



عمارة تجارة وصناعة عُمان
Oman Chamber of Commerce and Industry

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OMAN COMMERCIAL LAW

Royal Decree 55/90



OMAN COMMERCIAL LAW

ROYAL DECREE 55/90

OMAN CHAMBER OF COMMERCE AND INDUSTRY

2019

INTRODUCTION

Oman Chamber of Commerce and Industry has the pleasure to publish this unofficial translation of the Commercial Law issued by the Royal Decree No. 55/90. The provisions and rules of this law regulate the commercial activities in various sectors.

The Chamber accepts no liability for the accuracy of the translation. The Arabic text published in the official gazette is the authentic text.

The Oman Chamber of Commerce and Industry extends its thanks to Messrs Trowers & Hamlin, Legal Consultants for assisting in the preparation of the translation of this law.

Oman Chamber of Commerce and Industry

Fourth Edition - 2019

**ROYAL DECREE NO. 55/90
ISSUING THE COMMERCIAL LAW**

We, Sultan Qaboos bin Said, Sultan of Oman,

After perusal of Royal Decree No. 26/75 issuing the law on setting up of the Administrative Apparatus of the State and the amendments thereto; and

The commercial Registration Law 3/74 and the amendments thereto; and The Commercial Companies Law No. 4/74 and the amendments thereto; and

Royal Decree No. 4/74 issuing the Foreign Business and Investment Law and the Amendments thereto; and

Royal Decree No. 7/74, issuing the Banking Law and the Amendments thereto/ and Royal Decree No. 26/77 issuing the Commercial Agencies Law; and

Royal Decree No. 35/81 issuing the Maritime Law; and

Royal Decree No. 78/86 issuing the Law on the Organization of Brokerage in Real Estate; and

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Royal Decree No. 68/87 issuing the Law on Trade Marks and Trade Description; and Royal Decree No. 35/88 issuing the Law of Muscat Security Market; and

In accordance with the public interest -

HAVE DECREED THE FOLLOWING:

Article 1: The provisions of the attached Commercial Law shall be applicable and all other contradictions will be considered as cancelled.

Article 2: Ministers and all concerned shall implement this Law, each within the scope of competence.

Article 3: This Decree shall be published in the Official Gazette and shall come into force six months after the date of publication.

Issued on: 18 Dhu Al-Hijja 1410 AH
11 July, 1990

Qaboos bin Said
Sultan of Oman

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THE COMMERCIAL LAW GENERAL PROVISIONS

Article 1 The provisions of this Law shall apply to merchants and all commercial activities engaged in by any person even if such person is not a merchant.

Article 2 In defining the rules which apply to merchants and commercial activities, due account shall be taken of legally recognized contracts.

The said contracts shall become effective upon the mere congruence of offer and acceptance unless the Articles of this Code provide otherwise.

Article 3 The principle in respect of commercial contracts is that they may be proven by all means of so doing whatever their value unless the Articles of this Law provide otherwise.

Article 4 If no contract exists or if it exists and is silent with respect to a provision or if a provision contained therein is invalid, the legislative provisions comprised within this and other laws shall apply to all matters which these provisions deal with in word or meaning.

Article 5 If no legislative provisions exist, the rules of custom shall apply with particular or local custom taking precedence over general custom. In the absence of custom, the provisions of the noble Islamic sharia shall apply and thereafter the rules of justice.

Article 6 The meaning of Court in this Law is the Authority for the Settlement of Commercial Disputes or any other Court subsequently formed by law to examine commercial matters.

Article 7 Commercial companies, trademarks, trade descriptions, the Commercial Register, the Oman Chamber of Commerce & Industry and the Muscat Securities Market shall be regulated by their own laws.

Without prejudice to the provisions of the commercial Agencies Law the provisions of Section One of Chapter Five of Book Three of this Law shall apply to commercial agencies, commission agencies and commercial representatives.

BOOK ONE**COMMERCIAL ACTIVITIES... THE MERCHANT****CHAPTER ONE****COMMERCIAL ACTIVITIES**

Article 8 Commercial activities are those undertaken by any person with intent to speculate, even if such person is not a merchant.

Article 9 The following activities in particular shall be deemed to be commercial activities:

1. The purchase of commodities and other material and non-material moveable property with intent to sell the same at a profit whether sold in their original condition or after manufacture or conversion.
2. The purchase of commodities and other material and non-material movable property with intent to hire or lease the same with intent to sub-leasing them.
3. The sale, rent or sub-leasing of the commodities purchased or leased in the aforesated manner.
4. The purchase of real estate with intent to profit from the sale thereof in its original condition or after division and the sale of real estate purchased with such intent.
5. Supply contracts.
6. Employment contracts.
7. Public and private banking transactions, money-changing activities and financial dealings.
8. Brokerage activities (activities of a middleman) and commercial agencies.
9. Commercial papers such as bills of exchange, notes to order and cheques.
10. The incorporation of commercial companies and the sale or purchase of corporate shares or bonds.
11. Public warehouses and pledges on property deposited therein.
12. The extraction of minerals, oils, rocks and other natural resources.
13. The various types of insurance.
14. Public sites and premises such as public playgrounds, cinemas, hotels, restaurants and auction rooms.

15. Public utility concessions such as the distribution of water, electricity and gas, postal communications, telecommunications and the like.
16. Land, sea and air transport.
17. Business agencies, tourist offices' import and export.
15. Activities related to printing, publishing, the press, broadcasting and television, news or picture transmission, advertisements and the sale of books.
19. The establishment of factories, even if related to agricultural investment, and the undertaking of construction and manufacture.
20. Activities related to building and construction and to altering, renovating and demolishing buildings.

Article 10 All activities related to maritime and air navigation shall be deemed to be commercial activities, particularly:

1. The construction of ships or aircraft and the sale, purchase, charter, leasing or repair of the same.
2. Contracts pertaining to the wages and salaries of a ship's master and crew, navigators of aircraft and all those employed thereon.
3. Lending and borrowing.
4. Maritime and air transportation and all related processes such as the purchase or sale of the requisites thereof in terms of supplies, tools, stores, fuel, ropes, sails provisions and aircraft supply materials.
5. The various types of sea and air insurance.

Article 11 Activities relating to or facilitating the commercial transactions stated in the previous Articles shall be deemed to be commercial activities as well as all activities undertaken by merchants for commercial needs.

Article 12 The principle in respect of a merchant's contracts and obligations is that they shall be commercial unless otherwise indicated.

Article 13 If a contract is commercial in respect of any of the two contracting parties, the provisions of the Commercial Law shall apply to the obligations arising from such contract on both, unless otherwise indicated.

Article 14 The following shall not be deemed commercial activities:

1. The production of a work of art by an artist himself or by his use of the services of workers and the sale thereof.
2. The printing and sale by an author of his work.

- Article 20** Individuals who engaged in a minor profession or trade in which they rely mainly on their own work input such as travelling salesmen, small shop owners and manual craftsmen shall not be subject to the requirements for merchants in terms of commercial books and preparing a final accounts statement and balance sheet. Nor shall they be liable to entry in the Commercial Registry or to the provisions on bankruptcy and preventive composition. A decision defining the minor professions and trades shall be issued by the Minister of Commerce & industry.
- Article 21** Any person reaching eighteen years of age shall be considered as competent to engage in commerce, provided that there is no legal impediment related to him personally or related to the type of commercial activities practiced by him.
- Article 22** Where a minor has funds in a business, the Court may order that his funds be liquidated and withdrawn from such business or that he continues, as the interests of the minor require, and in compliance with the provisions of his national law where necessary. Where the court orders continuation in the business, it may grant the representative of the minor a general or restricted power to undertake all the necessary activities therefore; such power shall be entered in the Commercial Register and published in the Official Gazette. The minor shall only be liable to the amount of his funds as used in the business. He may be declared bankrupt; however, such bankruptcy shall not include funds other than those used in the business and shall have no ensuing effect on the minor. The Court may annul the aforesaid power where there is serious cause to fear mismanagement by the attorney without this resulting in damage to bona fide third parties. The Secretariat of the Court must, within twenty-four hours subsequent to the order being issued for cancellation of power of attorney, notify the Secretariat of the Commercial Register to be entered in the Commercial Register and published in the official Gazette.
- Article 23** Without prejudice to the provisions of Article 21, the aptitude of a woman to engage in commerce shall be subject to the law of the country of which she is a national.
- Article 24** Non-omanis may not engage in commerce in the Sultanate of Oman unless permitted to do so according to the provisions of the laws in force within the Sultanate.
- Article 25** A foreign company may not establish a branch in the Sultanate of

Oman or engage in commercial activities therein save through an Omani agent who is a merchant and according to the conditions specified in laws.

Article 26 The following persons may not engage in commerce:

First: Any merchant who has been declared bankrupt during the first year of his business unless he has been discharged.

Secondly: Any person who has been convicted in a bankruptcy offence of deception, negligence, commercial fraud, theft, imposture, breach of trust, forgery or use of forged documents unless he has been discharged.

Any person who contravenes this prohibition shall receive a penalty of imprisonment for a period not exceeding one year and a fine not exceeding two hundred Omani Rials or either penalty. In all instances, the place of business shall be ordered to close.

CHAPTER THREE

COMMERCIAL BOOKS

Article 27 Any person proved to have the capacity of merchant according to the provisions of this Law must maintain such commercial books as required by the nature and importance of his trade in a way that accurately indicate his financial status.

Article 28 A merchant must maintain at least the following two books:

1. A day-book maintaining a daily record of all activities related to his commercial enterprise and monthly record of his personal withdrawals.
2. A stock book which must be set in order at least once annually. Merchants must retain a true copy of the original of all correspondence and cables sent with relation to his commercial activities. Similarly, all correspondence, cables, invoices and other documents received and related to his commercial activities must be retained.

Persons engaged in a small trade or profession as stipulated under Article 20 of this Law and merchants whose capital does not exceed ten thousand Omani Rials shall be exempted from such obligations.

Article 29 Details of unsold goods at the end of the financial year must be recorded by the merchant in the stock book or to be recorded in total if the details thereof are included in separate books and lists: in this case such books and lists shall be deemed to be an integral part of the said stock book.

Similarly, a copy of the balance sheet of the merchant for each financial year shall be recorded in the stock book unless a special ledger is allocated for such purpose.

Article 30 The pages of commercial books must be numbered and devoid of any blanks or writing in the margins or erasures or interlineation. When the pages are exhausted and at the close of each financial year, the merchant must submit such books for endorsement accordingly and a report containing the final account and the balance sheet should also be submitted.

The Minister of Commerce & Industry shall issue a decision determining the body competent to endorse commercial books and the required procedures therefor.

Article 31 Merchants and their heirs must keep daybooks and stock books for at least ten years after they have been closed. They must also keep the correspondence, documents and copies referred to in Article 28 for a period of five years.

Article 32 When examining a case, the Court may on its own initiative or at the request of a litigant have the commercial books and papers presented for examination and to make inferences from these as it deems fit regarding the subject matter of the case.

Article 33 The compulsory commercial books shall provide evidence in favour of the merchant who owns them against the merchant who is his opposing litigant if the dispute relates to a commercial activity and if the books are maintained systematically according to the preceding rules. Such evidence shall be nullified on evidence to the contrary which may be taken from the systematically maintained commercial books of the opposing litigant.

Article 34 The compulsory commercial books, whether or not systematically maintained, shall provide evidence against the merchant who owns them if his opposing litigant, whether or not a merchant, rests his case on the same provided that the entries which are in the interest of the owner of such books shall also be considered as evidence in his favour.

- Article 40** A trade name shall be registered in the Commercial Register according to the provisions of the law. Once it has been registered, no other merchant may use such name in the type of commerce which he pursues. Where the name and surname of the merchant are similar to the trade name entered in the Register, the merchant must supplement his name with particulars which distinguish it from the name already registered.
- Article 41** A merchant must carry out his commercial activities and sign the documents related thereto in his trade name which he must display at the entrance to his concern.
- Article 42** A trade name may not be dealt in independently of a commercial concern. A dealing in a concern, however, shall not include the trade name unless implicitly or expressly stipulated.
- Article 43** A person to whom the ownership of a commercial concern is transferred may not use the trade name of his predecessor unless such name devolves to him or the predecessor allows him to use the same. In all instances, he must add particulars to such name which indicate the transfer of ownership. Where the predecessor agrees to the use of the original trade name without addition, he shall be liable for obligations contracted by the successor under such name where the successor fails to fulfill such obligations.
- Article 44** A person who owns a trade name belonging to a commercial concern shall succeed his predecessor in respect of the obligations and rights which ensue under such name. Any agreement to the contrary shall not apply in respect of third parties unless recorded in the Commercial Register or unless the interested parties are so advised. Liability for the obligations of the predecessor shall lapse five years as from the date on which the commercial concern is transferred.
- Article 45** A person to whom the ownership of a commercial concern is transferred to the exclusion of its trade name shall not be liable for the obligations of his predecessor unless there is an agreement to the contrary which is recorded in the Commercial Register.
- Article 46** The names of commercial companies shall comply with the legal provisions pertaining thereto. The company may retain its first trade name without amendment if a new partner joins or if a partner leaves whose name was included in the company name provided that such partner or his heirs agree to retention of such name.

goods, material items and non-material items. Out of the price paid, a deduction will be made first to the cost of the goods. Then to the cost of the material items and then to the cost of the non-material items even if agreed otherwise.

Article 53 A sale contract for the sale of a commercial concern shall be declared by being entered in the Commercial Register. Such registration must take place within one month of the date of sale.

Such registration shall take precedence over other registrations (elsewhere) in respect of the same concern which is purchased at the same time. The registration shall guarantee that the vendor retain a lien for five years as from the date thereof, but such registration shall be deemed invalid if not renewed during the said period: The registration shall be deleted with the mutual consent of the parties concerned or pursuant to a final judgment.

Article 54 The lien of the vendor shall only apply to those parts of the premises stated in the registration. Where the subject matter of the lien is not precisely defined, it shall only apply to the name of the commercial premises, the right to lease, contacts with clients and goodwill.

Article 55 The purchaser must retain the price in his possession for a period of ten days following completion of the declaration procedures. Any creditor of the vendor may during the aforesaid period raise an objection to what is in the possession of the purchaser and is to satisfy the price to be paid to the vendor.

A creditor may make such objection even if his debt is not to mature or if he has no executive document.

When the objection is registered, the purchaser must withhold the price from the vendor, failing which he shall be personally liable for the debt.

Where the period of the objection expires and the debts of the objecting creditors are less than the price, the purchaser must deposit the equivalent of the debts of the objecting creditors with the Court Treasury and pay the remainder to the vendor.

Article 56 Within ten days of the declaration of sale, creditors of the vendor may apply for the sale of the commercial premises by auction should they wish to increase the price by ten percent in the event that they estimate the sale price to be lower than the true value.

Article 57 A vendor who lodges a case for rescission must notify creditors- who have restrictions against the commercial concern at their elected domiciles as stated in their registrations.

Where the vendor stipulates upon sale that such sale shall be rescinded by law if the price is not paid within the designated period or where the vendor and the purchaser agree mutually to rescind the sale, the vendor must notify registered creditors by registered post and recorded delivery at their elected domiciles of the rescission or of the agreement obtained thereto.

Article 58 Where application is made for a commercial concern to be sold by public auction, the applicant shall notify the previous vendors thereof by registered post and recorded delivery at their elected domiciles as stated in their registrations, notifying them that if they fail to lodge a case for rescission within one month of the date of notification their right to do so shall lapse in respect of the purchases through the auction.

Article 59 Rescission for non-payment of the price shall not be accepted in respect of third parties unless the right to do so was expressly reserved in the registration. Actions may be instituted exclusively in respect of the elements of the premises which were the subject of the sale. Bankruptcy will not prevent raising the case of rescission.

SECTION TWO LEASING

Article 60 A commercial concern may be disposed of entirely or partially by means of leasing according to the provisions of this section.

Article 61 The leaseholder shall acquire the capacity of merchant and shall be subject to all the duties thereof, including the requirement to register his name in the Commercial Register within a maximum of 15 days as from the date of the lease.

Article 62 The leaseholder must declare the leasing contract by registering in the Commercial Register within the time limit specified in the previous Article. He must also declare the expiry of the lease in the same manner.

Article 63 The leaseholder must disclose such capacity in all documents pertaining to his commercial activity such as correspondence,

lists, supply orders and so forth. All infringements thereof shall be penalised with a fine of not less than ten Omani Rials and not more than five hundred Omani Rials.

- Article 64** Any person who has a debt against the commercial concern may request repayment of his debt within three months of the date of the leasing contract being declared, failing which his right against the lessee shall lapse upon expiry of such term.
- Article 65** The lessor shall be jointly liable with the leaseholder for debts caused by the latter during exploitation of the business concern within the period up to the declaration date of the leasing contract.
- Article 66** The provisions of the previous Article shall not apply to a leasing contract concluded by an attorney for the lessor unless he is authorized to execute such contract.

SECTION THREE MORTGAGE

- Article 67** A commercial concern may be mortgaged. Where the items included within the mortgage are not precisely defined, it shall only apply to the trade name, the right of lease, the right to contact clients and goodwill. The sale, Bankruptcy will not prevent raising the case of rescission.
- Article 68** A mortgage shall only be concluded by a formal contract. The mortgage contract must comprise a statement from the debtor as to whether the vendor has a lien over the commercial concern. It must also contain the name of any insurance company which insures the premises-against fire.
- Article 69** The mortgage contract shall be declared by being registered in the Commercial Register. Such registration must be concluded within thirty days of the date of contract. The registration must guarantee retention of the lien for five years thereafter and the registration shall be deemed annulled if not renewed within the said period. The registrations shall be deleted by the mutual consent of the parties concerned or by virtue of a final judgment.
- Article 70** Where the owner of the commercial concern fails to pay the price or the remainder thereof to the vendor or the debt to the mortgagee on the due date, the vendor or the mortgagee may, eight days after the date of formal notification to his debtor who has possession of the concern, submit an application to the Court seeking permission for

him to sell by public auction all or some of the items of the commercial concern which are the subject matter of the lien of the vendor or the mortgagee. Such application shall be decided expeditiously.

The sale shall take place according to the place, date, time and manner specified by the Court and shall be published at least ten days beforehand.

Article 71 Where there is cause for the sums arising from the insurance to become payable, the vendor and the mortgagee shall have the same rights and liens over such sums as they had over the insured items.

Article 72 The mortgagor shall be liable to maintain the mortgaged concern in good condition without being entitled to seek any recourse against the creditor for such.

Article 73 The lessor of a site where there is mortgaged furniture and machinery which is used in exploiting the commercial concern may not exercise his lien for more than two years.

BOOK THREE

COMMERCIAL OBLIGATIONS AND CONTRACTS

Article 74 The provisions stipulated within this Chapter shall apply to commercial obligations and contracts. Where no special provision exists, the provisions of Article 5 of this Law shall apply'

CHAPTER ONE

COMMERCIAL OBLIGATIONS

Article 75 Persons under the obligation of a commercial debt shall be jointly liable unless otherwise provided by law or by agreement'

Article 76 A guarantee shall be a commercial activity where the guarantor secures a commercial debt in respect of the debtor or where the guarantor is a merchant and has an interest in guaranteeing the debt and this is subject to the provisions of Article 233.

Article 77 In respect of a commercial guarantee, guarantors shall be jointly liable amongst themselves and with the debtor. A debtor who seeks recourse against one such guarantor shall not forfeit his right to seek recourse against the other guarantors and this is subject to the Provisions of Article 238.

- Article 78** Business and services related to the commercial activity of the merchant and offered to third parties shall be in return for a consideration unless otherwise proved. Such consideration shall be specified according to custom, in the absence of which the court shall determine the consideration.
- Article 79** A loan shall be commercial if concluded by a merchant in respect of activities related to his commercial affairs or if the purpose of the loan is that it be used in commercial activities.
- Article 80** A creditor shall have the right to exact interest in exchange for the procurement by the debtor of a loan or commercial debt. Such of both parties within the limits specified by the Ministry of Commerce & Industry in agreement with the Oman Chamber of Commerce & Industry every year taking into consideration the term of the loan and the purposes and risks thereof. Where the debtor fails to make the repayment on the due date the creditor shall be entitled to exact the agreed interest for the period of delay.
- Article 81** A creditor may request supplementary compensation in addition to the agreed interest on the loan or commercial debt if he has suffered damage in excess of such return. The Court shall estimate the compensation.
- Article 82** The agreed interest shall be paid at the end of the year if the period of the loan is one year or more or on the due date of the loan if the period is less than one year save where commercial custom or banking business require otherwise.
- Article 83** The creditor shall not be obliged to accept payment of the debt before the agreed due date unless the debtor pays the interest due on the outstanding period.
- Article 84** The Court may not grant the debtor of a commercial debt a period of respite for payment thereof nor allow him to pay by installments other than in the cases provided for in law or in cases of absolute necessity and on condition that the creditor suffers no serious damage.
- Article 85** Applications for the settlement of commercial obligations may only be made during working hours as provided by custom.
- Article 86** Debtors shall be advised or notified of commercial matters by registered post accompanied by a record of delivery. In cases of urgency, such advice or notification shall be made by cable or the equivalent.

