

# Law no (22) of 2004 Regarding Promulgating the Civil Code 22 / 2004

Number of Articles: 1188

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## **We, Hamad Bin Khalifa Al Thani, the Emir of State of Qatar,**

After reviewing the amended interim Constitution, in particular Articles 1, 23, 34 and 51 thereof;

The Civil and Commercial Law promulgated by Law No.16 of 1971, as amended by Law No. 10 of 1982;

The Civil and Commercial Procedures Law promulgated by Law No. 13 of 1990, as amended by Law No. 7 of 1995;

Decree by Law No. 14 of 1991 regulating the Ministry of Justice and determining its jurisdictions, as amended by Law No. 11 of 2002;

The Judicial Authority Law promulgated by Law No. 10 of 2003;

The proposal made by the Minister of Justice;

The draft law presented by the Cabinet; and

Upon consultation with the Shura Council,  
Have issued the following Law:

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## **Issuance Articles**

### Article 1 - Introduction

The provisions of the Civil Law attached hereto shall come into force. The Introductory Part and Book One (Articles 1 to 208) of the aforesaid Law of Civil and Commercial Articles are hereby repealed.

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### Article 2 - Introduction

All competent authorities, each within its jurisdiction, shall implement the present Law which shall be published in the *Official Gazette*.

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## **Introductory Part**

### **Chapter One: Application of Law and Temporal and Spatial Jurisdiction**

#### **Subchapter One: Application of Law**

### Article 1

1. The statutory provisions shall apply, expressly or impliedly, to relevant issues dealt with by the provisions herein.
  2. Where there is no statutory provision, the Judge shall rule according to the relevant provision of the Islamic *Shariah*, if any. Otherwise the Judge shall rule according to the customary practice. In the absence of such customary practices the Judge shall rule in accordance with the rules of justice.
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### Article 2

1. A provision of a law can only be repealed by a subsequent law expressly providing for such repeal, or containing a provision prejudicing a provision of the former law.
  2. Where a new law regulates a new matter previously regulated by a former law, the new law shall revoke all the relevant provisions of the former law.
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#### **Subchapter Two: Temporal Jurisdiction**

### Article 3

1. Save as otherwise provided, the new law shall apply to all cases from such time as it comes into force.
2. The consequences of actions or dispositions shall remain subject to the law applicable at the time of conclusion of such actions or dispositions, unless the provisions of the new law relate to public order, in which case the provisions of the new law shall apply to such consequences.

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Article 4

1. Provisions regarding the legal capacity of persons shall, from such time as such provisions come into force, be applicable to all persons who fall under such provisions.  
2. Change in capacity in accordance with the provisions of the new law shall have no effect on any dispositions prior to the effective date of the new law.

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Article 5

1. New legislative provisions regarding prescription shall apply from such time as they come into force in all cases in which the period of prescription has not been completed.  
2. Former legislative provisions, however, shall apply as regards the date of commencement of prescription, its cessation and its interruption in respect of the period prior to the application of the provisions of the new law.

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Article 6

Where the new law provides for extension of any incomplete prescription, the part of such period prior to the effective date of the new law shall be taken into account.

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Article 7

1. When the new law provides for a period of prescription shorter than that provided for in the former law, the new period shall apply from the date on which the new law came into force.  
2. If, however, the remaining period still to run under the former law is shorter than that fixed by the new law, the prescription shall be completed upon the expiry of the remaining period under the former law.

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Article 8

The provisions of the existing law shall apply to the conclusiveness of evidence effective from the time of occurrence of any incidents or acts that require to be proved by evidence.

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Article 9

Times shall be calculated according to the Gregorian calendar, unless the law provides otherwise.

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Article 10

Where a dispute arises in the application of different laws to any particular case, the dispute shall be resolved by reference to Qatari law.

Article 11

1. The status and legal capacity of persons are governed by the law of the country to which they belong by reason of their nationality.
2. Where, however, in a transaction of a financial nature, concluded and effective in Qatar, one of the parties is an incapacitated foreigner and such incapacity is due to a cause neither apparent to nor easily detected by the other party, such cause shall have no effect on the legal capacity of such foreigner.

Article 12

1. The legal status of foreign juristic persons, such as companies, associations and corporations, shall be subject to the law of the State where such juristic persons have established their respective headquarters.
1. Where, however, a juristic person conducts its main activity in Qatar, even if its actual headquarters is outside Qatar, the Qatari law shall nevertheless apply.

Article 13

1. Conditions for the validity of a marriage, such as capacity, acceptance and lack of Shariàh impediments, shall be governed by the law of jurisdiction (national law) of each spouse at the time of marriage.
2. If one of the two spouses is Qatari at the time of the conclusion of the marriage, the Qatari law alone shall apply except as regards the legal capacity to marry.

Article 14

Formalities of marriage, such as registration and religious ceremonies, shall be in accordance with the law of jurisdiction where the marriage is concluded, or the national law of either spouse, or the law of common domicile of both spouses.

Article 15

Upon confirming a marriage, it shall be referred to the law governing the formalities of such marriage.

Article 16

1. The personal and financial consequences of marriage, including termination of cohabitation, submission, mourning, alimony and dowry, shall be regulated by the law of the country to which the husband belongs at the time of conclusion of the marriage.
2. If the spouses adopt the same nationality following matrimony, the law of such nationality shall apply to the personal and financial consequences of the marriage.

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## Article 17

The law of common nationality of the spouses at the time of divorce, or at the time of filing for divorce or separation, shall apply to both. If the nationality of the spouses is different, the law of nationality of the husband at the time of marriage shall apply.

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## Article 18

Engagement shall be governed by the provisions of the preceding Articles in connection with marriage.

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## Article 19

The law of nationality of the father at the time of birth shall apply to any children born of the marriage, and shall also apply to the admission or denial of paternity. If the father dies prior to such birth, his law of nationality at the time of his death shall apply.

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## Article 20

The law of nationality of the father shall apply to the substantive issues relating to the guardianship and custody of any children.

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## Article 21

The obligation to pay alimony between relatives and in-laws shall be governed by the law of nationality of the person obliged to pay such alimony.

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## Article 22

Substantive matters, such as natural and legal guardianship, trusteeship/receivership, and custodianship, and systems established to protect minors, incapacitated persons and absent persons, shall be governed by the law of nationality of the person requiring protection.

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## Article 23

1. Inheritance shall be governed by the law of nationality of the deceased at the time of death.
2. Legacies in Qatar without any legatee shall be governed by the Qatari law.

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Article 24

- 1. A testament and all other dispositions taking effect after death shall be governed by the law of nationality of the testator.
- 2. However, the form of the testament and all other dispositions taking effect after death shall be governed by the law of nationality of the person at the time of such disposition or, or by the law of the country in which such disposition is made.

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Article 25

- 1. Possession, ownership, and other real rights in kind as regards immovable property, and the methods of acquisition, transfer or termination thereof, shall be governed by the law of the place in which the immovable property is situated.
- 2. The law of the jurisdiction where the property is located shall determine whether such property is immovable or movable.

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Article 26

Acquisition, title and associated rights in kind of a movable asset and the methods of acquisition, transfer or termination thereof such rights shall be governed by the jurisdiction where such movable asset is located at the time of its acquisition.

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Article 27

- 1. In terms of the substantive conditions to be imposed and the effects thereof, a contract shall be governed by the law of the jurisdiction of the domicile common to the contracting parties. If the domicile of one party is different from that of the other party, the law of jurisdiction where the contract is concluded shall be applied, unless the contracting parties agree otherwise or the circumstances indicate that another law is intended to be applied.
- 2. Contracts relating to immovable property, however, shall be governed by the law of the jurisdiction in which the immovable property is situated.

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Article 28

Employment contracts between employers and employees shall be governed by the law of jurisdiction where the head office of the employer is located. If the head office is located abroad, but particular contracts are concluded by offices based in Qatar, then Qatari law shall apply to those contracts.

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Article 29

- 1. The form of contracts shall be governed by the law of jurisdiction of the country where such contracts are concluded.
  - 2. The law governing the contract in its substantive provisions, the law of the domicile of the contracting parties, or their common national law, may also apply.
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## Article 30

1. Non-contractual obligations shall be governed by the law of the State in whose territory the act that gave rise to the obligation took place.
2. The provisions of the preceding paragraph shall not apply to acts which occurred abroad and which, although considered unlawful under the law of the country in which the tort occurred, are considered lawful in Qatar.

## Article 31

Obligations arising from unjust enrichment, payment of amounts not yet due, or officiousness shall be governed by the law of jurisdiction where the act creating such obligations occurs.

## Article 32

In legal relationships involving a foreign element, Qatari courts shall apply the rules of jurisdiction and procedure as determined by Qatari law.

## Article 33

The provisions of the preceding Articles shall apply only when no provisions to the contrary are included in a special law or in an International Convention in force in Qatar.

## Article 34

The principles of private international law shall apply in the case of a conflict of laws for which no provision is made in the preceding Articles.

## Article 35

1. In the case of persons of unknown nationality or of a person of simultaneous plural nationality, the law to be applied shall be decided by a judge.
2. Qatari law shall apply, however, if a person, in respect of Qatar, proves to have Qatari nationality and is at the same time deemed by one or more foreign states to be a national of those states.

## Article 36

Whenever it appears from the provisions of the preceding Articles that the applicable law is the law of a particular state with multiple statutes, the internal law of such state shall determine which statute shall be applied.

## Article 37

Where it is resolved that a foreign law is applicable, only the internal provisions of such foreign law shall apply, and the provisions relating to private international law shall be excluded.

## Article 38

The provisions of a foreign law applicable by virtue of the preceding Articles shall not be applied if they conflict with the public order or morals in Qatar. In such event, the Qatari law shall apply.

## **Chapter Two: Persons**

### **Subchapter One: Natural Person**

## Article 39

1. The personality of a human being shall commence upon being born alive and shall cease upon death.
2. Missing, absent and foundling persons shall be subject to the provisions prescribed in special laws. In the absence of such special laws, the provisions of the Islamic Shari'ah shall apply.

## Article 40

A fetus *in utero* shall be capable of rights, provided that it is subsequently born alive.

## Article 41

The domicile of a person is his place of habitual residence. Such person may have more than one domicile simultaneously.

## Article 42

The place where a person exercises a trade or profession shall be considered his domicile in connection with such trade or profession.

## Article 43

1. The domicile of an incapacitated, missing or absent person or of a minor shall be the domicile of his legal representative.
2. However, the minor or incapacitated person shall nevertheless retain his special domicile in respect of any acts that he is legally qualified to perform.

Article 44

1. A chosen domicile may be elected for a specific legal act.
2. The chosen domicile shall apply unless expressly limited to certain acts.
3. The chosen domicile must be proved in writing.

Article 45

1. The family of a person shall consist of the person's spouse and relatives.
2. Persons having a common ancestor are deemed to be relatives.

Article 46

1. Lineal consanguinity is the relation in a direct line between persons who descend from the same ancestor.
2. Collateral consanguinity is the relationship between persons who are related by a common ancestor but do not descend from each other.

Article 47

1. The degree of lineal consanguinity shall be determined on the basis that each descendant is related by a degree, without counting the ancestor.
2. The degree of collateral consanguinity shall be determined by the number of descendants up from one descendant to the common ancestor and then down from such common ancestor to the other descendant, without counting that ancestor.

Article 48

The degree of affinity shall be determined by the degree of relationship to the spouse.

Article 49

1. Any person who attains the age of majority and is in possession of his mental faculties shall have full legal capacity to perform legal acts, unless guardianship or custody of his property is decided to be continued or unless such person is incapacitated.
2. The age of majority shall be 18 years.

Article 50

1. No person who lacks discretion by reason of youth or imbecility or insanity shall be competent to exercise his civil rights.
2. A person under the age of seven years shall be deemed not to have reached the age of discretion.

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## Article 51

Any person who has reached the age of discretion, but has not reached the age of majority, and any person who has reached the age of majority but is prodigal or negligent, shall be deemed to lack capacity under the law.

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## Article 52

Persons of no or defective capacity shall be governed by the provisions of natural or legal guardianship or curatorship over property as provided for by special laws.

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### **Subchapter Two: Juridical Person**

## Article 53

Juridical persons are:

1. The state, administrative units thereof having legal entity recognised by law, and municipalities;
2. Public authorities and establishments;
3. Awqaf;
4. Civil and trading companies, save as excluded by a special provision;
5. Private associations and foundations, other than as provided by law.
6. Any grouping of persons or properties having a juridical personality under the provisions of the law.

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## Article 54

Within the limits established by law, a juridical person shall enjoy all rights except those which presuppose intrinsically human attributes.

1. A juridical person shall have:
  1. A separate patrimonium.
  2. Legal capacity within limits defined by its founding constitution or as provided by law.
  3. The right to sue;
  4. A separate domicile located at its head office. The location of any branch of a juridical person may be deemed its domicile to the extent of the activity of such branch.
  5. Its own nationality.
2. A juridical person shall have its own representative (natural person) to express its will.

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## Article 55

Where a juridical person engages in activity in Qatar but maintains its head office abroad, such head office shall be deemed its domicile in connection with its activity in Qatar.

## Chapter Three: Things and Property

### Article 56

1. Anything that is not outside the ambit of trade by its nature or by virtue of the law may become the subject-matter of proprietary rights.
2. Things that by their nature fall outside the ambit of trade are those things that no person can exclusively possess. Things that by law fall outside the ambit of trade are those things not authorised by law to be the subject-matter of proprietary rights.

### Article 57

1. All immovable or movable property of the state or public juristic persons allocated, either in fact or by law, for a public benefit shall be deemed to be public funds.
2. In all events, such public funds may not be disposed of, attached or acquired by prescription.

### Article 58

Public property shall cease to be such upon the termination of its allocation for a public benefit. Such allocation shall terminate by fact or by law or upon the removal of the public benefit for which such property has been allocated.

### Article 59

1. Any asset of property that is fixed to the Earth and cannot be moved without destroying or altering it shall be deemed real property; otherwise it shall be deemed a movable asset.
2. However, any movable asset placed in real property by the owner thereof to serve or to be utilised for the service or exploitation of such real property shall be deemed immovable by reason of its intended use.
3. Every real right attached to immovable property shall be deemed real property and all other proprietary rights shall be deemed movable property.

### Article 60

1. Fungibles are goods or commodities that are replaceable by another identical item, and which are assessed in trade by number, quantity, weight or measure.
2. Ad valorem things are those things whose individual value or qualities may customarily vary significantly and which are rarely traded.

### Article 61

1. Consumables are those things whose benefit is only realised by consumption, waste or spending.
2. All things intended for sale in commercial stores are deemed to be consumable.

Article 62

Any person who lawfully exercises his rights shall not be liable for any harm arising therefrom.

Article 63

The exercise of a right shall be unlawful in any of the following circumstances:

1. If the desired interest by such use is unlawful;
2. If such use is intended solely to cause damage to others;
3. If the interests desired are disproportionate to the harm that will be suffered by others; or
4. If such use may cause unusually gross damage to third parties.

**SECTION 1: Personal Rights or Obligations**

**BOOK 1: Obligations in General**

**Part 1 – Sources of Obligation**

**Chapter One: Contracts**

**Subchapter One: Elements of Contract**

Article 64

Without prejudice to any special formalities that may be required by law for the conclusion of certain contracts, a contract shall be concluded from the moment an offer and its subsequent acceptance have been exchanged if the subject-matter and cause of such contract are deemed legal.

**1ST: Consent**

**Expression of Intention**

Article 65

1. An intention shall be expressed orally or in writing, by a commonly used sign, by actual consensual exchange, and also by conduct that, in the circumstances, leaves no doubt as to its true meaning.
2. A declaration of intention may be implied when neither the law, nor the agreement, nor the nature of the transaction requires that such declaration be expressed.

Article 66

1. An expression of intention shall become effective once uttered. However, the expression shall have no effect unless it comes to the notice of the intended recipient.
2. Subject to proof to the contrary, the intended recipient shall be deemed to have notice of the declaration of intention from the time that it reaches him.

## Article 67

The expression of intention shall have no effect if a retraction thereof reaches the intended recipient before or at the same time as the expression reaches him.

## Article 68

1. Where the expression of intention differs from the actual intent of the offeror, the intent shall be paramount.
2. However, the offeree may rely on such expression even though it contradicts the intent of the offeror if he proves that he believed the expression conformed, without ambiguity, with the true intent of the offeror.

### Offer

## Article 69

1. An offer may be addressed to unidentified persons as long as the identity of the desired offeree is not deemed essential to the contract.
2. The offer of goods accompanied by an indication of their prices shall be regarded as an offer subject to the rules of trade.
3. Save where the conditions of the situation show otherwise, publications, advertisements, sending or distributing price lists used in current trading, as well as any other statement connected with offers or orders addressed to the public or particular individuals, shall not be regarded as an offer.

## Article 70

1. The offeror shall have the option to retract his offer as long as it is not accepted.
2. Where, however, the offeror has fixed a time limit for acceptance, or such time limit is required by the circumstances or the nature of the transaction, the offer shall remain open throughout such time limit and lapse upon its expiry.

## Article 71

The death or loss of legal capacity of the offeror shall terminate the offer.

### Acceptance

## Article 72

1. The acceptance must be in conformity with the offer for concluding the contract.
2. An acceptance that goes beyond the offer, or that is accompanied by a restriction or modification, shall be deemed to be a rejection comprising a new offer.

Article 73

1. No statement shall be attributed to a person who remains silent, but silence in circumstances requiring a statement shall be deemed an acceptance.  
2. Silence in particular shall be deemed an acceptance where there have been previous dealings between the two contracting parties and the offer is related to such dealings or if it appears to benefit the offeree.  
3. A buyer's silence after receiving purchased goods shall be regarded as acceptance of the terms of a sale.

Article 74

Acceptance shall be terminated by the offeree's death or loss of legal capacity if this occurs before the acceptance reaches the notice of the offeror.

**Correspondence of Offer and Acceptance**

Article 75

Where the offer is made during the contract session without containing a time limit for acceptance, both parties shall retain the option until the session ends. Where the offeror retracts his offer or the session ends without acceptance, the offer shall be considered terminated.

Article 76

Save as otherwise agreed or required by law or customary usage, the contract shall be deemed to have been concluded if the offer is accepted.

Article 77

A contract concluded by correspondence shall be deemed to have been made at the time and place when and where acceptance reaches the offeror's notice, unless otherwise agreed or required by law or usage.

Article 78

A contract made by telephone, over the internet, or by any other similar means shall, in respect of time, be regarded as having been concluded between present contracting parties. Such contract shall, in respect of place, be regarded as having been concluded between absent contracting parties.

Article 79

1. Where the contracting parties have agreed on all the essential terms of the contract and have left certain details to be agreed at a later date without

stipulating that, failing agreement on these details, the contract shall not be concluded, the contract shall be deemed to have been concluded.

2. In the event of a dispute regarding those details not yet agreed upon, the court shall resolve the dispute according to the nature of the transaction, the provisions of the law and custom, and the rules of justice.

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## Article 80

1. Where the contracting parties agree that their affairs shall be governed by the provisions of a standard contract or standard regulations, such provisions shall apply unless any party proves that they had no notice of such provisions or had no opportunity to discover them at the time of the agreement.
2. Where such provisions of which no notice has been taken are essential, the contract shall be invalid. If the provisions are auxiliary, the judge shall resolve any dispute arising therefrom in accordance with the nature of the transaction, current usage and the rules of justice.

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## Agency in Contracting

## Article 81

Unless the law requires it be concluded personally by the principal, a contract may be concluded by an agent on the principal's behalf.

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## Article 82

1. The scope of the power and authority of the agent shall be determined by the deed of his power of attorney.
2. However, if the power of attorney arises under an agreement and the principal announces his agent's power and authority and notifies third parties, any person who receives the announcement or notice may contract with the agent pursuant to such power and authority even if they exceed that set forth in the deed of power of attorney.

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## Article 83

1. Where a contract is entered into by an agent without the necessary authority, he and not the principal shall be liable for all acts relating to vices of consent.
2. Where, however, the agent acted in accordance with the principal's authority and precise instructions, the principal may not plead the ignorance of his agent of circumstances which the principal knew or should have known.

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## Article 84

When a contract is concluded by an agent within the scope of authority conferred by the principal, liability resulting therefrom shall be incurred by the principal.

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## Article 85

Where a person concludes a contract with an agent who does not disclose his capacity as an agent, the contract shall be deemed to have been concluded between the agent personally and the contractee, unless the contractee knows or should have known of the agent's capacity, or it makes no difference to him whether he concluded the contract with the agent or the principal, in which case the contract shall operate in favour of or bind the principal.

## Article 86

Where the agent concludes a contract on behalf of the principal after the agent's authority has terminated, the contractee may rely on or plead to the contract on the basis of the validity of the agency if he and the agent were unaware at the time of concluding the contract that the agent's authority had terminated, or they could not have known about such termination if they had *mutatis mutandis* exercised reasonable care and diligence as required by the circumstances.

## Article 87

1. Where a person concludes a contract for another without being his agent, or if he exceeds the scope of his agency, the effects of such contract shall not be binding on the principal unless the agent's acts have been ratified pursuant to the law.
2. Where the agent's acts have not been authorized, the other contracting party may claim compensation from the person who assumed the capacity of agent or exceeded the scope of his agency, except if the other contracting party knew or should have known that there was no agency or that the scope of the agency had been exceeded.

## Article 88

Save as otherwise provided for by law or by customary rules, no agent shall be permitted to conclude a contract with himself in the name of the principal, even for the account of a third party, without the express permission of his principal. The agent's acts shall not be binding on the principal unless he ratifies them.

## Article 89

No agent may delegate his power of attorney to another person without being authorised to do so pursuant to the agreement or the law.

## Article 90

Where the power of attorney has expired and the agent is in possession of the evidentiary deed, the agent shall surrender the deed immediately upon its expiry.

### Form of Contract

## Article 91

1. Unless otherwise required by law, no particular form of consent shall be required for concluding the contract
2. If the law imposes a particular form for concluding the contract and such form is not observed, the contract shall be rendered invalid.

## Article 92

Where the contracting parties stipulate a particular form for the conclusion of the contract, neither may, without the consent of the other, plead the conclusion of the contract unless it takes the agreed form.

## Article 93

Where the law requires, or the contracting parties agree on, a particular form of contract, and a dispute arises over whether such form is required, it shall not be regarded as a requirement for the contract.

## Article 94

Where the law or the agreement requires a particular form for concluding the contract, such form shall be observed in the promise contract thereof and the subsequent agreed amendments, but not in the supplementary conditions which do not contradict its contents, unless otherwise stipulated by law.

## Article 95

Where the contract concerns an object, the delivery thereof shall not be required for concluding the contract unless otherwise required by law, agreement or usage.

### **Certain Particular Forms of Contracting**

#### **Promise to Contract**

## Article 96

Without prejudice to Article 94 above, the contract by which either or both contracting parties promise to conclude a specific contract in the future shall only be binding if all the essential terms of the contract envisaged and the time when the contract should be concluded are stated.

## Article 97

1. Where the promise contract is binding on both parties, each shall conclude such contract in its final form and under the same conditions within the time limit determined thereby.
2. Amendments to the promise contract shall be permitted by agreement or where deemed necessary by the circumstances and nature of the transaction.

## Article 98

1. Where the promise contract is binding on one party, it shall be concluded if accepted by the party favoured by the promise and his acceptance reaches the notice of the promisor within the time limit prescribed for the promise.
2. The promisor's death or loss of legal capacity shall not preclude the conclusion of the promised contract if it is accepted in accordance with the preceding paragraph.
3. In the event of the promisee's death, the option to accept the promised contract shall pass to his successors unless his personal presence is integral or paramount to the promise.

## Article 99

1. Where either party breaches their obligation to conclude the promised contract, the other party may, if not in breach, claim a judgment against the party in breach for the validity and enforceability of the promise contract.
2. The judgment recognizing the promise contract as valid and enforceable shall replace the promised contract without prejudice to the requirements of the law for registering such a contract.

## Contracting by Earnest Money

### Article 100

An earnest payment made at the conclusion of the contract shall serve as a presumption that both parties have the option to withdraw, unless it transpires that they intended otherwise or customary usage prescribes otherwise.

