respective contracts.

Upon one insurer being insolvent, his part shall be shared among other insurers.

Article 1147

The insurance of goods against the land, water and air transport risks shall include all the damages, which the goods may sustain in the course of the transport, unless the law provides for differently.

Article 1148

The goods insurance contract against the transport risks shall enter into effect at the moment that the goods have been handed over to the transport and shall be in effect until they are delivered to the recipient, unless the contract has provided for differently.

Article 1149

Upon the transported goods being taken over by the recipients while the latter falling short of taking down minutes, the insurer shall not be liable for damages or loss of goods, unless the law provides for

differently.

Insurance of persons

Article 1150

The insurance contract for persons may be entered into in case of the events bearing a connection with the life and working capacity of the insured.

Article 1151

The insurance amount in the insurance contract of the person shall be set out upon the agreement of the parties and under the other provisions regulating insurances.

Article 1152

The insurance contract is valid even where the life of a third person is insured. Determining the person shall occur in the insurance contract, or upon a subsequent written statement, being notified to the insurer, or upon last will.

Article 1153

The insured may provide for in the insurance contract that in case he dies, the insurance amount be paid to a member of his family, to another person, to the state or to another public legal entity.

Article 1154

The insured shall, in the course of the time that the insurance contract is in effect, be entitled to replace the person he has determined for obtaining the insurance amount by another person. To this effect, the insured shall be bound to notify the insurer in writing and to submit the insurance certificate for making the respective notes.

Article 1155

The determination of the person benefiting the insurance amount may be revoked by the contractor in the form and fashion applied for determining him.

The revocation cannot be made by the heirs following the death of the contractor, upon the insurance event being established and the person having declared that he wishes this benefit.

The withdrawal of the contractor and the statement of the beneficiary shall be notified to the insurer in writing.

Article 1156

Determining the person benefiting from the insurance shall, although it may be irrevocable, not be of

effect, as long as it is the case provided for in letter 'a' of Article 771 of this Code.

Article 1157

Upon the person eventually benefiting the insurance amount not being indicated in the insurance certificate and upon the indicated person dying prior to being insured, thus falling short of being replaced by another, or upon him intentionally killing or attempting to kill the insured, the insurance amount shall be paid to the insured and, if the latter has died, to his legal or testamentary heirs.

Article 1158

Upon many persons being determined to benefit the insurance amount and some of them having died prior to being insured, or some of them intentionally killing or attempting to kill the insured, their pertinent part shall be shared among the other persons determined to obtain the insurance amount proportional to the part being apportioned to each of them.

Where the contract does not mention the part of persons determined to obtain the insurance amount, they shall be assumed to be equal.

Article 1159

Changes in profession or activity of the insured shall bring about the lapse of the insurance effect, as long as they increase the risk in such a way that, if such a situation existed at the time of entering into the contract, the insurer would not have concluded it.

If the changes are of such a nature that even if the new situation existed at the time of concluding the contract, the insurer would have entered into the contract for a higher price, the payment of the insurance amount shall be reduced proportionally to the lowest price, set out proportionally to that price which was determined at the outset.

Where the insured notifies the insurer of the above changes, the latter shall, within 15 days, declare whether he shall terminate the contract or reduce the insurance amount or raise the price.

The insured shall, within 15 days, declare whether he accepts the above changes in the contract. Where the insured declares that he does not accept them, the contract shall be terminated.

Article 1160

The insurance amount following the death of the insured being determined to be paid to the person to whose benefit the insurance contract was entered into shall not be included in the legacy of the insured.

Article 1161

The insurance amount emerging out of the insurance contract of the person shall be paid regardless of the amounts which might be paid out of the social insurances.

TITLE III
TRANSITORY AND LAST PROVISIONS

Article 1162

The Civil Code of the Republic of Albania shall be applied to the legal relations emerging following its entry into effect.

Article 1163

Regarding the lapse of lawsuit and adverse possession having started to run prior to the entry into effect of this Code, however, not having expired under the previous provisions, the latter shall apply.

Article 1164

The provisions of this Code regarding the possession shall apply also the possessions having started prior to its entry into effect.

Article 1165

The legal regulation of the periods of time and rent price in the contracts of residences rent shall continue to be made under the previous provisions, until the full liberalisation of this contract by way of specific provisions.

Article 1166

The specific contracts entered into prior to the entry into effect of this Code and continuing to be applied shall be regulated by the provisions of this Code.

Article 1167

The law no 6340, dated 26/06/1981 "On the Civil Code", except the provisions regulating property regime between spouses, law no 2362, dated 16/11/1956 "On social organisations not pursuing economic purposes", law no 7688, dated 13/03/1993 "On joint ownership over residences", law no 7695, dated 07/04/1993 "On foundations", Articles 1 – 15, Decree no 600, dated 22/07/1993 "On lien and mortgage", approved, as amended, with the law no 7753, dated 30/09/1993, shall be repealed.

Article 1168

The Civil Code of the Republic of Albania shall enter into effect on 1 November 1994.

Transitional provision

(Provided by law no. 17/2012, dated 16.2.2012)

For civil cases with the object of compensating non-pecuniary damage to reputation, which are still in process on the day of entry into force of this law, the civil legislation applicable at the time of filing lawsuits for compensation of non-pecuniary damage shall be applied.

Transitional provision

(Provided by law no. 121/2013, dated 18.4.2013)

The provisions on inheritance are applicable only to requests for the issuance of a certificate of inheritance, made after the entry into force of this law. Court cases with the object "request for issuance of certificate of inheritance" shall continue to be reviewed by the competent court, according to the law at the time of filing the request.

The provisions on the agency are applicable to the contracts of the agency, concluded after the entry into force of this law.