Article 87 Payment of a commercial debt shall be valid when made to the person holding the instrument of debt or carrying an acquittance from the creditor provided that payment is made by a bona fide person.

The latter shall be bona fide if he is unaware that the holder has illegitimate possession of debt instrument or acquittance.

Article 88 The possession by the debtor of the instrument of debt shall be associated with his debt having been discharged unless proven otherwise.

Article 89 A creditor shall not be obliged to accept execution of a contract where a period for execution thereof is specified and the debtor fails to carry out the execution within such period.

Article 90 Where a contracting party retains the right to rescind the contract in return for payment of a specific sum and where he implements his obligations according to such contract or accepts that the other contracting party has implemented his obligations, the right of rescission which he retained shall lapse.

Article 91 Commercial items of whatever value may be proven by all methods of so doing unless the law provides otherwise.

Save for those cases where the law stipulates that commercial items must be proven in writing, evidence contrary to that contained within written evidence or which goes beyond such evidence may be proven by all methods of so doing.

The customary papers in respect of commercial matters shall serve as evidence against third parties according to their date, even if such date is not proven save where the law stipulates that the date must be proven. The date of the customary paper shall be the true date until otherwise proven by all methods of so doing.

Article 92 The limitation period for the obligations of merchants towards each other related to their commercial activities shall be ten years as from when the date for performance of such obligations lapses unless the law provides for a shorter period.

Final judgments issued in disputes arising from the commercial obligations referred to in the preceding Paragraph shall lapse after ten years.

CHAPTER TWO

DESIGNATED COMMERCIAL CONTRACTS

SECTION ONE - COMMERCIAL SALE

SUB-SECTION ONE - BASIC PRINCIPLES OF SALE

Article 93 Sales shall be concluded by mutual agreement of the vendor and purchaser in respect of the items sold and the price. The purchaser must have sufficient knowledge of the items sold. Knowledge shall be deemed sufficient where the contract contains particulars of the items sold and basic descriptions thereof whereby they are identifiable. Where the contract states that the purchaser is aware of the items sold, he shall forfeit his right to have the sale invalidated on the grounds of unawareness unless it is proven that the vendor has acted fraudulently.

Article 94 Neither informing various persons of the current prices nor offering assets for sale by dispatching a schedule of such items which includes prices and illustrations thereof shall be deemed to be an offer.

Article 95 Where a sale is on the basis of a specimen, the item sold must conform to the specimen. Where the specimen is damaged or destroyed when in the possession of a contracting party even if through no fault of his own, the contracting party whether the vendor or the purchaser must prove whether or not the item conformed to the specimen.

Article 96 Where a sale is made on a trial basis, the purchaser may accept or reject the sale. The vendor must enable the purchaser to try the item for sale. Should the purchaser reject the said item, he must give notice of the rejection within the agreed period. Where there is no agreement as to such period, rejection shall be made within a reasonable period to be determined by the vendor. Should this period expire and the purchaser remains silent despite having been able to try the item for sale, his silence shall be deemed as acceptance.

Sales made on a trial basis shall be deemed dependent on a suspensive condition which is the acceptance of the item for sale unless it is clear from the agreement or the circumstances that the sale is dependent on a condition of mutual rescission.

Article 97 Where an item is sold conditional upon it being tasted, the purchaser may accept the sale should he so wish but must declare such acceptance within the period determined by agreement or custom.

The sale shall only be contracted as from the time when such declaration is made.

Article 98 Where a merchant sells an asset which is not his, the purchaser shall not own the item sold. However, the vendor shall be bound to take possession of the item sold and deliver it to the purchaser, failing which he shall be liable for compensation.

Article 99 Where a merchant sells a movable asset owned by a third party which is a part of his trade and delivers the same to the purchaser, the purchaser shall take possession of the item sold if bona fide. However, if the asset sold is lost or stolen, the true owner may recover the same within five years of the time of the loss or theft, and the purchaser must ask the owner to pay him in advance the price he has paid.

Article 100 The sale of goods which are not available at the time of the sale and which can be made ready and produced at the time of delivery shall be valid.

Article 101 In respect of the sale of an item which the parties to the sale observe at the time of contract has the potential to be damaged, if such damage occurs, the purchaser shall not recover the price. However, if the vendor is certain that the item sold was damaged at the time of contract, the sale shall be invalid.

Article 102 Where it is agreed that the purchaser may specify the shape' size or other detailed particulars pertaining to the item sold, the purchaser must specify such features within a reasonable period, failing which the vendor may seek rescission and compensation' once the said period has lapsed, the vendor may specify such features. Such specification shall be final if the purchaser raises no objections within a reasonable period of having been informed thereof.

Article 103 The price estimate may be confined to a statement of the principles whereby the price is to be later defined. Where it is agreed that the price shall be the market rate, in the event of doubt, the price must be the market rate at the time and in the place of delivery to the purchaser of the item sold. If there is no market in the place of delivery, recourse must be had to the market price in the place where custom dictates that its rates are the current rates.

Article 104 The failure of the contracting parties to not result in the sale being invalidated specify a sale Price shall when it is clear from the

circumstances that the contracting parties intended to use the currently prevailing trade price or the price used in dealings between them.

Article 105 A third party may be authorised to determine the price. Where such party fails to do so for whatever reason, the purchaser shall be bound by the market price on the day of the sale. If the market price is unknown, the court shall assume responsibility for determining the price.

Article 106 Where the price is estimated on the basis of weight, this shall mean the net weight save where both parties agree otherwise or custom dictates otherwise.

Custom shall determine in approximate terms the permitted amount of shortfall in the goods due to transport or other reasons or where there is an agreement regarding the delivery of a specific quantity.

Article 107 The compulsory pricing laws and the decisions thereof shall not apply to sales contracted prior to these coming into effect even if the price is payable on a subsequent date.

As for sales contracted whilst such laws and decisions are in force, the price specified may not be exceeded, otherwise.

SUB-SECTION TWO - EFFECTS OF SALE

1- OBLIGATIONS OF THE VENDOR

Article 108 Where the item sold is damaged prior to delivery for a reason beyond the vendor's control, the sale shall be rescinded and the purchaser shall recover the sale price unless the destruction occurs after the purchaser is given notice of delivery of the item sold.

Article 109 Where the value of the item sold is decreased prior to delivery due to it having suffered damage, the purchaser may either request a rescission of the sale where such decrease is serious to the extent that had it arisen prior to contract the sale would not have been concluded. Alternatively, the sale may stand but at a reduced price.

Article 110 Where the item sold is to be exported to the purchaser, delivery shall not be effected unless such item reaches him save where agreed otherwise.

Article 111 Where it is agreed that delivery shall occur upon the item sold being received by the carriage agent, the vendor shall have liability for any

destruction which occurs until the goods are delivered to the carriage agent following which the purchaser shall have liability for such.

Article 112 Where at the request of the purchaser the vendor dispatches the item sold to a party other than that specified for delivery, the purchaser shall have liability for destruction as from the time of delivery of the item sold to the person responsible for its carriage. Where the vendor breaches the instructions of the purchaser regarding the method of dispatch without the required justification, he shall be liable for any damage incurred to the item sold as a result of such breach.

Article 113 Where the sale is on the basis of deferred payment, the vendor may stipulate that the transfer of ownership to the purchaser is dependent on full payment of the price, even if the item sold has been delivered. The purchaser shall have liability for destruction from the time of delivery.

Article 114 Where a delivery time is unspecified, delivery must be made upon conclusion of contract unless either the nature of the item sold or custom specifies another time. Where the goods have a specific season, delivery must be made before the end of such season. If the purchaser may specify the time of delivery, the vendor shall be obliged to make delivery at the time to be specified by the purchaser, but having regard to the dictates of custom and the requirements imposed by the nature of the goods.

Article 115 Where the vendor fails to make delivery at the specified time, the contract shall be deemed rescinded without notice being required unless the purchaser informs the vendor that he holds him to implementation of the contract within three days of such time. Where the item sold consists of goods which have a known market price, the purchaser may, even if he has not purchased similar goods, request the vendor for the difference between the agreed price and the market price on the day specified for delivery.

Article 116 Where the goods delivered differ from the agreed goods in quantity or type, the purchaser may not request rescission unless the difference is serious enough to render the goods delivered unfit for their intended purpose. In other instances, it shall be sufficient to reduce or supplement the price according to the shortfall or enhancement in quantity or type. MI of the foregoing shall apply save where otherwise stipulated. The right of the purchaser to seek rescission or a reduction in price and the right of the vendor to seek to have the price supplemental shall lapse one year as from the date of actual delivery.

Article 117 The vendor shall bear the cost of gauging, counting, weighing or measuring unless otherwise stipulated by agreement or custom.

Article 118 The purchaser must inspect the item sold immediately upon delivery according to normal business practice. Where it is found to be defective, he must so inform the vendor forthwith upon discovering such defect, failing which his right to seek recourse against him for such defect shall lapse, where the defect is such that it cannot be detected by normal inspection, the purchaser must inform the vendor once he actually discovers such defect, failing which his right to seek recourse against him as a result shall lapse.

The limitation period for an action in respect of a guarantee of the defect shall be one year as from the date of delivery of the item sold save where the vendor accepts responsibility for the guarantee for a longer Period.

The vendor shall not derive the benefit of the limitation period or of lapse where he conceals a defect with fraudulent intent.

2. OBLIGATIONS OF THE PURCHASER

Article 119 The price shall be due for payment in the place where the sold item is delivered unless otherwise stipulated by agreement or custom. Where the price is not due at the time of delivery of the item sold, payment thereof must be made in the place where the purchaser is resident at the time when such payment is due.

Article 120 The price shall be due for payment at the time when the item sold is delivered unless otherwise stipulated by agreement or custom. Where the purchaser is approached by a person claiming that he has prior right of sale or that such right has devolved to him from the vendor, or if it is feared that the item sold is to be wrested from the possession of the purchaser, he may withhold the price until the approach is discontinued or the risk is eliminated unless there is a condition in the contract to preclude such. However, the vendor may in this case request payment of the price provided that he offers a guarantee. This provision shall apply in the event of the purchaser discovering a defect in the item sold.

Article 121 Where all or part of the price is due for immediate payment, the vendor may withhold the item sold until the amount owed to him is paid even if the purchaser presents a pledge or guarantee save where

the vendor allows the purchaser a period of respite following the sale.

Similarly, the vendor may withhold the item sold, even if the period stipulated for payment of the price has not lapsed, in the following instances:

1. Where the purchaser is declared bankrupt.
2. Where by his action the purchaser greatly weakens the securities given to the vendor or if the weakness of the security is attributable to a reason beyond the control of the purchaser and the purchaser fails to provide the vendor with the requirements for completing the security.
3. Where the purchaser fails to provide the vendor with the securities promised in the contract.

Article 122 Where the item sold is destroyed when being retained in the possession of the vendor, the purchaser shall be liable for the destruction unless the item sold was destroyed by the action of the vendor.

Article 123 Where the price is not paid at the agreed time, the vendor may, after notifying the purchaser asks him for the difference between the agreed price and the resale price in good faith. Where item sold has a known market price, Vendor may ask purchaser for difference between the agreed price and the price fixed on the day of delivery.

Article 124 The purchaser may pay the price before the period lapses unless otherwise agreed. Agreement or custom shall determine the deduction to be made from the price for payment before the period has lapsed.

Article 125 Where agreement or custom fails to specify a place or time for delivery -or the goods, the purchaser must take delivery in the place where the item sold is to be found at the time of the sale and remove the same promptly save to the extent that the carriage requires time.

Article 126 The purchaser shall bear the delivery cost of the item sold unless agreement or custom stipulates otherwise.

Article 127 Where the purchaser refuses delivery of the item sold, the vendor may deposit such item with a custodian and sell the same by public auction after such reasonable period as he specifies or promptly notifies to the purchaser has lapsed. Items which are susceptible to damage may be sold by public auction without such notification being required.

Where the item sold has a known market price, it may be sold at such price by a broker. The vendor must deposit the proceeds of the sale with the Court Treasury without prejudice to his right to deduct the price and the costs of deposit and sale.

SECTION TWO - CERTAIN TYPES OF COMMERCIAL SALE

SUB - SECTION ONE - SALE BY INSTALLMENTS

Article 128 Where the purchaser fails to pay an agreed price by installments, a judgment rescinding the sale cannot be entered where it is shown that he has paid at least three quarters of the price.

Article 129 Where the vendor retains ownership of a movable item sold until the installments are paid in full, the purchaser shall acquire such ownership upon payment of the final installment. The purchaser shall bear the consequences of any damage incurred to the item sold as from the time when he takes delivery thereof.

Without prejudice to the provisions stipulated in the chapter on bankruptcy, the condition regarding retention of ownership shall be invalid in respect of third parties unless recorded on a document displaying a fixed date which precedes the right of such third party or any execution proceedings taken by creditors against the item sold.

Article 130 The purchaser may not dispose of the item sold before having paid the installments in full unless the vendor so agrees in writing. All disposals effected by the purchaser to third parties in breach of this provision shall be invalid in respect of the vendor where it is established that the third party was aware at the time of the disposal that the price had not been paid in full.

Article 131 Where the purchaser disposes of the item sold before the installments have been paid in full and without the consent of the vendor, the latter may ask the purchaser to pay the remaining installments forthwith.

Article 132 The provisions in respect of hire purchase stipulated in the previous Articles shall apply even if the contracting parties call the sale a lease.

SUB - SECTION TWO - SALE AND AGENT

ON HIS OWN ACCOUNT

Article 133 A person who is appointed to act as agent on behalf of third parties

as per an agreement or provision or an order from the competent authority may not purchase on his own account either directly or under a pseudonym, even by public auction, any item which he is entrusted to sell by virtue of such agency without judicial authorisation and without prejudice to provisions in law to the contrary.

Article 134 Neither brokers nor experts may purchase goods which they are authorised to sell or assess the value of whether the sale is in their own name or under a pseudonym.

Article 135 Contracts shall be valid in the instances stipulated in the two Articles here above if approved by the person to whose account the sale is completed.

SUB-SECTION THREE - MARITIME SALES

A- PORT OF SHIPMENT SALES

1- COST, INSURANCE AND FREIGHT SALES (CIF)

Article 136 A CIF sale is the sale of goods exported by sea to a specific place at a fixed price which includes the cost of the goods, the insurance and the carriage by sea thereof.

Article 137 The vendor must conclude a contract - at his expense - under the normal conditions to convey the goods to the agreed port of arrival by normal journey.

He must pay the cost and any other expenses for discharging the goods as specified at the time and place of shipment.

Article 138 The vendor shall be obligated to load the goods at his expense aboard the vessel in the port of shipment on the date agreed in the contract of sale or within a reasonable time where the two parties fail to specify a time for shipment.

The vendor shall-at his expense - be responsible for acquiring the requisite licenses to export the goods from the place of shipment. He shall similarly bear the costs of packing, measuring, weighing and counting the goods or ensuring their quality wherever such processes are required for shipment. Similarly, he shall undertake to pay the taxes and duties payable on the goods due to the export or shipment thereof. He must advise the purchaser without delay of the date of shipment of the goods and the name of the vessel.

Article 139 The vendor shall be liable for any damage incurred to the goods until the moment where the goods cross the ships railing during loading. Thereafter such liability shall be borne by the purchaser.

Article 140 The vendor shall - at his expense - conclude a contract of insurance with a reputable marine insurer in respect of the goods to cover the risks of the voyage. Where the item sold is shipped in hatches, each batch must be insured separately. The vendor may not himself act as insurer for the purchaser. He must conclude a contract of insurance by means of a negotiable instrument according to the customary terms in the port of loading. The sum insured must be no lower than the price stated in the contract of sale plus ten percent.

The vendor shall only be bound to take out insurance against the risks of normal carriage. He shall not be bound to take out insurance against risks pertaining to a specific trade unless so agreed with the purchaser. Similarly, the vendor shall not be bound to insure the item sold against the risks of war unless the contract stipulates otherwise.

Article 141 The vendor shall without delay send the purchaser a clean and negotiable bill of lading pertaining to the goods sold. It shall include confirmation that the goods have been loaded onto the vessel on the date or within the period specified for shipment. It shall also entitle the purchaser or his representative to take delivery thereof by endorsement or transferal of such right thereto by the appropriate legal method. Where the bill of lading covers the shipment charge, it must bear an indication from the carrier on the date of shipping to the effect that the goods have been shipped on board the vessel.

A bill of lading shall be deemed clean if it contains no additional express conditions confirming the presence of defects in the item sold or in the method of packing such item. Such conditions do not include references in the bill of lading to the prior use of containers or packaging or to non-liability for any damage incurred due to the nature of the item sold or the carrier's ignorance of the contents or weight of the packages.

The bill of lading shall be accompanied by a list of the goods sold and the insurance policy or a certificate in place thereof comprising its basic conditions and granting the holder the rights established under the policy. Similarly, it shall be accompanied by such other documents as are required by the purchaser to ensure that the goods conform to the goods stipulated in the contract. Where the bill of

lading refers in certain instances to the contract of charter for the vessel, a copy of such contract must be attached.

Article 142 The purchaser shall not be bound to accept the documents sent to him by the vendor if they fail to comply with the conditions of the contract of sale. The purchaser shall be deemed to have accepted such documents if he raises no objections thereto within seven days of the date of receipt. Objections shall be made by notifying the vendor to dispatch documents complying with the conditions within a suitable period. Once such period has expired, the purchaser may seem a rescission of the sale and compensation where necessary.

Where the purchaser returns the documents for specific reasons or accepts the same with reservations, he may not thereafter raise any objections other than for the reasons or reservations already stated.

Where the purchaser returns documents without sufficient cause, he shall be liable for compensating the vendor for any damage arising as a result.

Article 143 Where the vessel aboard which the goods sold were shipped arrives prior to the arrival of the documents or where the documents received are defective, the vendor must immediately upon being so informed take whatever action is necessary to enable the purchaser to obtain a copy of the documents which failed to arrive or to complete the defective documents. The vendor shall bear the costs incurred accordingly and compensation where necessary.

Article 144 Upon arrival of the vessel, the purchaser must take delivery of the goods after inspecting them and verifying that they conform to the content of the documents. The purchaser shall bear costs payable on the goods during the sea voyage until their arrival in the port of destination unless it is agreed that such costs are to be included in the carriage charge.

Similarly, the purchaser shall be liable to pay any import or customs charges payable in respect of the item sold.

Article 145 Where it emerges that the goods are inconsistent with the content of the documents and the breach does not exceed the amount permitted according to custom, the purchaser shall be obliged to accept such goods at a reduced price assessed by experts according to the custom in force in the port of destination.

2. FREE ON BOARD SALES (FOB)

Article 146 An FOB sale is a sale whereby the goods are delivered at the port of shipment aboard the vessel designated by the purchaser for the carriage thereof.

Article 147 The purchaser must execute the contract for carriage of the goods, pay the freight charge and notify the vendor within a suitable period of the name of the vessel chosen for carriage, the place and date of shipment or the specific time limit for carrying it out.

Article 148 The vendor must pack the goods and ship them aboard the vessel designated by the purchaser on the date or within the time limit specified for shipment.

The vendor shall bear the cost of packing and the charges for such inspection, measuring, weighing or counting as is required for shipment of the goods.

The vendor shall promptly notify the purchaser of the shipment of the goods and shall send him the relevant documents provided that the purchaser shall bear the costs in respect of notification and dispatch of the documents.

Article 149 The vendor shall at his own expense be responsible for taking out an export license and for all procedures related to shipment of the goods.

Article 150 Where the purchaser is requested to submit a certificate indicating the source of the goods, the vendor must obtain the same and forward it to him.