### Article 101

1. The party who has paid the earnest money but withdraws from the contract shall forfeit the earnest money.
2. The party who has received the earnest money but withdraws from the contract shall repay double the amount received, even if the withdrawal causes no prejudice.

### Article 102

1. Where the agreement or usage specifies no time limit for exercising the option to withdraw, such option shall continue until the contracting party indicates his desire to conclude the contract.
2. Where one party fails to perform his obligations within the specified time limit or is unreasonably dilatory, the other party may consider such failure or delay as a withdrawal from the contract.

## Contracting by Auction

### Article 103

1. The bidder at an auction shall remain bound by his bid until another bidder offers a higher bid or until the auction closes without a winning bid.
2. The failure of a bid because of an outbid shall not preclude the nullification or rejection of the latter bid. The contract shall be concluded when the auction is adjudicated. However, if the conditions of the auction require that such adjudication should be authenticated, such authentication shall be obtained for the conclusion of the contract from the date of adjudication, unless otherwise stated by the law or indicated by the intent of the contracting parties.

### Article 104

As an exception to the provisions of the preceding Article, a bid shall not fail because of a higher bid offered in an envelope. The bidder may accept the bid he deems the most appropriate unless otherwise stated by the law or indicated by the intent of the contracting parties.

## Contracting by Adhesion

### Article 105

Conceding to a standard contract set by the offeror for all his clients, the conditions of which are not negotiable, shall not preclude its conclusion by the adhesion of one party to the will of the other.

### Article 106

If a contract is made by adhesion and contains arbitrary conditions, the judge may at the request of the adhering party amend such conditions so as to expunge them fully, even if the adhering party proves to have known thereof as prescribed by justice. Any agreement to the contrary shall be invalid.

## Article 107

In contracts of adhesion, doubt shall be interpreted in favour of the adhering party.

### Validity of Consent

## Article 108

Consent to contract shall be valid only if given by a legally competent person.

### Competency

## Article 109

Every person who has not been declared by the law to be of total or partial legal incapacity shall have the legal capacity to conclude a contract.

## Article 110

Dispositions of property by a minor lacking discretion shall be deemed void.

## Article 111

1. Dispositions of property by a minor possessing discretion shall be valid when wholly to his advantage and void when wholly to his disadvantage.
2. Subject to the following provisions, dispositions of property by a minor capable of discretion, which may be simultaneously profitable and detrimental, may be liable to invalidation in his interest unless immediately ratified, *mutatis mutandis*, by the guardian authorised to carry out such disposals or by the court, as the case may be, or by the minor after attaining the age of majority in accordance with the law.

## Article 112

Where a discerning minor has attained the age of sixteen years and has been authorised to take possession of his property in order to manage it, or has taken possession of his property by virtue of the law, acts performed by the minor shall be valid within the limits of the law.

## Article 113

A discerning minor who receives property for administration shall be legally competent to perform the disposals required for the administration of such property. However, such discerning minor shall not be legally competent to lease the property for a period longer than one year.

## Article 114

A discerning minor shall be legally competent to dispose of the property delivered to him or placed under his disposal for the purposes of his maintenance. The minor's obligations concerning such maintenance shall be valid only in relation to such property.

## Article 115

1. A discerning minor may conclude an individual employment contract pursuant to the provisions of the law. The court may, at the request of the guardian, trustee or any interested person, terminate the contract for the benefit of the minor's interests or future or for another apparent benefit.
2. From the age of fifteen years, a discerning minor shall be legally competent to dispose of the wage or other income he earns, and his obligations shall be valid only in relation to such money. However, subject to the minor's interests, the court may place restrictions upon the minor's competence to dispose of the money, and in such cases the provisions for guardianship or trusteeship shall be *mutatis mutandis*.

## Article 116

A discerning minor who attains sixteen years of age shall, with the permission of the court, be legally competent to conclude wills.

## Article 117

1. Where a person of incomplete competence claims to be legally competent, such claim shall not prevent him from insisting on his incomplete competence in accordance with the law.
2. However, where a minor, for the purpose of concealing his lack of competence, acts in a fraudulent manner that leads to the reasonable belief that he is legally competent, he shall be liable to compensate a party with whom he contracts for any damages arising from such contract. In such case, the judge may dismiss the invalidation action for the compensation.

## Article 118

1. The courts shall interdict a person suffering from insanity, imbecility, inattentiveness or prodigality, in accordance with the rules and procedures prescribed by law.
2. Requests for interdicts and decisions thereon shall be recorded in registers specially prepared for such purposes.

## Article 119

*Effective Date: 08/08/2004*

1. Any contract concluded by a person suffering from insanity or dementia after the registration of the interdiction application shall be null and void.
2. A contract concluded before the registration of the interdiction application shall not be deemed null and void unless the condition of insanity or dementia was a matter of common knowledge at the time the contract was concluded or if the other party had knowledge thereof.

## Article 120

1. Contracts concluded by a person placed under interdiction for prodigality or inattentiveness after the registration of the interdiction application shall be governed by the provisions of Article 111 regulating disposition of property by minors possessing discretion.
2. Acts occurring before the registration of the interdiction application shall not be void or voidable unless there has been fraudulent collusion to avoid the interdiction.

## Article 121

The disposal of a *wakf* (endowment) or the execution of a will by a person placed under interdiction for prodigality or for inattentiveness shall be valid if the interdicted person has received authorization from the court.

## Article 122

Management acts carried out by a person placed under interdiction for prodigality or for inattentiveness but authorised to take possession of his property shall be valid according to the rules and procedures prescribed by the law within the limits of Article 112 concerning discerning minors.

## Article 123

A person placed under interdiction for prodigality or inattentiveness shall be legally competent to perform disposals required for administering property delivered to him.

## Article 124

A person interdicted for prodigality or inattentiveness and who has been authorised to manage his property shall be legally competent to manage the property assigned to him within the limits provided for in Article 114 concerning disposal of property by discerning minors.

## Article 125

A person placed under interdiction for prodigality or inattentiveness shall be legally competent to enter into an employment contract and dispose of what he earns for such employment within the same limits in Article 115 concerning discerning minors.

## Article 126

Acts by natural guardians, legal guardians or curators shall be valid within the limits prescribed by the law.

## Article 127

Where a person is severely physically disabled, particularly deaf and dumb, blind and deaf, or blind and dumb, and cannot understand the contents or surrounding circumstances of a contract, or cannot effectively communicate his will, the court may appoint a judicial assistant to assist such person as may be necessary in his best interests.

## Article 128

Unless the court has permitted the judicial assistant to perform an act unilaterally, any act for which judicial assistance has been ordered shall be liable for invalidation if performed by the disabled person without assistance after the registration of the decision providing for such assistance.

## Article 129

Where a person cannot, due to severe debilitating illness, conclude a disposal even with judicial assistance, or if the person abstains from doing so, the court may permit the judicial assistant to conclude the disposal unilaterally if failure to conclude it may endanger the concerned person's interests.

## Defects of Consent

### Mistake

#### Article 130

1. Where a contracting party commits a mistake without which he would have not given his consent to the terms of the contract, such contracting party may demand voidance of the contract if the other contracting party commits the same mistake, or knows of its occurrence, or could easily have detected such mistake.
2. However, voidance of a contract in respect of gifts may be requested without taking into account the other contracting party's participation in the mistake or his knowledge thereof.

#### Article 131

The effect of the mistake shall be enforced even where it applies to the rule of law concerning any matter of the contract.

#### Article 132

A party whose consent was the result of a mistake may not insist on such mistake in a manner contrary to the principles of good faith. The other party may, in particular, insist on or plead to the conclusion of the intended contract, provided that substantial harm is not caused.

#### Article 133

The validity of the contract shall not be affected by mere arithmetical or writing mistakes. These errors must, however, be simply corrected by mutual agreement between the parties.

### Fraud

#### Article 134

1. A contract may be declared void on the grounds of fraudulent misrepresentation by the person who has given his consent as a result of deception, if it can be proved that the contract would not have been concluded by the other party had he had knowledge thereof
2. Lying and intentional silence as to the facts or as to the accompanying circumstances in relation to the contract and/or keeping silent about salient points shall be regarded as subterfuge.

#### Article 135

1. Voidance of a contract on the grounds of fraudulent misrepresentation shall require proof that the subterfuge was due to the conduct of the other contracting party, his representative or one of his subordinates, the broker he empowered to conclude the contract, or of the party in whose interest the contract was concluded.
2. Where the fraudulent misrepresentation is caused by a third party, the deceived party may only demand voidance of the contract if it is established that the other contracting party was, or should necessarily have been, aware of the fraudulent misrepresentation.

#### Article 136

## **Coercion**

### Article 137

1. A contract may be voidable as a result of duress if one of the parties has contracted under the stress of a justifiable fear unlawfully instilled in him.
  2. Fear is deemed to be justified when the affected contracting party was confronted by circumstances that led him reasonably to believe that a grievous and imminent danger to life, limb, honour or property threatened him or others.
  3. In determining the extent of the duress, the gender, age, knowledge or ignorance, and health of the affected contracting party, as well as any other circumstance that might have aggravated the duress, shall be taken into account.
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### Article 138

1. Voidance of a contract on the basis of duress shall be justified where the duress emanated from the conduct of the contracting party or his representative, or one of his subordinates, or the broker he empowered to conclude the contract, or of the party for whose interest the contract was concluded.
  2. Where the duress is caused by a third party, the affected party may not demand voidance of the contract unless it is established that the other contracting party had, or should necessarily have had, knowledge thereof.
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### Article 139

In contracts relating to gifts, voidance thereof may be requested if consent to its terms was given as a result of duress, even if caused by a third party.

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## **Exploitation**

### Article 140

Where a person exploits another person out of need, obvious frivolity, visible vulnerability, or sudden heat of passion, or his moral influence over the other person causes that other person to conclude a contract in his own or a third party's favour, and such contract contains an excessive imbalance between the obligations he must perform and the material or moral benefits he shall obtain from the contract, the judge may, at the request of the affected party, reduce his obligations, or increase the obligations of the other party, or void the contract.

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### Article 141

In respect of contracts of gift concluded as a result of exploitation, the judge may, at the request of the donor, *mutatis mutandis* annul the contract or reduce the amount of the fund donated, taking into consideration due process and fairness.

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### Article 142

1. Actions filed for exploitation shall prescribe after the lapse of one year from the date of the conclusion of the contract.
  2. However, where the defect from which exploitation arises continues, the one-year period shall only commence from the date when such defect disappears.
  3. In any case, the action shall fall away after a period of fifteen years has elapsed from the date of the conclusion of the contract.
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## **Injustice**

## Article 143

Injustice that does not result from mistake, fraud, duress or exploitation shall not affect the contract, except in the special cases determined by the law.

## Article 144

1. Where the contract causes excessive injustice to the State, other public juridical persons, an incompetent or semi-competent person, or the endowment (*Waquf*) authority, the aggrieved party may request an amendment to his or its own obligation, or to that of the other party, in order to redress such excessive injustice.
2. Injustice shall be considered excessive if it exceeds one-fifth at the time of concluding the contract.
3. Injustice may be objected to even where the contract is concluded by the legal representative of the aggrieved person on his behalf, or where the court so permits.

## Article 145

The party entering into a contract with an aggrieved person may avoid an amendment to the obligations under the contract by requesting the termination of the contract, unless otherwise stipulated by the law.

## Article 146

Contracts concluded by auction or tender may not be objected to for injustice if they were concluded in accordance with the law.

## Article 147

1. Actions to compensate injustice shall become invalid if not instituted within one year.
2. In the case of the State, other juridical public persons, and the endowment (*Waquf*) authority, the one-year period shall commence from the date of the conclusion of the contract.
3. In the case of legally incompetent and semi-incompetent persons, the one-year period shall commence from the date of conferral of full legal competence or from the date of death.
4. In any event, the action shall fall away after a period of fifteen years has elapsed from the date of the conclusion of the contract.

### **2nd: Subject Matter /Object**

## Article 148

Where the subject matter/object of an obligation is something impossible in itself, the contract shall be invalid.

## Article 149

1. The subject matter of a contract may be a future thing, provided that the contract is not aleatory.
2. However, an agreement relating to the estate of a living person shall be void, notwithstanding the consent of such person, save in cases provided for by law

## Article 150

1. The subject matter of the obligation shall be expressly and diligently identified, otherwise the contract shall be invalid.
2. Where the obligation relates to some material object, such thing shall be identified in its kind, quantity and quality.
3. Where, however, a thing is identified by its type, it shall be sufficient to include in the contract such provision as may be required to identify the quantity of such thing. Where there is no agreement on the degree of quality and such quality cannot be ascertained by use or by any other circumstances, the obligee must supply an article of average quality.

## Article 151

A contract shall be void if the subject matter of the obligation breaches public order or morality.

## Article 152

Where the subject matter of the obligation is an amount of money, the obligor shall pay such amount without effecting any change in its value, even if the parties agree otherwise.

## Article 153

1. Where the object of an obligation is to pay a sum of money, payment shall be made in Qatari Riyals.
2. However, where the parties agree to make such payment in a foreign currency, payment shall be made in such currency.

## Article 154

1. The contract may include any provision agreed to by the contracting parties, unless such provision is prohibited by law or in breach of the public order or morality.
2. Where a provision in the contract is illegal, however, such provision shall be invalid, even if the contract is valid, unless either party proves that it would not have agreed to enter into the contract without such provision, in which event the contract shall be revoked.

### **3rd: Cause**

## Article 155

1. A contract shall be revoked where the obligation of a contracting party is without good cause or unlawful.
2. In the determination of good cause, the motive for concluding the contract shall be taken into account if the other contracting party was aware or must have been aware thereof.

## Article 156

The obligation shall be deemed to be lawful and with good cause, even if not stated in the contract, unless evidence to the contrary is provided.

## Article 157

1. The cause of the contract shall be its true cause until evidence to the contrary is provided.
2. Where the cause is fictitious, any party alleging that the obligation has another lawful cause shall provide evidence to support this allegation.

## **Subchapter Two: Nullity**

### **1st: Voidable Contracts**

#### Article 158

A voidable contract shall be effective unless revoked. Where revoked, such contract shall be deemed void *ab initio*.

#### Article 159

1. Where the law recognises the right of one of the contracting parties to revoke the contract, the other party cannot avail himself of this right.
2. Where the right of revocation is available and the holder thereof requests its enforcement, the court shall so enforce it, unless the law provides otherwise.

#### Article 160

Where a voidable contract is authorised by the party holding the right of revocation, whether express or implied, such right shall not be applicable to the defect, the cause of such authorization.

#### Article 161

1. Unless the law provides otherwise, the right to demand the revocation of a contract shall prescribed if not invoked within three years from the date on which the right arose.
2. Prescription shall run: in the case of legal incapacity, from the date of the cessation of such incapacity; in the case of mistake or fraudulent misrepresentation, from the date on which the mistake or misrepresentation is discovered; in the case of duress, from the date it has ceased.
3. In all cases, the right to demand the revocation of a contract as a result of mistake, fraudulent representation or duress shall lapse after a period of fifteen years has elapsed from the date of the conclusion of the contract.

#### Article 162

1. Any concerned party may notify the party holding the right of revocation to declare its intention to authorise or revoke such contract no later than three months from the date of such notice.
2. A notice shall not be effective unless given during the time limit before the right of revocation lapses.
3. Where the period of the notice expires without a declaration of authorization or revocation of the contract having been made, such omission shall be deemed authorization of the contract, provided that the notice is given to such party in person.

### **2nd: Void Contracts**

#### Article 163

1. An invalid contract shall have no effect, and every concerned party may hold to such invalidity. The court may *ex officio* rule on such invalidity.
2. An invalid contract may not be corrected by authorization thereof or by lapse of time.
3. An invalidity suit shall prescribe after a period of 15 years has elapsed from the date of the conclusion of the contract.

### **3rd: Effects of Nullity**

## Article 164

1. Where a contract is void or annulled, the contracting parties shall be reinstated to the position they were in prior to the conclusion of the contract. Where such reinstatement is impossible, damages equivalent to any loss incurred may be awarded.
2. Where, however, a contract concluded by a person without legal capacity or with deficient capacity is invalid or annulled by reason of such lack of capacity or deficient capacity, such person shall only be liable to refund any profits he realised from the performance of the contract.

## Article 165

1. The invalidity of title-transferring contracts shall not be effective against a special successor that may receive a right in kind from either contracting party, provided that such successor received such right as indemnity in good faith.
2. A special successor shall be considered a *bona fide* party if, at the time of transfer thereto, this successor was not aware of the reason for revoking the contract of its predecessor, and could not have known of such reason if the successor exercised prudent and reasonable judgement.

## Article 166

Where any provision of the contract is invalid or voidable, such provision only shall be revoked, unless it is evident that the contract would not have been concluded without such provision, in which event the contract shall be revoked in full.

## Article 167

Where a void or voidable contract contains the elements of another contract, the contract shall be deemed valid to the extent of the other contract, whose elements are available if the intention of the contracting parties indicates that they wish to conclude such other contract.

## Article 168

1. Where a contract is invalid or revoked due to a mistake committed by either party; the other party or any third party may claim indemnity for any damage that may arise from such invalidity or revocation.
2. Indemnity shall not be applicable if the party suffering damage due to such invalidity or revocation may have contributed to such damage, or knew or should have known of the cause of such damage.
3. The provisions of this Article shall be subject to the provisions of Article 117 of this Law.

### **Subchapter Three: Effects of the Contract**

#### **1st: Interpretation of the Contract and Determination of its Content**

## Article 169

1. Where the wording of the contract is clear, it shall not be capable of deviating from or construing the intent of the contracting parties.
2. Where a contract must be construed, the common intention of the parties shall be sought without restriction to the literal meaning of the words, taking into account the nature of the transaction as well as the honesty and confidence that should prevail between the parties in accordance with commercial custom.

## Article 170

1. Any doubt in the wording of the contract shall be interpreted in favour of the obligor.
2. However, where the contract contains a clause discharging a party from liability, such provision shall be construed narrowly.

## 2nd: Binding Force of Contracts

### Article 171

1. *Pacta sunt servanda* i.e., a contract duly and properly concluded between the parties must be kept, and non-fulfilment of the respective obligations is a breach of that contract. Such a contract may be revoked or altered only by mutual consent of the parties or for reasons provided for by law.
2. Where, however, as a result of exceptional and unforeseeable events, the fulfilment of the contractual obligation, though not impossible, becomes excessively onerous in such a way as to threaten the obligor with exorbitant loss, the judge may, according to the circumstances and after taking into consideration the interests of both parties, reduce the excessive obligation to a reasonable level.
3. Any agreement to the contrary shall be void.

### Article 172

1. A contract shall be performed in accordance with its provisions and in such manner consistent with the requirements of good faith.
2. A contract shall not be limited only to binding a party to its provisions but shall also cover whatever is required by law, customary practice and justice in accordance with the nature of the obligations contained in the contract.

### Article 173

Where a nominal contract is concluded, the concealed contract and not the apparent contract shall bind the contracting parties and the general successor of each party.

### Article 174

1. The creditors of the contracting parties and the special successor of each party may hold to the concealed contract and may prove by all means that the contract, which caused damage to such creditors, is not real. Such creditors may, if they are *bona fide* creditors, hold to the nominal contract.
2. Where the interests of the concerned parties are in conflict, such that some hold to the nominal contract and others to the concealed contract, the former shall prevail.

## 3rd: Proportional Effects of the Contract

### Article 175

Subject to the provisions of inheritance, the effects of a contract shall be binding on the contracting parties and the general successor, unless such effects are not applicable to the general successor in accordance with the contract, the nature of the transaction or a provision of the law.

### Article 176

1. Where a contract creates personal rights and obligations in connection with specific property, and such rights and obligations are deemed to identify or complement such property, and such property is transferred to a special successor, such rights and obligations shall also be transferred to such successor at the time of transfer of such property.
2. Such obligations shall be binding on the special successor only if such successor is, or could have been, aware of such obligations at the time of the property's transfer.
3. The above provisions shall apply *in toto* unless the law provides otherwise.

### Article 177

## Article 178

1. A person who binds himself to another person in order to commit a third party to an obligation shall himself be bound by such obligation.
2. Where the third party rejects the performance of the obligation, the person who made the undertaking shall be liable to indemnify the other contracting party against any damage due to the breach of such undertaking, unless the party who made the undertaking fulfils the obligation himself, provided that this party can do so without causing any damage to the other contracting party.
3. Where, however, the third party accepts the undertaking, it shall be bound thereto and the relevant contracting party shall be discharged from such undertaking. The third party shall be bound by such undertaking from the time of acceptance thereof, unless it is indicated expressly or by implication that the consent is retroactive from the date of the agreement between the contracting parties

## Article 179

1. Where he contracts on his own behalf, a person may stipulate particular obligations on the other contracting party in favour of any third party, provided that such person has a material or moral interest in such obligations.
2. In the event of such a stipulation in favour of a third party, the beneficiary may be a prospective person or a person not particularly identified in such stipulation if such person can be identified at the time of performing the relevant obligation.

## Article 180

1. Unless otherwise agreed, the stipulation in favour of a third party shall be required to prove that the beneficiary has a personal direct right to be demanded and may call upon the contracting party to do so.
2. A stipulating party may demand the other contracting party to confer the relevant right on the beneficiary, unless the contract indicates that such a demand is limited to the beneficiary.

## Article 181

The obligor may plead against the beneficiary to all the pleadings arising from the contract which he may have claimed against the stipulating party.

## Article 182

1. The stipulating party, but not his heirs or creditors, may revoke the stipulation before the beneficiary notifies the stipulator or the undertaking party of his intention to revoke such stipulation, unless the revocation was contrary to the spirit of the contract
2. Upon revocation of such stipulation, the obligor shall not be discharged from liability but shall remain obliged towards the stipulating party, unless agreed otherwise or the nature of the obligation requires otherwise.
3. Upon revocation of such stipulation, the stipulator may substitute a new beneficiary for the former beneficiary, or may retain for himself the benefit of the stipulation.

### **Subchapter Four: Dissolution of the Contract**

## Article 183

1. In contracts binding on both parties and imposing reciprocal obligations (synallagmatic contracts), where one of the parties fails to perform his obligation, the other party may, upon formal notice to the former, demand performance of the contract or its rescission, and may claim any damages caused by such failure to perform.
2. The judge may, *mutatis mutandis*, determine a period of grace within which the obligor shall perform his obligation. The judge may also reject the application for rescission if the obligation not performed is insignificant compared with the obligations considered in their entirety.

## Article 184

1. The parties may agree that, in the case of a failure to perform the obligations arising from the contract, such contract shall be deemed to have been rescinded *ipso facto* without a court order.
2. Such an agreement may not limit the authority of the judge to terminate the contract, unless the wording of the contract expressly indicates that this is the parties' mutual intention.
3. Other than in commercial transactions, an agreement to deem a contract rescinded *ipso facto* shall not release the parties from the obligation of serving a formal notice. Any agreement between the parties to the contrary shall be void.

## Article 185

When a contract is rescinded, the contracting parties shall be reinstated to the position they were in prior to the date of the conclusion of the contract. If reinstatement is impossible, the court may grant indemnity.

## Article 186

1. The termination of title-transferring contracts shall not be effective against a special successor that may receive a right in kind from either contracting party, provided that such successor received such right as indemnity and in good faith.
2. A special successor shall be considered a bona fide party if, at the time of transfer to it, such successor is not aware of the reason for revoking the contract of its predecessor and could not have known of such reason if the successor used reasonable care in the circumstances.

## Article 187

1. In contracts binding on one party, where performance of the obligation becomes impossible due to force majeure beyond the control of the obligor, the contract shall terminate automatically.
2. Where such impossibility is partial, the obligee may enforce the contract to the extent of such part of the obligation that can be performed.

## Article 188

1. In contracts binding on both parties, where performance of an obligation by one party is extinguished by reason of impossibility of performance due to force majeure beyond the control of the obligor, such obligation and correlative obligations shall also be extinguished and the contract deemed rescinded *ipso facto*.
2. Where such impossibility is partial, the obligee may either enforce the contract to the extent of such part of the obligation that can be performed or demand termination of the contract.

## Article 189

1. The contracting parties may mutually agree to terminate the contract upon its conclusion, provided that the subject matter of the contract remains in the possession of either party.
2. Where the subject matter of the contract is lost, damaged or disposed of in part in favour of a third party, the contract may be rescinded to the extent of the remaining part and the share of the party.

## Article 190

In terms of its correlative effects, rescission shall be deemed termination of the contract between the contracting parties and a new contract in favour of third parties.

## Article 191

1. In contracts binding on both parties, where corresponding obligations are due for performance, either party may decline to perform his obligation if the other party fails to perform his obligation, unless the parties agree otherwise or mutually accepted practice provides otherwise.

## **Chapter Two: Unilateral Disposition (Intention)**

## Article 192

1. A legal act by sole will shall not create any obligation or amend or terminate any existing obligation, other than where provided by law.
2. If the law provides that an obligation is created, amended or terminated by such legal act made by sole will, such act shall extend to the provisions of the law that govern the contract in general, other than those in conflict with acting by sole will.

## Article 193

Any person who makes a promise to the public of a reward in consideration for the performance of a job, such party shall be bound to deliver the reward to the person who performs such job according to the agreed conditions, even where such person performed the job prior to receiving promise, or without thought of the promise of reward, or without knowledge thereof.

## Article 194

1. Where the party offering the promise determines a timeframe for its delivery, he may not withdraw the promise during such period. The promise shall, however, lapse after the expiry of this period.
2. However, where the party offering the promise has not determined a timeframe for delivery of such promise, he party may withdraw it by notice to the public in the same manner as the promise was offered, or in a similar manner through other media.

## Article 195

1. Withdrawal of a promise to give a prize shall be effective only from the date of it being declared to the public, without prejudice to the right to such prize of the person who performed the required job before such declaration.
2. Where the job is not performed, any person who has commenced but not completed it prior to the withdrawal of the promise may demand the party offering the promise to pay him, within the limits of the prize, any expenses incurred therein. Provided, however, that such person can prove he could have completed the job in a timely manner.

## Article 196

The party offering the promise shall decide whether the prize is payable or not within six months from the expiry date of the period set out in the notice, unless such notice contains another date.

## Article 197

The promise to give a prize or giving it to the person entitled to it shall not establish the right of the party giving the promise to the benefit of the job, unless the conditions of the promise provide otherwise.

## Article 198

The suit to claim a prize or other rights arising from the promise shall prescribe after a period of six months from the date of the decision referred to Article 196 above, or from the date of declaring the withdrawal of the promise, as the case may be.

### **Chapter Three: Responsibility for Unlawful acts**

#### **Responsibility for Personal Acts**

## Article 199

Any person who commits an act that causes damage to another party shall be liable to indemnify such damage.

## Article 200

1. A person of the age of discretion shall be liable for the commission of unlawful acts.
2. However, where damage is caused by a person who has not reached the age of discretion and such person cannot be held liable to indemnify such damage, the court may require such person to pay a fair indemnity, taking into account the position of the parties.

## Article 201

1. Damages payable by a person responsible for any unlawful act shall be limited to the loss incurred and profit forfeited by the aggrieved party, provided that the loss resulted from the unlawful act.
2. Such loss or forfeited profit shall be deemed a natural result of the unlawful act if it could not have been avoided by using reasonable efforts as required in the circumstances by a reasonable person.

## Article 202

1. Indemnity against the unlawful act shall cover damages even where such damages are moral.
2. However, indemnity against moral damages arising from death may not be granted other than to the spouse and relatives up to the second of kin for physical, mental or psychological suffering they sustained due to such death.

## Article 203

The right to indemnity for moral damages may not be transferred to a third party unless their value is fixed by law or by agreement, or if the obligee claims such indemnity before the court.

## Article 204

Where a person proves that damages have arisen from a cause beyond his control, such as force majeure, unforeseen incident or the fault of the victim or a third party, such person shall not be liable for such damages, unless there is a provision to the contrary.

## Article 205

1. Where a person causes damage in lawful defence of himself, his reputation or his property, or in lawful defence of another person or his reputation or property, such person shall not be liable for damages incurred by such defence, provided that such defence shall not exceed the extent reasonably necessary to prevent harm.
2. Where the defence exceeds reasonable bounds, such person shall be liable for damages incurred according to the requirements of justice.

## Article 206

Any person who causes damage to third parties in order to avoid more serious damage to himself or to another person shall not be liable for damages incurred other than those deemed fit by the court.

## Article 207

A public official shall not be liable for damages to third parties caused by his acts unless he acted under instructions issued by his superior, provided that compliance with such instructions was obligatory or the official reasonably believed it to have been obligatory, and provided that such official proves that he had reasonable grounds to believe that his acts were lawful and that he used reasonable care and diligence in the performance of such acts.

### Responsibility for Third Party's Acts

## Article 208

1. Any person obliged by law or by agreement to guard a person by reason of age or mental or physical condition shall indemnify any damage caused by such other person to third parties by his unlawful act. This obligation shall apply even where such person who commits the unlawful act has not reached the age of discretion.
2. A minor shall be guarded if younger than 15 years or, if 15 years old, is still in the custody of his guardian.
3. Guardianship of a minor shall be transferred to his teacher at school or to his trainer in a craft, provided that the minor shall remain under the supervision of such teacher or trainer.
4. Guardianship of a minor wife shall be transferred to her husband or to any person in charge of the guardianship of the husband.
5. A person in charge of such guardianship may be discharged from liability for damages if such person can prove that he properly performed his duty of guardianship and that the damage was inevitable.

## Article 209

1. An employer shall be liable for damages caused by its employee due to the unlawful act of such employee, provided that such act occurred during the course and scope of his employment.
2. The employment relationship shall be established where the activities of the employee that are in furtherance of duties that are owed to the employer and where the employer is, or could be, exercising some control, directly or indirectly, over the activities of the employee.

## Article 210

1. A person responsible for the acts of a third party may recourse against such a third party to the extent of the amount paid by such person to the victim as indemnity against the unlawful act of such third party.
2. However, the state or owner of a private school or private institute may not recourse against the teacher in connection with the indemnity to the victim, even if such indemnity cannot be collected from the money of the student himself, unless the teacher has committed a personal error.

Article 211

Any person who occupies a place for accommodation or otherwise shall be liable for any damages that may be suffered by a third party due to things being dropped or falling from such place, unless the damage occurred due to a cause beyond the control of such person.

Responsibility for Damage Caused by Objects

Article 212

1. Any person in custody of things that require special care to prevent the occurrence of damage shall be liable to indemnify the damage caused by such things, unless such damage occurs due to a cause beyond the control of such person.
2. Things that require special care to prevent the occurrence of damage shall include cars, airplanes, ships and other vehicles, mechanical machines, weapons, electric wires and equipment, animals, buildings and any other thing that may, by its nature or condition, be considered dangerous.
3. Custody of an animal shall remain the responsibility of the custodian, even if the animal is lost or escapes. However, the custodian shall not be liable if damage occurs in such places where livestock animals are allowed to graze freely without being under any person's control.

Article 213

1. Any person confronted by the risk of damage caused by a particular thing may demand that the owner or custodian of such thing take the required measures to avoid such risk.
2. Where the owner or custodian of a thing fails timeously to take the required measures to avoid such risk, any person threatened by such risk may obtain permission from the court to take such measures.
3. In the event of an emergency, any person threatened by such risk may, without permission from the court, take any measures to avoid such risk at the expense of the owner or custodian.

Compensation for Damage resulting from Unlawful Acts

Article 214

Where the parties fail to agree on the amount of indemnity against damage that may arise from any unlawful act, the court shall fix such amount.

Article 215

1. The court shall assess the amount of indemnity in cash.
2. The court may, according to the circumstances and at the request of the aggrieved party, order that the parties be restored to their original position or that they make any other payment by way of indemnity.

Article 216

1. The court, in its sole discretion, shall determine the amount of indemnity to the extent that it properly compensates the damage, in accordance with the provisions of Articles 201 and 202 and taking into consideration the surrounding circumstances.

2. Where the court is unable, due to time constraints, to finally determine the amount of indemnity, it may reserve to the aggrieved party the right to request reconsideration of the determination within a specified period of time.

## Article 217

The court may rule that the indemnity be paid in instalments or in the form of a specific payment for a fixed period of time or for life. In such event, the court may require the obligor to provide an adequate guarantee.

## Article 218

The collection of blood money as security for personal harm shall be without prejudice to the aggrieved party's right to demand, in accordance with the provisions of liability for unlawful acts, indemnity against any other damages, unless the aggrieved party waives such right.

## Article 219

1. The filing of a claim for damages caused by an unlawful act shall prescribe after a period of three years has elapsed from the date on which the aggrieved party and the liable party became aware of the damage, or after a period of fifteen years has elapsed from the date of the occurrence of the unlawful act, whichever occurs first.

2. Where liability for an unlawful act is based on a criminal act, the filing of a claim for damages caused by such criminal act shall not prescribe for as long as the criminal case remains unresolved, even where the time periods set forth in the preceding clause have expired.

## Chapter Four: Unjust Enrichment

## Article 220

Any person, even where such person has not reached the age of discretion, who is enriched for no lawful reason at the expense of another person, shall indemnify the other person against the loss suffered, to the extent of such enrichment. This obligation shall continue, even where such enrichment has ceased.

## Article 221

The filing of a claim for unlawful enrichment shall prescribe after a period of three years has elapsed from the date on which the aggrieved party became aware of his right to indemnity, or after a period of fifteen years has elapsed from the date on which such right arose, whichever occurs first.

## Receipt of Undue Payments

## Article 222

1. Any person who receives payment of any amount not legally due to him shall repay such amount.

2. Repayment shall not be required where the payment is fully aware that he is not obliged to make such payment, except where such person is incapacitated or has been coerced into making such payment.

## Article 223

An amount not payable may be recovered if payment is made in the performance of any obligation whose purpose has not been achieved, or of an obligation whose purpose ceased to exist after it has been achieved.

## Article 224

Where payment is made in the performance of an obligation that is not yet due and the obligor has no knowledge of whether the due date has occurred or not, the obligee shall repay only the amount of the prepayment that he has used and which constitutes the extent of the damages suffered by the obligor.

## Article 225

Prepayment may not be recovered if made by a person other than the obligor, provided that the obligee, acting in good faith, has released the debt instrument or security for such debt or allowed his claim against the obligor to prescribe. In such event, the obligor shall reimburse such third party.

## Article 226

1. Where the person who receives a prepayment acts in good faith, such person shall not be required to repay any amount other than that which was prepaid. However, where such person acts in bad faith, he shall also repay any benefits that he receives from the date of receiving such prepayment or from the date on which he acts in bad faith.
2. In any event, any person who receives a payment not yet due shall repay the benefits received from such payment from the date that the claim to repay arises.

## Article 227

Where the person who receives a payment not yet due lacks the capacity to contract, such person shall be liable to repay only the benefits received from such prepayment.

## Article 228

A claim for recovery of any undue payment shall prescribe after a period of three years has elapsed from the date on which the claimant became aware of his right to recover such prepayment, or after a period of fifteen years has elapsed from the date on which such right arose, whichever occurs first.

## Officious Performance

## Article 229

1. Officiousness is the objectionably aggressive offering of a person's unrequested and unwanted services, help, or advice.
2. Officiousness shall be present even where the officious person, while performing his own act, performs at the same time an act for another person

due to the inseparability of both acts.

Article 230

Where an employer accepts work performed by the officious person, the rules of agency shall apply.

Article 231

An officious person shall complete the work until the employer is able to perform it by himself. The officious person shall notify the employer of his interference as soon as possible.

Article 232

1. An officious person shall use reasonable care in the performance of the work, failing which he shall be liable to indemnify any damages arising from such failure.
2. However, the court may decrease or discharge the indemnity for such failure if the circumstances so require.

Article 233

Where an officious person assigns to another person all or part of the work, the former shall be liable for the acts of his representative without prejudice to the employer's right of direct recourse against such representative.

Article 234

Where more than one officious person performs a single job, they shall be jointly liable to the employer.

Article 235

An officious person shall return to the employer anything he has taken due to his interference and shall prepare a report of what he has taken, in the same manner as an agent shall prepare such report for the principal.

Article 236

1. Where an officious person dies, his heirs shall be obligated to the employer in the same manner as the heirs of an agent shall be obligated to the principal.
2. If the employer dies, the officious person shall remain obliged to the heirs of the employer to the same extent.

Article 237

1. An officious person shall be deemed the representative of the employer where the former uses reasonable care in the performance of the work, even where the expected result is not achieved. In such event, the employer shall be bound by the undertakings given by the officious person for the account of

the employer, and shall indemnify the officious person for such undertakings and reimburse him for all necessary and reasonable costs incurred by him in the circumstances, and shall indemnify him against any damages suffered due to such work.

2. An officious person shall not be entitled to payment of wages for work performed unless such work constitutes the usual activity of his profession.

## Article 238

1. Where an officious person lacks the capacity to contract, he shall not be liable beyond the extent to which he has benefitted from the work, unless such liability arises from an unlawful act.

2. The employer shall remain fully liable, even where he lacks the capacity to contract.

## Article 239

The filing of a claim for officiousness shall prescribe after a period of three years has elapsed from the date on which the plaintiff became aware of his right to indemnity, or after a period of fifteen years has elapsed from the date on which such right arose, whichever occurs first.

### Chapter Five: Law

## Article 240

Obligations that may directly arise from the law shall be governed by the legal provisions creating such obligations.

### Part 2: Effects of Obligations

#### Chapter One: Performance of Obligations

##### Compulsory Performance

## Article 241

1. Where the obligor fails to perform his obligations voluntarily, such obligation shall be enforced.

2. However, where the obligation is natural, it may not be enforced.

## Article 242

In the absence of an express provision, the court shall determine whether an obligation is natural or not. In all cases, a natural obligation shall not breach the public order.

## Article 243

An obligor may not recover any voluntary payment made by him in the performance of a natural obligation, nor shall such payment be considered a voluntary contribution.

## Article 244

A natural obligation may, depending on the circumstances, be sufficient to found a civil obligation.

### Specific Performance

## Article 245

1. Upon the obligor being notified, the obligation shall be enforced in kind, as soon as possible.
2. However, where enforcement in kind is extremely onerous to the obligor, the court may, at the request of the obligor, limit the right of the obligee to indemnity, provided that he suffers no serious prejudice thereby.

## Article 246

The obligation to transfer title or any other right in kind shall automatically transfer such right, provided that the subject-matter of the obligation is a self-identified thing held by the obligor and subject to the rules in connection with registration.

## Article 247

1. Where the obligation relates to the transfer of a right in kind to a thing identifiable only by its kind, such right shall not be transferred until such thing is apportioned.
2. Where the obligor fails to perform his obligation, the obligee may, with the permission of the court, or without its permission in the case of an emergency, obtain a thing of the same kind at the expense of the obligor. The obligee may also demand the value of the thing, without prejudice in either event to his right to indemnity.

## Article 248

The obligation to transfer a right in kind to a thing shall include the obligation to maintain such thing in safe custody until it is delivered.

## Article 249

1. Where the obligor undertakes delivery of a thing but fails to do so after having been notified, he shall be liable for any loss caused by such failure, even where the liability for such loss lies with the obligee prior to the notification.
2. The obligor shall, however, not be liable for the loss even where he was notified, provided that he proves that the thing would also have been lost in the possession of the obligee if it had been delivered to the obligee, unless the obligor accepts liability for force majeure or unforeseen incident.
3. Where a thing that has been stolen is lost or damaged in any manner whatsoever, the thief shall be liable for such loss or damage.

## Article 250

Where the terms of the agreement or the nature of the debt requires performance of the obligation by the obligor himself, the obligee may reject payment by any third party.

## Article 251

1. Where the obligor fails to perform his obligation, the obligee may apply to the court for permission to enforce the obligation at the expense of the obligor, if such enforcement is possible.
2. In the event of an emergency, the obligee may enforce the obligation at the expense of the obligor without permission from the court.

## Article 252

The court judgment shall be considered as performance if the nature of the obligation so permits.

## Article 253

1. Where the obligor is required to maintain or manage a thing or to act carefully in the performance of his obligation, he shall have performed his obligation if he uses reasonable care, even where the intended purpose is not achieved, unless the law or agreement provides otherwise.
2. At all times, the obligor shall be liable for any fraud or gross negligence committed by him.

## Article 254

Where the obligor undertakes not to do something and then breaches such obligation, the obligee may petition the court to remedy such breach at the expense of the obligor, without prejudice to the obligee's right to indemnity.

## Article 255

1. Where the performance of an obligation in kind is not possible or appropriate unless the obligor executes it, the obligee may obtain a judgment to require the obligor to perform such obligation or otherwise to pay a disciplinary penalty.
2. Where the court believes that the amount of the penalty is insufficient to force the obligor to perform the obligation, the court may increase the amount as necessary.
3. In the event of performance in kind, or where the obligor insists on rejecting the performance, the court may determine the amount of indemnity against the obligor's non-performance or delay in performance, taking into account the damages suffered by the obligee.

### Compensatory Performance

## Article 256

Where the obligor fails to perform the obligation in kind or delays such performance, he shall indemnify any damages suffered by the obligee, unless such non-performance or delay therein was due to a cause beyond his the control.

## Article 257

The court may decrease the amount of indemnity or reject any request for indemnity where the negligence of the obligee contributed to or aggravated the damage.

## Article 258

The parties may agree that the obligor shall bear liability for force majeure or unforeseen incident.

## Article 259

1. The parties may agree to discharge the obligor from any liability arising from his failure or delay to perform his contractual obligation, except for his fraud or gross negligence.
2. The parties may also agree to discharge the obligor from liability for fraud or gross negligence committed by persons employed by the obligor to perform his obligation.
3. Any agreement concluded prior to the liability for the unlawful act arising shall be rescinded and the obligor shall be discharged from such liability in whole or in part.

## Article 260

Indemnity shall not be payable until the obligor is notified, unless the parties agree or the law provides otherwise.

## Article 261

An obligor may be notified by a warning or by any other official paper in lieu of the warning. A notice may be given by registered mail or by any other means as agreed.

## Article 262

A notice shall not be necessary in any of the following cases:

1. Where it is agreed that the obligor be considered notified immediately upon the maturity of the debt;
2. Where the performance of the obligation in kind is not possible or futile due to the act of the obligor;
3. Where the obligation is an indemnity arising from any unlawful act;
4. Where the obligation requires the return of a thing that the obligor knows to have been stolen, or the delivery to the obligor of a thing to which he knowingly has no right;
5. Where the obligor expressly states in writing that he shall not perform his obligation.

## Article 263

1. The court shall calculate the indemnity unless such calculation is provided in the contract or by the law.
2. Indemnity shall cover damages incurred by the obligee, including loss of profit, provided that such damages or loss of profit are a natural consequence

of the obligor's failure or delay to perform the obligation. Damages shall be deemed consequential if they were reasonably foreseeable or within the contemplation of the parties at the time of the conclusion of the contract.

## Article 264

Indemnity shall include moral damages and shall be governed by the provisions of Articles 202 and 203.

## Article 265

Where the obligation is the payment of money, the contracting parties may calculate the amount of indemnity in advance in the contract or in any subsequent agreement.

## Article 266

No agreed indemnity shall be payable if the obligor proves that the obligee has suffered no damages. The court may decrease the agreed amount of indemnity if the obligor proves that the calculation is exaggerated or if the obligation has been performed in part. Any agreement to the contrary shall be invalid.

## Article 267

Where the damages exceed the agreed amount of indemnity, the obligee may not claim a higher amount unless he proves the obligor's fraud or gross negligence.

## Article 268

Where the obligation is the payment of money and the obligor fails to make such payment after being notified to do so, and provided that the obligee proves he has incurred damages due to such non-payment, the court may order the obligor to pay indemnity, subject to the requirements of justice.

## **Chapter Two: Creditors' General Guarantee and Means of Its Protection**

### **Creditors' General Guarantee**

## Article 269

1. All the assets of a debtor shall secure its debts.
2. All creditors rank *pari passu* in such security, unless any creditor has preference rights by law.

### **Creditor's Use of Debtors' Rights (Indirect Suits)**

## Article 270

1. Even where a debt is not payable, every creditor may use in the name of its debtor the financial rights of such debtor, other than such rights relating to

the debtor in person or which are not attachable, if the creditor proves that the debtor has not used such rights and that such omission to use them will cause the insolvency of the debtor or aggravate such insolvency.

2. Upon use of the rights of its debtor, the creditor shall not be required to notify the debtor. Such debtor shall be joined in the claim; otherwise it shall not be admissible.

## Article 271

Upon use of the rights of its debtor, the creditor shall be deemed to act as an agent of the debtor. Any benefit from the use of such rights shall be added to the funds of the debtor and shall secure all its creditors.

### Actions for Invalidation of a Debtor (Acts)

## Article 272

Any creditor whose debt is payable and whose debtor commits any harmful act to the creditor may demand the invalidation of such act against the creditor if such act decreases the rights of the debtor or increases its obligations and results in the insolvency of the debtor or aggravates such insolvency, provided that the conditions as set forth in the following Articles 273 and 274 are satisfied.

## Article 273

1. Where the disposal of the debtor is with consideration, such disposal shall not be effective against the creditor in the event of fraud by the debtor and where the counter party is aware of such fraud. Fraud by the debtor shall be presumed if the creditor proves that the debtor knew at the time of the disposal that it was insolvent. The counter party to the disposal shall be presumed to have known of such fraud by the debtor if the creditor proves that the counter party knew at the time of the disposal that the debtor was insolvent.

2. Where the disposal by the debtor is without consideration, such disposal shall be effective against the creditor irrespective of fraud by the debtor or bad faith of the counter party.

## Article 274

1. Where the disposal of the debtor is with consideration, and the successor disposes of the right transferred to it to another successor with consideration, the creditor may not claim that such disposal is ineffective unless the creditor proves that both successors were aware of the debtor's fraud.

2. Where the disposal by the debtor is without consideration, and the successor disposes of the right transferred to it to another successor with consideration, the creditor may not claim that such disposal is ineffective unless the creditor proves that the latter successor was aware of the debtor's fraud at the time of disposal by the debtor in favour of the first successor.

## Article 275

Where the creditor alleges that the debtor is insolvent, the creditor shall only be obliged to prove the amount of the debt payable by such debtor. Where the debtor alleges solvency, the debtor shall prove money at least equal to or in excess of the debts accrued.

## Article 276

Where it is resolved that the disposal is not effective, all creditors who suffered damages from such disposal shall benefit therefrom.

Article 277

The counter party to a disposal may avoid trial if such party pays into the court treasury an amount equal to the value of the disposed asset.

Article 278

1. Where the disposal of an insolvent debtor involves preference of a creditor without good reason, the other creditors may request that the disposal be invalidated against them, subject to the provisions of Articles 272 and 275.
2. Where the insolvent debtor pays the debt of any of its creditors prior to the agreed maturity date of such debt, the other creditors may request not to enforce such payment against them. However, where the debtor pays such debt after its maturity date, the other creditors may not request invalidation of the payment against them unless such payment is made in collusion between the debtor and the creditor whose debt is settled.

Article 279

The claim to invalidate a disposal shall prescribe after a period of three years has elapsed from the date on which the creditor knew that the disposal was not effective against the creditor. In any event, such claim shall prescribe after a period of fifteen years has elapsed from the date of such disposal.

Right of Retention

Article 280

1. A person who undertakes to perform any obligation may decline performance thereof where the obligee has not offered to perform the corresponding obligation or has not provided adequate security for the performance thereof.
2. However, a holder or acquirer of a thing may refuse to return it until all amounts owing thereon have been paid, including such appropriate or necessary expenses incurred by such person in connection with such thing, unless the obligation to return such thing arises from any unlawful act.

Article 281

1. The person in possession shall maintain such thing in safe custody in accordance with the provisions of mortgage and shall account for the revenues of such thing.
2. Where the thing is feared lost or damaged, the custodian may apply to the court for permission to sell it in accordance with such procedures as determined by the court, and may sell such thing without prior permission from the court in the event of an emergency.
3. Title to the thing shall remain vested in the seller and shall not pass to the buyer until the purchase price has been paid in full and received by the seller.

Article 282

The right to retain a thing shall not grant a lien thereon.

Article 283

Where the retained thing is lost or damaged, the right to retain shall be transferred to any consequent consideration or indemnity.