Article 151 The vendor must provide every assistance to enable the purchaser to obtain the bill of lading and other documents issued in the country of shipment which the purchaser may request to enable the goods to be imported to the country of destination or to cross another country in transit where necessary. The purchaser shall bear the costs relevant to obtaining such documents.

Article 152 The vendor shall bear all costs related to the shipment of goods. He shall also bear the consequences of any damage which may occur to the goods until the moment during loading where they cross the ship's railing. Any damage incurred to the goods thereafter and any costs arising shall be the responsibility of the purchaser.

limitation period shall apply to actions pertaining to liability for the entire destruction of the goods from the day upon which delivery is to be made and for delay or damage or partial destruction of the goods from the day of delivery or from the day upon which the goods are placed at the disposal of the consignee. Any person who commits deliberate or gross error may not invoke such limitation period. Any agreement in breach of the preceding provisions shall be invalid.

SECTION ONE - CONTRACT FOR THE CARRIAGE OF GOODS

Article 158 The bill of carriage shall be drawn up in duplicate. One copy shall be signed by the carrier and delivered to the consignor, and the other shall be signed by the consignor and delivered to the carrier.

The bill shall comprise in particular:

1. The date of issue.
2. The names of the consignor, the consignee, the carrier, the carriage commission agent if any and their domiciles.
3. The place of departure and the place of destination.
4. The type, weight, size and manner of packing of the item to be carried, the number of packages and all other particulars required to identify the item and assess its value.
5. The date specified for carriage.
6. The freight charge and the party which is to pay the same.
7. The agreements related to the means of carriage and the method of compensation payable in the event of destruction, damage or late arrival in respect of the item.

The contrary of the content of the bill of carriage may be proven by all means of so doing.

Article 159 The bill of carriage may be drawn up in the name of a specific person or to his order or to the bearer. The bill shall be negotiable according to the rules of transfer if nominal and by endorsement if made out to order and by delivery if made out to the bearer.

Article 160 Where a bill of carriage is not drawn up, the carrier must deliver to the consignor at his request a receipt which he has signed for receipt of the item carried. The receipt must be dated and shall include sufficient information to identify the items carried and the freight charge.

SUB-SECTION ONE

EFFECT OF CONTRACT IN RESPECT OF CONSIGNOR AND CONSIGNEE

Article 161 The consignor must deliver the item to the carrier at his domicile unless it is agreed to deliver it to him at another place. Where the carriage requires the carrier to make special preparations, the consignor must notify him accordingly within sufficient time before the delivery.

The carrier may request to open the parcels prior to delivery in order to verify the authenticity of the information given by the consignor.

Where the nature of the item requires that special preparations be made for its carriage, the consignor must pack it in a manner which protects it from destruction or damage and whereby other persons or items carried therewith shall not be exposed to any injury or damage.

Article 162 The consignor must pay the charges for carriage and any other charges payable to the carrier unless the consignee agrees to bear such charges, in which case the consignor and the consignee shall be jointly liable for payment of all such charges. The carrier shall not receive payment for the carriage of items which are destroyed due to force majeure.

Article 163 Whilst the item is in the possession of the carrier, the consignor may order him to return the item to him or to send it to a person other than the consignee. He shall pay the carrier for such carriage as he has effected and compensate him for costs and damages.

However, the consignor may not exercise this right where:

- a. He fails to present the bill of carriage received from the carrier.
- b. The item arrives and the consignee has requested that delivery be made to him.

Such right shall be transferred to the consignee as from when he receives the bill of carriage.

Article 164 The owner of the item may dispose thereof by sale or by another method of disposal whilst such item is in the possession of the carrier by virtue of the bill of carriage.

The owner shall bear liability for destruction of the item during carriage and shall have recourse against the carrier where applicable.

Article 165 The consignee shall be liable for the obligations arising from the contract of carriage where he so accepts expressly or implicitly. In particular, the request of the consignee for delivery of the item according to the bill of carriage or the fact that he issues instructions pertaining to such bill following his receipt thereof shall be deemed to be an implicit acceptance.

SUB-SECTION TWO

EFFECT OF CONTRACT IN RESPECT OF CARRIER

Article 166 The Carrier shall be liable to ship and stow the item on board the means of carriage unless agreed otherwise. Where it is agreed that the consignor shall ship or stow the goods, the carrier shall have the right to refuse carriage if the shipment or stowage is defective in a manner visible to any ordinary carrier.

Article 167 The carrier shall follow the agreed route. Where no specific route is agreed, the carrier must take the shortest route.

However, the carrier may alter the agreed route or fail to take the shortest route where such becomes necessary.

Article 168 The carrier shall guarantee the safety of the item during implementation of the contract of carriage and shall be liable for the full or partial destruction or damage thereof or for delay in delivery. Where the item remains untraced once a reasonable period has lapsed following expiry of the period specified or which custom permits for the arrival thereof, it shall be deemed to have been completely destroyed.

The carrier shall not be liable for any loss of weight or volume in the item which occurs normally during its carriage by reason of its nature unless it is established that the loss has arisen for another reason.

Article 169 The carrier shall not be liable for the loss of any money, securities, jewellery or other precious items entrusted to him for carriage save to the extent of such written details in respect thereof as the consignor gives to the carrier at the time of receipt.

Article 170 The carrier shall be liable for the actions of persons whom he employs in the course of implementing his obligations under the contract of carriage.

Where the carrier stipulates by way of reservation that he shall not be liable for damage caused by defective packaging of the goods, the consignor or consignee must prove that the damage did not arise from such defect.

Article 176 Any condition which stipulates that the carrier is exempt from liability for the entire or partial destruction or damage of the goods shall be invalid. Similarly, any condition which stipulates that the carrier is exempt from such liability if it is caused by the actions of his subordinates shall be invalid.

Any condition whereby the consignor or consignee is rendered liable in any manner whatsoever for the payment of all or some of the costs of insurance against the liability of the carrier shall be deemed an exemption from liability.

Article 177 Save in the two- instances of deliberate fault and gross fault, the carrier may.

- (a) Limit his liability for destruction or damage provided that the compensation stipulated is genuine.
- (b) Stipulate his exemption from liability for delay.

The condition of exemption from liability and the limitation thereof shall be made in writing and be notified to the consignor by the carrier.

Article 178 Where the item is carried under the custody of the consignor or consignee, the carrier shall not be liable for the destruction or damage thereof unless either he or his subordinates are proven to have perpetrated a fault.

Article 179 The carrier shall be liable to discharge the item upon arrival thereof unless otherwise agreed.

The consignee may have direct recourse against the carrier and claim delivery or compensation where necessary.

Article 180 Where delivery is not required at the place of the consignee, the carrier must advise him of the arrival of the item and of the time when he may take delivery thereof. The consignee must take delivery of the item at the time specified by the carrier, failing which he shall be liable for storage charges. Following expiry of the appointed delivery time, the carrier may transport the item to the place of the consignee in return for an additional fee.

Article 181 Where carriage ceases during implementation thereof or the consignee fails to take receipt at the time appointed by the carrier or fails either to take delivery despite attending or to pay the freight charges and costs, the carrier must advise the consignor accordingly and seek his instructions.

Where the consignor fails to advise the carrier of his instructions within a suitable period, the carrier may ask the court to appoint an expert as a matter of urgency to establish the condition of the item and seek permission to deposit the same with a custodian at the expense and risk of the consignor.

Where the item is liable to destruction or damage or a reduction in value, or where the maintenance thereof necessitates excessive cost, the judge shall order that the same be sold in a manner which he determines and that the proceeds are deposited in the Court Treasury on account of those concerned.

The judge may where necessary order the sale of the item in whole or in part whereby the sums payable can be settled.

Article 182 The carrier shall have the right to withhold the item in order to satisfy payment of the carriage charges and costs and other sums payable to him by reason of carriage.

The carrier shall have a lien over the proceeds from the sale of the item in order to receive payment of the sums due to him by reason of carriage.

SECTION TWO

CONTRACT OF CARRIAGE OF PERSONS

Article 183 The carrier shall assume responsibility for the carriage of the passenger and his luggage' which he may keep until the place of destination, on the date agreed or stated in the carriage time table or as determined by custom.

Article 184 The carrier shall guarantee the safety of the passenger during implementation of the contract of carriage and shall be liable for any physical or material injury to the passenger and for any delay in arrival. He may not deny liability save by proving force majeure or fault on the part of the passenger.

Heirs shall be entitled to seek compensation from the carrier for damaged sustained to their legator whether death occurs as a direct result of the accident or after a period of time lapses.

Article 185 The carrier shall be liable for the actions of the persons whom he employs to perform such obligations as ensue from the contract of carriage.

Article 186 Any condition which stipulates the full or partial exemption of the carrier from liability for physical injury caused to the passenger shall be null and void. Any condition whereby the passenger is rendered liable in any manner for payment of all or some of the costs of insurance against the liability of the carrier shall be deemed an exemption from liability.

With the exception of the two instances of deliberate fault or gross fault on the part of the carrier or his subordinates, the carrier may stipulate his exemption from non-physical injury or damage caused by lateness incurred to the passenger. Such exemption must be made in writing and be notified by the carrier to the passenger.

Article 187 The carrier shall not be liable for loss or damage to luggage kept by the passenger unless the passenger proves fault on the part of the carrier or his subordinates.

The carriage of registered luggage shall be subject to the provisions pertaining to the transport of items.

Article 188 Where the passenger dies during implementation of the carriage contract, the carrier shall assume responsibility for making the arrangement required to safeguard his luggage until it is handed over to the parties concerned. Where a concerned party is present at the place of death, he may intervene to supervise such arrangements and request the carrier to provide him with a declaration to the effect that the luggage of the deceased is in his possession.

Article 189 The passenger shall pay the carriage fare at the time agreed or stated in the carriage regulations or as determined by custom. He shall be liable to pay the fare in full even if he abandons the journey. However, where the journey proves to be impossible due to the death or illness of the passenger or other overriding impediment, the contract of carriage shall be rescinded and the fare shall not be imposed.

However, where carriage is by a means which operates on lines

sustained by the passenger shall be invalid. Any condition whereby the passenger is responsible in any manner for paying all or some of the costs of insurance against the liability of the commission agent shall be deemed an exemption from liability.

With the exception of the two instances of deliberate fault of gross fault on the part of the commission agent or one of his subordinates or the carrier or one of his subordinates, the commission agent may stipulate that he is fully or partially exempt from liability arising from the late arrival of the passenger or for any non-physical damage which the latter sustains. Such exemption condition must be in writing and must be notified by the agent to the principal or passenger.

Article 195 The principal or the passenger shall be entitled to have direct recourse against the carrier for compensation in respect of damage arising from non-implementation of the contract of carriage or from the implementation thereof in a specific manner or delay. In this case, the carriage commission agent shall be entered as a party to the action.

The carrier shall be entitled to have direct recourse against the principal or the passenger for compensation in respect of damage which he sustains from implementation of the carriage.

Article 196 The original commission agent shall stand as surety for the commission agent whom he appoints as his intermediate unless the consignor appoints the intermediate agent in his agreement with the original agent.

Article 197 Where the commission agent pays the carriage charge to the carrier, he shall subrogate the latter as regards such rights as he may have.

Article 198 With the exception of the provisions stipulated here above, the provisions pertaining to the commission agent contract shall apply to the carriage commission agent.

SECTION FOUR

SPECIAL PROVISIONS OF AIR CARRIAGE

Article 199 Air carriage means the carriage of persons or luggage or goods by aircraft in return for a fare. The word "luggage" means the items which the passenger may carry with him aboard the aircraft and surrender to the custody of the carrier during carriage. This word does not include

small personal items which remain in the custody of the passenger during the journey.

Article 200 Without prejudice to the international agreements to which the Sultanate is party, the provisions of Chapter Three shall apply to air carriage and the special provisions stipulated in the following Articles shall be observed.

Article 201 The air carriage bill must comprise a statement to the effect that carriage is effected according to the provisions in respect of limited liability stipulated in Article 208, failing which the air carrier shall be barred from invoking such provisions.

Article 202 The air carrier shall be liable for damage incurred in the event of the death or injury of a passenger or any other physical damage which he sustains if the accident which leads to such damage occurs on board the aircraft or during any of the operations for the embarkation and disembarkation of passengers.

Article 203 The air carrier shall be liable for damage which occurs in the event of the destruction or loss or damage of luggage or goods where the accident which leads to such damage occurs during air carriage.

Air carriage shall include the period during which luggage and goods are in the custody of the carrier during flight or during the presence of the aircraft in an airport or in any other place where it lands.

Air carriage shall not include the period during which luggage or goods are carried by land, sea or river outside the airport. However, where such carriage occurs during implementation of air carriage for the purpose of shipment, delivery or carriage from one aircraft to another, it must be assumed that the damage arose from an accident which occurred during the period of air carriage until such time as evidence to the contrary is established.

Article 204 The air carrier shall be liable for damage arising from delay in the arrival of the passenger, luggage or goods.

Article 205 The air carrier shall be exempt from liability where it is established that he and his subordinates adopted all the measures necessary to avoid damage or that it was impossible to do so.

Article 206 The air carrier shall be exempt from liability where it is established that the entire damage arose due to fault on the part of the injured

party. The Court may reduce the liability of the carrier where it is established that the fault of the injured party played a part in the events which caused the damage.

Article 207 The air carrier shall not be liable for small personal items which remain in the custody of the passenger during the journey unless the passenger establishes the fault of the carrier or his subordinates.

Article 208 In respect of the carriage of persons, the compensation awarded against the air carrier may not exceed ten thousand Omani Rials per passenger unless it is expressly agreed to exceed such amount.

In respect of the carriage of luggage or goods, compensation shall not exceed ten Omani Riyals per kilogram. However, if upon delivery of the luggage or goods to the carrier the consignor provides him with a special declaration with regard to the importance he attaches to delivery of the goods in the place of destination and pays such fee as the carrier may request accordingly, the carrier shall be liable to pay compensation to the extent of the amount stated in the declaration unless the carrier establishes that such value exceeds the true importance which the consignor attaches to such delivery.

In the event of the loss or destruction or damage or all or part of a package or certain contents thereof, maximum compensation shall be calculated on the basis of the total weight of the entire package unless this affects the value of other packages included in the same consignment, in which case due account shall be taken of such packages. In respect of small personal items which remain in the custody of the passenger during the journey, compensation awarded in favour of each passenger for such items shall not exceed two hundred Omani Rials.

Article 209 The air carrier may not invoke the limitation of liability stipulated under the previous Article where it is established that the damage arose from an act or omission on the part of the carrier or his subordinates either with intent to cause damage or by way of imprudence combined with the awareness that damage may ensue as a result.

Where the act or omission occurs on the part of subordinates, it must also be proven that such occurred whilst they were performing their duties.

Article 210 Where an action for compensation is lodged against a subordinate

of the carrier, he may invoke the limitation of liability stipulated under Article 208 where it is proven that he carried out the act which caused the damage during the course of performing his duty. The total compensation which can be obtained from the carrier and his subordinates together may not exceed such limits.

However, a subordinate of the carrier may not invoke limitation of liability where it is proven that the damage arises from an action or omission on his part either with intent to cause damage or by way of imprudence combined with an awareness that damage may ensue as a result.

Article 211 Any stipulation which exempts the air carrier from liability or which limits the same to less than the limits stipulated under Article 208 shall be invalid.

However, such invalidity shall not include the stipulation which exempts the carrier from liability or limits the same in the event of the destruction or damage of the item being carried due to its nature or to an inherent defect therein.

Article 212 The receipt by the consignee of the luggage or goods without reservation shall be evidence that he has received the same in good condition and in conformity with the bill of carriage unless evidence to the contrary is established.

Article 213 In the event of luggage or goods being damaged, the consignee shall direct a protest to the carrier immediately after the damage is discovered and within a maximum of seven days with regard to luggage and fourteen days with regards to goods as from the date of delivery. In the event of delay, the protest must be registered within a maximum twenty-one days of the day when the luggage or goods were placed at the disposal of the consignee.

The protest must be established in the form of a reservation in respect of the carriage bill of lading upon receipt of the luggage or goods or in the form of a registered letter dispatched to the carrier within the legal time limit.

An action for liability against the air carrier shall be dismissed where the protest is not registered within the periods stipulated in this Article unless the plaintiff proves that deception has been committed by the carrier or his subordinates in order to allow such periods to pass or to conceal the fact of the damage incurred to the luggage or goods.

Article 214 The right to institute an action for liability against the air carrier shall lapse two years as from the day when the aircraft arrives at its destination or the day when it should have arrived or the day when carriage ceased.

Article 215 Where air carriage is free of charge, the air carrier shall have no liability save if it is established that he or one of his subordinates committed a fault. In this case, the carrier shall be liable within the limits stipulated under Article 208. Carriage shall be deemed to be free of charge where it is without remuneration and where the carrier is not a professional carrier. Where the carrier is a professional, the carriage shall not be deemed to be free of charge.

Article 216 The air carrier shall be liable within the limits stipulated under Article 208 whatever the capacity of the litigants in the action for liability and whatever their number or the amount of compensation payable.

CHAPTER FOUR

PLEDGE, GUARANTEE AND DEPOSIT IN PUBLIC WAREHOUSES

SECTION ONE - COMMERCIAL PLEDGE SUB-SECTION ONE - BASIC

PRINCIPLES OF PLEDGE

Article 217 A pledge shall be commercial in respect of all concerned where it is created over a moveable asset as security for a debt which is deemed to be commercial in respect of the debtor.

Article 218 The pledge shall not be effective in respect of third parties unless the possession of the pledged item is transferred to the pledgee' or to another person appointed by the two contracting parties and remains in the possession of whichever one of them takes delivery thereof.

The pledgee or person appointed by the two contracting parties shall be deemed to be in possession of the pledged item where:

- a. It is placed at his disposal in a manner which leads others to believe that the item is in his custody.
- b. He receives a legal instrument representing the pledged item and giving the holder the exclusive right to take receipt of such item.

appointed by the two contracting parties shall be liable for the destruction or damage of the pledged item unless it is established that such was attributable to an inherent defect in the item or to an external reason beyond his control.

Article 224 The pledgee or the person appointed by the two contracting parties shall be bound to exercise on account of the pledger all rights related to the pledged item and accept its value, profits, interest and other sums arising when due provided that he discounts from the amounts he receives firstly the costs, then the interest and then the principal of the debt secured by the pledge unless the agreement or the law stipulates otherwise.

Article 225 Where the debtor fails to pay the debt secured by the pledge on the due date, the pledgee may, once three days have lapsed from the date of the debtor receiving notice to pay either by official means or by registered post and recorded delivery, approach the Chief Judge of the Court seeking an order to sell all or part of the pledged item.

Article 226 The order issued by the Chief Judge of the Court to sell the pledged item may not be implemented until five days have lapsed since the same was served on the debtor and the real guarantor, if any, indicating the place, date and time of the sale.

Where the pledge entails several items, the pledgee shall be entitled to designate the items which are to be sold unless otherwise agreed. In all cases, the sale may only comprise such items as shall guarantee payment of the amount due to the creditor.

Article 227 The sale shall take place at the time and place appointed by the Chief Judge of the Court by public auction unless the latter orders another method. Where the pledged item is an instrument which is negotiable on the securities market, the Chief Judge shall order that it be sold on such market with the knowledge of a broker.

The pledgee shall recover his debts in terms of the principal, interest and costs by way of a lien over the proceeds of the sale.

Article 228 Any agreement concluded at the time of the establishment of the pledge or thereafter shall be deemed invalid and in the event of the non-settlement of the debt when the term thereof expires, the pledgee shall have the right to acquire ownership of the pledged item or to sell the same without complying with the procedures stipulated in Articles 225-27.

However, after the debt or an installment thereof becomes payable, it may be agreed that the debtor transfer to the creditor the pledged item or part thereof in payment of the debt. Similarly, the Court may order the pledgee to acquire ownership of the pledged item or part thereof in payment of the debt provided that the value is calculated according to the assessment of experts.

Article 229 Where the item pledged is liable to destruction or damage or if the possession thereof requires excessive expenditure and the pledger do not wish to offer another item as a substitute, the creditor and the pledger may seek authorization from the Court to sell the same forthwith by any means determined by the court. The pledge shall be transferred to the proceeds from the sale.

Article 230 Where the value of the item pledged falls short in as much as it is considered insufficient to secure the debt, the creditor may appoint a suitable time for the pledger to complete the security, failing which the creditor may, once the period has lapsed, levy execution on the pledged item by following the procedures stipulated in Articles 225 -227.