## Article 284

1. The right to retain shall cease when the retained thing is no longer in the possession of the retainer.
2. However, where such thing is taken from the custody of such retainer without his knowledge or despite his objection, the retainer may demand its return within thirty (30) days of the date on which he became aware thereof and, in any event, within one year from the date thereof.

### **Part 3 - Modification of Obligation Effects**

#### **Chapter One - Condition and Term**

##### **Condition**

## Article 285

An obligation shall be conditional where its execution is suspended by a condition which has not been accomplished.

## Article 286

1. Where the condition is in breach of the public order or morals, or is impossible to meet, the obligation shall not exist if the condition is suspensive.
2. However, if such a condition is rescissible, such condition shall be void and shall have no effect on the enforceability of the obligation.

## Article 287

No obligation shall be effective where it is based on the suspensive condition that the existence of such obligation shall be dependent on the absolute discretion of the obligor.

## Article 288

1. No obligation based on a suspensive condition shall be effective unless that condition is met.
2. However, before such condition is met, the obligee may take any action to preserve its right.

## Article 289

1. An obligation based on a rescissible condition shall be effective immediately. Where the condition is met, the obligation shall cease, and the obligee shall return what he has received. Where meeting the condition is rendered impossible by any act attributable to the obligee, he shall pay indemnity.
2. However, acts pertaining to management performed by the obligee shall remain valid and binding notwithstanding such condition having been met.

## Article 290

1. Where a suspensive or rescissible condition is met, its effect shall apply to the time of execution of the contract, unless the intention of the contracting parties or the nature of the contract indicates that the existence or non-existence of the obligation relates only to the time at which the condition is met.
2. However, such a condition shall have no retroactive effect where the performance of the obligation before meeting such a condition becomes impossible due to any cause beyond the control of the obligor.

## Deferment

### Article 291

An obligation shall persist for a fixed time if its validity or termination depends on a definite future event, even where the time of the occurrence of such event is presently not known.

### Article 292

1. Where the obligation is attached to a suspensive period, such obligation shall be effective only from the time such period expires.
2. However, the obligee may, prior to the expiry of such period, take such action to reserve its right and, in particular, may demand security if the obligee has reasonable grounds to anticipate the insolvency or bankruptcy of the obligor.

### Article 293

1. A suspensive period shall be presumed to be intended for the benefit of the obligor, unless a provision of the law or of the contract or the particular circumstances indicate that it is intended for the benefit of the obligee or both parties.
2. Where such period becomes for the benefit of either party, each may waive it.

### Article 294

The right of the obligor to such suspensive period shall be extinguished in any of the following cases:

1. Where a judgment declares the obligor's bankruptcy;
2. Where the obligor substantially impairs the security given by the obligor to the obligee, even where such security is given under a subsequent contract or by law, unless the obligee elects to complete such security. However, where such security is impaired due to a cause beyond the control of the obligor, the time limit prescribed in the suspensive period shall lapse if the obligor fails to provide adequate security to the obligee;
3. Where the obligee fails to provide such securities as required under the contract.

### Article 295

Where the obligation indicates that the obligor shall perform its obligation only when capable or solvent, the court shall fix an appropriate time for the fulfillment of the obligation, taking into account the current and future resources of the obligor and assuming that the obligor shall use reasonable care in the performance of such obligation.

### Article 296

An obligation attached to a rescissible time shall be effective immediately. However, where such time expires, the obligation shall terminate without any retrospective effect of such termination.

## **Chapter Two: Multiple Objects of the Obligation**

### **Optional Obligations**

#### Article 297

1. Opting out of an obligation shall be possible if certain criteria, agreed by both parties, are met.
2. Where the option of designation is absolute, it shall be granted to the obligor, unless the law or agreement between the parties provides that this option be granted to the obligee.

#### Article 298

1. The period of validity of the designation option shall be determined. However, where the option is indefinite, the court shall determine the appropriate period following the petition of either party.
2. Where the option is granted to the obligor and it declines to exercise such option or, in the event of multiple obligors, they fail to agree among themselves, the obligee may apply to the court to designate the obligation. However, where such option is granted to the obligee and it declines to exercise such option or, in the event of multiple obligees, they fail to agree among themselves, the option shall be transferred to the obligor.

#### Article 299

1. Where the designation option is granted to the obligor and either thing is lost while in its possession, the obligor may bind the obligee by the other thing. Where both things are lost, the obligation shall cease to exist.
2. Where the obligor is liable for the loss of either thing, the obligor shall pay the value of the last thing to be lost.

#### Article 300

The designation option shall be vested in the heir.

### **Substitutional Obligation**

#### Article 301

1. An obligation shall be substitutive if its subject matter is a single item. However, the obligor shall be discharged of his responsibilities if he provides another item as a substitute for the original item.
2. The original item and not the substitute item shall be the subject matter of the obligation.

## **Chapter Three: Multiple Parties to the Obligation**

### **1- Joint Obligation**

#### Article 302

Consolidation among the debtors or the creditors shall not be presumptive but in accordance with an agreement or a provision of the law, subject to the rules of trade.

## Joint Action of Creditors

### Article 303

1. Subject to a description amending the relationship of each creditor to the effect of the debt, consolidated creditors may, jointly or severally, demand that the debtor pay the debt in full.
2. Where the debtor is requested by one of the consolidating creditors to pay a debt, he may not raise an objection based on grounds specific to another creditor. The debtor may, however, raise an objection based on grounds that are specific to that creditor and common to all of the creditors.

### Article 304

1. The debtor may repay the full debt to any of the consolidating creditors, unless another creditor notifies the debtor not to do so.
2. However, consolidation shall not prevent the division of the debt among the heirs of the consolidating creditors, unless the debt is indivisible.

### Article 305

1. Where the debtor is discharged from liability to any of the consolidating creditors for a reason other than payment, its liability to the other creditors shall be discharged only to the extent of the creditor's share for which the debtor is discharged.
2. Where any of the consolidating creditors performs an act that may cause damage to the other creditor, such act shall not be effective against such other creditors.

### Article 306

Any part of the debt collected by any of the consolidating creditors shall be the right of all the creditors and shall be divided among them equally, unless otherwise provided by agreement or by law.

## Joint Liability of Debtors

### Article 307

1. The creditor may demand the consolidating debtors to pay the debt jointly or severally, subject to such description of the connection of each debtor adjusting the effect of the debt. Where a creditor initially demands one debtor to pay the debt, this shall not prevent the creditor from demanding the other debtors to pay the same debt.
2. No debtor, demanded by any creditor to pay a debt, may invoke the aspects of payment in connection with the other debtors. However, such debtor may invoke the aspects of payment of such a debtor and by the common aspects of payment among all the debtors.

### Article 308

Payment by a consolidating debtor of the debt in kind or with consideration shall discharge such debtors of their repayment obligations.

Article 309

Renewal of a debt between the creditor and any of the consolidating debtors shall discharge the other debtors unless the creditor reserves its right against them.

Article 310

No consolidating debtor may invoke the set-off between the creditor and another consolidating debtor other than to the extent of the share of such other debtor.

Article 311

1. Where one of the consolidating debtors is discharged, the other debtors shall not be discharged unless the creditor so declares.
2. Where no such declaration is made by the creditor, such creditor may demand the other consolidating debtors to pay the balance of the debt subsequent to the deduction of the share owed by the discharged debtor. However, the creditor may reserve the right to demand that such other debtors pay the debt in full, in which case the debtors may have recourse against the discharged debtor to the extent of his share of the debt.

Article 312

Unless agreed otherwise, where the creditor discharges any of the consolidating debtors from joint liability, the creditor shall reserve the right to demand that the other debtors pay the debt in full.

Article 313

1. In all cases where the creditor discharges any of the consolidating debtors, whether such discharge is from the debt or from consolidation, the other debtors may, if necessary, have recourse against such debtor to the extent of the share of any insolvent debtor in accordance with the provision of Article 319.
2. Where the creditor discharges a debtor from all liability for the debt, the creditor shall bear the share of the insolvent debtor's debt.

Article 314

1. Where the debt in connection with any of the consolidating debtors has prescribed, the other debtors shall be discharged only to the extent of the share of such debtor.
2. Where the running of prescription is suspended or its period ceases to be calculated in respect of any of the consolidating debtors, the creditor may not hold thereto against the other debtors.

Article 315

1. A consolidating debtor shall not be liable other than for its own act in connection with the performance of the obligation.
2. Where the creditor notifies or litigates against a consolidating debtor, such notification or litigation shall not be effective against the other debtors. However, where any of the consolidating debtors notifies the creditor, all the other debtors shall benefit from such notice.

## Article 316

Where the debtor reconciles with any of the consolidating debtors and such reconciliation involves discharge from the debt, either directly or indirectly, the other debtors shall benefit from such discharge. However, where such reconciliation creates a new obligation or increases their existing obligations, such reconciliation shall only apply should the other debtors accept it.

## Article 317

1. Where any of the consolidating debtors acknowledges the debt, such acknowledgement shall not extend to the other debtors.
2. Other debtors will not be adversely affected should any of the consolidating debtors falsely swear or put the creditor under oath.
3. Where the creditor requests any of the consolidating debtors to swear, and such debtor swears in fact, then all the consolidating debtors shall benefit from such act.

## Article 318

1. Where a judgment is issued against any of the consolidating debtors, such judgment shall not affect the other debtors.
2. Where a judgment is issued in favour of any of the consolidating debtors, the other debtors shall benefit from such judgment unless it is substantiated on grounds specifically relating to the debtor in whose favour it is issued.

## Article 319

1. Where any of the consolidating debtors pays the debt in full or in excess of its share, or discharges such debt by any corresponding means of settlement, the debtor may have recourse against any of the other debtors only to the extent of such debtor's share of the debt, even where such recourse is under the creditor's claim on the basis of its right of subrogation.
2. Where any of the debtors pays the debt, it shall be divided in equal shares among all the debtors, unless otherwise agreed or provided by law.
3. Where any of the consolidating debtors becomes insolvent, the debtor who pays the debt and all the other debtors shall bear such liability pro rata to their respective shares, without prejudice to their right of recourse against the insolvent debtor when such debtor becomes solvent.

## Article 320

Where only one of the consolidating debtors has an interest in the debt, such debtor shall bear liability for the debt in full.

### 1- Indivisibility

## Article 321

An obligation shall not be divisible in either of the following cases:

1. Where the obligation relates to a thing that cannot by its nature be divided.
2. Where the intention of the contracting parties indicates that such obligation may not be performed in divided parts.

Article 322

Where there are multiple obligors in any indivisible obligation, each shall be liable to perform the obligation in full. The obligor that performs such obligation shall have a right of recourse against the other obligors to the extent of their respective share of the obligation, unless the circumstances require otherwise.

Article 323

1. Where there are multiple obligees in any indivisible obligation, or multiple heirs of the obligee, each obligee or heir may demand to perform the obligation in full. Where any of the other obligees or heirs objects thereto, the obligor shall be liable to perform the obligation in favour of all the obligees or to deposit the thing which is the subject matter of the obligation, as required by law.
2. The obligees shall have recourse against the obligee that had the obligation performed, *pro rata* to their respective share thereof.

**Part 4 – Transfer of Obligations**

**Chapter One: Transfer of Rights**

Article 324

1. The obligee may transfer to a third party its right against the obligor, unless the law or agreement between the parties provides otherwise or unless the nature of the obligation requires otherwise.
2. The consent of the obligor shall not be required in order to effect such a transfer.

Article 325

The transfer of right shall be effective only to the extent that it may be attached.

Article 326

Such transfer shall be effective against the obligor or a third party only where such obligor accepts or is notified of such transfer, provided that such transfer shall be effective against a third party with the consent of the obligor where such consent is fixed by date.

Article 327

Prior to the notification or acceptance of such transfer, the obligor may take any steps necessary to protect the subject right.

Article 328

The right shall be vested in the transferee in its descriptions, attachments and securities.

### Article 329

The transferor shall provide the transferee with the deed of transfer and such means to confirm it, and any necessary statements to be able to collect and enforce such a right.

### Article 330

1. Where the transfer is with consideration, the transferor shall only warrant the existence of the transferred right at the time of such transfer, unless agreed otherwise.
2. Where the transfer is without consideration, the transferor shall not be liable for anything, even the existence of such right.

### Article 331

1. The transferor shall not secure the solvency of the obligor unless there is an agreement to this effect.
2. Where the transferor secures the solvency of the obligor, such security shall apply to the solvency at the time of transfer only, unless agreed otherwise.

### Article 332

1. Where the transferee enforces the security in accordance with Articles 330 and 331, the transferor shall repay the amount paid by the transferee plus expenses, even where there is an agreement to pay a higher amount.
2. However, where the transferor is aware that there is no such right against the obligor, he shall indemnify the bona fide transferee for any damage suffered.

### Article 333

1. The transferor shall be liable to indemnify the transferee for any damage incurred by the latter due to the personal acts of the transferor, even if the transfer is without consideration.
2. Any provision to the contrary shall be void.

### Article 334

The obligor may hold against the transferee the same pleadings that such obligor has against the transferor on the effective date of the transfer. The obligor may also hold to such pleadings arising from the deed of transfer.

### Article 335

In the event of multi-transfers of a single right, the transfer that first applies to third parties shall take precedence.

## Article 336

1. In the event of any attachment against the obligor before the transfer becomes valid against third parties, the transfer shall, in respect of the attachment creditor, be considered as a second attachment.
2. In such event, where another attachment occurs after the transfer becomes effective against third parties, the debt shall be divided between the former attachment creditor, the transferee and the latter attachment creditor on a back-to-back basis, provided that the share of the latter attachment creditor shall be applied to complete the transferred right.

## Chapter Two: Transfer of Debts

## Article 337

1. The debt may be transferred by mutual agreement between the debtor and another person to transfer the debt of the debtor to the transferee.
2. Such transfer shall be limited where the performance therein is limited to a particular property or debt to the debtor by the transferee. Such transfer shall be absolute where such performance is not limited by anything, even where the debtor is entitled to any debt or property in the possession of the transferee that may be applied for settlement.

## Article 338

1. No transfer shall be effective against the creditor unless the creditor accepts it.
2. Where the original debtor or the transferee notifies the creditor of such transfer and a reasonable time is fixed for acceptance thereof by the creditor, and such time expires without any declaration of acceptance by the creditor, such non-declaration shall be considered as a rejection of the transfer.

## Article 339

The transferee shall be obliged to the original debtor to pay the transferred debt to the creditor in due time, unless agreed otherwise. This provision shall apply even where the creditor rejects the transfer.

## Article 340

The debt may be transferred under an agreement between the creditor and the transferee. However, where the original debtor rejects the transfer, the transferee shall have no right of recourse against the debtor, other than in accordance with the rules of unlawful enrichment, if available.

## Article 341

Where the creditor is a party to, or accepts, the transfer deed, the original debtor shall be discharged from the debt.

Article 342

The original debtor shall secure the solvency of the transferee at the time of acknowledgement by the creditor of the transfer, unless agreed otherwise.

Article 343

1. The debt shall be vested in the transferee in its descriptions, attachments and securities.
2. However, the guarantor, whether in kind or in person, shall remain liable to the creditor only if the creditor accepts the transfer.

Article 344

The transferee may hold the creditor to all the pleadings of the original debtor in connection with the same debt and may hold to such pleadings derived from the transfer deed.

Article 345

1. Where the debt, being the subject-matter of the transfer, is terminated for any urgent reason upon the conclusion of such transfer, such termination shall not affect the transfer. The transferee may have recourse against the original debtor to the extent of the amount paid to the creditor.
2. Where the debt is terminated for any urgent reason not attributable to the transferee prior to the conclusion of such transfer, the transfer shall be rendered invalid.

Article 346

In any event, where payment for the thing transferred becomes due, the transfer debtor who paid the price shall have a right of recourse, either against the transferor or against the transferee paid.

Article 347

Where the debtor transfers its debt under a transfer limited to the property in the custody of the transfer debtor and such property is lost prior to delivery thereof to the creditor, but not due to the fault of the transfer debtor, the transfer shall be terminated. However, where such property in custody is payable to a third party, the transfer shall be void.

Article 348

Where the debtor refers its creditor to the person in wrongful possession under a transfer limited to the wrongfully seized property, and the property is lost while in the custody of such person in wrongful possession prior to its delivery to the creditor, the transfer shall not be affected thereby. However, where such property in custody is payable to a third party, the transfer shall be void.

Article 349

The creditor may not have recourse against the original debtor unless the transfer provides that the original debtor may be demanded to pay the debt if it cannot be recovered from the transfer debtor, or if the limited transfer is terminated or becomes void upon the termination of the debt, or the loss or maturity of the property occurs in accordance with the preceding four Articles.

## Article 350

Where the original debtor transfers its debt under an absolute transfer and such debtor holds no debt or property in the custody of the transfer debtor, the transfer debtor shall upon payment of the debt have a right of recourse against the original debtor to the extent of the transferred debt.

## Article 351

1. Where the original debtor transfers its debt under an absolute transfer and such debtor holds any debt or property held in trust or wrongfully seized by the transfer debtor, the original debtor shall upon such transfer have the right to claim such debt or property from the transfer debtor until the transferred debt is paid to the creditor.
2. Where the transfer debtor pays such debt to the creditor, the debt payable by such transfer debtor shall be discharged to the extent paid.

## Article 352

Where a transfer limited by a debt or property is concluded, the original debtor shall have no claim against the transfer debtor, and the latter shall have no obligation to pay such debt to the original debtor.

## Article 353

1. Upon the sale of any property officially pledged, the debt secured by such pledge shall not be effective against the purchaser unless otherwise agreed.
2. If the seller and the purchaser agree to transfer the debt, and the sale agreement is registered, the creditor shall, promptly upon being notified of the transfer, either accept or reject such transfer no later than six (6) months of such notification. Upon the expiry of such period without any response from the creditor, such silence shall be deemed acceptance by the creditor.

### **Part 5: Termination of the Obligation**

#### **Chapter One: Settlement**

##### **Subchapter One: Parties to the Settlement**

## Article 354

1. Payment may be made by the debtor or its representative or by any other person having an interest in such payment, subject to the provisions of Article 250.
2. Payment may also be made by any person having no interest therein, even without the knowledge of the debtor or against its will, provided that the creditor may reject such payment by third parties if the debtor objects thereto and the creditor is notified of such objection.

## Article 355

1. Payment shall not be valid unless the payer is the owner of the thing paid for and has the capacity to dispose thereof.
2. However, payment by an incapacitated person for a thing payable by him shall be valid unless the payer suffers any damage due to such payment.
3. Where the debtor pays some of its creditors on his deathbed and his assets are not sufficient to pay all his debts, such payment shall not be effective against the other creditors, provided that such payment causes damage to such creditors.

## Article 356

1. Where a third party pays a debt, such third party may have recourse against the debtor to reimburse the amount paid.
2. However, where a payment is made against the will of the debtor, the debtor may then prevent recourse by the payer in connection with the amount paid, in full or in part, if the debtor proves that it has an interest in objecting to such payment.

## Article 357

Where a person other than the debtor makes payment, the payer shall substitute the creditor who collected its right in any of the following cases:

1. Where the payer is obliged to pay the debt with or on behalf of the debtor;
2. Where the payer is a creditor and pays another creditor having preference to such creditor due to any security in kind, even if the payer holds no security;
3. Where the payer holds a thing and pays the debt to a creditor who had held such thing to secure its right;
4. Where a special provision grants the right of subrogation to the payer.

## Article 358

1. A creditor repaid its right by a person other than the debtor may agree with such third party to substitute the creditor, without the consent of the debtor. This shall not be applicable where the agreement is made after the date of payment.
2. Where the debtor borrows money to settle the debt, it may also substitute the relevant creditor by the lender, without the consent of such creditor, provided that the loan agreement shall state that such money is designated to pay such debt and that, upon settlement, such money borrowed from the new creditor is applied to pay such debt.
3. Subrogation against a third party shall not be effective unless the date of the agreement with the creditor, the loan agreement and the settlement agreement is fixed.

## Article 359

Any party that, by agreement or by law, may substitute the creditor shall have the same rights as the creditor, including its benefits, attachments, securities and remedies. Such subrogation shall be limited to the payment on behalf of the debtor.

## Article 360

1. Where a person other than the debtor pays to the creditor part of its right and replaces the creditor to such part, the creditor shall not be adversely affected by such subrogation, and payment of the balance of the right to such creditor shall have priority over the right of the payer, unless agreed otherwise.
2. Where another person substitutes the creditor to the balance of its right, the latter substitute and former substitute shall subrogate the creditor to the extent of the part of the right paid by each of them and shall divide such right on a back-to-back basis.

## Article 361

Where the holder of the pledged property pays the debt in full and substitutes all the creditors, such person may not demand the holder of another property pledged on account of the same debt to pay such debt other than to the extent of the share of such other holder *pro rata* to the value of the property acquired by him.

## Article 362

Payment may be made to the creditor or to its representative. Any person that may provide to the debtor a letter of subrogation issued by the creditor shall have the capacity to collect the debt, unless it is agreed to pay the debt to the creditor in person.

## Article 363

Where payment may be made other than to the creditor or to its representative, the debtor shall not be discharged from liability unless the creditor accepts such payment or such payment is in the interest of the creditor, and to the extent of such interest, or if payment is made in good faith to a person in possession of such debt.

## Article 364

1. Where the creditor rejects without good reason a duly proposed payment, or rejects works performed for such payment, or if the creditor declares that it rejects payment, the debtor may notify the creditor.
2. Upon such notification, the creditor shall bear the consequences of loss of or damage to the relevant asset. In such event, the debtor shall be entitled to deposit such asset at the expense of the creditor and demand indemnity, as applicable.

## Article 365

Payment shall be deemed made if the debtor, having made an offer, deposits the corresponding sum or item in accordance with the provisions of the Pleadings Law or any other similar action, provided that the creditor accepts such an offer or a final judgment confirming the validity of such offer is issued.

## Article 366

Payment shall also be deemed made if the debtor deposits the debt directly or takes any step in lieu of such deposit, in any of the following cases:

- (a) Where the debtor is not aware of the identity and domicile of the creditor;
- (b) Where the creditor is incapacitated and has no representative to accept such payment on behalf of such creditor;
- (c) Where the debt is disputed; or
- (d) Where there are serious grounds that make it difficult to make a real offer of the debt prior to the deposit or alternative procedure.

## Article 367

1. Where the debtor offers the debt and then deposits it or takes any similar action, the debtor may withdraw its offer if the creditor rejects it or if no final judgment confirming the validity of such offer is issued. In such event, the co-debtors and the guarantors of the debt shall not be discharged from liability and the securities to such debt shall survive.
2. However, where the debtor withdraws such offer after its acceptance by the creditor or after issuing a final judgment confirming its validity, and provided that the creditor accepts such withdrawal, the creditor may not hold to the securities of its right and the co-debtors and the guarantors of the debt shall be discharged from liability.

## Article 368

Where payment is in the form of a specific asset which is required to be delivered, the debtor may, upon notifying the creditor to take delivery thereof, apply to the court for permission to deposit such asset. Where such asset is real property or a thing intended to remain where it is, the debtor may request it be held in custody.

## Article 369

Where the asset of payment is liable to depreciate in value or its maintenance in custody may prove costly, the debtor may, with the consent of the court, or, in case of emergency without such consent, sell the asset. The debtor shall thereafter deposit the sale price with the creditor in lieu of the asset itself.

### **SubChapter Two: Object of Settlement**

## Article 370

Payment shall be limited to the particular outstanding debt. The creditor may not be coerced into accepting an alternative, even if of greater value.

## Article 371

1. A debtor may not coerce the creditor into accepting payment in part, unless the agreement or the law provides otherwise.
2. Where the debt is disputed in part and the creditor accepts the undisputed part, the debtor may not reject such acceptance.

## Article 372

Where the debtor is obliged to pay with the debt any expenses or compensations incurred by a delay in payment, and where the payment by the debtor is not sufficient to settle such expenses or compensations, such payment shall first be applied to the expenses, thereafter to the compensations, and finally to the initial debt, unless agreed otherwise.

## Article 373

In the event of multiple debts of the same kind owed to one creditor, and where payment by the debtor is not sufficient to settle all such debts, the debtor may, at the time of payment, designate the debt proposed to be paid, unless there is any legal or consensual impediment to such designation.