Article 231 Where the item pledged is an instrument for which full payment has not been made, the pledger shall, when asked for the unpaid part, offer the creditor the cash needed to pay for such part at least one day before the due date, failing which the pledgee may sell the instrument by following the procedures stipulated in Articles 225-227.

SECTION TWO - COMMERCIAL GUARANTEE

SUB - SECTION ONE - BASIC PRINCIPLES OF GUARANTEE

Article 232 A guarantee is where one undertaking to answer for payment another in the demand for performance of an obligation.

A guarantee is contracted by means of an offer and acceptance on the part of the guarantor and creditor.

Article 233 A guarantee is commercial where the guarantee secures a debt which is deemed to be commercial with regard to the debtor.

The guarantee arising from precautionary guarantee of commercial papers or endorsing the same shall always be a commercial guarantee.

- Article 234** The guarantee shall cover amounts relevant to the debt, the costs of the first claim and such costs as there are after notifying the guarantor unless there is an agreement which stipulates otherwise.
- Article 235** Where the debt which has been guaranteed by another is deferred in respect of the principal debtor, it shall likewise be deferred in respect of the guarantor.
- Article 236** Where the creditor defers the debt against the principal, it shall be deferred in respect of the guarantor and the guarantor of the guarantor. Where he defers it in respect of the guarantor, it shall be deferred in respect of the guarantor of the guarantor but not in respect of the principal.
- Article 237** Where the guarantor stands as surety for the debt by way of a deferred guarantee, it shall be deferred in respect of the guarantor and principal save where the guarantor adds the appointed term himself or where the creditor specifically stipulates the appointed term of the guarantor at the time of the guarantee.

SUB-SECTION TWO EFFECTS OF GUARANTEE

- Article 238** In a commercial guarantee, the guarantors shall be jointly liable amongst themselves and jointly liable with the debtor. The creditor shall have the option of claiming against the debtor should he so wish or against the guarantor should he so wish. By claiming against one he shall not forfeit his right to claim against the other. Hence, after claiming against one, he may claim against the other and may claim against both. In the commercial guarantee for the personal bank loans, it is permissible for the guarantor to ask for including a clause in the contract that obligates the creditor for the Dispossession of debtor first before resorting to the guarantor.
- Article 239** The guarantor must notify the debtor prior to settling the debt. Where processing are instituted against him by the creditor, he must introduce the debtor as a litigant in the case. Where he fails to notify the debtor prior to settlement of the debt or where he fails to introduce him as a litigant in an action brought against him by the creditor, he shall forfeit his right to seek recourse against the debtor if the latter has settled the debt or established reasons which dictate that it is invalid or has lapsed. The guarantor shall have no recourse save against the creditor.

Article 240 The debtor shall be bound to surrender to the guarantor at the time of settlement of the debt the papers needed to exercise his right to seek recourse against the debtor. Where the debt is secured-by a moveable asset which is pledged or withheld, the creditor must relinquish the same to the guarantor.

Article 241 The creditor shall safeguard such securities as the debt may have and in so doing shall take due account or the interests of the guarantor. The guarantor shall be released to the extent of losses caused to him by the error of the creditor in respect of such securities.

By the securities shall be meant every security earmarked to secure the debt even if it arose after the guarantee and every security which arises by operation of law.

Article 242 Where the debtor is bankrupt, the creditor must submit the debt in the declaration of bankruptcy, failing which he shall forfeit his right to seek recourse against the guarantor to the extent of the damage caused to the guarantor due to the negligence of the creditor.

Article 243 Where the creditor agrees to receive another item from the debtor in discharge of the debt, the guarantor shall be released from the debt, even where such item falls due from the debtor, save where the creditor has reserved the right to seek recourse against the guarantor in this case.

Article 244 Where the guarantor pays the guaranteed debt from his assets, he shall have recourse against the debtor in respect of the payment made and the guarantor shall replace the creditor in respect of all rights which such creditor has whether the guarantee was at the order of the debtor or not.

Article 245 Where there are several debtors for one debt who are jointly liable, the guarantor who guaranteed them all may have recourse against any of them in respect of everything he has paid as regards the debt.

Article 246 The guarantor may release his liability for the guarantee where the creditor grants the debtor a period of time for payment without the approval of the guarantor. When the debt falls due and the creditor has not made a claim for payment, the guarantor may advise the creditor that legal measures must be taken to settle his debt within a period not exceeding one month, if the period ends and the debtor has not been asked to pay his debt, the guarantor shall be released unless the debtor provides the guarantor with an adequate security.

- Article 247** Where the guaranteed debt is deferred and the guarantor has paid the same to the creditor in advance, he shall not have recourse therefore against the debtor until the date of payment falls due.
- Article 248** The guarantor shall have recourse against the debtor in respect of such amounts as he is obliged to incur in order to comply with the requirements of the guarantee.
- Article 249** The guarantor who guarantees the guarantor towards the creditor shall, in his relationship with the creditor, be deemed a guarantor for the guarantor ("the counter guarantor") with whom he shall be jointly liable. In his relationship with the guarantor, it shall be as if such guarantor is a primary debtor in his regard.
- Article 250** Payment by the debtor or guarantor or counter-guarantor of the guaranteed debt shall release the debtor, the guarantor and the counter-guarantor.
- Article 251** Where the creditor releases the debtor, the guarantor shall be released. However, the release of the guarantor shall not necessarily entail the release of the debtor.

CHAPTER THREE

DEPOSIT IN PUBLIC WAREHOUSES

- Article 252** Making a deposit in public warehouses is a contract whereby the warehouse operator undertakes to receive and safeguard goods on account of the depositor or any person to whom ownership or possession of such goods devolves according to instruments which represent the same and which are issued by the public warehouse Transit depots in ports shall be deemed to be public warehouses.
- Article 253** A public warehouse which is entitled to issue negotiable instruments representing deposited goods shall be established and used by decision of the Minister of Commerce and Industry according to the terms and conditions which he shall specify in this respect.
- Article 254** The Minister of Commerce and Industry shall issue regulations concerning public warehouses. Each warehouse shall draw up its own bill regulating its activity in a manner which is consistent with the nature of the goods which are stored and kept therein' Such regulations must include in particular the rights and obligations of the warehouse operator and the method of designating the storage charge.

Article 255 The warehouse operator may not in any capacity, whether on his own account or on the account of third parties, practise a commercial activity which entails any form of speculation on goods of the kind which he is licensed to keep in his warehouse and the issue of instruments representing such goods.

Where the warehouse operator is a company where at least 10% (ten percent) of the capital is owned by a partner therein, the prohibition stipulated in the preceding paragraph shall apply to that partner.

Article 256 An exemption shall be made from the preceding Article where the warehouse operator is a state-owned company and where the interest of the national economy so necessitates provided that such is declared on the front of the warehouse and on its signboard.

Article 257 A public warehouse may offer loan secured by pledging goods stored therein and by dealing in instruments of pledge which represent the same.

Article 258 The depositor must provide the public warehouse with all accurate information and particulars in respect of the type of goods, their specifications and their value. The depositor shall have the right to inspect the goods delivered to the public warehouse on his account and to take samples or specimens thereof.

Article 259 The warehouse operator shall be responsible for keeping and safeguarding the goods deposited. The warehouse operator shall exercise the necessary care in so doing according to the nature and type of goods.

The warehouse operator shall only be responsible for the goods up to the value estimated by the depositor.

The warehouse operator shall not be liable for any damage or shortfall in respect of the goods which is caused by force majeure or the nature of the goods or an inherent defect therein or the method used to Prepare them.

Article 260 The warehouse operator shall request authorisation from the President of the Court to sell the goods if they are at risk of rapid deterioration. The President of the Court shall determine the method of sale. The warehouse operator shall promptly notify the depositor thereof.

Article 261 The depositor shall insure the deposited goods or at his expense authorise the warehouse operator to do so where such goods are susceptible to fire. Similarly, the depositor must insure the goods where they are the subject of instruments of pledge.

Goods deposited in the transit depots in ports which are covered by marine insurance shall be excluded from the provision of the preceding paragraph.

Article 262 The depositor shall receive a storage receipt from the warehouse operator stating the name and domicile of the depositor, the nature and quantity of the goods, any information required to identify the goods and assess their value, the name of the company insuring the goods, the type of insurance, the beneficiary of the insurance, and a statement as to whether the duties and taxes due on the goods have been paid Each storage receipt shall be accompanied by an instrument of pledge which includes all information recorded on the storage receipt.

The public warehouse shall retain a true copy of the original storage receipt and the instrument of pledge.

Article 263 Where the goods covered by the storage receipt instrument of pledge are fungible items, they may be replaced by goods of the same nature, type and quality if a stipulation to such effect is included on the storage receipt and instrument of pledge. In this case, all rights and liens of the holder of the receipt shall be transferred to the new goods. The storage receipt and instrument of pledge may be issued for a quantity of fungible goods which are included within a larger quantity.

Article 264 The storage receipt and instrument of pledge may be issued in the name of depositor or to his order. Where both are made out to the order of the depositor, he may assign them together or individually by endorsement.

The endorsee of the storage receipt or instrument of pledge may request that the endorsement be recorded along with details of his domicile on the copy kept at the warehouse.

Article 265 Where the instrument of pledge is endorsed separately from the storage receipt, shall be a pledge in respect of the goods in favour of the endorsee.

Endorsement of the storage receipt shall have the effect of transferring the ownership of the goods to the endorsee. Where the instrument of pledge is endorsed to another person, the ownership of the goods shall be transferred to the person to whom the storage receipt has been endorsed including the pledge. In this case, the latter shall undertake to pay the debt secured by the instrument of pledge or the pledge may receive the amount payable to him from the price of the goods.

Article 266 The endorsement on the storage receipt and the instrument of pledge shall be dated. Where the instrument of pledge is endorsed separately from the storage receipt, the endorsement must indicate, in addition to the date, the amount of the debt secured from the principal and return, the due date, the name and domicile of the creditor and the signature of the endorsee.

The endorsee shall promptly request that the endorsement of the instrument of pledge and the information related to such endorsement be recorded in the books of the warehouse and be indicated accordingly on the instrument of pledge.

Article 267 The person who holds the storage receipt independently of the instrument of pledge may pay the debt secured by such instrument, even if prior to the date for payment of the debt. Where payment is not made to the bearer of the instrument of pledge or where he refuses to receive payment prior to the date of settlement, the bearer of the storage receipt may deposit the debt in terms of principal and return until the due date with the warehouse operator who shall assume responsibility therefore. Such deposit shall entail release of the goods.

Article 268 Where the secured debt is not paid on the settlement date, the person who holds the instrument of pledge independently of the storage receipt may request the sale of the pledged goods by following the procedures of execution pertaining to commercial pledges.

Article 259 The pledge shall receive the amount due to him from the price of the goods by way of a lien over all creditors after deduction of the following sums:

- a. Taxes and duties due on the goods.
- b. Legal costs.
- c. The cost of selling and storing the goods and other costs of safeguarding the same.

Where the holder of the storage receipt is not present at the time of the sale, the sum in excess of the amount payable to the holder of the instrument of pledge shall be deposited with the court Treasury.

Article 270 The holder of the instrument of pledge may not seek recourse against the pledger or the endorsers until the pledged goods have been levied in execution and realised insufficient proceeds to settle the debt.

Recourse against the endorsers must be sought within ten days of the date of the sale of the goods, failing which the right of the holder to seek recourse against them shall lapse.

In all cases, the right of the holder of the instrument of pledge to seek recourse against the endorsers shall lapse unless execution proceedings in respect of the pledged goods are instituted within thirty days of the date for repayment of the debt.

Article 271 Where the goods sustain an accident which is covered by the insurance policy, the holder of the storage receipt or the instrument of pledge shall have such rights and liens over the insurance sum as he had over the goods.

Article 272 The holder of the storage receipt may upon the loss or damage thereof ask the Chief Judge of the Court to issue an order for delivery to him of a copy of the storage receipt provided that he proves his ownership of the receipt and presents a guarantor or a sufficient security.

A person who has lost the instrument of pledge or in respect of whom it has been damaged may request the President of the Court to issue an order for payment of the pledged debt where such debt is overdue. Where the debtor fails to implement the order, the person in favour of whom such order is issued may request that the pledged goods be sold according to the execution procedures pertaining to commercial pledges on condition that the endorsement of the instrument of pledge in his favour is recorded in the books of the warehouse and that a surety or sufficient guarantee is provided.

The payment order must include all information pertaining to the endorsement which is recorded in the warehouse books.

Article 273 The guarantor shall be released or the security provided in the event of loss of the storage receipt shall lapse after three years have passed without the warehouse receiving any demand for recovery of the goods.

The guarantor shall be released or the security provided in the event of loss of the instrument of pledge shall lapse one year after the date of registration of the endorsement in the warehouse books.

Article 274 Where the depositor fails to recover the goods upon expiry of the term of the contract of deposit, the warehouse operator shall, after notifying the depositor, apply to sell the goods according to the execution procedures pertaining to commercial pledges. The warehouse operator shall be paid the sums owing to him from the proceeds of the sale and the remainder shall be surrendered to the depositor or be deposited with the Court Treasury.

The provision stipulated in the preceding paragraph shall apply where the term of the contract of deposit is unspecified and where a year has lapsed from the date of deposit without the depositor seeking to recover the goods or explicitly or implicitly expressing a wish to continue with the contract of deposit.

Article 275 Any person who establishes or uses a public warehouse contrary to the provisions of Article 253 of this law shall receive a prison sentence of no more than one year and a fine not exceeding two thousand Rials or either penalty.

Where a conviction is made, the court may decide to liquidate the warehouse, appoint a liquidator and determine his functions.

A warehouse operator or any of his employees who divulges a secret pertaining to the goods deposited shall receive the same penalty save in those instances permitted by law.

CHAPTER FIVE

COMMERCIAL AGENCY AND BROKERAGE

SUB-SECTION ONE - GENERAL PROVISIONS

Article 276 An agency - in general terms - is a contract whereby the principal substitutes another person for himself to carry out a specific legal disposal.

A commercial agency, even if comprising an absolute agency, shall only proceed with commercial business unless expressly agreed otherwise.

Where the commercial agency pertains to a specific business, the agent shall have the authority to carry out the related activities required to perform such business:

Article 277 Commercial agency shall be carried out for remuneration unless expressly agreed that it is to be without consideration. In all instances, the agent must exercise the care of an ordinary person in executing the commercial agency.

Article 278 The remuneration of the agent shall be determined by agreement, failing which it shall be determined according to the prevailing remuneration within the profession or according to custom.

The agent shall be remunerated by the mere conclusion of the disposal with which he is entrusted, or where it is proven that the transaction cannot be concluded for a reason attributable to the principal. In other instances, the agent shall only be entitled to compensation commensurate with the efforts he has exerted, and this shall be according to the requirements of custom. Where there is no custom, the Court shall assess the compensation.

Article 279 The agent may not deputise third parties to execute the agency unless authorised to do so by the principal. Where the agent is authorised to have a deputy without appointing such deputy, the agent shall only be liable for his fault in selecting his deputy or for his fault as regards such instructions as he may issue to him.

In the event of the agent being authorised to appoint a deputy on his behalf according to the provisions of the preceding paragraph, the principal and the deputy agent shall each be entitled to seek direct recourse against the other.

Article 280 Where the principal issues instructions to the agent and the agent fails to abide thereby, the latter shall be liable for the damage which results accordingly. As for guidelines issued to him by the principal, the agent shall have the freedom of disposal and appraisal in respect thereof as circumstances pertaining to execution of the agency necessitate.

Where the agent realizes that execution of the agency according to instructions issued to him by the principal shall cause excessive damage to the latter, the agent must defer execution of the agency until he consults the Principal.

Article 281 The agent may defer execution of the agency where he has no express instructions from his principal in respect thereof until he receives such. However, where it is necessary as a matter of urgency, to execute the agency, or where the agent is authorized to operate within beneficial and convenient limits, he may execute the agency as the interests of the principal require and after taking due care.

Article 282 The agent shall not be liable to insure items of which he has possession on account of the principal unless the principal asks him to do so or if the nature of the item requires insurance or if custom so dictates.

Article 283 The agent shall be liable for damage incurred to items of which he has possession on account of the principal unless such damage has an external cause in which the agent has no involvement or is caused by defects in such items or by their nature.

Article 284 Where it is clear to the agent that damage has occurred during a journey to the items received on account of the principal, he must take urgent measures to safeguard such items and limit exacerbation of the damage.

Where the items possession of which the agent has on account of the principal are such that they are at risk of rapid deterioration or susceptible to a fall in value and the agent is unable to consult the principal or his consultant and he receives no instructions accordingly within a suitable period, the agent may seek permission from the Court as a matter of urgency to sell the same by the manner which it determines.

Article 285 The agent shall be bound to convey to the principal the necessary information on a step by step basis as to his progress in executing the agency and must submit a statement of account accordingly.

The statement of account must be consistent with fact. Where it contains any deliberately false information, the principal may refuse the transactions related to such statement and shall be entitled to claim compensation. Where the statement of account deliberately omits essential information, the principal shall be entitled to request that it be included and to seek compensation.

In all instances, the agent shall not be entitled to receive remuneration for the said transactions.

Article 286 The agent shall have the right of lien over the goods and other items

consigned, delivered or deposited with him by the principal upon such consignment, deposit or delivery.

Such lien shall secure the remuneration of the agent and all sums due to him and the return thereon by reason of the agency whether such sums fell due before delivery of the goods or items or whilst they were in the possession of the agent.

The lien shall be established without consideration as to whether the debt arose from activities related to the goods or items which remain in the possession of the agent or to goods or other items previously consigned or delivered to him or deposited with him for safekeeping.

Where the goods or items subject to such lien are sold and delivered to the purchaser, the lien of the agent shall be transferred to the sale proceeds.

Article 287 The agent shall not have the right of lien over goods or items consigned or delivered to him or deposited with him for safekeeping unless they remain in his possession. Goods and items are deemed to be in the possession of the agent in the following instances:

- a. Where they are placed at his disposal in customs or in public warehouses or in his warehouses or where he is transporting them by his private means.
- b. Where he has possession of such prior to their arrival by virtue of a bill of lading or any other bill of carriage.
- c. Where he exports the same and remains in possession nonetheless of the bill of lading or any other bill of carriage.

Article 288 The lien of the agent shall supersede all other rights of lien save legal costs, legitimate expenses, taxes, duties and other charges of whatever nature payable to the government which have a lien according to the conditions prescribed in law and the regulations issued in such respect.

Article 289 In levying execution on the goods and items in possession of the agent for payment of his dues, the execution procedures pertinent to items pledged as a commercial pledge shall be followed.

However, where the agent is entrusted to sell the goods or items in his possession, he may levy execution on the same in order to receive his dues by selling them without having to follow the said procedures unless it proves impossible for him to implement the instructions of the principal in respect of the sale.

the new agent shall be jointly liable with the principal for payment of compensation or sums awarded to the previous agent when it is proven that the latter was dismissed or that his contract was not renewed due to collusion between the principal and the new agent.

B. COMMISSION AGENCY

Article 298 A Commission agency is a contract whereby the agent undertakes to effect a legal disposal in his name on account of the principal in return for a fee.

Save for the provisions stipulated in this Chapter, the provisions on commercial agency shall apply to commission agency.

1. OBLIGATIONS OF THE COMMISSION AGENT TOWARDS THE PRINCIPAL

Article 299 The commission agent must exercise the due care of an ordinary merchant in executing the agency.

He must follow the instructions of the principal. Should he contravene these without justification, the principal may reject the transaction.

Article 300 Where the commission agent sells at a price below that specified by the principal or where he buys at a higher price than that specified by the principal, the latter, if he refuses the transaction, shall take the initiative upon being advised that the transaction is complete, to notify the commission agent of the refusal, failing which he shall be deemed to have accepted the price.

Article 301 Where the commission agent concludes a contract under conditions which are more favourable than the conditions specified by the principal, the agent must submit an account to the principal.

Article 302 Where the commission agent grants a sale to a purchaser on the basis of deferred payment of the price or payment by installments without permission from the principal, the principal may ask the commission agent to pay the full price forthwith, in which case the commission agent may keep the difference if the transaction is concluded at a higher price.

However, the commission agent may grant a deferral or payment by

installments without the permission of the principal where custom in the place where the sale is concluded so dictates unless the instructions of the principal oblige him to sell on a prepaid basis.

Article 303 Where the instructions of the principal stipulate a sale at a deferred price and the commission agent sells on a prepaid basis the principal may not ask him to pay the amount until expiry of the term. In this case, the commission agent shall pay the price on the basis of the deferred sale.

Article 304 The commission agent shall not be liable to insure items which he receives from the principal unless the principal so requests or custom so requires.

Article 305 The commission agent may not state the name of the principal without his permission. The commission agent shall not be obliged to notify the principal of the name of third parties with whom he has concluded a contract unless the transaction is deferred. In this case, should he fail to disclose the name of the third party, the principal may deem the transaction to be on a prepaid basis.

Article 306 The commission agent may not stand as a second party in the transaction unless authorised to do so by the principal, in which case the commission agent shall not be entitled to receive remuneration.

2 - RIGHTS OF THE COMMISSION AGENT TOWARDS THE PRINCIPAL

Article 307 The commission agent shall not be entitled to remuneration unless he concludes the transaction with which he was entrusted or if established that it is impossible to do so for a reason attributable to the principal. In all other instances, the commission agent shall only be entitled to compensation for the efforts which he has exerted as required by custom.

The remuneration of the commission agent shall not be subject to the discretion of the Court.

Article 308 The principal must reimburse the commission agent for expenses and other sums which he incurs during the course of executing the agency, even if the transaction is not completed, except in the case of fault on the part of the commission agent or unless otherwise agreed.

The principal shall pay a return on the sums and expenses incurred by the commission agent from the day of disbursement thereof.

Article 309 Where the commission agent sustains damage due to the execution of the agency, he may seek compensation from the principal unless the damage arises due to the fault of the commission agent.

Article 310 Where the commission agent appoints another commission agent to undertake his work, the deputy shall have no lien save within the amount of the debt owed to the original commission agent.

3 - RELATIONSHIP OF THE COMMISSION AGENT WITH CONTRACTED THIRD PARTIES

Article 311 The commission agent shall be directly liable towards third parties with whom he concludes a contract.

The third parties shall have no recourse against the principal, and the principal shall have no recourse against the third parties by means of a direct action unless the law provides otherwise.

Article 312 Where the commission agent is declared bankrupt before receiving the price from the purchaser, the principal may request the purchaser to pay the price to him directly. Where the commission agent is declared bankrupt before delivering the item sold, the principal may demand that the seller delivers the item to him direct.

Article 313 The commission agent shall not be liable for implementing the obligations incumbent on the other contracting party unless he expressly assumes such liability or unless prescribed by custom in the place where he carries out his activity.

The commission agent who is a guarantor shall receive special remuneration.

C - COMMERCIAL REPRESENTATIVES

Article 314 Any person authorised by a merchant by way of an employment contract to act in the name of the merchant in activities pertinent to his business, whether on an itinerant basis or in the place of business of the merchant or any other place, shall be deemed to be a commercial representative.

Article 315 The merchant shall be liable for transactions and contracts undertaken by his representative within the limits of the authority vested in him by the merchant.

A commercial representative may be authorised by several merchants, all of whom shall be deemed jointly liable where recourse is to be had in respect of the liability of the principal for the actions of his subordinates.

Article 316 Where the limits of the authority vested in the commercial representative are not defined, such authority shall be deemed general, encompassing all transactions related to the type of trade which the representative is authorised to carry out.

The merchant may not plead limitation of authority against third parties who have entered into contract with the commercial representative unless the merchant proves that such parties were aware of the limitation.

Article 317 The commercial representative shall undertake the authorised commercial activities in the name of the merchant who authorised him accordingly. Upon signing, he shall write next to his own full name the full name of such merchant and indicate his capacity as commercial representative. If he does not, he is personally liable for such transactions as he undertakes. However, third parties may in this instance seek direct recourse against the merchant if the transactions undertaken by the representative were done on account of the merchant and related to the type of trade which he is authorised to undertake.

Article 318 The commercial representative shall represent the merchant in actions arising from the transactions which he undertakes.

Article 319 The commercial representative may not undertake any commercial activity on his account or on account of a third party without obtaining the express consent of the merchant who employs him.

Article 320 An itinerant commercial representative of a merchant may not receive the price of goods which he does not sell or deduct or defer any part of the price. He shall accept orders from third parties in the name of the person whom he represents and must take the necessary measures to safeguard the rights of the latter.

Article 321 The merchant may authorise his employees to sell in his store. They may receive the price of the goods in the store unless payment should be made to the cashier. The sale receipts in the store shall serve as proof against the merchant. The price may be paid outside the store when employees are empowered in writing to do so by the merchant.

Article 322 The commercial representative shall be jointly liable with the merchant for complying with the legal provisions pertaining to unlawful competition.

SECTION TWO - BROKERAGE

Article 323 Brokerage is a contract whereby a broker undertakes to another person to search for a second party with whom to conclude a specific contract in return for remuneration.

Article 324 Where the remuneration of the broker is not determined by law or agreement, it shall be determined according to custom, in the absence of which it shall be assessed by the Court according to the effort made and time spent on the part of the broker in undertaking the activities assigned to him.

Article 325 The broker shall not be entitled to remuneration unless his mediation leads to the conclusion of contract, remuneration shall be payable upon the mere conclusion of contract. Where all or part thereof is not executed, and where the contract is dependent on a suspensory condition, the broker shall not be entitled to his remuneration unless the condition is satisfied.

Article 326 Where the broker is authorised by both parties to the contract, he shall be entitled to receive remuneration from both.

Each contracting party shall be individually liable towards the broker for payment of the remuneration due, even if they agreed that one of them should bear all the costs of the broker.

Article 327 The broker shall not be entitled to recover costs incurred in the execution of the work assigned to him unless so agreed, in which case costs shall be payable even if the contract is not concluded.

Article 328 The broker shall not be entitled to claim remuneration or recover costs where he causes damage to one contracting party in the interests of the other contracting party for whom he did not mediate in concluding the transaction or where he extracts a promise to his benefit from the latter in breach of his duty in good faith.

Article 329 The broker may not stand as a second party in a contract which he is mediating to conclude unless authorised to do so by the contracting party, in which case he shall not be entitled to any remuneration.

Article 330 The court may reduce the remuneration of the broker where it is disproportionate to the services he has given unless the amount of remuneration was determined or the agreed remuneration was paid after conclusion of the contract in respect of which the broker was mediating.

Article 331 The broker shall be liable for any fault which he commits in executing the work assigned to him.

Article 332 The broker through the mediation of whom a negotiable instrument of sale is sold shall be responsible for the authenticity of the signature of the vendor.

Article 333 The broker through the mediation of whom goods are sold according to samples shall keep such samples until the date of delivery or until the purchaser accepts the goods without reservation or until all disputes related thereto are settled.

The broker shall set out the particulars which distinguish the samples from other goods, unless the contracting parties exempt him from this.

Article 334 Where the broker appoints a third party to execute the work assigned to him without having been authorised to do so, he shall be responsible for the work of such deputy as if such work were carried out by himself. The broker and his deputy shall have joint liability.

Where the broker is authorised to appoint a third party without specifying such deputy, the broker shall only be liable for his fault in selecting his deputy or for his fault in respect of such instructions as he issues.

In all instances, the person who concludes a contract with the broker and the deputy broker may each have direct recourse against the other.

Article 335 Where several brokers are authorised by one contract, they shall be jointly liable for the work assigned to them unless they are authorised to act separately.

Article 336 Where several persons are appointed as one broker for a joint assignment, they shall be jointly liable for the implementation of such assignment unless agreed otherwise.

Article 337 The broker shall record in his books all transactions concluded by his

endeavour. He shall retain the documents related thereto and shall give true copies of the original to whomsoever of the contracting parties so requests. The provisions pertaining to commercial books shall apply to such books.

Article 338 Brokers in the commodities markets and in the financial markets as well as real estate brokers shall be subject to the laws and regulations pertaining thereto.

CHAPTER SIX

BANKING

SECTION ONE

CASH DEPOSIT

Article 339 A cash deposit is a contract whereby the bank is authorised to own and dispose of cash deposited therewith in line with its professional activity and its obligation to refund the equivalent to the depositor. Such refund shall be made in the same currency as the original deposit.

Article 340 The bank shall open an account for the depositor to enter the transactions concluded between them or those concluded between the bank and third parties on account of the depositor.

Transactions which both parties agree shall not be entered in the account shall not be entered therein.

Article 341 A contract for the deposit of cash shall not entitle the depositor to withdraw amounts from the bank in excess of the amount deposited.

Where the bank conducts transactions which result in the depositor having a debit balance, the bank must advise him forthwith to settle his position.

Article 342 The cash deposit shall be returned upon request unless agreed otherwise. The depositor shall have the right at any time to dispose of the balance or part thereof.

Such right may be dependent on prior notice or the expiry of a certain period.

Article 343 The bank shall send a statement of account to the depositor at least once annually unless otherwise stipulated by custom or agreement.

The statement shall comprise a copy of the account and the amount of the balance following the final transaction thereof.

Article 344 Where the bank issues a savings deposit book, it shall be in the name of the person in whose favour it is issued. Payments and withdrawals shall be recorded therein.

The information entered in the book and signed by an officer of the bank shall serve as evidence in proving the said information in the relationship between the bank and the person in favour of whom the book is issued. All agreement to the contrary shall be invalid.

Article 345 Deposits and withdrawals shall be made at the office of the bank in which the account is opened unless agreed otherwise.

Article 346 Where the depositor has several accounts at one bank or at branches of one bank, each account shall be deemed independent of the others unless agreed otherwise.

Article 347 The bank may open a joint account for two or more persons equally unless otherwise agreed in compliance with the following provisions:

1. The joint account shall be opened by all of the owners thereof or by one person who holds a power of attorney from the owners of the account which is legalized by the competent authority. The agreement of the owners of the account shall be observed in respect of withdrawals.
2. Where an attachment is made upon the balance of a joint account owner, such attachment shall apply to the share of the distrainee from the balance of the account as from the day when the bank announces the attachment. The bank shall stop withdrawals from the joint account equivalent to the share subject to attachment. The partners or their representatives shall be notified of the attachment within a period not exceeding five days.
3. When clearing the different accounts of a joint account owner, the bank may not include such account in the clearance without the written agreement of the other partners.
4. Upon the death or loss of competence of a joint account owner, the other owners shall notify the bank thereof and of whether they wish to continue the account within a period not exceeding ten days as from the date of death or loss of competence.

The bank shall stop withdrawals from the joint account within the limits of the share of the deceased or the person who has lost competence until a legal successor is appointed.

SECTION TWO

DEPOSIT OF SECURITIES

Article 348 The bank may not use securities deposited therewith or exercise rights arising therefrom save in the interest of the depositor unless otherwise agreed.

Article 349 In safeguarding securities, the bank shall exercise the care of a depositor in return for a fee. Any agreement which exempts the bank from so doing shall be invalid. However, the bank shall not be liable for the destruction of securities deposited unless attributable to force majeure.

The bank may not relinquish possession of such securities save for a reason which makes this necessary. The depositor shall be required to deposit the fee agreed or specified by custom in addition to the necessary costs.

Article 350 The bank shall undertake to receive the return, profits and value of securities in addition to any other sum payable by reason of the same unless agreed otherwise. The sums received by the bank shall be placed at the disposal of the depositor and credited to his account.

The bank shall undertake every transaction necessary to safeguarding the rights related to the security such as receipt of documents granted free of charge and presentation for exchange or the addition of new profits thereto.

Article 351 The bank shall inform the depositor of each order or right related to the security which requires his consent or which is dependent upon his choice. Where the instructions of the depositor are not received at an appropriate time, the bank must dispose of the right in a manner beneficial to the depositor. The depositor shall bear the cost of transactions undertaken by the bank in addition to commission charges.

Article 352 The bank shall undertake to return the deposited securities at the mere request of the depositor subject to the time required to prepare the securities for return.

Such return shall be effected at the place where the deposit was made. The bank shall undertake to return the deposited securities themselves unless both parties have agreed or the law permits the return of like securities.

Article 353 The security shall be returned to the depositor or to his agent by special power of attorney or to his successor, even if the security indicates that it is the property of third parties.

Article 354 Where an action is instituted in respect of the maturity of the securities deposited, the bank must immediately notify the depositor and refrain from returning the securities to him until the case is settled.

SECTION THREE

RENTAL OF SAFE DEPOSIT BOXES

Article 355 The rental of safe deposit boxes is a contract whereby in return for a fee a specific safe deposit box is placed at the disposal of the lessee to use for a specific period of time.

Article 356 The bank shall be responsible for the safety of the deposit box and for the custody and serviceability thereof. It may not deny liability unless a foreign cause is proven.

Article 357 The bank shall deliver the key of the safe deposit box to the lessee. The bank alone shall keep a copy of the key.

The key shall remain the property of the bank and must be returned thereto upon expiry of the lease.

The bank may not authorise persons other than the lessee or his agent to open the safe deposit box.

The bank may not open the safe deposit box or empty the same of its contents save with the permission of the lessee or in his presence or in execution of an order issued by the Court.

Article 358 The lessee may not rent out the safe deposit box or part thereof or assign the lease to third parties unless otherwise agreed.

Article 359 Where the safe deposit box is rented to several lessees, each shall have the right to use the same separately unless otherwise agreed.

In the event of the death of the lessee or one of the lessees, the bank - having been notified of the death - may not authorise the safe deposit box to be opened without the agreement of all those concerned or by order of the Court.

Article 360 The lessee may not place in the safe deposit box items which threaten its safety or the safety of the place it is in.

Where the safe deposit box becomes exposed to risk or is shown to contain dangerous items, the bank must advise the lessee forthwith to report and empty the same. Should the lessee fail to do so, the bank may apply to the Chief Judge of the Court for permission to open the box in the presence of whomsoever the Court appoints. Where the danger is immediate, the bank may at its own liability, open the safe deposit box and empties it or removes the dangerous items therefrom without notification or permission from the court.

Article 361 Where the lessee fails to pay the fee for the safe deposit box within fifteen days or being advised to do so, the contract shall be deemed automatically rescinded without a court judgment being required.

Article 362 Where the period of contract expires or is deemed rescinded pursuant to the foregoing Article, the bank shall recover the safe deposit box after notifying the lessee to report and empty the contents thereof. Such notification shall be valid if sent to the last domicile specified to the bank by the lessee.

Where the lessee fails to report at the time specified in the notice, the bank may apply to the Chief Judge of the Court for permission to open the safe deposit box in the presence of the execution officer whom it appoints. The execution officer shall prepare a report of the event and further specify the contents of the safe deposit box.

The bank shall retain the contents of the safe deposit box. Six months after writing the record of inventory, it may apply to the Court for an order to sell such contents by the method which it determines and to deposit the proceeds with the Court Treasury or for an order to take any other appropriate measure.

The bank shall have a lien over the sums deposited in the rented safe deposit box or over the proceeds from the sale of its contents for payment of the rental charge and costs payable to it.

Article 363

- a) An attachment may be imposed on the safe deposit box.
- b) Such attachment shall be by way of instructing the bank to state whether the safe deposit box was rented to the distrainee. Where the bank so acknowledges, it must prevent the distrainee from entering the area of the safe deposit box. The bank shall be left a copy of the record of attachment comprising details of the document whereby the attachment was carried out. Similarly, the lessee of the safe deposit box shall be notified of the record of attachment.

- c) Where the attachment is precautionary, the lessee may apply to the Chief Judge of the Court for the attachment to be lifted or for permission to take certain contents of the safe deposit box.
- d) Where the attachment is executory, the execution officer must, after notifying the lessee, forcibly open the safe deposit box once the distrainer has deposited the costs for opening the same and for restoring it to normal condition. The contents of the safe deposit box shall be sold in accordance with the procedures determined by the Court.
- e) Where the lessee is unavailable and the safe deposit box contains instruments or documents, the bank must keep the same in a safe to be sealed by the execution officer and the bank.
- f) The distrainer shall pay the bank a sum sufficient to guarantee payment of the rental charge for the safe deposit box during the period of attachment.

SECTION FOUR

BANK TRANSFER (ACCOUNT TRANSFER)

Article 364 Bank transfer is a transaction whereby the bank debits a specific amount from the account of the person ordering the transfer based on written order therefrom and credits the same to another account for the purpose of achieving the following:

- a) The transfer of a specific sum from one person to another, each of whom has an account at the same bank or at two different.
- b) The transfer of a specific sum from one account to another, both of which are opened in the name of the person ordering the transfer at the same bank or at two different banks.

The agreement between the bank and the person ordering the transfer shall regulate the conditions pertaining to issuing the order. However, the transfer order may not be made out to the bearer. Where the beneficiary of the transfer order is authorised to transfer the value to the credit balance of the account of another person, his name must be stated on the transfer order.

Article 365 Where the bank transfer is effected between two branches or more of the bank or between two different banks, any dispute raised by a third party in respect of the value shall be directed to the branch or the bank where the beneficiary has his account.

Article 366 The transfer order may be in respect of sums actually entered into the account of the person ordering the transfer or sums entered in such account within a period which the person ordering the transfer agrees to determine in advance with the bank.

Article 367 An agreement may be made for the beneficiary to present the transfer order himself to the bank instead of it being notified thereto by the person ordering the transfer.

Article 368 The beneficiary shall acquire possession of the value from the time it is credited to his account. The orderer may withdraw the transfer order until such time as the credit is made.

However, where it is agreed that the beneficiary shall himself present the transfer order to the bank, the person ordering the transfer may not withdraw the transfer order, this to be in compliance with the provision of Article 373.

Article 369 The debt in payment for which the transfer order is issued shall stand with its securities and schedules until the amount is actually credited to the account of the beneficiary.

Article 370 Where the balance of the person ordering the transfer is insufficient and the transfer order is sent directly to the bank from the person ordering the transfer, the bank may refuse to execute the order provided that it forthwith advises the person ordering the transfer of such refusal.

Where the transfer order is presented by the beneficiary, the bank shall enter the partial balance in his account unless the beneficiary refuses. The bank shall indicate on the transfer order the partial balance entered or the refusal of the beneficiary.

The person ordering the transfer shall have the right to dispose of the partial balance where the bank refuses to execute the transfer order or where the beneficiary refuses entry of the partial balance according to the two preceding paragraphs.

Article 371 Where several beneficiaries make simultaneous presentations to the bank and the value of the transfer orders which they hold exceeds the balance of the person ordering the transfer, they shall be entitled to request that the incomplete balance be distributed amongst them in proportion to their respective entitlements.

Article 372 The distribution referred to in the preceding Article may only be made on the first consecutive working day to the day of presentation. In this case, the provision of Paragraphs Two and Three of Article 370 shall apply.

Article 373 Where the beneficiary is declared bankrupt, the person ordering the transfer may stop execution of the transfer order, even if delivered to the beneficiary himself. The declaration of bankruptcy in respect of the person ordering the transfer shall not prevent the execution of transfer orders presented to the bank prior to the declaration of bankruptcy being made unless the Court orders otherwise.

SECTION FIVE

OPENING OF CREDIT

Article 374 The opening of credit is a contract whereby the bank places means of payment within a determined amount at the disposal of the beneficiary, Credit is opened for a definite or indefinite period.

Article 375 Where credit is opened for an indefinite period, the bank may cancel the same at any time provided that the beneficiary is notified accordingly at least ten days prior to the date appointed for cancellation.

Any agreement whereby the bank is entitled to cancel credit of indefinite term with or without prior notice concluded within a period shorter than that provided for under the preceding Paragraph shall be invalid.

Article 376 The bank may not cancel credit prior to expiry of the agreed period save where the beneficiary dies or has an attachment made against him or ceases to make payment - even if an adjudication of bankruptcy has not been awarded against him - or commits gross error in using the credit opened in his favour.

SECTION SIX

DOCUMENTARY CREDIT

Article 377 Documentary credit is a contract whereby the bank undertakes to open credit at the request of a customer (the person ordering the

opening of credit) in favour of another person (the beneficiary) using as security documents representing moveable goods or goods made ready for carriage.

A contract of documentary credit is deemed to be independent of the contract by reason of which the credit is opened. The bank shall remain a foreign party to such contract.

Article 378 The documents against which transactions pertaining to payment, acceptance or discount are made shall be precisely specified in the documents related to the application for the opening of documentary credit, the confirmation or the notification thereof.

Article 379 The bank opening the credit shall undertake to implement the conditions of payment, acceptance and discount agreed in the contract opening documentary credit where the documents are consistent with the details and terms contained in such contract.

Article 380 Documentary credit may be revocable or irrevocable.

The type of letter of credit must be stated expressly in the contract opening it. If there is no such statement the credit shall be deemed to be revocable.