## Article 374

Where the debt paid is not designated as set forth in the preceding Article, the payment shall be applied to the mature debt. Where more than one debt becomes mature, the largest debt shall be paid first. Where the amount of each debt is the same, payment shall be applied to the debt designated by the creditor.

## Article 375

1. Payment shall be made immediately when the obligation becomes finally established against the debtor, unless otherwise provided by agreement or by law.
2. However, the court may, in exceptional cases and unless otherwise provided by law, afford the debtor an adequate time to make payment, or order payments in instalments, provided that no gross damage is suffered by the creditor.

Article 376

1. Where the form of the obligation is a specific thing, it shall be delivered from its location as at the time when such obligation arises.
2. The fulfilment of other obligations shall be made according to the law of the debtor's domicile jurisdiction, or the jurisdiction where the head office of the debtor's business is located if the obligation relates to such business.
3. The above provisions shall apply, unless otherwise provided by agreement or by law or unless the nature of the obligation requires otherwise.

Article 377

Unless otherwise provided by agreement, law or practice, the costs of such performance shall be payable by the debtor.

Article 378

1. Any person that pays a debt in part may demand a discharge to the extent paid by marking such payment on the debenture. Where the debt is paid in full, the person may recover or demand cancellation of the debenture. However, where such debenture is lost, the person may demand that the creditor acknowledge in writing the loss of such debenture.
2. Where the creditor refuses to act in accordance with the preceding clause, the debtor may deposit the relevant thing in accordance with the provisions of the law.

**Chapter Two: Satisfaction of Obligation by Valuable Consideration**

**Subchapter One: Settlement with Agreed Consideration**

Article 379

Where the creditor accepts payment by a thing other than the thing receivable by the agreement, such payment shall be a valid discharge.

Article 380

1. In the event of transfer of title of a thing given in consideration of the debt, the provisions of the sale, particularly those relating to the capacity of the contracting parties and the security of the rights and intrinsic defects liability, shall apply to the payment by consideration.
2. The provisions of payment, particularly those relating to the designation of the repaid debt and the expiry of securities, shall also apply as such payment by consideration settles the debt.

**Subchapter Two: Novation**

Article 381

Obligations shall be renewed where:

1. The debt is changed by virtue of the parties' agreement to replace the initial obligation by a new and different obligation;

2. The debtor is changed by virtue of the creditor's agreement with a third party to replace the original debtor, provided that the original debtor is discharged from liability without its consent or if the original debtor agrees with the creditor to be replaced by a third party as the new debtor;
3. The creditor is changed by virtue of an agreement between the creditor, the debtor and a third party to designate such third party as the new creditor.

## Article 382

1. An obligation shall be renewed only where the original obligation and the new obligation are both free of any grounds for invalidity.
2. Where the original obligation arises from an irrevocable contract, the new obligation shall not be valid unless it is intended to authorise and replace the contract.

## Article 383

1. Renewal shall not be presumptive but shall be expressly agreed or clearly concluded from the circumstances.
2. In particular, renewal shall not be concluded by issuing a debenture of an existing debt, or any variation of the obligation limited to the place and time and method of payment, or any other amendment limited to the securities, unless otherwise agreed.

## Article 384

1. Upon such renewal, the original obligation and its effects shall expire and a new obligation shall come into existence.
2. The securities of the original obligation shall not be automatically vested in the new obligation unless otherwise provided by law, or it is evident that the contracting parties so intend.

## Article 385

1. Where the original obligation is secured by securities in kind provided by the debtor, such securities may be agreed to be vested in the new obligation, subject to the following provisions:
  - (a) In the event of renewal by a change of the debt, the creditor and the debtor may agree to transfer the securities to such extent that causes no damage to third parties;
  - (b) In the event of renewal by a change of the debtor, the creditor and the new debtor may agree to keep the same securities without the consent of the original debtor;
  - (c) In the event of renewal by a change of the creditor, the three parties may agree to keep the same securities.
2. In all events, such agreement to transfer the securities in kind to a new obligation shall not be effective against any third party before the time of agreement to renew the obligation, subject to the registration provisions.

## Article 386

No guarantee, whether in kind or personal, and consolidation shall be transferred to the new obligation without the consent of the guarantors and the consolidating debtors.

### **Subchapter Three: Delegation for Settlement**

## Article 387

1. Assignment shall be valid if the debtor obtains the consent of the creditor to a third party to undertake the payment of the debt in lieu of the debtor.
2. Assignment shall not be conditional upon any previous indebtedness between the debtor and such third party.

## Article 388

1. Where the parties agree to the assignment, provided that the assignee replaces the assignor, such assignment shall be deemed a renewal of the obligation with a change of the debtor. As a result, the assignor shall be discharged from liability to the creditor, provided that the assignee is not insolvent at the time of assignment.
2. However, renewal shall not be presumed in assignment. Where there is no such agreement to renewal, the new obligation shall arise side by side with the original obligation.

## Article 389

The assignee shall be properly obliged against the creditor, even where the assignee's obligation to the assignor is invalid or subject to any remedy. Unless otherwise agreed, the assignee shall have a right of recourse against the assignor only.

### **Subchapter Four: Set-off**

## Article 390

1. The debtor shall have the right to set off the amount payable to its creditor against the amount payable by the creditor to such debtor, even where the basis of each debt is different, provided that the subject matter of either debt is cash or fungible things of the same type or quality and that both debts are free of any outstanding legal dispute.
2. Set-off shall not be affected where the time for payment is adjourned according to an extension granted either by the court or voluntarily by the creditor.

## Article 391

Set-off may be made even if the place of payment of each debt is different. In such event, the party that holds to such set-off shall indemnify the other party for any damage suffered by such other party due to its inability to recover its right in full or to pay its debt at the place designated for such purpose as a result of such set off.

## Article 392

Debts of any source whatsoever may be set off, other than any of the following:

1. Where the form of either debt is the return of a thing dispossessed without any right from its owner;
2. Where the form of either debt is the return of a deposited or lent thing;
3. Where either debt is a non-attachable right; or
4. Where either debt is an alimony debt.

## Article 393

1. Set-off shall not be applicable unless the concerned party holds thereto, and it may not be waived until the right is established.
2. As a result of such set-off, the debts shall expire to the extent of the lower debt at such time when both debts are capable of set-off.

3. In the event of a debtor having multiple debts, designation of set-off shall be the same as the designation upon repayment of such multiple debts.

Article 394

Where the debt is prescribed at the time of holding to set-off, such debt may be set off despite holding to such prescription, provided that prescription shall not be effective at the time when set-off becomes possible.

Article 395

1. No set-off that may prejudice the rights of third parties may be made.
2. Where a third party imposes an attachment on a thing in the possession of the debtor and the debtor becomes a creditor of its own creditor by a debt that can be set off, such debtor may not hold to such set-off to the detriment of the attachment creditor.

Article 396

1. Where the creditor transfers its right to a third party and the debtor accepts such transfer without any reservation, the debtor may not hold the transferee to any right of set-off that the debtor could have exercised prior to accepting the transfer. The debtor shall have a right of recourse against the transferor only.
2. However, where the debtor has not accepted the transfer but has been notified of it, such transfer shall not prevent the debtor from holding to set-off, unless the right of set-off of the debtor is established against the transferor upon being notified of such transfer.

Article 397

Where a debtor repays a debt even though it has the right to set off such debt, the debtor may not hold to the securities to its right to the detriment of third parties, unless the debtor has not previously been aware of such right.

**Subchapter Five: Combined Obligations**

Article 398

Where a single person is simultaneously a creditor and a debtor in respect of a single debt, such debt shall expire to the extent of such unity.

Article 399

Where the grounds for such unity of liability cease to exist with retrospective effect, the debt and its attachments shall be resurrected in respect of all the concerned parties. In such event, unity of liability shall be deemed void.

**Chapter Three: Termination of Obligation without Satisfaction**

**Subchapter One: Discharge**

Article 400

1. An obligation shall expire if the creditor discharges the debtor. Discharge shall be effective when the debtor becomes aware thereof.

2. Where the discharge is rejected, the obligation and all its terms, securities and remedies shall become effective once again.

## Article 401

The substitutive provisions of voluntary contribution shall apply to such discharge. Discharge shall not be required to have a special form, even if it relates to an obligation that requires a particular form to be valid, as provided by law or by agreement between the parties.

### Subchapter Two: Impossibility of Fulfilment

## Article 402

Obligations shall cease if the debtor can prove that their fulfilment has become impossible due to a foreign cause beyond the control of the debtor.

### Subchapter Three: Limitations

## Article 403

The claim of any personal right shall prescribe after the lapse of a period of fifteen years, except where another period is provided for either by law or by the events described in the following Articles.

## Article 404

1. The claim of every renewing periodical right, such as the rental of buildings and agrarian lands, salaries, wages, fixed incomes and pensions, shall be subject to prescription.
2. The claim of the revenues payable by a holder acting in bad faith and a claim to the revenues payable by the trustee of the Waqf to the concerned parties shall prescribe after the lapse of a period of fifteen years.

## Article 405

The claims of the rights of doctors, pharmacists, advocates, engineers, experts, administrators of bankruptcy, brokers, teachers and freelancers shall prescribe after the lapse of a period of five years, provided that such rights are payable to them in consideration for their professional services or expenses incurred.

## Article 406

1. Claims of charges and taxes payable to the state shall prescribe after the lapse of a period of five years. This period shall commence from the end of the year for which the annual charges and taxes are payable and, in the event of legal costs in connection with court papers, such period shall commence from the closure of the verbal pleading in the claim, the subject matter of such papers, or, if no such pleading is made, from the date of issue of such papers.
2. The above provision shall also apply if the claim relates to the repayment of charges and taxes collected without any good reason. In such event, the period shall commence from the date of payment of such charges and taxes.
3. The above provisions shall be without prejudice to the provisions of any special laws.

## Article 407

1. A claim shall prescribe after one year if it relates to any of the following rights:
  1. The rights of traders and craftsmen for things supplied to persons not trading therein;
  2. The rights of owners of hotels and restaurants in connection with costs of board and lodging, meal charges, and all other expenses for their customers' account;
  3. The rights of home servants and the like, including daily and other wages and the cost of their supplies and services to their masters.
2. Any person who holds to prescription of a claim in accordance with the provisions of this Article shall swear under oath that he actually repaid the debt. Where such person is an heir of the debtor or a legal representative of such debtor or heir, he shall swear under oath that he had no knowledge of the debt or payment. The court shall *ex mero motu* put him under oath.

## Article 408

1. In respect of the rights described in Articles 405 and 407 herein, the period of prescription shall commence from the date on which the creditors have delivered their initial supplies, even if they make subsequent deliveries.
2. Where a deed of any of such rights is made, the relevant claim shall prescribe after the lapse of a period of fifteen years.

## Article 409

The period of prescription shall be calculated in days, not hours. The first day shall not be counted and the period shall be completed upon the expiry of the last day thereof, unless such day is an official holiday, in which event such period shall extend to the next working day.

## Article 410

1. The period of prescription shall not commence until the maturity date of the debt, unless the law provides otherwise.
2. In particular, such period shall not apply to a debt based on a suspensive condition other than from the time when such condition is met; and in respect of the security to maturity, from the date on which maturity is established; and in respect of a deferred debt, from the time when such period expires.
3. Where the determination of the date for payment is at the sole discretion of the creditor, the period of prescription shall commence from the date when the creditor is able to exercise such discretion.

## Article 411

1. The period of prescription shall not apply where a creditor is prevented from claiming his right, even if such prevention is moral; nor shall it apply to the relationship between the principal and his agent.
2. Lack or absence of capacity of the creditor, or a penalty ruled against him, shall be deemed a prevention to claim a right, unless the creditor is legally represented by an agent.

## Article 412

Where any reason exists to suspend the calculation of the period of prescription in respect of some heirs of the creditor, such suspension shall not apply to the other heirs.

## Article 413

The period of prescription shall be suspended by a judicial claim, even if the claim is made before a court of non-competent jurisdiction, and it shall be suspended by notification of the executive deed, attachment and such request to accept one's right in bankruptcy or distribution, and any other procedure taken by the creditor to hold to his right during the progress of any claim.

## Article 414

1. The period of prescription shall be suspended if the debtor expressly or impliedly acknowledges the right of the creditor.
2. Such acknowledgement shall be deemed implied if the debtor leaves in the possession of the creditor any asset that is mortgaged as security for a debt, or if the creditor retains such asset on the basis of his right to reject the return of such asset to the debtor until the debt is repaid.

## Article 415

1. Where the period of prescription is interrupted, a new period shall begin to run from the time of expiry of the effect arising from the cause of such interruption, and such new period shall be the same as the original period.
2. Where the right is awarded and the judgment has become *res judicata*, or the claim of such right is prescribed after five years in accordance with the provisions of Article 405, or after one year in accordance with the provisions of Article 407, and such prescription is interrupted by acknowledgement from the debtor, the new period of prescription shall be fifteen years, unless the judgment provides for periodic renewed obligations that mature only when the judgment is issued.

## Article 416

Where the claim of the right is subject to prescription, the claim of its effects shall also be subject to prescription, even if the period of prescription of the latter claim is not completed.

## Article 417

1. The court may not *ex mero motu* rule on prescription but only upon demand by the debtor or its creditors, or by any concerned party, even if the debtor has not previously held to it.
2. The debtor may be held to prescription at any stage of the claim, even before the filing of an appeal to the court.

## Article 418

1. Prescription may not be waived before the right thereto is established. The period for prescription shall be established by law only.
2. A person having the capacity to dispose of his rights may not under any circumstances waive prescription after the right thereto is established, provided that such waiver shall not be effective against the creditors to the extent that they may suffer damage from such waiver.

### **BOOK TWO: Specific Contracts**

#### **Part I: Contracts relating to Ownership**

##### **Chapter One: Sale**

###### **Subchapter One: Sale in General**

## Article 419

A sale shall be defined as a contract in terms of which the seller undertakes to transfer to the purchaser the title to a thing or any other financial right in exchange for money.

## Article 420

A sale shall include all the rights attached to the sale asset and anything prepared on a permanent basis for the use of such asset, according to the nature of things, practice and the intent of the contracting parties.

### 1st: Elements of Sale

## Article 421

1. The sale item shall be fully described to the purchaser, failing which the purchaser may withdraw from the sale.
2. The contract shall contain a description of the sale item and its basic identifying elements.
3. Where the contract states that the purchaser is aware of the sale item, he may not demand cancellation of the sale by claiming not to be aware of the item, unless the purchaser can prove the seller has acted fraudulently.
4. Where the purchaser takes delivery of the sale item and fails to object thereto within a reasonable time, such failure shall be deemed acceptance of the item.

## Article 422

*Effective Date: 08/08/2004*

1. Where the sale is by sample, the sale item shall be identical to the sample.
2. Where the sample is lost or damaged while in the possession of either contracting party, without any fault on their part, the seller or the purchaser shall prove that the sale item matches the sample.

## Article 423

### **Article 423**

*Effective Date: 08/08/2004*

1. In sales by trial, the seller shall enable the purchaser to try an item and the purchaser may accept or reject it. Where the purchaser rejects the sale item, he shall notify the seller of such rejection within an agreed time period, or within such reasonable time period as the seller determines. Expiry of such period without the purchaser's notification shall be deemed acceptance of the sale item.
2. A sale by trial shall be conditional upon the acceptance of the sale item by the purchaser, unless the agreement or the circumstances indicate that the sale is based on a rescissible condition.

## Article 424

### **Article 424**

*Effective Date: 08/08/2004*

Where the sale of a thing is subject to the condition of tasting, the purchaser may accept the sale at his sole discretion. However, the purchaser shall notify the seller of his acceptance within such period as provided by agreement or practice, and the sale shall be effective only from the time of such notification.

## Article 425

### **Article 425**

*Effective Date: 08/08/2004*

The sale price shall be determined only on the basis of appropriate means used to assess such price.

## Article 426

### **Article 426**

*Effective Date: 08/08/2004*

1. Where the sale price is not expressed in the contract, the sale shall not be invalid if the agreement or circumstances indicate that the contracting parties intended to apply either the trading price between them or the market price.
2. Where the parties agree that the price shall be the market price, such price shall be the market price at the time and place of delivery of the sale item to the purchaser. Where no market is available, the market price shall be that prevailing in the place whose prices are applicable in accordance with practice, unless otherwise agreed.

## Article 427

### **Article 427**

*Effective Date: 08/08/2004*

Where the sale price is assessed on the basis of the item's weight, the net weight only shall be taken into consideration, unless otherwise agreed by the parties or unless practice provides otherwise. Such practice shall determine the tolerant deficiency in the cargo due to carriage, etc.

## Article 428

### **Article 428**

*Effective Date: 08/08/2004*

1. A sale may be with or without profit, a contribution, or with decrease.
2. A sale with profit shall entail the item being sold at the initial price paid by the seller plus a fixed sum. Sale without profit shall entail the item being sold at the same initial price paid by the seller without an increase or decrease. Sale by contribution shall entail part of the item being sold at part of the price. Sale with decrease shall entail the item being sold at the initial price paid by the seller less a fixed sum.
3. Where the price paid by the seller is lower than that stated, the purchaser may hold to the actual price.
4. The omission by the seller to disclose the circumstances of his purchase of the item shall be deemed fraudulent, provided that such non-disclosure may have affected the acceptance of the sale by the purchaser.

## **2nd: Effects of Sale**

## Article 429

### **2<sup>nd</sup>: Effects of Sale**

(Articles 429 to 431)

### **Article 429**

*Effective Date: 08/08/2004*

If the sale is haphazard or random, the title shall be transferred to the purchaser in the same manner as the specified contractual sale. A sale shall be deemed haphazard or random if the determination of the price is conditional upon the estimation or assessment of the sale item.

## Article 430

**Article 430**

*Effective Date: 08/08/2004*

1. Where the sale price is deferred, the seller may be required to collect the price in full as a condition for the transfer of title to the purchaser, even if the sale item has been delivered.
2. Where the price is paid in instalments, the contracting parties may agree that the seller retain part of the price as indemnity against rescission of the sale in the event that all the instalments are not paid. However, the court may, where necessary, reduce the agreed amount of indemnity.
3. Upon payment of the sale price, transfer of title to the purchaser shall be effective from the date of the sale.
4. The provisions of paragraphs 1, 2 and 3 above shall apply even where the contracting parties have referred to the sale as a lease.

**Article 431****Article 431**

*Effective Date: 08/08/2004*

The purchaser shall have the right to the revenues and benefits of the goods sold and shall pay the costs thereof from the time of sale, unless otherwise agreed or provided by practice.

**Obligations of Seller****Article 432****(a) Obligations of the Seller**

(Articles 432 to 465)

**Article 432**

*Effective Date: 08/08/2004*

The seller shall undertake to do all things necessary to transfer the right to the goods sold to the purchaser, and to abstain from any acts that might render this transfer impossible or difficult.

**Article 433****Article 433**

*Effective Date: 08/08/2004*

The seller shall be obliged to deliver the goods sold to the purchaser in the same condition as they were at the time of the sale.

**Article 434****Article 434**

*Effective Date: 08/08/2004*

1. The seller shall provide the purchaser with all necessary details on the goods sold and the documents related thereto.
2. Where the use of the goods sold requires specific precautions to be undertaken, the seller shall notify the purchaser thereof and draw his attention to the proper method of such use. If no notification is given, the seller shall be obliged to compensate the purchaser.

**Article 435****Article 435**

*Effective Date: 08/08/2004*

1. Where the contract specifies the quantity of the goods sold, the seller shall, subject to any agreement to the contrary, be liable for any shortfall in such

quantity in accordance with custom.

2. The purchaser shall not, however, have the right to demand cancellation of the contract by reason of such shortfall, unless he establishes (a) that the shortfall has placed a greater obligation upon him; and (b) the shortfall is sufficiently severe such that he would not have entered into the contract had he known of the shortfall at the time of the sale.

## Article 436

### Article 436

*Effective Date: 08/08/2004*

1. Where the quantity of the sold goods exceeds the quantity fixed in the contract, and the price is fixed per unit, the excess shall belong to the seller if the sold goods can be divided, unless the purchaser decides to take the excess at their corresponding price. If the sold goods are not capable of being divided, the purchaser shall pay the price of the excess unless it is gross, or he may rescind the contract.
2. Where the price has been fixed for the goods as a lot, the excess shall belong to the purchaser, unless it is so gross that the seller would not have concluded the contract if he had been aware of it. In this case, the purchaser shall have the option either to increase the price proportionately to the excess or to rescind the sale.
3. All of the above provisions shall apply unless there is an agreement or custom to the contrary.

## Article 437

### Article 437

*Effective Date: 08/08/2004*

An action for rescinding the contract, or for reducing or completing the purchase price, or for returning the excess, shall prescribe upon the expiry of one year from the time of actual delivery of the sold goods.

## Article 438

### Article 438

*Effective Date: 08/08/2004*

1. Delivery shall consist of placing the goods sold at the disposal of the purchaser in such a way that he can take possession of and enjoy them without hindrance, even if he does not take effective delivery thereof, provided that the seller shall inform the purchaser that the goods are at his disposal.
2. Delivery shall be made in accordance with the nature of the goods sold.

## Article 439

### Article 439

*Effective Date: 08/08/2004*

Delivery may be completed by mere agreement between the parties where the goods sold were in possession of the purchaser prior to the sale, or where the seller retains the goods sold in his possession after the sale by virtue of a reason other than that of ownership.

## Article 440

### Article 440

*Effective Date: 08/08/2004*

Delivery shall be made at the time fixed in the contract. If no time is fixed, the seller shall deliver the goods immediately following the conclusion of the contract, having due regard to the nature of the goods or the circumstances of their use.

## Article 441

### Article 441

*Effective Date: 08/08/2004*

1. The goods sold shall be delivered at the place specified at the time of conclusion of the contract, unless otherwise agreed.
2. Where the place for delivery is not specified, the goods shall be delivered at the seller's place of residence.

## Article 442

### **Article 442**

*Effective Date: 08/08/2004*

Where the seller undertakes to deliver the goods to a specific place, no delivery shall have occurred unless the goods arrive at such place, unless otherwise agreed.

## Article 443

### **Article 443**

*Effective Date: 08/08/2004*

The seller shall bear the costs of delivery, unless otherwise agreed or required by custom.

## Article 444

### **Article 444**

*Effective Date: 08/08/2004*

Where the goods sold perish before delivery as a result of a cause beyond the control of the seller, the sale shall be invalidated and the purchaser refunded, unless he was summoned to take delivery before the loss occurred.

## Article 445

### **Article 445**

*Effective Date: 08/08/2004*

1. Where the goods sold are partially destroyed or have deteriorated before delivery for a reason beyond the control of the contracting parties, the purchaser shall have the right to reduce the price to the extent of the reduction in the value of the goods sold.
2. Where the destruction or damage occurred before conclusion of the contract and is so considerable that the sale would not have taken place, the purchaser shall have the right to cancel the sale.
3. The above shall apply where the destruction or damage occurred before the seller gave notice to the purchaser to take delivery of the goods sold.

## Article 446

### **Article 446**

*Effective Date: 08/08/2004*

1. Where the goods are destroyed or damaged by an act of the purchaser, he shall remain liable for payment of the full price thereof.
2. Where the destruction or damage is attributed to the seller, the purchaser shall have the option either to cancel the sale or to reduce the price to the extent of the diminution of the value of the goods, without prejudice to his right to claim compensation if grounds exist.

## Article 447

### **Article 447**

*Effective Date: 08/08/2004*

The seller shall warrant that the purchaser enjoy exclusive and undisturbed possession of the goods sold, either in whole or in part, even if there is an agreement to the contrary.

## Article 448

### Article 448

*Effective Date: 08/08/2004*

1. The seller shall warrant that the purchaser enjoy exclusive and undisturbed possession of the goods sold, either in whole or in part, if such disturbance is caused by the act of any third party claiming a right to the goods sold at the time of the sale and enforceable against the purchaser.
2. The purchaser shall be bound by his warranty even if the third party claims that he has acquired a right from the seller after the sale.