Article 381 Revocable documentary credit shall not entail any obligation on the part of the bank towards the beneficiary. The bank may at any time amend or cancel the same at its discretion or at the request of the person ordering it without having to notify the beneficiary provided that such amendment or cancellation is made in good faith and at an appropriate time.

Article 382 The obligation of the bank in respect of irrevocable documentary credit shall be absolute and immediate as regards the beneficiary and any bona fide holder of the instrument drawn in execution of the contract by reason of which credit is opened. Irrevocable documentary credit may not be cancelled or amended without the agreement of all parties concerned.

Irrevocable credit may be confirmed by another bank which in turn shall be under an absolute and immediate obligation to the beneficiary.

Mere notice of the opening of irrevocable documentary credit being sent to the beneficiary through another bank shall not be deemed to be confirmation thereof by such bank.

Article 383 Every irrevocable documentary credit shall bear a maximum date for the validity of the credit and the presentation of the documents with a view to payment, acceptance or discount.

Where the appointed expiry date for the validity of the credit is on a bank holiday, the period of validity shall be extended to the first working day subsequent to such holiday.

With the exception of holidays, the validity of credit shall not be extended, even if the date of its expiry coincides with cessation of the bank's activities by reason of force majeure unless there is an explicit authorisation in this respect from the person ordering the credit.

Article 384 The bank shall ascertain that the documents comply with the instructions of the person ordering the opening of credit.

Where the bank refuses the documents, it must notify the person ordering the credit of the refusal forthwith stating the reasons.

Article 385 The bank shall not be liable where the documents presented apparently conform with the instructions which it receives from the person ordering the credit.

Similarly, it shall bear no liability for the specification of the goods by reason of which the credit is opened nor for their quantity, weight, external condition, packaging or value. Neither shall it bear liability for the performance by the consignors or insurers of their obligations.

Article 386 Documentary credit may not be assigned or divided unless the bank which opened the same is authorised by the person ordering the credit to pay all or part thereof to one or more persons other than the first beneficiary on the express instructions of such beneficiary.

Assignment shall only be made with the express consent of the bank. Only one assignment may be made unless otherwise agreed.

Article 387 Where the person ordering the opening of credit fails to pay the bank the value of the shipping documents which conform to the terms of opening credit within three months of the date of being notified of the arrival of such documents, the bank may sell the goods according to the procedures determined by the Court.

SECTION SEVEN

DISCOUNT

Article 388 Discount is a contract whereby the bank advances to the bearer of a commercial paper or any other negotiable instrument which has not matured the value stated on the instrument, having deducted return and commission, in return for transfer of ownership of the instrument to the bank. The beneficiary shall undertake to refund the value to the bank if it is not paid by the original debtor.

Article 389 Returns shall be calculated on the basis of the time lapsed up to the maturity date of the instrument. Commission shall be calculated on the basis of the value of the instrument. A minimum commission may be specified.

Article 390 The beneficiary of the discount shall refund to the bank the nominal value of the instrument which remains unpaid.

Article 391 The bank shall have all rights arising from the instrument which it discounts with regard to the original debtor, the beneficiary of the discount and other obligees.

Further, the bank shall have a separate right with regard to the beneficiary of the discount to recover the sums which it has placed at the disposal of the latter without deducting any return or commission received by the bank. The bank shall exercise such right within the limits of unpaid instruments whatever the reason for non-payment thereof may be. Where the proceeds of the discount are entered in the current account, the bank shall cancel the entry by making a reverse entry in accordance with the provision of Article 413 and notify the beneficiary of the discount of such entry.

SECTION EIGHT

LETTER OF GUARANTEE

Article 392 A letter of guarantee is issued by a bank at the request of a customer (the person ordering the guarantee) for the payment of a specific sum or a sum which can be determined to another person (the beneficiary) without restriction or stipulation if requested to do so within the period specified in the letter. The letter of guarantee shall clarify the purpose for which it is issued.

Article 393 The bank may request the provision of security against the letter of guarantee.

Such security may be an assignment by the person ordering the guarantee of his right before the beneficiary.

Article 394 The beneficiary may not assign to third parties his right arising from the letter of guarantee without the consent of the bank.

Article 395 The bank may not refuse payment to the beneficiary for a reason attributable to the relationship of the bank with the person ordering the guarantee or the relationship of the person ordering the guarantee with the beneficiary.

Article 396 The bank shall be released of its obligation before the beneficiary where he receives no request for payment from the same within the period of validity of the letter of guarantee unless renewal thereof was expressly agreed before the expiry of such period.

Article 397 Where the bank pays the beneficiary the sum agreed in the letter of guarantee, it shall subrogate him as regards seeking recourse against the person ordering the guarantee to the extent of the amount paid.

SECTION NINE CURRENT ACCOUNT

Article 398 A current account is a contract whereby two persons agree to make entries in an account by means of reciprocal and overlapping payments of debts arising from transactions concluded between them such as the receipt of monies, assets or commercial papers which can be owned and so forth. They likewise agree to replace the settlement of each separate payment by a final settlement resulting in the final balance upon closure thereof.

Article 399 The current account may be overdrawn on the part of both parties or of one party. In the latter case, the party who has the account shall not be liable to provide funds to the other party unless he has a balance sufficient to do so.

Article 400 Where the items of the current account include cash debts assessed in different currencies or dissimilar things, both parties may agree to include these in the account provided that they are entered in separate sections which give due consideration to the similarity of

the payments included and that both parties declare that the account shall retain its unity despite having numerous sections.

Balances of such sections should be transferable, whereas clearing could be made among it to extract one balance during the period defined by the two parties or when closing the account at the latest.

Article 401 The ownership of the money or the property which is entered in the current account may be transferred to the party which delivered it.

Each party to the current account may make dealings therein at any time in respect of its credit balance unless otherwise agreed.

Article 402 The entry of commercial paper in the current account shall be deemed to be valid provided that its value shall not be calculated if it is not paid on the due date. In such event, it may be returned to its owner and the entry deleted in the manner set out in Article 413.

Article 403 There shall be entered into the current account by operation of law all debts which arise through the connections of the activities which are completed between the parties to the account provided that such debts are not guaranteed by legal or contractual securities.

Nevertheless, such debts which are guaranteed by contractual securities may be entered whether they are admitted by the debtor or by a third party in the current account if all interested parties agree thereto.

Article 404 If it is agreed to enter the debt guaranteed by a contractual security in the current account, then such security shall be transferred to secure the credit balance when it is closed to the extent of the debt without taking account of any changes which may happen to the account whilst active unless otherwise agreed. If the law stipulates specific procedures for the security or to use it for protest against third parties then it shall not be transferred to the balance and may not be used for protest save from the date on which such procedures are completed.

Article 405 If debts accruing to one of the parties should enter into the current account then they lose their characteristics and self-existence.

Thereafter they are not individually available to satisfy debts or for clearing or to lapse through the limitation period.

Article 406 The entry of payments into the current account shall not cause the

parties to lose their claims in respect of contracts and transactions from which these payments stem, unless otherwise agreed.

Article 407 Payments into the current account shall not earn interest unless otherwise agreed. If the agreement does not specify the rate of interest then it shall be calculated on the basis of custom. In current accounts with a bank interest may be calculated whilst the account is open.

Article 408 Individual items in the current account shall be considered in their totality and are not divisible before the account is closed and the final balance extracted. The closure of the account alone is that which gives total clearing for all individual items in the account. Nevertheless, the creditor who is one of the parties in the account may make an attachment while the account is open for the balance of the creditor towards his debtor at the time of such attachment. In such event, the person in whose favour the account is opened shall have a provisional balance of the account so as to investigate the state of the person against whom the attachment is made at the time of the attachment. In the event of an agreement to prevent the person attached from making dealings in his credit balance while the account is open, the attachment shall only be executed in relation to the final balance which appears in his favour when the account is closed.

The balances of such sections shall be transferable in as much as at the time specified by the two parties or on closure of the account in any event an accounting will take place between them to produce a single balance.

Article 409 Where the period for closure of the account is specified, it shall be closed upon expiry thereof. It may be closed prior to the expiry of such period by agreement of the two parties.

Where the period for the current account is unspecified, it may be closed at any time as either party wishes in compliance with the periods of notice stipulated by agreement or custom. In all instances, the account shall be closed should either party die, lose his competence or be declared bankrupt.

The account may be temporarily suspended whilst in operation to show the position of each party. Such suspension shall occur on the dates agreed by both parties or as specified by local custom or otherwise at the end of every three months.

Article 410 Upon closure of the account, the debit balance shall become immediately payable unless otherwise agreed by both parties or if certain transactions which should have been entered in the account are complete and are such that the balance would be altered were they to be entered.

Article 411 The general rules shall apply to the limitation period concerning the debit balance and interest charges thereon.

Interest on the debit balance shall apply as from the date of the closure of account unless agreed otherwise.

Article 412 Where the debit entered in the account is cancelled or the amount thereof is reduced for any reason occurred subsequent to the entry, the entry therefor shall be cancelled or reduced and the account amended accordingly.

Article 413 Where the proceeds from a discounted commercial paper are entered in the current account and the value of the paper is not to be paid on the maturity date, the discounter of the paper may, even after the person who presented the same has been declared bankrupt, cancel the entry by making a reverse entry.

A reverse entry means the entry of an amount equivalent to the value of the commercial paper plus interest as from the date of maturity and costs on the debit side of the account.

A reverse entry may only be made in relation to commercial papers which are not paid on their maturity dates. Any agreement to the contrary shall be invalid.

Article 414 Actions pertaining to a correction of account due to a mistake or omission or repetition in the entry or to any other corrections shall not be accepted once six months have lapsed as from the date of receipt of the statement of account in respect of liquidation which shall be sent by registered and recorded delivery.

In all instances, the limitation period for any action pertaining to a current account shall be five years. Such period shall apply as from the date when the account is closed.

BOOK FOUR COMMERCIAL INSTRUMENTS

CHAPTER ONE BILLS OF EXCHANGE

SECTION ONE CREATING AND NEGOTIATING A BILL OF EXCHANGE

1 . CREATING A BILL OF EXCHANGE

Article 415 A bill of exchange is an instrument that contains the following details:

1. The wording of the bill of exchange written in the body of the instrument, in the language in which written.
2. The date on which and the place in which the bill is created.
3. The name of the person required to make payment (drawee)
4. The person to whom or to whose order payment is to be made.
5. An unconditional order to pay a specific sum of money.
6. Maturity date.
7. Place of payment.
8. The signature of the person creating the bill of exchange (drawer).

Article 416 Except for the cases specified in the following paragraphs, an instrument shall not be deemed a bill of exchange if it does not include any one of the particulars given in the preceding Article.

- a. If the bill of exchange does not indicate the place at which it was created, it shall be regarded as created in the location indicated next to the name of the drawer or the location in which the drawer actually signs the bill.
- b. If the bill does not show the maturity date, payment shall be deemed to be due at sight.
- c. If the bill does not show the place of payment, the place indicated alongside the name of the drawee or his place of business or residence shall be deemed to be a place for payment and a domicile for the drawer at the relevant time and the bill of exchange shall be payable at the drawer's domicile if payment elsewhere is not specified.

Article 417 A bill of exchange may be made out to the order of the drawer himself. It may also be drawn on the drawer himself, and it may also be drawn to someone else's account.

- Article 418** If the account of a bill of exchange is given in letters and figures, in the event of variation the letters shall prevail. If the amount is given several times in letters and figures, in the event of variation the least amount shall prevail.
- Article 419** A return on the amount stated in a bill of exchange may not be stipulated unless the bill is payable at sight or within an interval thereafter, and the rate of return must be specified in the bill itself, otherwise the stipulation shall be invalid, the return shall apply from the date on which the bill is created unless some other date is specified.
- Article 420** For determination of the competence of the obligor under a bill of exchange, reference shall be made to his national law.
- If the obligor is incompetent under his national law, his commitment remains nonetheless valid if he affixes his signature in the territory of a state whose legislation recognises him to be fully competent.
- Article 421** Commitments by minors who are not merchants and are legally incompetent, and which stem from their signature to a bill of exchange as drawers, endorsers or in any other capacity, shall be null and void with respect to them only and they may maintain this invalidity vis-a-vis any bearer of the bill of exchange.
- Article 422** If a bill of exchange bears the signatures of persons who are not competent to be bound by it, or forged signatures or those of imaginary persons, or if for other reasons the signatures are not binding on their owners or on those who have signed the bill with their names, the obligations of other signatories thereto shall remain nonetheless valid.
- Article 423** Any person who signs a bill of exchange on behalf of someone else without authorization from that person is personally bound by that bill. If he meets the obligation thereon the rights accruing to the person on whose behalf he purported to sign shall vest in him, and this shall apply to a person who exceeds the limits of his attorneyship.
- Article 424** The drawer of a bill of exchange guarantees to accept and discharge the same. He may stipulate that he is exempted from the guarantee of acceptance but not the guarantee of discharge.

2 - NEGOTIATING A BILL OF EXCHANGE

- Article 425** Any bill of exchange, even if not stating as drawn to order, may be

negotiated by endorsement. A bill of exchange in which its drawer states 'not to order' or any other phrase with that meaning shall not be negotiable except through following the provisions governing subrogation.

Endorsement may be made to the drawee whether or not he accepts the bill, and to the drawer or any other obligor, and all such persons may re-endorse the bill.

Article 426 An endorsement shall be written on the bill itself or on another paper attached thereto and signed by the endorser. An endorsement subsequent to the maturity date validates the provisions of the endorsement precedent to it. An endorsement subsequent to a protest for non-payment or occurring after the expiry of the lawful date specified for making a protest for non-payment produces only the effect of a subrogation. An endorsement devoid of a date is assumed to have been made prior to the expiry of the date laid down for such protest to be made unless proved otherwise.

Article 427 An endorsement may not be pre-dated, and if done shall be a forgery.

Article 428 An endorsement need not state the name of the payee, and may be confined to the signature of the endorser (in blank). For an endorsement to be valid in the latter case, it has to be on the back of the bill or on a paper attached to it.

Article 429 Without prejudice to the provisions of Article 431, an endorsement may not be made conditional, and any pre-condition to an endorsement shall be considered null and void. A partial endorsement shall be null and void. An endorsement to bearer shall be regarded as an endorsement in blank.

Article 430 If an endorsement is in blank, the bearer may:

1. Fill in the blank by entering his own or someone else's name.
2. Re-endorse the bill of exchange in blank or to someone else.
3. Deliver the bill of exchange to someone else without filling in the blank and without endorsing it.

Article 431 An endorser guarantees to accept and pay the value of a bill of exchange unless he stipulates otherwise.

He may forbid its re-endorsement, in which case he shall not be bound by any guarantee to any persons to whom the bill passes by a subsequent endorsement.

Article 432 The holder of a bill of exchange shall be deemed to be its lawful bearer when it is proved that he is entitled to it by continuous endorsements even if the last thereof is in blank. In this respect deleted endorsements shall be considered null and void. If an endorsement in blank is followed by a further endorsement, the signatory to such further endorsement shall be deemed to be the person entitled to the bill of exchange by the endorsement in blank.

If a person loses possession of a bill of exchange following some accident, its bearer shall not be bound to surrender it when his right to it is established by virtue of the foregoing provisions unless his acquisition thereof was with ill intent or in the process thereof he was guilty of gross default.

Article 433 All rights arising of a bill of exchange could be transferred through endorsement. Without prejudice to the provisions of Article 421, a debtor against whom an action is brought for a bill of exchange may not bring an argument against its bearer on the basis of his personal relationship with its drawer or previous bearers, unless it was the intention of the bearer at the time of his acquisition of the bill to indemnify the debtor.

Article 434 If an endorsement includes the phrase “value for collection” or “value to receive” or by attorney or any other statement indicating attorneyship, all rights accruing from the bill of exchange vest forthwith in the bearer, but he may endorse it only by way of attorneyship. In such case obligors may only protest against the bearer based on such grounds as they may protest against the endorser. The proxyship contained in an endorsement by attorney shall not lapse with the death of the mandator or on the occurrence of an event that breaches his competence.

Article 435 If an endorsement includes the phrase ‘value as security’ or ‘value as pledge’ or any other statement indicating security, the bearer may exercise all the rights developing from the bill. If he endorses it such endorsement shall be deemed to be by way of attorneyship.

A debtor for a bill of exchange may not protest against the bearer based on his personal relationship with the endorser, unless it was the intention of the bearer at the time of his acquisition of it to damage the debtor.

3 - MULTIPLE COPIES AND REPRODUCTIONS FALSIFICATION

Article 435 A bill of exchange may be drawn in numerous corresponding copies. The number of each copy must be shown in the body thereof; otherwise each copy shall be regarded as a separate bill.

Any bearer of a bill of exchange in which it is not mentioned that it is the sole version may request copies thereof at his own expense. To achieve this, he should refer to the person who endorsed it, and that person should assist him by referring to the previous endorser, this process continuing until terminating with the original drawer. Each endorser must enter his endorsement on the fresh copies.

Article 437 Payment of a bill of exchange via one of its copies discharges the debt, even if it is not stipulated therein that such payment invalidates the other copies, but the drawee remains bound to pay lender each acceptable copy thereof which he has not retrieved. Endorsers who have endorsed copies of a bill of exchange to different individuals as well as subsequent endorsers remain obliged by the copies that bear their signatures and which they have not retrieved.

Article 438 A person who forwards one of the copies of a bill of exchange for acceptance must indicate on the other copies the name of the person in whose possession this copy is. The latter must deliver it to the lawful bearer of any other copy, and if such delivery is refused the bearer shall not have a right of recourse unless he proves by way of protest for non-payment.

1. That the copy forwarded for acceptance was not delivered to him when he requested the same.
2. That acceptance or payment has not occurred via another copy.

Article 439 The bearer of a bill of exchange may make copies of it. Such copy must conform exactly to the original in the way of endorsements that it bears or any other details entered therein and must show that the copying of the original ended at this point. The copy may be endorsed and guaranteed as a precaution in the same way as on the original, and the same provisions shall apply to such copy as the original.

Article 440 The name of the holder of the original must be shown in a copy of a bill of exchange, and that holder must deliver the original to the lawful bearer of the copy. If the holder of the original declines to deliver it, the bearer of the copy shall not have a right of recourse to its endorsers or precautionary guarantors unless he proves by way of

a protest for non-payment that the original has not been delivered to him at his request.

If, after the last endorsement made prior to making the copy, it is written on the original that henceforth endorsement shall only be valid on the copy, then any endorsement made thereafter on the original shall be of no effect.

Article 441 If a falsification occurs in the body of a bill of exchange, subsequent signatories to that falsification shall be bound to the content of the falsified text, but previous signatories shall be bound by the original text.

CHAPTER TWO

GUARANTEES OF PAYMENT OF BILL OF EXCHANGE

1. CONSIDERATION

Article 442 The drawer of a bill of exchange or the person in whose favour the bill is drawn is to make the consideration therefor available to the drawee, but this shall not exempt a drawer in favour of another person from his personal responsibility to its endorsers and bearers to the exclusion of others.

Article 443 The consideration shall be deemed to exist if on the maturity date of the bill the drawee is in debt to the drawer or the person ordering the draw for a specific sum of money due for payment and at least equivalent to the amount of the bill.

Article 444 Acceptance of a bill of exchange presumes that the consideration therefor is available to the acceptor, and such presumption may not be proved to the contrary through a relationship between the drawee and the bearer.

In the event of repudiation it is for the drawer alone, whether the bill is accepted or not, to prove that the consideration therefor was available to the drawee on the maturity date. If he fails to so prove, he is a guarantor of payment even if the protest for non-payment arrives after the legally prescribed date. If the drawer proves that the consideration existed and continued to exist up to the date by which the protest for non-payment should have been made, his obligation shall have been met to the extent of such consideration unless it shall have been used in his favour.

Article 445 Ownership of the consideration passes by law to successive bearers of a bill of exchange. If the consideration is less than the value of the bill of exchange, the bearer shall have all those rights over the deficient consideration to which he is entitled over the full consideration. This provision applies if the consideration is a debt that is disputed, doubtful or non-current at the maturity of the bill of exchange.

Article 446 Even if he makes a protest for non-payment after the legally prescribed date, the drawer is to deliver the necessary documents to the bearer of a bill of exchange for the consideration to be obtained. If the drawer becomes insolvent, this action is incumbent upon the receiver. In all cases, the expenses thereof are a liability of the bearer of the bill of exchange.

Article 447 If the drawer becomes insolvent, even if he has accepted the maturity date the bill of exchange, the bearer alone of the drawer's creditors may receive his entitlement from the consideration properly available to the drawee.

Article 448 If the drawee becomes insolvent and the consideration is a debt owing to him, such debt shall come within the insolvency assets.

Article 449 If the drawee holds goods, commercial instruments, securities or other objects of material value recoverable under the insolvency rules that belong to the drawer, and those chattels are expressly or implicitly designated for payment of a bill of exchange, the bearer shall have priority in receiving his entitlement from their value.

Article 450 If several bills of exchange are drawn on one consideration and the value thereof is insufficient to meet them all, the order of dates on which drawn is to be taken into account with respect to the entitlement of their bearers to pay their debts from the aforesaid consideration, and the bearer of the earliest dated bill shall have priority over the rest.

If the bills of exchange are drawn on the same date, the bill bearing the drawee's acceptance shall have precedence.

If no bill bears the drawee's acceptance, the bill for the payment of which the consideration is designated shall have precedence.

Those bills which include a non-acceptance clause come into the latter class.

2. ACCEPTANCE OF A BILL OF EXCHANGE

Article 451 The bearer of a bill of exchange or any holder thereof may present it to the drawee at his domicile for acceptance until the date on which it is payable.

Article 452 The drawer of a bill of exchange may stipulate that it must be presented for acceptance on a particular or on no particular date, and he may stipulate that it be not presented for acceptance, unless payable by other than the drawee or in a location other than his domicile or payable a particular interval after sight.

He may stipulate that it not be presented for acceptance before a particular deadline. Any endorser may stipulate that the bill of exchange be presented for acceptance on a particular or on no particular date, unless the drawer has stipulated not to be presented for acceptance.

Article 453 A bill of exchange payable on the elapse of a particular interval after sight must be presented for acceptance within a year of the date thereof. The drawer may bring forward or extend this date. Any endorser may bring forward this date.

Article 454 A drawee may request that the bill should be presented for acceptance a second time on the day following first presentation. A plea from interested parties that such a request has been received shall not be accepted unless the request is mentioned in the protest.

Article 455 The bearer of a bill of exchange presented for acceptance is not bound to relinquish it to the drawee. Acceptance is to be indicated on the bill itself, is done by the wording accepted, or any phrase having the same meaning, and to be signed by the drawee. The mere affixing by the drawee of his signature to the body of the bill shall be deemed acceptance. If the bill is payable at an interval after sight, or must be presented for acceptance within a specific period under a particular clause, the date of acceptance must be shown on the day on which it occurs unless the bearer requires the date of acceptance to be shown on the day the bill is presented. If the acceptance is undated the bearer may, to maintain his right of recourse to the endorsers or the drawer, confirm such absence by a protest made at an appropriate time.

Article 456 Acceptance must be unconditional; however, the drawee may restrict it to part of the amount of the bill. Any amendment to the details of

the bill occurring in the form of acceptance shall be deemed to be a refusal thereof. However, the acceptor remains bound by the form of acceptance.

Article 457 If the drawee deletes his acceptance written on the bill of exchange before returning it, the deleted acceptance shall be deemed to be a refusal. The deletion shall be deemed to have occurred prior to the return of the bill unless proved to the contrary. However, if the drawee notifies his acceptance in writing to the bearer or any other signatory he shall be bound to that acceptance with respect to them.

Article 458 If, in the bill, the drawer designates a place for payment other than the domicile of the drawee, without specifying the party by whom payment is to be made, the drawee may designate him on acceptance. If he does not so specify, the acceptor shall be deemed bound to pay at the place of payment.

If the bill is payable in the domicile of the drawee, he may designate in the form of acceptance an address in the location where payment is to be made.

Article 459 If the drawee accepts the bill, he becomes bound to pay its value by the maturity date. Should payment not be made the bearer, even if himself the drawer, may claim on the acceptor drawee by immediate suit on the basis of the bill and to the full amount allowed to be claimed under the provisions of Articles 494 and 495 of this law.

3. PRECAUTIONARY GUARANTEE

Article 460 Payment of the whole or part of the amount of a bill of exchange may be guaranteed by a precautionary guarantor. Such guarantor may be anybody, even a signatory to the bill.

Article 461 A precautionary guarantee is to be written on the bill itself or on an attached sheet, this being done in the format 'accepted as precautionary guarantee' or any other phrase having the same meaning, the guarantor then signing it and stating the name of the party guaranteed in the guarantee, otherwise the guarantee shall be deemed to be to the drawer.

This guarantee follows from the signing by the guarantor on the body of the bill of exchange unless such signature is made by the drawee or drawer.

proper objection has met his obligation unless he has been guilty of fraud or gross fault. He is to verify the regularity of the series of endorsements, but is not required to verify the propriety of the signatures of the endorsers.

Article 471 The bearer of a bill of exchange is not obliged to receive its value before the maturity date, and if the drawee pays the value of a bill of exchange prior to the maturity date he shall bear the consequences.

Article 472 If the drawee pays a bill of exchange, he may request to receive it from the bearer duly signed to indicate payment.

The bearer may not decline to accept partial payment. The drawee may request that such partial payment be confirmed on the bill of exchange and that he be given acquittance therefore. The drawer, endorsers and other obligors of a bill of exchange are released by every payment made of the original value of the bill. The bearer of the bill should make a protest for non-payment with respect to the unpaid part of its value.

Article 473 If a bill of exchange is not presented for payment by its maturity date, every person indebted therefore may lodge its amount with the court cashier. Such deposit shall be at the expense and responsibility of the bearer.

The court secretariat shall provide the depositor with a document stating that the sum has been lodged, its amount, the date of the bill of exchange, the maturity date and the name of the person in whose favour the original was made out. If the bearer claims on a debtor for payment, the debtor must hand over the document of deposit against receipt of the bill of exchange, and the bearer may take receipt of the amount from the secretariat by virtue of this document. If the debtor does not hand over the document of deposit, he must pay the value of the bill of exchange to the bearer.

Article 474 If it is stipulated that a bill of exchange be paid in the Sultanate of Oman in money that is not in circulation therein, it must be paid in money in circulation in the Sultanate of Oman at its rate on the day due. If payment is not made on the day due, the bearer shall have the option of demanding the amount of the bill of exchange valued in money negotiable in the Sultanate of Oman at the rate obtaining on the day due or the day paid. Current practice in the Sultanate of Oman shall be followed when valuing foreign currency. However, the

drawer may indicate in the bill of exchange the rate on the basis of which the amount to be paid has been calculated.

If the sum in a bill of exchange is designated in currencies with a common denomination but whose value differs in the country of issue of the bill from that in the country of payment, it shall be assumed that the currency of the country of payment is intended.

Article 475 To decline payment of a bill of exchange shall not be accepted unless it has been lost or the bearer becomes insolvent.

Article 476 If a non-accepted bill of exchange becomes lost and was made in several copies, the person entitled to its value may demand that it be paid via one of the other copies.

Article 477 If a bill of exchange has been made in several copies and the copy bearing the form of acceptance is lost, its payment may not be demanded via one of the other save by an order from the president of the court and provided that a guarantor is submitted.

Article 478 A person losing a bill of exchange, whether or not coupled with acceptance, and who is unable to present one of the other copies, may apply to the president of the court for an order for its payment, provided that he proves his ownership of it and provides a guarantor.

Article 479 Should payment of a lost bill of exchange be declined after a demand in accordance with the two foregoing Articles, its owner; in order to maintain his rights, must confirm the same in a protest for non-payment made out by him on the day following maturity date and served on the drawer and the endorsers in the ways and on the dates prescribed in Article 492.

The protest for non-payment must be made out and served even if it is not possible to obtain an order from the president of the court at the proper time.

Article 480 The owner of a lost bill of exchange may obtain a copy of it by recourse to the person to whom the bill was endorsed, and the endorser is bound to assist him and to allow him to use his name in claiming on the previous endorser. In such a claim, the owner is to proceed from endorser to endorser until he arrives at the drawer. Each endorser is bound to write his endorsement on the copy of the bill provided by the drawer after indicating thereon to the effect that it is a replacement for one lost.

A demand for payment by virtue of such copy may only be made on an order from the president of the court and provided that guarantor is made available. All expenses are to be borne by the owner of the lost bill. Article 481.

Payment by the maturity date on an order from the president of the court in the cases referred to in the preceding Articles discharges the debtor from his obligation.

Article 481 Payment by the maturity date on an order from the president of the court in the cases referred to in the preceding Articles discharges the debtor from his obligation.

Article 482 The obligation of the guarantor stated in Articles 477, 478 and 480 lapses after three years if neither a claim nor a court action has occurred during that period.

2. FAILURE TO PAY

CLAIMING AND RECOURSE FOR NON-ACCEPTANCE OR NON-RECOURSE

Article 483 Should a bill of exchange not be paid by its maturity date, its bearer may have recourse to its endorsers and drawer or other obligors.

He has right of recourse to these prior to maturity in the following cases:

1. Where acceptance is totally or partially declined.
2. In the event of insolvency of the drawee whether he has accepted the bill of exchange or not.
3. In the event that he has refrained from paying what he owes even if the stoppage has not been confirmed by a judgment, and in the case of an unavailing attachment of his possessions.

In the event of the insolvency of the drawer of a bill of exchange the non-presentation of which for acceptance is conditional, the guarantors, when recourse is made to them in the cases indicated in paragraphs (2) and (3) may apply to the court within three days of the date on which recourse was made to them for a grace period for payment. If the court considers the application to be justified, it is to specify in its order the date on which payment is to be made, with the provision the bill of exchange. Such order may not be contested.

Article 484 If the maturity of a bill of exchange coincides with an official holiday, its payment may be demanded only on the following working day.

Nor may any action be taken connected with a bill of exchange, in particular its presentation for acceptance or the making of a protest for non-payment or the like, except on a working day. If a particular date is prescribed for action to be taken in connection with a bill of exchange and its last day coincides with a holiday, the date shall be extended to the following day. Interposing holidays are to be deducted when calculating the date.

Article 485 Failure to accept or pay a bill of exchange shall be proved by an official document called a protest for non-acceptance or non-payment which is made out by the clerk of the court. The protest is to include a literal copy of the bill of exchange and of the wording confirming acceptance and endorsement, and notice to pay the value of the bill of exchange. It is to state whether the acceptance or payment obligor is present or absent and the reasons for declining acceptance or payment.

The clerk of the court charged with making out the protest for non-payment is to leave a copy of it with the party against whom it is written. He is to enter the protest documentation in full, day by day observing the sequence of dates, in a special register with numbered pages and designated according to the original.

Entries in the aforesaid register shall be made by the method followed for indexing. Within the first ten days of every month, the clerk of the court is to send to the secretary of the Commercial Register a list of the protests for non-payment made out by him during the previous month for accepted bills of exchange and documents to order. The secretariat of the Commercial Register is to keep a book for entering these protests. Anybody may examine these on payment of the prescribed fees, and the office shall compile a publication containing these protests.

Article 486 A protest for non-acceptance of a bill of exchange is to be made on the dates prescribed for presentation for acceptance. If first presentation in accordance with Article 454 is made on the last day of the period prescribed for presentation, the protest may be made on the following day.

Article 487 A protest for non-payment of a bill of exchange due for payment on

a particular day or at a particular interval after its date or the date of signing it must be made on one of the two working days following the day due.

Article 488 If a bill of exchange is payable at sight, a protest for non-payment must be made in accordance with the conditions given in Article 486 for a protest for non-acceptance.

Article 489 A protest for non-acceptance dispenses with presentation of a bill of exchange for payment and making a protest for non-payment.

Article 490 If the drawee fails to pay, whether or not he has accepted the bill of exchange and in the case where an unavailing attachment has been made of his possessions, the bearer of the bill of exchange may not have recourse to his guarantors until the bill has been presented to the drawee for payment and a protest for non-payment has been made. In the event of insolvency of the drawee, whether or not he has accepted the bill of exchange, and in the event of the insolvency of the drawer of a bill of exchange the presentation of which for acceptance is a condition, presentation of the insolvency order is sufficient in itself to enable the bearer to exercise his rights of recourse to the guarantors.

Article 491 The drawer or any endorser or precautionary guarantor may exempt the bearer of a bill of exchange from making a protest for non-acceptance or non-payment when exercising his right of recourse, if he writes on the bill and signs below the clause 'recourse without costs' or 'without protest' or any other phrase having the same meaning.

This clause shall not exempt the bearer from presenting the bill of exchange on the dates laid down or from making the necessary notifications. Anyone who maintains to the bearer that these dates have not been observed must prove it.

If the drawer writes in this clause, its effects shall be valid for all signatories. If written by an endorser or a precautionary guarantor, its effects shall be valid for him alone.

If it is the drawer who lays down this condition, yet the bearer nonetheless makes a protest, he alone shall bear the costs. If the clause is made by an endorser or a precautionary guarantor, recourse may be made to all the signatories for the costs of a protest if made.

Article 492 The bearer of a bill of exchange is to notify its drawer and those persons who endorsed it to him of its non-acceptance or non-payment within the four working days following the day on which the protest was made or the day of presentation for acceptance or payment if it includes a clause exempting him from making a protest. Within the two working days following the day of receipt of the notification, each endorser is to notify each person who endorsed the bill of exchange to him of his receipt of that notification, giving the names and addresses of those persons, who made the previous notifications, and so on from endorser to endorser up to the drawer. The date with respect to each endorser shall commence from the date on which he received the notification.

When a signatory to the bill of exchange notifies in the aforesaid manner, he must also notify his precautionary guarantor on the same date.

If a signatory to the bill of exchange does not specify his address (or provides it in an illegible fashion) it is sufficient to notify the endorser that precedes him.

A person bound to notify may do so in any form, even by returning the bill itself. He is to confirm that he has made notification on the date prescribed, and the date shall be deemed met if the notification is sent on the aforesaid date by registered mail.

The rights of a persons required to notify shall not lapse if he does not do so on the afore-stated date, but he shall be bound when required to compensate for damage caused by his negligence, with the proviso that such compensation shall not exceed the value of the bill of exchange.

Article 493 The drawer, acceptor, endorser and precautionary guarantor of a bill of exchange are all jointly liable to its bearer, and they may be claimed on severally or jointly and without observing any particular order. This right applies to any signatory to a bill of exchange who has paid its value, vis-a-vis those liable to him.

An action brought against an obligor does not inhibit a claim being made against the remainders, even if their commitment is subsequent to the person against whom the action is brought in the first Place.

Article 494 The bearer of a bill of exchange may claim against those to whom he has right of recourse for the following:

- (a) The principal of the amount of an unaccepted or unpaid bill of exchange plus proceeds if stipulated.
- (b) The costs of the protests for non-payment, notifications and similar costs.

In cases where recourse is made before the maturity date of bill of exchange, the equivalent of the discount rate on the date of recourse at the place of domicile of the bearer must be deducted from its value.

Article 495 A person who has met a bill of exchange may claim on his guarantors for the following:

- (a) The whole amount paid by him.
- (b) The costs and interests borne by him.

Article 496 The courts may not grant a grace period for payment of the value of bills of exchange or for the taking of any action connected with them other than in the cases stated in the law.

Article 497 Any obligor claimed on for a bill of exchange by way of recourse, or liable to-be so claimed on, may, should he be liable to pay, request to receive the bill of exchange along with the protest for non-payment and a quittance for what he has paid.

Any endorser who has met a bill of exchange may delete his endorsement and endorsements subsequent to it.

Article 498 In the event of recourse to an obligor for the unaccepted amount of the value of a bill of exchange, the person paying this amount may request the bearer to confirm this payment on the bill of exchange and to be sent a quittance therefor. The bearer must, furthermore, send him a certified true copy of the bill of exchange, and the protest, to enable him to exercise his right of recourse to others.

Article 499 The rights of the bearer of a bill of exchange vis-a-vis its drawer, endorsers and other obligors other than its acceptor shall lapse on the passing of the deadlines prescribed for carrying out the following:

- (a) Presentation of a bill of exchange payable at sight or after a period subsequent to sight.
- (b) The making of a protest for non-acceptance or non-payment.
- (c) Presentation of a bill of exchange for payment in the event that it contains a clause exempting from making a protest.

However, the drawer shall not benefit from this lapse unless he proves that he has made available the consideration for payment by the maturity date, in which case the bearer can only have recourse to the drawee.

If the bill of exchange is not presented for acceptance by the date prescribed by the drawer, the rights of recourse of its bearer for non-acceptance and non-payment lapse, unless it is clear from the wording of the clause that the drawer intended by it only to exempt himself from guaranteeing acceptance.

If it is the endorser who specified a date for presentation of the bill of exchange for acceptance, only he shall benefit from this clause.

Article 500 If an event of force majeure prevents the presentation of a bill of exchange or the making of a protest by the dates laid down therefor, such dates shall be extended. The bearer is without delay to notify the person who endorsed the bill to him of the event of force majeure, and this notification is to be affixed to the bill dated and signed by him, or to its attached sheet, and the notifications are to proceed serially until they arrive at the drawer. When the event of force majeure no longer applies, the bearer is to present the bill of exchange for acceptance and payment, and is then to make a protest as required.

If the event of force majeure continues for more than thirty days reckoned from the date of maturity, recourse may be made to the obligors without a requirement to present the bill or make a protest. If the bill of exchange is payable at sight or at an interval after sight, the thirty-day period shall be valid from the date on which the bearer notified the person who endorsed the bill to him of the occurrence of the event if this date occurs before the expiry of the deadlines for presentation of the bill. The interval for sight is added to the thirty-day period if the bill of exchange is payable after an interval subsequent to sight.

Matters that relate to the person of the bearer of the bill of exchange or to whoever charged him with presenting it or with making a protest are not deemed to come within an event of force majeure.

Article 501 The bearer of a bill of exchange for which a protest for non-payment has been made may impose a conservation attachment on the chattels of the drawer, acceptor, endorser, precautionary guarantor and other obligators of the bill of exchange. The attachment shall be

imposed by order of the president of the court, and shall indicate the procedures to be followed in its imposition.

Article 502 Anyone with a right of recourse to other obligors of the bill of exchange may exercise his right by drawing a fresh bill of exchange on one of his guarantors, due for payment at sight and payable in the domicile of that guarantor unless he stipulates otherwise.

Article 503 The bill of recourse shall include those sums detailed in Articles 494 and 495 plus charges and fees paid.

If the drawer of the bill of recourse is the bearer, he shall determine its amount on the basis on which is determined the value of a bill of exchange payable at sight drawn from the place in which the original bill was payable on the place of domicile of the guarantor.

If the drawer of the bill recourse is one of the endorsers, its sum will be specified on the basis by virtue of which was specified the value of the bill which was payable on sight drawn on the place in which was the domicile of the drawer of the bill of recourse on the place in which was the domicile of the guarantor.

Article 504 If there are numerous bills of recourse, a claim may be made against the drawer of the original bill or any of its endorsers only for the value of one bill of recourse.

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INTERVENTION

Article 505 The drawer, endorser and precautionary guarantor of a bill of exchange may nominate who is to accept it or pay it when necessary.

A bill of exchange may be accepted or paid by any person intervening in favour of any debtor thereunder to whom recourse is liable to be made.

The intervener may be an outsider, and maybe the drawee if he has not accepted the bill or any person obliged under the bill of exchange.

An intervener is to notify the person in whose favour the intervention is being made within the following two working days, otherwise he shall be liable if required to compensate for the consequential damage of his negligence, with the proviso that the amount of compensation shall not exceed the amount of the bill of exchange.

Article 506 Acceptance by intervention occurs in all cases where the bearer of a permissible acceptance bill has right of recourse prior to its maturity date. If the person accepting the bill or paying its value when necessary in its place of payment is nominated in the bill, the bearer may not have the right of recourse before its maturity date to the person making that nomination or to subsequent signatories unless the bill is presented to the person nominated to accept or pay it when necessary and that person declines to accept it, and the bearer confirms this refusal is a protest. In other cases the bearer may refuse acceptance by intervention. If he accepts it, he loses his rights of recourse before the maturity date to the person in whose favour the intervention is made and the subsequent signatories.

Article 507 Acceptance by intervention is to be stated on the bill itself, and the intervenor is to sign it and give the name of the person in whose favour the intervention has occurred. If an acceptance by intervention lacks this statement, it shall be deemed to have occurred in favour of the drawer.