## Article 449

### Article 449

*Effective Date: 08/08/2004*

1. Where an action to reclaim the goods sold is brought against the purchaser (*rei vindicatio*), the seller, upon receipt of notice of the action, shall, according to the circumstances and in conformity with the provisions of the Code of Procedure, join as a co-defendant with the purchaser, or take his place as defendant in the action.
2. Where notice is given timeously, the seller who has not joined in the action shall be liable under his warranty, unless he proves that the judgment given in the action is the result of fraud or gross negligence on the part of the purchaser.
3. Where the purchaser does not timeously notify the seller of the action brought against him and is dispossessed by a judgment that has become final, he shall be deprived of his right of recourse under the warranty if the seller establishes that, had he joined in the action, he would have succeeded in obtaining the dismissal of the action to reclaim the goods sold.

## Article 450

### Article 450

*Effective Date: 08/08/2004*

1. In the case of total dispossession of the goods sold, the purchaser may claim from the seller and have recourse against him in respect of the value of the loss sustained and loss of profit because of the dispossession.
2. However, the seller's obligation shall be limited to compensating the purchaser for the price he has paid if the seller proves that he was not aware of the dispossession at the time of the sale.

## Article 451

### Article 451

*Effective Date: 08/08/2004*

1. In the case of partial dispossession, or if the goods sold are encumbered with a lien in favour of a third party, the purchaser shall, if the loss is of such a nature that, had he been aware thereof, he would not have entered into the contract, return the goods sold and the benefit gained.
2. Where the purchaser opts to retain the goods sold or where the loss sustained by him does not reach the degree of gravity defined in paragraph (1) above, he shall have only the right to seek compensation.
3. In both cases, the provisions of Article 450 (2) herein shall be observed.

## Article 452

### Article 452

*Effective Date: 08/08/2004*

The seller shall not warrant the purchaser against servitude if it was disclosed by the seller at the time of entering into the contract or if this right is an obvious easement or arises from a legal restriction on ownership.

## Article 453

### Article 453

*Effective Date: 08/08/2004*

1. The contracting parties may by special agreement increase the warranty against dispossession, or restrict it, or stipulate that the sale is free of any warranty.
2. A clause stating that the sale is free of any warranty or that the warranty against dispossession is restricted shall be null and void if the seller intentionally conceals the grounds for dispossession.

## Article 454

### **Article 454**

*Effective Date: 08/08/2004*

Notwithstanding a clause excluding a warranty, the seller shall remain liable to refund the sale price and any expenses incurred by the dispossession, unless he proves that the purchaser knew at the time of the sale of the grounds for dispossession or that he purchased the goods with the risk of dispossession.

## Article 455

### **Article 455**

*Effective Date: 08/08/2004*

The seller shall be liable under his warranty according to the provisions of Article 451 herein where the goods sold have, at the time of delivery, defects that diminish their value or render them unfit for their purpose either as defined in the contract or as a result of their nature or intended use. The seller shall be liable for such defects, even if he was unaware of their existence.

## Article 456

### **Article 456**

*Effective Date: 08/08/2004*

The seller shall not liable for defects which are customarily tolerated.

## Article 457

### **Article 457**

*Effective Date: 08/08/2004*

1. The seller shall not be liable for a defect of which the purchaser was aware at the time of the sale or which he could have discovered himself had he examined the goods with reasonable care.
2. The seller shall, however, be liable for such defect where the purchaser proves that the seller declared to him that the goods were free of any defects or that the seller fraudulently concealed them.

## Article 458

### **Article 458**

*Effective Date: 08/08/2004*

1. Where the purchaser has taken delivery of the goods sold, he shall ascertain their condition as soon as is practicable. If the purchaser discovers a defect for which the seller is accountable, the purchaser must give reasonable notice thereof to the seller, failing which the purchaser shall be deemed to have accepted the goods sold.
2. Where, however, the defect cannot be discovered by reasonable inspection, the purchaser shall, upon discovery thereof, inform the seller, failing which he shall forfeit his right to the warranty.

## Article 459

### **Article 459**

*Effective Date: 08/08/2004*

An action on a warranty shall exist even where the goods sold have perished due to any cause whatsoever.

## Article 460

### Article 460

*Effective Date: 08/08/2004*

Where the purchaser becomes aware of the existence of a defect and then disposes of the goods sold as if he were the owner thereof, he shall have no recourse against the warranty.

## Article 461

### Article 461

*Effective Date: 08/08/2004*

1. The contracting parties may by specific agreement increase, restrict or abolish the warranty.
2. A clause abolishing or restricting the warranty shall be void if the seller intentionally and fraudulently conceals defects in the goods sold.

## Article 462

### Article 462

*Effective Date: 08/08/2004*

1. An action on a warranty shall prescribe after a period of one year has elapsed from the date of delivery of the goods sold, even if the purchaser discovers the defect after the expiration of this period, unless the seller agrees to be bound by the warranty for a longer period.
2. The seller, however, cannot avail himself of the prescription period if it is proved that he fraudulently concealed the defect from the purchaser.

## Article 463

### Article 463

*Effective Date: 08/08/2004*

No warranty shall exist against defects in cases of a judicial sale or administrative sale made by auction.

## Article 464

### Article 464

*Effective Date: 08/08/2004*

Where the goods sold do not, at the time of delivery, possess the characteristics guaranteed by the seller to the purchaser, the purchaser may return the goods in addition to demanding compensation within the limits set forth in Article 451 (1) herein. Otherwise, he may retain the goods sold and claim compensation for any damages arising from the absence of such guaranteed characteristics.

## Article 465

### Article 465

1. Where a seller has warranted the proper operation of the goods sold for an agreed period of time, and they develop a defect within this period, the purchaser shall notify the seller of such defect within one month.
2. Where the seller fails to repair the defect, the purchaser may return the goods sold or retain them, and claim compensation in both cases pursuant to the provisions of the preceding Article.
3. Any action in this regard may be filed within six months from the date of notification of the defect, failing which the purchaser shall forfeit his right to claim compensation.
4. All of the above shall apply unless otherwise agreed.

## Obligations of the Purchaser

### Article 466

#### **(b) Obligations of the Purchaser**

(Articles 466 to 473)

#### **Article 466**

1. Unless otherwise agreed or required by custom, the purchase price shall be payable upon delivery of the goods sold.
2. Where the purchaser's possession and enjoyment of the goods is disturbed by a third party invoking a right existing prior to the sale or derived from the seller, or where he is in danger of being dispossessed of the goods sold, he may, subject to an agreement to the contrary, retain the purchase price until such disturbance or danger of dispossession has ceased. In this case the seller may, however, demand payment of the purchase price upon provision of an appropriate security.
3. The provisions of the preceding paragraph shall also apply where the purchaser has discovered a defect in the goods sold.

### Article 467

#### **Article 467**

*Effective Date: 08/08/2004*

1. Save as otherwise agreed or required by custom, the price shall be payable at the place where the delivery of the goods sold is made.
2. Where the price is not payable at the time of delivery of the goods sold, payment shall be made at the domicile of the purchaser on the due date.

### Article 468

#### **Article 468**

*Effective Date: 08/08/2004*

Where the purchaser fails to pay the purchase by the due date or breaches other contractual obligations, the seller may opt either to apply for specific performance or to terminate the contract.

### Article 469

#### **Article 469**

*Effective Date: 08/08/2004*

Where the full price or part thereof is payable immediately, the seller may, unless he grants the purchaser a delay for payment after the date of the sale, retain the goods sold until he obtains payment, even if the purchaser has offered a mortgage or security.

### Article 470

#### **Article 470**

*Effective Date: 08/08/2004*

Where the goods sold perish while in possession of the seller, the purchaser shall be liable for the loss unless such loss is caused by the seller.

### Article 471

#### **Article 471**

*Effective Date: 08/08/2004*

In the case of a sale of movables, where the terms for payment and delivery are agreed, the seller shall be entitled to consider the sale terminated without the need for notice if the purchaser fails to make payment by the due date, unless there is an agreement to the contrary.

## Article 472

### **Article 472**

*Effective Date: 08/08/2004*

In the absence of agreement or custom indicating the place and time of delivery, the purchaser shall be bound to take delivery of the goods sold at the place where they were located at the time the sale was concluded and to remove them as soon as reasonably possible.

## Article 473

### **Article 473**

*Effective Date: 08/08/2004*

In the absence of agreement or custom to the contrary, all costs relating to the sale contract, registration, payment of the price, delivery of the goods sold, and any other expenses, shall be borne by the purchaser.

## SubChapter Two: Certain Types of Sale

### 1st: Pledging

## Article 474

### **Subchapter II: Certain Types of Sale**

### **1<sup>st</sup>: Pledging**

(Article 474)

### **Article 474**

*Effective Date: 08/08/2004*

Where, at the time of sale, the seller reserves the right to recover the sale item, the contract shall be invalid.

### 2nd: Sale of Other Persons' Properties

## Article 475

### **2<sup>nd</sup>: Sale of Other Person's Property**

(Articles 475 to 476)

### **Article 475**

*Effective Date: 08/08/2004*

1. Where a person sells a specific thing which is not his property, the purchaser may demand rescission of the sale. This shall also apply in the event of the sale of real estate property, whether the contract is registered or not.
2. In any event, such sale shall not be effective against the owner of the sold property, even if the purchaser accepts the contract.

## Article 476

### **Article 476**

1. Where the owner accepts the sale, the contract shall be effective against him and valid against the purchaser.
2. The contract shall also be valid against the purchaser if the title to the property is vested in the seller after the date of the contract.
3. Where the purchaser is awarded a judgment that the sale is invalid in accordance with the preceding Article, and the purchaser is not aware that the sale item is owned by a third party, the purchaser may demand the seller pay indemnity, even if the seller acts in good faith.

### **3rd: Sale of Litigious Rights**

#### Article 477

##### **3<sup>rd</sup>: Sale of Litigious Rights**

(Articles 477 to 479)

##### **Article 477**

Effective Date: 08/08/2004

1. Where a disputed right is sold, the party in dispute with the seller may recover such right from the purchaser if the price paid and the expenses incurred by the purchaser are repaid by such party to the purchaser.
2. A right shall be deemed disputed if a claim is made in connection with such right or if there is a serious dispute over such right.
3. Recovery of such right shall prescribe after the lapse of a period of sixty days from the date on which the relevant party became aware of the sale.

#### Article 478

##### **Article 478**

Effective Date: 08/08/2004

The provisions of the preceding Article shall not apply to any of the following events:

1. Where the disputed right is part of a number of assets sold haphazardly for a single price;
2. Where the disputed right is held in common and either partner sells his share to another partner;
3. Where the disputed right is disposed of by its holder in settlement of a debt payable by the creditor;
4. Where the disputed right is secured by a mortgage on real property and such right is sold to the holder of such real property.

#### Article 479

##### **Article 479**

Effective Date: 08/08/2004

Judges, members of the public prosecution, advocates, court clerks and bailiffs may not purchase any disputed right, even under a false name, otherwise the contract shall be invalid.

### **4th: Sale by a Representative to Himself**

#### Article 480

##### **4<sup>th</sup>: Sale by a Representative/Agent to Himself**

(Articles 480 to 481)

##### **Article 480**

Effective Date: 08/08/2004

1. No person representing another person by virtue of the law, an agreement or an order from the competent authorities may purchase, in his own name or under any false name, not even by public auction, any property which such person is authorized to sell in such capacity, without permission from the court, subject to the provisions provided for in any other law.

2. A contract shall be valid if accepted by the person for whose account the sale is made.

## Article 481

1. Brokers and experts may not purchase, even under a false name, such assets which they are authorized to sell or to assess their value or to provide expert services in connection therewith.
2. In such event, the sale shall be valid if acknowledged by the person for whose account the sale is made.

## **5th: Sale of Inheritance**

## Article 482

Where a person sells any estate or part thereof without stating the details thereof, such person shall be liable to prove his inheritance, unless agreed otherwise.

## Article 483

1. Where the estate is sold in full or in part, the sale shall not be effective against third parties unless the purchaser satisfies all procedures required to transfer every right involved in the estate.
2. Where the law provides for procedures to transfer the right as between the contracting parties, such procedures shall also be satisfied.

## Article 484

Where the seller exercises any rights of the estate or sells or consumes any part of the estate, the seller shall return to the purchaser any right or item retained and shall indemnify any part consumed by the seller, unless there is no provision to this effect in the sale contract.

## Article 485

The purchaser shall repay to the seller any debts of the estate settled by the seller and shall pay for all the rights of the seller in the estate, unless otherwise agreed.

## **6th: Sale Made on a Person's Deathbed**

## Article 486

1. Where a person on his deathbed sells to an heir or otherwise at a price less than the value of the sale item at the time of death, the sale shall be effective against the heirs if the difference between the true value of the sale item and the price paid does not exceed one third of the estate, including the sale item itself.
2. However, where the difference between the true value of the sale item and the price paid exceeds one third of the estate, the sale in excess of one third shall not be effective against the heirs unless they accept the sale or unless the purchaser returns such excess to balance the estate to become two thirds.
3. The provisions of Article 1014 herein shall apply to the sale by a person on his deathbed.

Article 487

The provisions of the preceding Article shall not apply to the extent of causing damage to a *bona fide* third party if such third party acquires with consideration a right in kind on the sold property.

**Chapter Two: Barter**

Article 488

Barter shall be defined as a contract under which either party undertakes to transfer to the other party, by way of exchange, the title to any property other than money.

Article 489

Where the value of the exchanged thing is different as assessed by the parties, the difference may be settled in cash.

Article 490

The provisions of sale shall apply to the barter to such extent as permitted by the nature of such barter. Each party to the barter shall be deemed a seller and a purchaser of the items exchanged.

Article 491

The costs and expenses of the barter agreement and the registration fees shall be borne equally by the parties, unless otherwise agreed.

**Chapter Three: Gift**

Article 492

1. A gift shall be defined as the granting of property or any other financial right to another person without consideration while the owner is still alive.
2. The donor may still require the donee to perform a particular obligation, which obligation shall be deemed a consideration.

**1st: Elements of Gift**

Article 493

1. Gift shall be valid by consent and acceptance and shall be completed by collection.
2. Consent shall be sufficient if the donor is the parent or guardian of the donee and the donated property is in his possession. This shall also apply where the donee is a minor raised by the donor.
3. The enforceability of a gift agreement shall depend on any procedure to transfer title in accordance with any laws. Either party may complete the required procedures.

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#### Article 494

Gift may not be agreed on a contingent future asset.

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#### Article 495

The gift agreement shall not be valid if the donated asset is not owned by the donor, unless the owner authorizes such agreement and the collection of such asset is made with his consent.

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#### Article 496

Any asset held in common may be donated, even if this asset is divisible.

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#### Article 497

The provisions of testamentary succession shall apply to the gift on a person's deathbed.

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### **2nd: Effects of Gift**

#### **Obligations of the Donor**

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#### Article 498

1. The donor shall deliver the donated asset unless the donee has already collected such asset. In this event, the provisions relating to the delivery of sale items shall apply.
2. Where the donated asset is lost or suffers any change or deficiency prior to its delivery, the donor shall not be liable unless such loss or change or deficiency is due to his wilful act or gross negligence.

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#### Article 499

A donor shall not be liable for any claim other than due to his own act, and shall not be liable unless he conceals the cause of the right claimed or unless the gift is charged, unless otherwise agreed or provided by law.

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## Article 500

1. Where the donated asset/gift is outstanding, and the donor deliberately conceals the cause of the right claimed, the court shall estimate a fair indemnity to the donee.
2. Where the gift is attached to a commitment, the donor shall not be liable to indemnify the donee other than to the extent of the amount paid by the latter from such commitment. The donee shall subrogate the donor in all its rights and remedies in this respect.

## Article 501

The donor shall not be liable for any defect in the donated item unless otherwise agreed or unless the donor wilfully conceals such defect. In such event, the donor shall be liable to indemnify the donee against the damage caused by such defect. The donor shall also be liable to pay indemnity if the gift is attached to a commitment, provided that indemnity in such event shall not exceed the amount paid by the donee from such commitment.

### Obligations of the Recipient

## Article 502

The donee shall undertake to comply with any commitment under the contract, whether such contract is for the benefit of the donor or a third party or the public interest.

## Article 503

Where the value of the gift at the time of delivery is less than the value of the attached commitment, and the donee is not aware thereof, the latter shall not be liable to perform the commitment other than within the limit of the value of the gift.

## Article 504

1. Where the gift involves the commitment of the donee to pay the debts of the donor, the former shall not be liable to pay any debts other than those existing at the time of the gift, unless agreed otherwise.
2. Where the gift involves a right in kind as security for a debt payable by the donor or by any other person, the donee shall pay such debt, unless agreed otherwise.

### 3rd: Retraction of a Gift

## Article 505

1. A donor may not revoke his gift unless the donee accepts such revocation or if the gift is from the parents to their child.
2. However, a gift may be revoked by a court order if the donor has a good reason to do so.
3. In all events, the provisions of Articles 507 and 508 herein shall be taken into account.

## Article 506

In particular, the following shall be considered as good reason to revoke the gift:

1. Where the donee breaches his obligation to the donor to such an extent that this may reasonably be deemed considerable ingratitude.
2. Where the donor becomes unable to provide a livelihood for himself according to his social status or becomes unable to pay the living costs of third parties as required by law.
3. Where a child is born to the donor after such gift and such child remains alive until the time of revocation, or the donor believes such child to be dead at the time of the gift but is thereafter found to be alive.

## Article 507

Revocation of gift is prohibited in any of the following instances:

1. Where the donor is the mother and her child is an orphan at the time of revocation;
2. Where the gift is granted by one spouse to the other so long as the marriage continues;
3. Where the donor or the donee dies;
4. Where the donee finally disposes of the gift, and such disposal is limited to the gift in part, the donor may revoke the other part;
5. Where the gift is lost in the custody of the donee, whether such loss is due to the act of the donee or to a cause beyond his control or to use, and if only part thereof is lost, revocation shall apply to the remaining part;
6. Where any change affects the nature of the gift or any increase therein necessitates an increase in its value. The right of revocation shall be valid again when the prohibition expires;
7. Where the gift is attached to a commitment that is already met;
8. Where the gift is for a charitable purpose.

## Article 508

In addition to the prohibitions set forth in the preceding Article, parents may not revoke their gift to their child in any of the following instances:

1. Where the donee deals with third parties on the basis that the gift exists, and such revocation causes damage to the donee or any third party.
2. Where the donor or donee is on their deathbed. If the disease is cured, the right to revocation shall be valid again.

## Article 509

Where the donee murders the donor, any of the donor's heirs may demand the gift be revoked.

## Article 510

1. Without prejudice to the rules of registration, the revocation of a gift shall result in the return of its ownership to the donor at the time of complete revocation.
2. The donee shall not be liable to repay the revenues of the gift other than from the time of the agreement to revoke or from the time of filing the suit. The donee may demand that the donor pay the necessary expenses incurred by him. In the case of expenses benefiting the donee, the claimed expenses at the time of revocation shall not exceed the value of the gift.

## Article 511

1. Where the donor recovers the gift without the consent of the donee or the court, he shall be liable for its loss if such loss is due to his own act, or to a foreign cause beyond his control, or to use.
2. Where a judgment of revocation of a gift is issued and the gift is lost in the custody of the donee after he was notified to deliver it, he shall be liable for the loss, even where such loss is due to a foreign cause.

## Article 512

The donee shall bear the expenses of the gift and the donor shall bear the revocation costs, unless agreed otherwise.

## **Chapter Four: Company**

## Article 513

A company is a contract between two or more persons to contribute money or work to a financial project and to divide the profit or loss that may arise therefrom.

## Article 514

1. A company shall be considered a legal entity once it has been established, but such entity shall not be effective against any third party until the completion of the publication procedures as provided for by law.
2. However, if the company fails to complete the prescribed publication procedures, third parties may hold to the personality of the company.

### **1st: Elements of the Company**

## Article 515

1. The contract of the company shall be in writing, otherwise it shall be invalid. Any amendments to the contract not reflected on such form as applicable in the contract shall also be invalid.
2. However, such invalidity may not be held thereto by the shareholders against third parties and such invalidity shall not be effective as between the shareholders themselves, other than from the time a shareholder demands that invalidity be ruled.

## Article 516

The shares of the shareholders shall be equal in value and shall apply to the ownership of the capital not only by virtue of mere benefitting from it, unless otherwise required by agreement or norm.

## Article 517

The share of a shareholder may not be granted on the bases of the shareholder influence or financial worthiness.

## Article 518

Where a shareholder undertakes to contribute his share in the company in cash and fails to pay such amount, the company may, in addition to demanding such shareholder to perform his obligation, demand the shareholder to pay indemnity against the damage suffered due to late payment.

## Article 519

1. Where the share of a shareholder is a title, usufruct or any other right in kind, the sale provisions shall apply in connection with the indemnity against such share if it is lost, becomes mature, or possesses any defect or deficiency.
2. However, where the share is merely a usufruct in a property, the provisions of lease shall apply.

## Article 520

1. Where a shareholder undertakes to contribute to the company in the form of work, he shall provide the undertaken services and shall account for his profits from the time of incorporation upon performing such work.
2. However, such shareholder shall not be obliged to provide to the company any benefits obtained by him from a patent, unless agreed otherwise.

## Article 521

Where the share contributed is a debt of the shareholder due from a third party, this obligation shall not be discharged until the debt is paid. In addition, the shareholder shall be liable to indemnify the consequent damage if the debt is not repaid timeously.

## Article 522

1. The profits shall be distributed among the shareholders as set out in the contract. If no such agreement is available in the contract, the profits shall be distributed *pro rata* to the contributions by the shareholders in the share capital.
2. Losses shall be distributed *pro rata* to the respective shares of the shareholders in the share capital, unless agreed otherwise.
3. Where the contribution by a shareholder is limited to his work, his share of the profits shall be assessed to the extent that the company benefits from such work. His share of the losses shall be limited to his work.
4. Where the shareholder contributes an additional interest beyond such work or money, his share of the profit shall be commensurate with this labour.

## Article 523

Where it is agreed that a shareholder shall not contribute to the profits or losses of the company, the contract of the company shall be invalid.

## 2nd: Company Management

## Article 524

1. A shareholder nominated for management under a special provision in the contract of the company may, despite the objection of all the other

shareholders, conduct the management of the company and such acts within the purpose of the company, provided that such acts are free of fraud. Such shareholder may not be removed from management without good cause so long as the company continues in existence.

2. Where a shareholder is nominated for management following the date of the contract of the company, such nomination may be cancelled where applicable in the event of the ordinary power of attorney.
3. Managers who are not shareholders may be removed at any time.

## Article 525

1. Where more than one shareholder is nominated for management without the designation of their respective powers, and there is no provision that any of them may not individually manage the company, such shareholders may individually conduct any of the management affairs of the company.
1. The other managing shareholders may object to such act prior to its completion and the majority of the managing shareholders may reject such objection. In the event of parity, the majority of all the shareholders may object.
2. Where the parties agree that the resolutions of the shareholders shall be passed unanimously or by majority, such agreement shall be honoured, unless for any urgent matter where the omission to honour such agreement shall cause gross loss that the company cannot recover.

## Article 526

Where a resolution is agreed to be passed by majority, the numerical majority shall be considered, unless agreed otherwise.

## Article 527

Shareholders who are not managers shall not manage the company, but they may inspect the books and documents of the company. Any agreement to the contrary shall be void.

## Article 528

Where there is no provision on the method of management, each shareholder shall be deemed authorized by the other shareholders to manage the company and to conduct the business of the company without reference to the other shareholders, provided that any of those shareholders may object to any act prior to its completion. The majority of the shareholders may reject such objections.

### **3rd: Effects of Company**

## Article 529

1. In the management of the company's affairs, a shareholder shall use such level of care as he would in the conduct of his own affairs, unless such shareholder is nominated for management with consideration, in which event he may use less than reasonable care.
2. Such shareholder may not conduct any activity that may cause damage to the company or may be contrary to the company's founding purpose.

## Article 530

1. A shareholder may not retain for himself any of the company's money; otherwise he shall indemnify the company for any damage that may arise from such retention.
2. Where a shareholder contributes his own money to the company or pays expenses on behalf of the company in good faith and discreetly, the company shall be bound to indemnify the shareholder for any consequent damage.
3. In either case, the indemnity shall be payable without prior notice.

## Article 531

Where the company fails to repay its debts, the shareholders shall be liable to settle such debts from their own money, each *pro rata* to his share of the company's losses. Any agreement that may discharge the shareholder from liability for the company's debts shall be void.

## Article 532

1. Unless agreed otherwise, the shareholders shall not be jointly liable for the company's debt.
2. However, where a shareholder is insolvent, his share of the debt shall be distributed to the other shareholders *pro rata* to their respective share of the losses.

## Article 533

1. Where any shareholder has personal creditors, they may not, while the company is in existence, collect their rights from that shareholder's contribution to the share capital of the company, but they may settle such rights from his share of the profit.
2. Where the company is liquidated, the creditors may collect their rights from the share of their debtor in the assets of the company after deduction of the company's debts. However, prior to such liquidation, they may impose an interdict on the share of such debtor.

## 4th: Termination of Company

## Article 534

1. The company shall be dissolved upon the expiry of its term or upon the completion of its objectives. If prior to such date the shareholders agree to the continuation of the company, the contract shall be extended.
2. Where the agreed term expires or the objectives are completed, and the shareholders continue to conduct any of the activities for which the company is formed, the contract shall be renewed year by year under the same conditions.
3. The creditor of any shareholder may object to such extension or renewal, in which case such extension or renewal shall not be effective against such creditor.

## Article 535

1. The company shall be dissolved upon the loss of all or a substantial part of its share capital, so that its continuation shall not be economically viable.
2. Where a shareholder undertakes to contribute a specific portion of his share in the share capital and such portion is lost prior to its contribution, the company shall be dissolved as between all the shareholders.

## Article 536

1. The company shall be dissolved upon the death, interdiction or insolvency of a shareholder.
2. However, it may be agreed that if a shareholder dies, the company shall continue with his heirs, even if they are minors.
3. It may also be agreed that, in accordance with the provisions of Article 537 herein, the company shall continue as between the remaining shareholders upon the death, interdiction, insolvency or withdrawal of a shareholder. In such event, such shareholder or his heirs shall be entitled to his share in the assets of the company only. Such share shall be assessed according to its value on the date of the cause of the withdrawal of such shareholder from the company. Such share shall be paid in cash, whereafter such shareholder shall have no further share in any subsequent rights, other than to the extent that such rights arise from previous transactions.

## Article 537

1. The company shall be dissolved upon the withdrawal of any of its shareholders if its term is not fixed, provided that such shareholder notifies the other shareholders in advance of his intention to withdraw. Such withdrawal may not be for fraud or at any inconvenient time.
2. The company shall also be dissolved by the unanimous consent of its shareholders.

## Article 538

1. The court may order the dissolution of a company on the demand by a shareholder due to the failure by another shareholder to perform his obligation or for any other reason not related to the shareholders. The court shall assess the extent of the risk associated with such reason and the justification for such dissolution.
2. Any agreement to the contrary shall be void.

## Article 539

1. Any shareholder may request the court to order the removal from the company of any shareholder whose presence may raise any objection to the extension of its term, or whose acts may be deemed good cause for the dissolution of the company, or for any other serious reasons, provided that the company continues in existence as between the other shareholders.
2. Where the term of the company is fixed, any shareholder may request the court to permit his exit from the company on reasonable grounds. In such event, the company shall be dissolved unless the other shareholders agree to its continuance.
3. In either case, the provisions of Article 536 (3) herein shall apply to the shares of a shareholder who is removed or who withdraws from the company. Such share shall be assessed according to its value on the date of filing the suit.

## **5th: Liquidation and Partition of the Company Assets**

## Article 540

The assets of the company shall be liquidated and divided in the manner provided for in the contract. In the absence of any special provision, the provisions of the following Articles shall apply.

## Article 541

Upon liquidation of the company, the authority of the managers shall terminate. However, the personality of the company shall survive to the extent required for liquidation and until such liquidation is complete.

## Article 542

1. The liquidation shall be conducted by all the shareholders or, as applicable, by one or more liquidators appointed by the majority of the shareholders.
2. Where the shareholders disagree on the appointment of the liquidator, the court may appoint a liquidator on the demand by any shareholder.
3. In the event that the company is invalid, the court shall, on the demand by any concerned party, appoint a liquidator and determine the method of liquidation.
4. Until a liquidator is appointed, the managers shall be deemed liquidators to third parties.

## Article 543

1. Without prejudice to all the limitations as set out in the order of appointment, the liquidator shall conduct all liquidation procedures, including the inventory of the assets of the company, the collection of its rights, the payment of its debts and the sale of its assets by auction or practice, until the funds are divisible.
2. The liquidator shall not perform any acts other than those required in the liquidation process. In particular, the liquidator may not commence any new works of the company unless necessary to complete previous works.

## Article 544

1. The assets of the company shall be divided among all the shareholders upon payment of debtors' rights, upon deduction of the amounts required to repay the outstanding and disputed debts, and upon repayment of the expenses and loans granted by a shareholder in favour of the company.
2. Each shareholder shall be allocated an amount equal to his contribution to the share capital of the company as set out in the contract, or equal to the value of such contribution at the time of delivery thereof to the company if such value is not stated in the contract, unless the contribution by the shareholder is limited to his work or to the right of usufruct or utilization only.
3. Any remaining assets shall be divided among the shareholders *pro rata* to their respective shares of the profits.
4. Where, however, the net assets of the company are not sufficient to pay the shares of the shareholders, the loss shall be divided among the shareholders *pro rata* according to their respective contributions to the share capital of the company.

## Article 545

In the distribution of company assets, the rules pertaining to the division of common assets shall apply.

### Certain Types of Companies

#### 1st: Business Companies

## Article 546

A Work Partnership shall be defined as a contract under which two or more persons agree to accept work from third parties and to carry out such works for a fee, and to divide any consequent profit or loss among themselves.

## Article 547

Partners shall be jointly liable for the performance of work accepted by any of them, and any partner may collect wages from the employer.

## Article 548

A partner who accepts any work may assign it to another partner or third party, unless the employer demands that such partner perform the work in person.

## Article 549

Profits shall be divided among the partners at such percentages as agreed in the memorandum of association of the partnership, without consideration for the type or quantity of the work performed by each partner. Profit shall be payable even if there is a prohibition against a contribution by the shareholder to the work.

#### Article 550

The loss shall be divided among the partners *pro rata* to the work performed by each partner.

### **2nd: Speculative Venture Companies**

#### Article 551

A Trust Partnership shall be defined as a contract under which two or more persons agree to purchase an asset at a deferred price due to their position and thereafter to sell and split the consequent profit or loss.

#### Article 552

The partners shall be jointly liable to pay the purchase price, whether they purchase an asset jointly or individually. Any partner who pays such price shall have the right to recover it from the other partners *pro rata* to their respective shares of the debt.

#### Article 553

Profit and loss shall be distributed among the partners *pro rata* to their respective shares of the purchased asset. Any agreement to the contrary shall be void.

### **3rd: Mudaraba Companies**

#### Article 554

A Speculation Partnership shall be defined as a contract under which the holder of the capital undertakes to provide it to the speculator and the latter aims to make a profit.

#### Article 555

Both parties shall have the capacity to act.

#### Article 556

Speculation may be absolute or limited by time, place or any type of business or by any other restrictive conditions.

## Article 557

Where the speculation is absolute, the speculator may perform all such acts and works required by the nature of the investment according to the applicable practice.

## Article 558

Where the speculation is limited, the speculator shall comply with the agreed conditions, failing which he shall be liable for any loss or damage to the speculated capital and shall indemnify the holder of the capital for any consequent damage.

## Article 559

1. A speculator may not mix the speculated capital with his own funds or delegate a third party to speculate such capital, unless otherwise required by practice, or unless the circumstances of speculation authorize the speculator to act at his own discretion.
2. At no time shall the speculator donate or lend the speculated capital or borrow to such extent that the debt becomes greater than the capital, without the express consent of the holder of the capital.

## Article 560

1. The holder of the capital and the speculator shall be entitled to the *pro rata* profit at an agreed percentage. Where no such percentage is stated in the contract of the company, the profit shall be divided according to the applicable practice, and if no such practice is applicable, the profit shall be divided equally.
2. Where the speculator mixes the speculated capital with his own funds, the profit shall be divided *pro rata* to the capital. The speculator shall receive the profit from his funds, while the profit of the speculated capital shall be divided according to the preceding clause.

## Article 561

1. The holder of the capital shall bear the loss. Any agreement to the contrary shall be void.
2. Where the speculated capital decreases due to loss or damage, such decrease shall be completed from the profits. Where such decrease exceeds the amount of the profit, such excess shall be deducted from the capital, without any liability on the speculator.

## Article 562

1. Either contracting party may terminate the speculation if open, provided that such termination is made at a proper time, otherwise such party shall indemnify the other party against any consequent damage suffered by him.
2. Such termination shall be effective only from the time of notifying the other contracting party thereof.
3. Where the speculation is terminated in such manner, the speculator shall avoid any disposal of the speculated capital if in cash; otherwise, the speculator may sell and collect the price of the speculated capital.

## Article 563

1. Irrespective of the manner in which the speculation is terminated, the speculator shall complete the work commenced by him in such a way that the speculated capital shall not be lost or damaged.
2. Where the speculation is terminated by the death of the speculator, the heirs or their representatives shall notify the holder of the capital of such death and shall take such measures as required to protect the speculated capital.

## **Chapter Five: Loans**

### **Article 564**

A loan shall be defined as a contract under which the lender undertakes to transfer the title to a certain amount of money to the borrower, or anything similar, provided that such amount or thing shall be returned to the former in the same type, condition and quantity.

### **Article 565**

1. The lender shall deliver the agreed item to the borrower at the time of conclusion of the contract, unless another time is agreed.
2. Where such item is lost prior to delivery, the lender shall bear the consequences of such loss.

### **Article 566**

The lender shall not be held liable for the entitlement to the borrowed item, unless there is an agreement to such liability or the lender has deliberately concealed the cause of such entitlement.

### **Article 567**

1. Where a concealed defect is detected in the borrowed item and the borrower opts to retain it, the borrower shall be liable to repay the value of such item in its defective condition.
2. Where the lender has deliberately concealed the cause of such defect, he shall be liable for any damage caused by it.

### **Article 568**

Where the loan contract provides for a benefit greater than the amount agreed in the contract, other than the security to the right of the lender, the provision shall be annulled while the contract shall be valid.

### **Article 569**

1. A borrower shall return a similar item on the agreed maturity date or immediately when it becomes outstanding.
2. Where such date is not agreed, or where it is agreed to return such item when capable or solvent, the court shall fix an appropriate date for the return of the item according to the circumstances.

### **Article 570**

Where the place for the return of such similar item is not agreed, it shall be returned at the domicile of the lender.

## Article 571

1. Where the value of a similar item changes at the time of returning it, such change shall have no effect.
2. Where the borrowed item is not available in the market, the lender shall have the option either to wait until such item is available again in the market and then have it returned by the borrower, or to demand that the borrower pay the value of such item at the time and place as agreed.

## Article 572

The costs pertaining to the loan and its repayment shall be borne by the borrower, unless agreed otherwise.

### Chapter Six: Reconciliation

## Article 573

Reconciliation is a contract under which the parties settle a dispute between them, or avoid a contingent dispute by each party waiving the corresponding part of their claim.

### 1st: Elements of Reconciliation

## Article 574

A party entering into reconciliation shall have the capacity to act with surety regarding the rights contained in the reconciliation agreement.

## Article 575

Issues relating to personal matters or public order may not be reconciled. However, financial rights arising from such personal matters or that may arise from the commission of any crime may be reconciled.

## Article 576

Reconciliation shall not be effective unless in writing or recorded in formal minutes.

### 2nd: Effects of Reconciliation

## Article 577

1. Reconciliation settles the relevant disputes only.
2. As a result of reconciliation, rights and claims finally waived by the parties shall lapse.

## Article 578

1. Reconciliation shall have a revealing effect in connection with the disputed rights to the exclusion of any other rights.
2. The wording of the waiver contained in reconciliation shall be narrowly construed. In any event, the waiver shall apply to such rights that are clearly the subject matter of the dispute settled by such reconciliation.

## Article 579

1. Any benefit or damage from reconciliation shall be limited to its parties, even if reconciliation relates to an indivisible item.
2. However, consolidating parties, whether creditors or debtors, may hold to the reconciliation made by any of them if they believe that such reconciliation is in their interest.

## Article 580

Where a person reconciles his right or a right received for a particular reason and then receives the same right from another person or for another reason, such newly-acquired right shall not be connected with the previous reconciliation.

### **3rd: Nullity of Reconciliation**

## Article 581

1. Reconciliation being indivisible, where part thereof is or becomes invalid, the whole contract shall become invalid.
2. The above provision shall not apply where the wording of the contract or the circumstances indicates that the contracting parties considered each part of the reconciliation separate and independent from the other parts.

### **Part 2: Contracts relating to Utilization of Things**

#### **Chapter One: Lease**

##### **Subchapter One: Lease in general**

## Article 582

Lease is a contract under which the landlord enables the tenant to benefit from a particular item for a fixed period of time in return for a financial compensation.

### **1st: Elements of Lease**

## Article 583

A person whose right is limited to management may not enter into any lease for a period exceeding three years without the permission of the owner of the property. Unless there is a provision to the contrary, where such person enters into a lease for a longer period, the term of such lease shall expire within three years.

#### Article 584

1. A lease granted by a person holding the right of usufruct shall not be effective after such right lapses against the owner of the property unless the latter accepts it, provided that the dates for notification to vacate and the time required for the existing produce to become ripe and to be removed are taken into consideration.
2. However, any person who holds only the right of use or accommodation may not grant a lease without express authorization or strong justification.

#### Article 585

The rent agreed to in the lease contract may be in the form of cash or other financial consideration.

#### Article 586

Where the contracting parties do not fix the rent amount or the method of its assessment, or such rent cannot be quantified, the comparative rent of a similar property assessed on the date of the contract shall apply.

#### Article 587

Where the contracting parties fail to state the commencement date of the payment of the rent, it shall commence from the date of the contract.

#### Article 588

1. Where the lease contract does not stipulate the length of its term, or the contract is for an indefinite period or such period cannot be confirmed, the lease shall be deemed to commence from the date fixed for the payment of the rent.
2. The lease shall terminate upon the expiry of such period if either contracting party notifies the other party to vacate prior to the commencement of the second half of such period, provided that such notice shall not exceed three months.

#### Article 589

The period of lease may not exceed twenty-five years. Where such period is longer or indefinite, it shall be limited to that term, unless the lease is valid for the lifetime of the landlord or the tenant, in which event the contract shall continue for such period, even if such period exceeds twenty-five years.

### **2nd: Effects of Lease**

#### **Obligations of the Lessor**

Article 590

The landlord shall deliver to the tenant the leased property and its annexes in a condition fit for its intended use, either as agreed or according to the nature of the property.

Article 591

1. Where the leased property is delivered in a condition unfit for its intended use, or if such condition may considerably affect such use, the tenant may demand termination of the lease contract or a reduction in the rent to the extent that the property is so affected, and in either case payment of indemnity, as applicable, without prejudice to the tenant's right to bind the landlord to perform all necessary repairs to render the leased property into a condition fit for its intended use.
2. Where the condition of the leased property may highly endanger the health of the tenant, or those who live with him, or his employees or workers, the tenant may demand termination of the contract, even if such right has already been waived.

Article 592

The provisions applicable to the delivery of a sold property shall also apply to the obligation to deliver a leased property, particularly in connection with the time and place of delivery, the description of the leased property and its annexes, or any deficiency or excess therein, unless the law provides otherwise.

Article 593

The landlord shall undertake to maintain the leased property in good condition by performing all necessary repairs during the term of the lease in accordance with common practice, unless agreed otherwise.

Article 594

1. Where the landlord, upon receiving notice, fails to perform the necessary repairs in accordance with the provisions of Articles 591 and 593 herein, the tenant may obtain permission from the court to perform such repairs personally and to deduct the cost incurred from the rent, without prejudice to the tenant's right to demand termination of the lease or a reduction in the rent as provided for by law.
2. The court's permission shall not be necessary if the repairs are urgent or of low cost.

Article 595

1. The landlord shall perform all urgent repairs as may be necessary to maintain the safety of the leased property, even if the tenant objects thereto, provided that the landlord notifies the tenant of his intention to perform such repairs at an appropriate time prior to doing so.
2. Where such repairs cause any breach, either in whole or in part, of the proposed use, the tenant may demand termination of the lease or a reduction in the rent.
3. However, where the tenant remains on the leased property until such repairs are completed, his right to demand termination of the lease shall lapse.

Article 596

1. Where the leased property is totally demolished during the term of lease, the contract shall terminate automatically.
2. Where such demolition, for which the tenant is not liable, is partial, or if the property becomes unfit for its intended use, and unless the landlord restores the property to its original condition at such appropriate time, the tenant may demand either a reduction in the rent or termination of the lease, without prejudice to his right to repair the leased property by himself and to restore it to its original condition in accordance with the provision of Article 593 herein, unless such repairs are a burden to the landlord.
3. In both the aforementioned cases, the tenant may not demand indemnity if the loss is attributable to a cause beyond the control of the landlord.

## Article 597

1. The landlord may not interfere with the tenant's use of the leased property throughout the term of the lease, or make any change in the leased property or its annexes which may impinge on such use.
2. Any interference by any of the subordinates of the landlord shall be deemed interference by the landlord himself.

## Article 598

The landlord shall not indemnify the tenant against any interference by third parties unless such interference is based on legal grounds.

## Article 599

1. Where a third party claims a right in conflict with the rights of the tenant under the lease contract, the tenant shall notify the landlord thereof and withdraw from the lawsuit. In such event, the claim shall be addressed to the landlord.
2. Where, as a result of such claim, the tenant is deprived of using the property as authorized under the lease contract, the tenant may demand termination of the contract or a reduction in the rent with indemnity, as applicable.

## Article 600

1. The landlord shall not be liable for any material interference caused by a third party so long as such party has not claimed any right, without prejudice to the tenant's right to file in his name the indemnity suit and all the acquisition suits against such third party.
2. Where such material interference is due to a cause beyond the control of the tenant and which he cannot avoid, and such interference is so considerable that it may fully or substantially prevent him from using the property, the tenant may demand termination of the lease or a reduction in the rent.

## Article 601

Where more than one tenant leases a single property, preference shall be given to the tenant who takes possession of the property in good faith. In the absence of such good faith possession, preference shall be given to the first to contract.

## Article 602

1. Where any act by the public authority causes considerable deficiency in the use of the property by the tenant, the tenant may demand termination of the lease or a reduction in the rent, unless such act is attributable to the tenant.
2. The tenant shall have no right to indemnity against the landlord unless such act by the public authority is for a reason for which the landlord may be liable.
3. The above provisions shall apply unless otherwise agreed.

Article 603

1. The landlord shall undertake to the tenant that the leased property is free from defects that may prevent or considerably impair the use of the property.
2. However, the landlord shall not be liable for any defect permissible by practice or any defect that was known to the tenant at the time of contracting or which the tenant could have detected if he had inspected the leased property with reasonable care, unless the tenant proves that the landlord has confirmed that the leased property is free of such defect or that he fraudulently concealed it.
3. The above provisions shall apply unless otherwise agreed.

Article 604

1. Where a latent defect is found in the leased property, which the landlord knew or should have known about upon a reasonable inspection, the tenant may demand that the defect be repaired by the landlord or he may repair such defect personally at the cost of the landlord.
2. The above shall be without prejudice to the tenant's right to demand termination of the contract or a reduction in the rent with indemnity, as applicable.

Article 605

Any provisions to discharge or limit the liability for a defect or for interference shall be invalid if the landlord deliberately conceals the reason for such liability.

Article 606

Where the leased property lacks the specifications that the landlord had previously specified to the tenant, the tenant may demand termination of the contract or a reduction in the rent, subject to his right to indemnity, as applicable.

Obligations of the Lessee

Article 607

1. The tenant shall pay the rent on the agreed dates. Where no such dates are agreed, the rent shall be paid on such dates as determined by practice.
2. Unless otherwise required by agreement or practice, the rent shall be payable at the domicile of the tenant.

Article 608

Payment of rent for a specific period shall be deemed evidence of payment of rent for that period, unless the landlord proves otherwise.

Article 609

1. As security for his rights under the lease contract, the landlord may retain all such attachable movables in the leased property, so long as he holds a lien thereon, including such movables not owned by the tenant. The landlord shall have the right to object to the removal of such movables. Where such movables are removed despite such objection or without the knowledge of the landlord, the landlord shall have the right to recover such

movables from the new holder thereof, even if the new holder acts in good faith, without prejudice to the rights of such holder.

2. The landlord may not use his right to retention or recovery if the removal of such things is required either by the tenant's professional or personal affairs, or if the movables left in the leased property or those recovered are sufficient to secure the payment of the rent in full.

## Article 610

The tenant shall use the leased property as agreed. In the absence of such agreement, the tenant shall use it according to its intended purpose and as applicable by practice.

## Article 611

The tenant may not, without the consent of the landlord, make any change in the leased property that may cause damage to the landlord.

## Article 612

1. The tenant may affix in the leased property such fittings or installations as will ensure the intended use thereof, provided that such fittings or installations are affixed in a manner consistent with proper practice, unless such fittings or installations may cause damage to the property or decrease its value.
2. Where interference by the landlord is required to do any of the foregoing, the tenant may request the landlord to do it, provided that the tenant shall bear the costs incurred by the landlord.

## Article 613

1. The tenant shall exercise reasonable care in the use and protection of the leased property.
2. The tenant shall be liable for any loss or damage that may be suffered by the leased property arising from its improper use by the tenant.

## Article 614

The tenant shall notify the landlord of anything that requires the interference of the landlord, such as urgent repairs required for the leased property; the discovery of a defect; wrongful seizure; a challenge to the tenant's use; or any damage therein.

## Article 615

The tenant shall execute all such minor repairs as are required for the proper use of the leased property and as applicable by practice, unless agreed otherwise.

## Article 616

The tenant shall vacate the leased property and its annexes upon the expiry of the lease. However, if the tenant continues to occupy the property without right, he shall, in addition to delivery of the property, pay indemnity to the landlord, taking into consideration upon assessment of such indemnity the rent and the damage suffered by the landlord.

Article 617

1. The tenant shall return the leased property in the same condition as it was when he initially took occupation, except for any loss or damage not caused by him.
2. Where the leased property is delivered without a description of its condition, the tenant shall be presumed to have taken delivery of the property in good condition until evidence to the contrary is provided.

Article 618

The tenant shall bear the expenses incurred in the return of the leased property, unless required otherwise by agreement or by practice.

Article 619

1. Save as otherwise agreed, where the tenant creates in the leased property any building, plantation or other improvements that may increase its value, the landlord shall pay to the tenant upon expiry of the lease the costs of such improvements or the amount in excess of the value of the real property, whichever is less.
2. Where such improvements are made without the knowledge of the landlord or despite his objection, he may also demand that the tenant remove such improvements and pay indemnity for any damage to the leased property due to such removal, as applicable.
3. Where the landlord effects to keep such improvements in consideration of any of the above values, the court may grant the landlord time to pay their corresponding value.

**3rd: Assignment of Lease and Sublease**

Article 620

The tenant may assign or sublease the leased property in whole or in part, unless agreed otherwise or unless the personality of the tenant is taken into account at the time of concluding the contract.

Article 621

1. Preventing the tenant from assigning the lease shall include preventing him from subleasing, and vice versa.
2. However, where the lease relates to real property on which a factory or store is constructed and it the tenant is required to sell such factory or store, the court may, despite such preventive condition, order the continuation of the lease if the tenant provides sufficient security and no ascertainable damage is suffered by the landlord.

Article 622

Where the lease is assigned, the assignee shall substitute the original tenant in all his rights and obligations arising from the lease contract. However, the original tenant shall remain liable to the assignee to perform his obligations.

Article 623

1. In the event of sublease, the relationship between the original tenant and the landlord shall remain governed by the provisions of the lease contract. However, the provisions of the sublease contract shall govern the relationship between the original tenant and the sub-lessee.
2. However, the sub-lessee shall directly pay to the landlord such amount payable by the original tenant to the landlord when the latter notifies the tenant to do so. The landlord may not require the sub-lessee to pay such rent that the landlord may demand the original tenant to pay in advance, unless such advance payment is required prior to the date of the notice under an instrument whose date is fixed.