Article 508 An acceptor by intervention is liable to the bearer and subsequent endorsers of the bill of exchange on behalf of the person in whose favour the intervention has occurred for the commitments of the latter. The person in whose favour the intervention has occurred and his guarantors, despite the occurrence of acceptance by intervention may against their payment of the sum specified in Article 494, oblige the bearer to deliver them the bill, protest and quittance if any.

Article 509 A bill may be settled by intervention in all cases where its bearer may, on or before its maturity date, have right of recourse to its obligors. Such settlement shall be by payment of the whole of the sum payable by the person in whose favour the intervention is made. Settlement must be made at the latest on the day following the last day on which a protest for non-payment may be made.

Article 510 If those persons who have accepted the bill by intervention or those persons nominated to pay it when necessary have a domicile in the place for payment, its bearer must present it to all these for payment and make a protest for non-payment if the case requires at the latest by the day following the last day on which a protest for non-payment may be made.

If he fails to make a protest on that date, the party who nominated the persons to pay when necessary or the party in whose favour the

acceptance of the bill by intervention occurred, and subsequent endorsers are released from their obligations.

Article 511 If the bearer of a bill of exchange refuses payment by intervention, he shall lose his right of recourse to those persons whose obligation would be discharged by such payment.

Article 512 Payment by intervention must be confirmed by entering a quittance on the bill, stating in whose favour the payment was made. Is such statement lacks this quittance, the payment by intervention shall be deemed to have occurred in favour of the drawer.

The bill and protest (if made), must be delivered to the intervening payer.

Article 513 A person who pays a bill of exchange by way of intervention acquires all rights arising therefrom vis-a-vis the person in whose favour the intervention was made vis-a-vis the obligors of the latter under the bill of exchange. However such payer may not re-endorse the bill. Endorsers subsequent to the person in whose favour the payment was made are released from obligation.

If several persons are pressing to pay by intervention, preference shall be given to the person whose payment shall release the largest number of obligors. A person who knowingly intervenes to pay contrary to this rule shall lose his right of recourse to those persons who would have been release from their obligation had this rule been observed.

3. LIMITATION PERIOD

Article 514 Every action against the acceptor of a bill of exchange and arising therefrom becomes proscribed on the expiry of three years from the date of maturity.

Actions by the bearer against the endorsers or drawer become barred on the expiry of a year from the date of protest made by the legal deadline or from the maturity date if the bill contained a clause exempting from protest.

Action by some endorsers against others or against the drawer become proscribed on the expiry of six months from the day on which the endorser paid the bill or from the day on which the action was brought against him.

Article 515 In the event that an action is brought, the limitation period shall apply only if a judgment concerning the debt is given or if the debtor acknowledges the debt in a separate instrument entailing renewal of the debt.

Article 516 Interruption of the limitation period shall affect only the person in respect of whom the action to discontinue was taken.

Article 517 Those against whom a case in respect of a debt is brought, irrespective of the expiry of the limitation period, declare on oath that they are free from the debt if they are asked so to swear and their heirs or other successors must swear that they were unaware that their testator died with his financial obligations encumbered with the debt.

CHAPTER TWO

PROMISSORY NOTE

Article 518 A promissory note is an instrument containing the following particulars:

1. The order clause or the phrase 'promissory note' written in the body of the note in the language in which it is made out.
2. The date on which and the place in which the note is created.
3. The name of the person to whom or to whose order payment is to be made.
4. An unconditional undertaking to pay a particular sum of money.
5. The maturity date.
6. The place of payment.
7. The signature of the person creating the note.

Article 519 A note that lacks any of the particulars stated in the foregoing Article shall not be deemed a promissory note except in the following cases:

- (a) If the note lacks a statement of the place where it was created, it shall be deemed to have been created in the place indicated alongside the name of its compiler, otherwise the place in which the actually signed the note.
- (b) If the note lacks a statement of the maturity date, payment shall be deemed to be at sight.

- (c) If the note lacks a statement of the place for payment, the place indicated alongside the name of the compiler shall be deemed to be the place for payment and at the same time the domicile of the compiler. If it lacks any statement of a place for payment, the place of business or residence of the compiler shall be deemed to be the place for payment.

Article 520 The provisions relating to a bill of exchange in respect of multiple reproduction and copies, endorsement maturity, payment, recourse for non-payment, impermissibility of granting a grace period for payment, conservation attachment, protest and calculation of deadlines and working days, recourse by establishing a bill of recourse, payment by intervention, and the limitation periods apply to a promissory note in as much as they do not conflict with its nature.

Also applicable to a promissory note are the rules relating to a bill of exchange payable in the domicile of any of the other parties or in a location other than that of the domicile of the drawee, stipulation of the interest, variation in the particulars pertaining to the sum to be paid, the consequences of signing by those persons not competent to enter into an obligation, non-binding signatures, or signing by a person unauthorised or who exceeds the limits of an authorisation.

Also applicable to a promissory note are the provisions relating to a precautionary guarantee, whilst observing that if the name of the guaranteed party is not mentioned in the form of this guarantee the guarantee shall be deemed to be in favour of the compiler of the note.

Article 521 The compiler of a promissory note is bound in the same way as the acceptor of a bill of exchange. A note to order payable by a particular interval after sight must be presented to the compiler by the date stated in Article 453 for a statement to be entered indicating that the note has been sighted. This indication must be dated and signed by the compiler. The sight interval shall commence from the date on which the indication is made. If the compiler declines to make such indication, his refusal must be confirmed by a protest for non-acceptance. The date of the protest shall be deemed to be the beginning of the sight interval.

Article 526 A cheque may not be issued unless at the time of making out the cheque the drawer had funds with the drawee disposable by cheque according to an express or implied agreement.

In the event of repudiation, the drawer alone must prove that the party on whom the cheque was drawn had the consideration available at the time it was made out. If he does not so confirm, he is the guarantor of its payment even if a protest for non-payment is made after the prescribed dates.

Article 527 There is no acceptance in the case of a cheque, and if the word 'acceptance' is written on a cheque it shall be deemed null and void. However, the drawee may indicate on the cheque to the effect that his is honouring it, and this means that the consideration existed on the date of the indication.

The drawee may not refuse to honour a cheque if he holds the consideration for its payment, and the signature of the drawee on the body of the cheque shall be deemed to indicate his approval.

Article 528 It is permissible to stipulate that a cheque be paid:

- (a) To a named person, with or without an express order clause.
- (b) To a named person, stating 'not to order' or any other phrase having the same meaning.
- (c) To the bearer of the cheque.

A cheque drawn in favour of a named person and which mentions the phrase 'or to bearer' or any similar phrase shall be deemed to be a cheque to bearer. If it does not show the name of the payee it shall be deemed to be to bearer. A cheque which includes the clause 'not negotiable' shall be payable only to the bearer who takes receipt of it accompanied by this clause.

Article 529 A cheque may be drawn to the order of the drawer himself, and it may be drawn on account of someone else. It may not be drawn on the drawer himself except when drawn from one establishment on another both belonging to the drawer himself provided that it is not payable to bearer.

Article 530 Stipulation of interest on a cheque shall be deemed null and void.

Article 531 It is permissible to stipulate that a cheque be cashed in another bank in the location of the domicile of the drawee or in any other location.

Article 538 An endorser guarantees to pay the cheque unless he stipulates otherwise. He may forbid it re-endorsement, in which case he is not bound by guarantee to persons to whom the cheque accrues by a subsequent endorsement.

Article 539 An holder of an endorsable cheque is considered to be its lawful bearer on proving that he holds title to it by, uninterrupted endorsements, even if the last thereof is an endorsement in blank. In this regard deleted endorsements shall be deemed null and void.

If an endorsement in blank is followed by a further endorsement, the signatory to this endorsement shall be deemed to be the one to whose title to the cheque belongs by the endorsement in blank.

Article 540 An endorsement written on a cheque to bearer makes the endorser liable under the provisions governing recourse, but such endorsement does not result in the instrument becoming a cheque to order.

Article 541 If a person loses possession of a cheque as a result of some accident, whether it be to bearer or endorsable, the person to whom such cheque accrues is not bound to surrender it should he establish his title to it as given in Article 539, unless he shall have obtained it in bad faith or in its acquisition was guilty of gross default.

Article 542 An endorsement subsequent to a protest for non-payment or occurring after the expiry of the deadline for presentation of the cheque shall entail only the effects of subrogation.

An undated endorsement shall be deemed to have been made prior to making a protest for non-payment or to have been made prior to the expiry of the deadline for presentation of the cheque unless proved to the contrary. Endorsements may not be pre-dated and if this is done it shall be deemed a forgery.

PRECAUTIONARY GUARANTEE

Article 543 Payment of the value of a cheque wholly or in part may be guaranteed by an alternative guarantor. This guarantee may be given by an outsider other than the drawee, and he may be a signatory to the cheque.

SECTION TWO

LAPSE OF THE OBLIGATION ESTABLISHED BY THE CHEQUE

1 - ENCASHMENT

Article 544 A cheque is payable at sight. If a cheque is issued with a subsequent date, it may not be cashed before that date, whilst observing the provisions pertaining to discount in bank operations in this law.

Article 545 A cheque drawn and payable in the Sultanate must be presented for payment within six months. The aforesaid deadline shall commence on the date shown on the cheque as the date of issue. Presentation of the cheque to a legally recognised clearing Chamber shall be deemed to be presentation for payment.

Article 546 If a cheque is drawn between two places with differing calendars, the date of issue is to be converted to the corresponding date in the calendar of the place for payment.

Article 547 The drawee may pay the value of the cheque even after the expiry of the deadline for presentation. An objection by the drawer to the encashment of a cheque shall not be acceptable except in the case of loss or the bankruptcy of the bearer.

If for other reasons the drawer objects in spite of this prohibition, at the request of the bearer the court must order refusal of the objection even in the case of principal action.

Article 548 If the drawer dies, loses his capacity or becomes bankrupt after the creation of the cheque, this shall not affect the applicable provisions.

Article 549 If several cheques are presented at the same time and the consideration is insufficient to pay them all, their dates on which drawn are to be taken in to account. If the cheques presented are taken from one book and bear one date of issue, the earliest cheque numerically shall be deemed to antecede the others unless proved otherwise.

Article 550 If it is stipulated that a cheque be cashed in the Sultanate in currency that is not in circulation therein, its value on the date of presentation of the cheque must be paid in the currency in circulation in the Sultanate at its rate on the date of its encashment. If encashment is not done on the date of presentation, the bearer shall have the option of demanding the amount of the cheque valued in the currency in circulation in the Sultanate at its rate either on the date of presentation or the date of encashment.

If a cheque is presented for the first time after the expiry of the deadline for its presentation the rate on the day on which the deadline for presentation expired shall apply.

The practice current in the Sultanate shall be followed when valuing foreign currency, but the bearer may designate on the cheque the rate at which the payable sum is to be calculated. If the amount of the cheque is designated in a currency with a common denomination but whose value in the country of issue differs from that in the country of encashment, it shall be assumed that the currency in the country of encashment was intended.

Article 551 If a cheque to bearer is lost or destroyed, its owner may refer to the drawee to stop payment of its value. Such reference must include the cheque number, its amount, the name of the drawer and every other particular that will assist in identifying it, and the circumstances surrounding its loss or destruction. If it is not possible to provide some of these details, the reasons must be given. If the objector is not domiciled in the Sultanate, he must designate a selected domicile in it. When the drawee receives the objection, he must decline to pay the value of the cheque to its holder, and must earmark the consideration for payment of the cheque until the matter is resolved.

Article 552 The cheque holder referred to in the foregoing Article may challenge the drawee over the objection. The drawee is to take receipt of the cheque from him against a receipt and then inform the objector by recorded delivery registered letter of the name and address of the holder.

The cheque holder is to notify the objector by recorded delivery registered post of the requirement to bring an action for entitlement to the cheque within one month of the date of his receipt of the notice, and the notice is to contain the reasons for holding the cheque and the date thereof.

Should the objector not bring an action for entitlement within the aforesaid interval, at the request of the cheque holder the court must rule to refuse the objection, and in this event the cheque holder shall be deemed to be its lawful owner vis-a-vis the drawee.

If the objector brings action for entitlement to the cheque, the drawee may pay its value only to that litigant who is granted a final ruling on ownership of the cheque or an amicable settlement certified by both sides declaring ownership to be his.

Article 553 If six months elapse from the date of the objection referred to in Article 551 without the cheque holder presenting a claim for payment, the objector may apply to the court for permission to take receipt of the value of the cheque. This ruling shall be given *vies-a-vies* the drawee once the court has verified the objector's ownership of the cheque.

If the objector does not apply as aforesaid, or applies and it is refused by the court, the drawee must re-enter the consideration on the credit side of the drawer's account.

CROSSED CHEQUE AND CHEQUE CREDITED TO ACCOUNT

Article 554 The drawer or bearer of a cheque may cross it, and such crossing shall have the effect Shown in the following Article. Crossing is done by putting two parallel lines across the body of the cheque. Crossing may be general or specific. If there is no entry in the space between the lines or if the word 'bank' or any other wording having the same meaning is written between the lines, the crossing is general. If the name of a particular bank is written between the lines the crossing is specific.

A general crossing may be converted to a specific crossing. A specific crossing cannot be converted to a general crossing, and deletion of a crossing or the name of the bank written between the lines shall be deemed null and void.

Article 555 The drawee may pay on a generally crossed cheque only to one of his clients or to a bank. He may pay on a specifically crossed cheque only to the bank named between the lines or to a client of that bank if the latter is the drawee. However, the bank named between the lines may entrust another bank with taking receipt of the value of the cheque.

A bank may obtain a crossed cheque only from one of its clients or another bank, nor may it receive its value on account of persons other than those named.

If a cheque bears several specific crossings, the drawee may not pay on it unless it bears two crossings one of which is for its value to be collected via a clearance Chamber. Should the drawee fail to observe the foregoing provisions, he shall be liable to compensate for damage not exceeding the value of the cheque.

By the word 'client' in this Article is meant anyone having an account

with the drawee and who has obtained a cheque book from him or is entitled to obtain such book.

Article 556 The drawer or bearer of a cheque may stipulate that it not be encashed by entering the following on the body of the cheque: 'for credit to account' or any other phrase having the same meaning. In this case the drawee can only settle the value of the cheque by entries in writing such as a credit- to an account or bank transfer or clearance. Such entries in writing replace encashment, and a deletion of the statement 'for credit to account' is ignored. Should the drawee fail to observe the foregoing provisions, he shall be liable to compensate for damage not exceeding the value of the cheque.

2- FAILURE TO PAY

Article 557 The bearer of a cheque may have recourse to the drawer, endorsers or other obligors if he presents it within the legal deadline and its value is not paid-over, and he confirms failure to pay by a protest for non-payment. In lieu of a protest for non-payment, failure to pay may be proved by the following:

- (a) A statement issued by the drawee, mentioning the day of presentation of the cheque.
- (b) A statement issued by a clearance chamber, stating that the cheque was presented within the legal deadline and its value was not paid. The statement must be dated, written on the cheque itself, and signed by the party making it. It shall not be permissible to decline to put this statement on a cheque if the bearer so requests, even if the cheque includes a clause for recourse without costs. However, the drawee may request a grace period of not more than the working day following presentation of the cheque even if presented on the last day of the date for presentation.

Article 558 The bearer retains his right of recourse to the drawer even if the bearer does not present the cheque to the drawee or make a protest for non-payment or equivalent within the legal deadline, unless the drawer made the consideration available and the consideration remained with the drawee until expiry of the deadline for presentation of the cheque and the consideration was then abated by an act not attributable to the drawer.

Article 559 A failure to pay must be proved in the manner given in Article 557

Article 562 The limitation period stated in the foregoing Article shall, in the event that an action is brought, apply only from the date of the last proceedings. The said limitation period shall not apply if judgment is given on the debt, or if the debtor acknowledges it in a separate instrument entailing renewal of the debt.

Article 563 Interruption of the limitation period shall affect only the person with respect to whom the action causing the interruption was taken.

Article 564 The time barring of an action to claim for the value of a cheque shall not prevent the bearer from claiming against the drawer who has not made the consideration available and has taken it back wholly or in part, for the return of that from which he has unrightfully profited.

This provision applies to the drawer if the obligors make recourse to him for payment of the value of a cheque.

SECTION THREE - PENALTIES

Article 565 Anyone who with ill intent draws a cheque and who has no available drawable consideration or a consideration less than the value of the cheque, and anyone who with ill intent, having given a cheque, retrieves the consideration or part thereof whereby the remainder is insufficient to meet the value of the cheque, or who with ill intent orders the drawee not to pay the value of a cheque, shall be punished according to the penal code.

Article 566 If a criminal action is brought against the drawer under the provisions of the foregoing Article, the bearer of the cheque in the civil prosecution may apply to the criminal court to rule in his favour for a sum equivalent to the unpaid amount of the value of the cheque plus interest on that amount calculated from the day of presentation of the cheque for payment, plus supplementary compensation if applicable.

The names of persons convicted under the foregoing Article shall be published in the official Gazette, giving their professions, domiciles and the type of punishments awarded.

Article 567 Any drawee who with ill intent refuses to honour a cheque properly drawn on his accounts, having the consideration and not having made any objection in its regard, shall be penalised with a fine not exceeding two hundred Omani Rials without prejudice to the compensation due to the drawer for damage sustained through non-payment and the harm done to his credit.

- Article 568** Any drawee who knowingly declares that he holds a consideration less than that which he actually holds shall be penalised with a fine not exceeding one hundred Omani Rials.
- Article 569** The following shall be penalised with a fine not exceeding one hundred Omani Rials:
- (a) Anyone who draws a cheque which he has not dated.
 - (b) Anyone who draws a cheque on their than a bank.
 - (c) Anyone who pays on a cheque that lacks a date and anyone taking receipt of such a cheque by way of clearance.
 - (d) Anyone who draws a cheque not having the full consideration therefor prior to drawing it, without prejudice to the provisions of Articles 565 and 566.
- Article 570** Any bank holding a consideration and which provides its creditor with a blank cheque book for payment thereon from its funds, must write the name of the person receiving it on each of such cheques. Every offence against this Article shall be penalised with a fine not exceeding one hundred Omani Rials.

CHAPTER FOUR

MOVABLE VALUABLES

- Article 571** Shares, loan instruments, income bonds and other negotiable instruments issued wholesale and giving entitlement to equal money values and which may be quoted on a finance market may be nominal, to bearer or to order, without prejudice to the provisions relating to joint stock companies incorporated in the Sultanate.
- Article 572** If an instrument is created to bearer it transfers on simple handover. Any holder of such an instrument shall be deemed to have the capacity to exercise the rights pertaining to it, and so long as a debtor receives no legal objection payment by him to the bearer of the instrument shall release him from his obligation.
- A debtor may also protest to the bearer of the instrument on grounds based on the invalidity of the instrument or arising from the wording of the instrument itself.
- Article 573** If an instrument is nominal, the entitlement of its owner is proved by registering it in his name in the records of the establishment which

issued the instrument, and ownership of the instrument is confirmed from this registration.

Article 574 A nominal instrument is sold by a declaration indicating the same which is entered in the records and signed by the seller or his agent. The debtor establishment, prior to registration of the sale, is entitled to demand that the declarant confirm his identity and capacity. Such sale accords the new owner whose name has been registered personal and immediate rights, and the debtor establishment may not make recourse to him on any grounds that concern the previous owners of the instrument.

Article 575 Nominal instruments may include detachable coupons that entitle their bearer to receive entitlements, distributions and interest (called mixed instruments).

Article 576 Instruments for movable valuables which are created to order pass by way of endorsement. Their endorsement is subject to the rules governing the endorsement of bills of exchange unless there are differing provisions that devolve from rules and regulations or from the nature of the instrument itself.

CHAPTER FIVE

OTHER INSTRUMENTS CONVEYABLE BY WAY OF ENDORSEMENT

Article 577 Any instrument binding its signatory to the delivery of a sum of money or a quantity of fungibles in a particular place and at a particular time may pass by endorsement if created specifically by the wording of the order. An endorsement shall be subject to the provisions of Article 425 and subsequent articles related to the endorsement of a bill of exchange unless the law of the instrument itself provides otherwise.

A debtor may not protest on grounds that have no basis in the instrument itself and grounds that he has directly against the claimant unless the claimant is in bad faith.

A debtor is only obliged to pay against delivery of a note to order which includes a mention of the receipt.

Article 578 If a bill of exchange or note to order or other endorsable instruments are delivered as settlement of a debt, this shall not be deemed a renewal of the contractual agreement unless the wish of the two parties indicates otherwise.



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