## Article 624

The tenant shall be discharged from liability to the landlord, whether in connection with his liability to the assignee in the event of assignment of the lease or with such obligations under the lease in the event of sublease, provided that the landlord grants an express or implied consent of such assignment or sublease. Implied consent shall be deemed if the landlord directly collects the rent from the assignee or the sub-lessee without any reservation of his rights against the original tenant.

### 4th: Termination of Lease

## Article 625

The lease shall terminate upon the expiry of its term as stated therein without notice to vacate, unless it is agreed to extend the lease for a fixed or other term if no specific date is stated.

## Article 626

1. Where the lease contract terminates and the tenant continues to occupy the leased property without objection by the landlord, the lease shall be deemed renewed under its initial conditions for an indefinite period of time. In such event, the provisions of Article 588 herein shall apply to the lease.
2. Securities in kind that the original tenant may have provided as security for the initial lease shall, subject to the rules of registration, apply to the new lease. However, securities provided by third parties shall not extend to the new lease without their consent.

## Article 627

1. Where either party notifies the other of vacating or the tenant continues to use the leased property upon expiry of the lease, it shall not be deemed renewed unless evidence to the contrary is provided.
2. Where the landlord notifies the tenant that he shall not renew the lease other than for a specific rent or under other specific conditions and the tenant remains silent, such silence shall be deemed renewal of the lease at such rent or under such new conditions as notified by the landlord.

## Article 628

1. Where the title to the leased property is vested in a special successor, the lease shall not be effective against such successor unless it is proved that he is aware thereof or unless the date of the lease is prior to the effective date of such transfer of title.
2. However, any person to whom such title is transferred may hold to the lease, even if such lease is not effective against him.

## Article 629

Even if the lease is not effective against him, any person to whom title to the leased property is transferred may not force the tenant to return the leased property without prior notice in accordance with the provision of Article 588 herein, and after the tenant receives an indemnity from the landlord due to the return of the property prior to the expiry of the lease or after the tenant obtains sufficient security to pay such indemnity.

Article 630

1. Where the lease is effective against the person to whom such title is transferred, he shall substitute the landlord in all his rights and obligations under the subcontract.
2. However, the tenant may not hold to any rent paid to such person if, at the time of payment, such person proves that the tenant was, or should have been, aware of such transfer. If such person fails to provide such evidence, he shall have recourse against the landlord only.

Article 631

Where it is agreed that the landlord may terminate the lease for personal reasons, he shall, upon using this right, notify the tenant to vacate on such dates as set forth in Article 588 herein, unless agreed otherwise.

Article 632

1. Where any unforeseen circumstances arise in connection with either party which make the continuation of the lease unduly burdensome to such party, the court may, on demand by such party and upon a comparison of the interests of both parties, terminate the lease and fairly indemnify the other party.
2. Where the landlord demands termination of the lease, the tenant shall not be forced to return the leased property until indemnity is paid or until a sufficient security is provided.

Article 633

1. The lease contract shall not terminate on the death of the landlord or the tenant.
2. However, if the tenant dies, his heirs may demand termination of the lease if they prove that, due to such death, the obligations of the contract have become more burdensome than their resources can bear or that the lease exceeds their needs.

Article 634

Where the tenant dies and the lease relates to his professional or personal affairs, his heirs or the landlord may demand termination of the lease.

Article 635

Where the work of the tenant requires changing his place of residence, he may demand termination of the lease of his accommodation.

Article 636

The party who demands termination of the lease under Articles 632 to 635 herein shall comply with the date of giving notice as provided by Article 588 herein.

Article 637

1. Where the tenant fails to use the leased property, either fully or in part, and such failure is attributed to his error or to something relating to his person, he shall remain liable to pay the rent and to perform his obligations under the lease, so long as the landlord has put the leased property at the disposal of the tenant in a condition that is fit for its intended purpose.
2. In such an event, the landlord shall deduct from the rent any costs saved and any profits made due to the failure by the tenant to use the leased property.

## **Subchapter Two: Certain Types of Lease**

### **1st: Lease of Agricultural Lands**

#### **Article 638**

The provisions of lease shall apply to the lease of farming lands, subject to the following Articles, unless otherwise required by agreement or by practice.

#### **Article 639**

1. Lease of farming lands shall not, unless the lease contract provides otherwise, include the cattle, tools and equipment associated with farming.
2. Where the lease includes the foregoing, the tenant shall take good care thereof and attend to their proper maintenance.

#### **Article 640**

Where the lease term is for one or more years, this shall mean one or more annual crop rotations.

#### **Article 641**

1. Leased lands shall be utilized as agreed. In the absence of such agreement, the tenant shall utilize them according to their nature and as required by farming practice and, in particular, he shall ensure that such lands remain productive.
2. Without the consent of the landlord, the tenant may not make to the applicable means of utilization thereof any material change that may survive the lease.

#### **Article 642**

1. The tenant shall make such repairs as required for the usual utilization of the leased land and, in particular, he shall undertake the usual maintenance of the wells, waterways and buildings allocated for accommodation or utilization.
2. The landlord shall undertake such repairs as may be necessary for the property's intended use.

#### **Article 643**

1. Where the tenant cannot prepare the land for cultivation or the seeds are lost, either in whole or in part, due to a foreign cause beyond his control, he shall be discharged from paying the rent in full or in part, as the case may be.
2. Where the crop is lost in full prior to its harvest due to a foreign cause beyond the control of the tenant, he may demand to be discharged from paying the rent.
3. Where the crop is lost in part, and such loss results in considerable deficiency in the revenues of the land, the tenant may demand a reduction in the rent in proportion to such deficiency.

Article 644

The tenant may not demand cancellation of or a reduction in the rent as provided by the preceding Article if he is indemnified against the damage he has suffered by the profits made by him throughout the term of the lease or by any other way.

Article 645

The tenant may not demand cancellation of or a reduction in the rent if the crop is lost after harvest, unless it is agreed that the landlord has a fixed right to the crop. In such event, the landlord shall bear his share of such loss, provided that such loss is not due to the fault of the tenant or it occurs upon his being notified to deliver the crop.

Article 646

Where the crop is not yet ripe upon expiry of the lease, the tenant shall remain on the leased property at the same rent until the crop is ripe and harvested. Where the crop is unripe due to the tenant's fault, he shall also indemnify the landlord.

Article 647

The tenant may not do anything that limits or delays the use of the land by his successor. In particular, and within a reasonable time prior to vacating the property, the tenant shall permit such successor to cultivate and sow the land without any consequent damage.

**2nd: Farm Lease**

Article 648

Farming and tree-planted lands may be leased to the tenant on a crop-sharing basis in consideration of part of the crop to the landlord.

Article 649

Unless otherwise required by agreement or by practice, the provisions of lease shall apply to crop-sharing, subject to the following Articles.

Article 650

Where the term of crop-sharing is not determined, its term shall be such period as required to harvest the agreed crop, if any, or an annual crop rotation.

Article 651

Cattle and farming tools owned by the landlord which are found on the land at the time of contracting shall form part of the crop-sharing contract.

Article 652

The tenant shall, in farming and keeping the crop, use such care as he would for his own affairs and shall use all reasonable care in maintaining the land and anything thereon or therein.

Article 653

The tenant may not, without the consent of the landlord, assign the lease to or share it with any other person.

Article 654

1. The tenant shall bear the cultivation expenses and protect the crop until it is ripe. The tenant shall also maintain and make minor repairs to the tools, equipment and buildings.
2. The tenant shall bear the expenses of other repairs and all necessary improvements to the land.
3. The parties shall, *pro rata* to their respective shares in the crop, bear all costs relating to seed and fertilization, pesticides, harvesting, and any other costs incurred until the division of the crop.

Article 655

1. The crop shall be divided between the parties as agreed or according to the practice. In the absence of such agreement or practice, the crop shall be divided equally.
2. No agreement may be made in terms of which the share of either party is a fixed amount of the crop or the crop of a particular part of the land.

Article 656

Where the crop is lost, either in whole or in part, due to a foreign cause beyond the control of either party, such loss shall be borne equally by both parties.

Article 657

The provisions of Article 646 herein shall apply where the crop is not yet ripe upon the expiry of the crop-sharing contract. However, the tenant shall not be liable to pay an equivalent rent other than *pro rata* to his share of the crop.

Article 658

Where the tenant fails to cultivate the land due to illness or for any other reason and it is not possible that he be substituted by any of his family members, either party may demand termination of the contract.

Article 659

Crop-sharing shall not terminate on the death of the landlord but it shall terminate on the death of the tenant.

Article 660

1. Where crop-sharing is terminated prior to the expiry of its term, the landlord shall repay to the tenant or to his heirs such costs paid by the tenant for the crop not yet ripe at such termination, plus an indemnity equal to the wage of a similar work, provided that such amounts shall not exceed the share of the tenant in the crop.
2. However, where crop-sharing is terminated by the death of the tenant, his heirs shall have the option either to collect the above amounts or substitute the tenant in the work until the crop is ripe, provided that such heirs can perform the work properly.

### 3rd: Lease of Waqf Property

#### Article 661

1. The trustee of the waqf shall have the authority to lease it.
2. Even if the entitlement is limited to him, the beneficiary of the waqf shall have no authority unless he is authorized by the creator of the waqf or by any other person who may have the authority to lease, such as the trustee or the judge.

#### Article 662

The authority to collect the rent shall be vested in the trustee but not the beneficiary, unless the trustee authorizes him to collect such rent.

#### Article 663

The trustee of the waqf may not lease a waqf property for his own account or for his wife, children or relatives.

#### Article 664

1. No waqf lease shall be valid in the event of gross injustice unless the landlord is the only beneficiary that may have the authority to dispose of the waqf, in which event the waqf may be leased by gross injustice against himself but not against successive beneficiaries.
1. Where the trustee leases the waqf at gross injustice, the tenant shall complete the rental to the rental of a similar property; otherwise the contract shall be revoked.

#### Article 665

1. Where the creator of the waqf determines the term of lease, such determination shall apply and the trustee may not contradict such determination unless authorized to lease in the best interest of the waqf.
2. If no person wishes to lease the waqf for the term as determined by the creator of the waqf or if the lease for a longer period is in the best interest of the waqf, the trustee may lease the waqf for a longer time, subject to the court's permission.

#### Article 666

Other than waqf properties forming part of the general trusteeship by the competent authority by law, the trustee may not, unless the creator of the waqf determines the period of the lease, lease a house, a shop and the like for more than one year or lease the land for less than three years, unless the interest requires the rent of such house and shop be increased or the rent of the land be decreased.

#### Article 667

1. Other than waqf properties forming part of the general trusteeship by the competent legal authority, the trustee may not, without permission from the court, lease the waqf for more than three years, even under successive contracts. If the term of the lease is longer, such term shall be shortened to three years.
2. However, if the trustee is the creator of the waqf or the only beneficiary, he may not, without permission from the court, lease the waqf for more than three years, subject to the right of the successor trustee to demand a decrease of such term to three years.

## Article 668

The waqf lease shall not terminate on the death or removal of the trustee.

## Article 669

The provisions of the lease contract shall apply to the waqf lease, subject to the above provisions.

### **Chapter Two: Commodation**

## Article 670

Lending shall be defined as a contract under which the lender undertakes to deliver to the borrower a non-consumable thing to be used without consideration for a specific period of time or for a specific purpose, provided that such thing shall be returned to the lender after the specified period or purpose has expired.

### **1st: Effects of Commodation**

#### **Obligations of the Lender**

## Article 671

The lender shall deliver the borrowed thing to the borrower in the same condition it was at the time of conclusion of the lending contract.

## Article 672

1. Where the borrower incurs costs in maintaining the borrowed thing, the lender shall reimburse these costs.
2. Expenses beneficial to the borrower shall be governed by the provisions concerning expenses paid by a holder of a thing who acts in bad faith.

## Article 673

1. The lender shall not be liable for the entitlement to the borrowed thing, unless there is an agreement to such liability or the lender has deliberately concealed the cause of such entitlement.
2. The lender shall not warrant that the borrowed thing is free from defects unless the lender deliberately conceals a defect or warrants to secure such defect, in which event the lender shall indemnify the borrower for the damage that may arise from such defect.

#### **Obligations of the Borrower**

## Article 674

1. Where lending is limited by time, place or type of use, the borrower may not use the borrowed thing other than at such time and place as determined, or use the borrowed thing other than as permitted.
2. Where lending is not restricted by any limitation, the borrower may use the borrowed thing at any time or place or for any purpose at his discretion, provided that he shall not exceed the usual use of such thing.
3. In either case, the borrower shall not be liable for any change, loss or deficiency due to the use of a thing authorized by such lending.

## Article 675

A borrower may not lease or lend the borrowed thing without the consent of the lender.

## Article 676

The expenses arising from the use, usual maintenance and return of a borrowed thing shall be borne by the borrower.

## Article 677

1. The borrower shall use all reasonable care to protect the borrowed thing.
2. In all events, the borrower shall be liable for the loss of a thing if such loss arises from an unforeseen incident or *force majeure*, provided that the borrower could have avoided such loss by using a thing of his own, or had the choice to save either his own property or the borrowed property and chose to save his own property.

## Article 678

1. Upon the expiry of lending, the borrower shall return the thing in its original condition at the time of borrowing, subject to his liability for loss or damage.
2. Such thing shall be returned to the place from where the borrower collected it, unless otherwise agreed.

## **2nd: Termination of Commodation**

## Article 679

1. Lending shall terminate upon the expiry of the agreed date or otherwise upon the completion of the purpose for which the borrowed thing has been lent.
2. Where the term of lending cannot be determined, the lender may terminate it at any time.
3. In all events, the borrower may return the borrowed thing prior to the expiry of lending, but if such return may cause damage to the lender, he shall not be forced to accept such thing.

## Article 680

The lender may, at any time, terminate the lending contract in any of the following cases:

1. Where an urgent unforeseen need to terminate the lending contract arises at any time.
2. Where the borrower misuses a thing or fails to protect it.

3. Where the borrower becomes insolvent upon the conclusion of lending or if he has already been insolvent without the knowledge of the lender.

## Article 681

Unless agreed otherwise, lending shall terminate on the death of the borrower.

### **Part 3: Employment Contracts**

#### **Chapter One: Contract Agreements**

##### **Subchapter One: General Rules for Contractual Agreements**

## Article 682

A contracting agreement shall be defined as a contract under which either party undertakes to make a thing or perform any work for the other party in consideration of a wage, without being an agent or representative of such party.

### **1st: Provision of Materials**

## Article 683

1. The obligation of the contractor may be limited to the performance of the agreed work, provided that the employer provides the required materials.
2. The contractor may provide all or any of the materials in addition to his obligation to perform the work.

## Article 684

1. Where the contractor provides all or any of the work materials, such materials shall be compliant with the agreed specifications, if any, or shall be adequate for their intended purpose.
2. The contractor shall be liable for any defects in such materials in accordance with the provisions of liability for defects in a sold thing.

## Article 685

1. Where the work materials are provided by the employer, the contractor shall use all reasonable care to protect such materials, comply with the technical practices for the proper use of such materials, account for the materials to the employer, and return to the employer any remaining part of such materials.
2. Where such materials are not fit for use, either in whole or in part, due to the negligence or technical inefficiency of the contractor, he shall pay the value of such materials to the employer, together with indemnity, as applicable.

## Article 686

1. Where, during the progress of the work, any defects in the materials provided by the employer arise or appear, or there are other factors that may obstruct the performance of the work in proper conditions, the contractor shall notify the employer of such defects immediately.
2. Where the contractor neglects to notify the employer, the contractor shall be liable for the consequences of such negligence.

## 2nd: Contractor's Obligations

### Article 687

1. The contractor shall perform the work in accordance with the conditions as set out in the contracting agreement and within such period as agreed. Where no such conditions are set out or no such period is agreed, the contractor shall perform the work in accordance with the applicable practices and within such reasonable period as required for the nature of the work, subject to established standards of workmanship.
2. Unless otherwise required by agreement or practice, the contractor shall provide at his cost any labour, tools and supplies required to perform the work.

### Article 688

1. Where, during the progress of the work, it appears that the contractor is performing the work in a defective manner or in breach of the contract; the employer may notify the contractor to correct the method of performance within such reasonable time as determined by the employer. Where such period expires without remedy of such breach, the employer may demand termination of the contract or obtain a license from the court to perform the work at the cost of the contractor if the nature of the work so permits.
2. The employer may demand termination of the contract without notice or time limit if the correction or remedy of the breach is impossible.
3. In any event, the court may reject the request for termination if the defect in the method of performance has not decreased to a large extent the value of the work or its utility for the intended purpose, without prejudice to the right to indemnity, as applicable.

### Article 689

Where the contractor delays in commencing or accomplishing the work to such an extent that he cannot possibly deliver the work within the agreed period, or if his actions indicate his intention not to perform his obligation or make the performance of his obligation impossible, the employer may demand the immediate termination of the contract.

### Article 690

Where a thing is lost or damaged due to an unforeseen incident or *force majeure* prior to its delivery to the employer, the contractor may not demand payment of the agreed wage or the value of the materials provided by him unless the employer is in breach of his obligation to take over the work at the time of loss or damage.

### Article 691

1. Where the materials are provided by the employer and the thing is lost or damaged prior to its delivery due to any unforeseen incident or *force majeure*, the employer may not demand that the contractor pay the value of such materials unless at the time of such loss or damage the contractor is in breach of his obligation to deliver the work, provided that the contractor fails to prove that such thing would have been lost or damaged in the possession of the employer if it had been delivered to the employer.
2. The work materials shall be deemed provided by the employer if their value has been paid by the employer to the contractor or an amount paid on account, including such value, to the contractor.

## 3rd: Obligations of the Employer

### Article 692

1. Where performance of the work requires a specific action within a specific time period by the employer but he fails to act within such time period, the contractor may demand the employer to act within such reasonable time as determined by the contractor.
2. Where such time period expires without the employer's action, the contractor may demand termination of the contract without prejudice to his right to indemnity, as applicable.

### Article 693

Where the contractor completes the work and puts it at the disposal of the employer after notification thereof, the employer shall take over the work according to the familiar procedures of transaction. If the employer without any good reason rejects taking over the work despite being invited to do so under a formal notice, the work shall be deemed to have been delivered to the employer.

### Article 694

1. The employer may reject taking over the work if any defect therein or breach of the agreed conditions renders the work unfit for its intended purpose.
2. Where such defect or breach has not rendered the work unfit for its intended purpose, the employer may only demand a reduction in the sum owed to the contractor to the extent consistent with the significance of such defect or breach or, where a remedy is available at reasonable cost, he may require the contractor to remedy such defect or breach within such reasonable time as determined by the employer.

### Article 695

The employer may not hold to the rights provided in the preceding Article if he has caused the defect, whether by issuing orders contrary to the opinion of the contractor or by any other way.

### Article 696

1. Whenever the work is taken over actually or virtually, the contractor shall not be liable for any apparent defect or breach of the conditions of the contract.
2. Where the defects or breach are invisible, and the employer detects such defects or breach after taking over the work, he shall notify the contractor thereof, subject to the rules of workmanship, failing which the employer shall be deemed to have accepted the work.

### Article 697

The employer shall pay the dues of the contractor upon taking over the work, unless otherwise required by agreement or by practice.

### Article 698

1. Where the work consists of distinct parts or if the price is determined by unit price, either contracting party may demand inspection upon the completion of each part that may be adequately significant to the work as a whole. In such event, the contractor may collect his dues to the extent of the work completed, unless agreed otherwise.
2. It shall be presumed in connection with any work for which the contractor's dues are paid that it has been inspected and accepted, unless in the event of payment on account.

### Article 699

Where the contractor's dues are not agreed, such dues shall be determined with reference to the value of similar work at the time of the contract and the value of the materials provided by the contractor as required for the work.

## Article 700

Subject to the provisions of clause 2 of Article 171 herein, the rise in the prices of raw materials, labour force wages and other costs shall not affect the scope of the obligations under the contract.

### 4th: Subcontracts

## Article 701

1. The contractor may delegate all or part of his work to a subcontractor unless otherwise provided by the contract, or unless the personality of the contractor is considered in the light of the nature of the work.
2. However, the obligations of the main contractor to the employer shall remain effective and the contractor shall be liable to the employer for the works performed by the subcontractor.

## Article 702

1. The subcontractor and labourers working for the account of the main contractor to perform the work shall be entitled to directly demand the employer to pay their dues to the extent payable by the main contractor at the time of the claim. The employees of the subcontractor shall have the same right against the main contractor and the employer.
2. The subcontractor and labourers may, at the time of imposing attachment against the employer or the main contractor, hold a lien on the amounts due to the main contractor from the subcontractor at the time of the attachment, *pro rata* to the right of each of them. Such amounts may be paid to the subcontractor or labourers.
3. The rights of the subcontractor and labourers as provided under this Article shall have priority to the rights of any party to whom the contractor may assign his right against the employer.

### 5th: Termination of the Contractual Agreement

## Article 703

Where the contractor performs the maintenance of a thing or any other refurbishing works within a specific period under the contracting agreement, such agreement shall terminate upon the expiry of that period.

## Article 704

The contracting agreement shall terminate if the agreed work is impossible to perform due to a foreign cause beyond the control of either party. In such event, the contractor shall have the right to demand the employer to reimburse any costs incurred by the contractor and such wages payable to him, commensurate with the benefit obtained by the employer from such work.

## Article 705

The contracting agreement shall terminate upon the death of the contractor if his personal qualifications or capabilities are taken into consideration upon making the contract, otherwise the contract shall not terminate automatically. However, the employer may demand termination of the contract if no adequate securities to perform the work properly are available in the heirs of the contractor.

## Article 706

1. Where the contracting agreement terminates on the death of the contractor, his heirs shall be entitled to the value of the works completed by him and such costs incurred by the contractor therein, to such extent that the employer may benefit from such works and costs.
2. The employer may demand delivery of all materials and drawings relating to the work, provided that he pays a fair consideration.
3. These provisions shall also apply where the contractor has commenced the work but becomes unable to complete it due to a foreign cause beyond his control.

## Article 707

1. The employer may withdraw from the contract and stop the work at any time prior to its completion, provided that the contractor shall be indemnified for all expenses incurred, all works completed, and any profit he could have made had the work been completed.
2. The court may reduce the indemnity payable for the profit missed by the contractor if the circumstances make such reduction fair. In particular, the court shall reduce such indemnity to the extent of the costs saved by the contractor due to the withdrawal from the contract by the employer and the profit made by the contractor by applying such time to other work.

### **Subsection 2: Special Provisions Relating to Building and Construction Contracts**

## Article 708

1. Where the contract is made on an estimated measurement basis and, during the progress of the work it is deemed necessary to exceed the assessed measurements to execute the agreed design, the contractor shall notify the employer thereof, stating the extent of the increase in costs. Failure to do so shall result in the contractor losing the right to reimbursement for the extra costs incurred.
2. Where such extra costs required for the execution of the design are substantial, the employer may withdraw from the contract and stop such execution without delay, provided that the contractor is paid for the works completed by him, assessed in accordance with the conditions of the contract, without any indemnity against the contingent profit of the contractor in the event of completion of the work.

## Article 709

Where the contract is made for a lump sum on the basis of a design agreed with the employer, the contractor may not demand any increase in his dues as a result of any amendment or addition to such design, except if caused by or on behalf of the employer, and the employer shall agree with the contractor on the extra amount in connection with such amendment or addition.

## Article 710

Where a building or other structure is constructed on land owned by the employer and there are substantial defects therein to the extent as described in clause 1 of Article 694 herein, and the removal of such building or structure may result in serious damage, the employer may only demand a reduction in the dues of the contractor or require him to repair such damage in accordance with the provision of clause 2 of the said Article, subject to the employer's right to indemnity, if any.

## Article 711

1. The contractor and the engineer shall be jointly liable for any collapse or defect, either in whole or in part, of the buildings or other fixed structures constructed by them, even if such collapse or defect arises from a defect in the land itself or the employer has authorized such defective buildings or structures. Such liability shall include any defects that may appear in the buildings or other structures which may threaten the safety and stability thereof.
2. Where the parties intend that the buildings or structures remain on the land for less than ten (10) years, liability shall be valid during any shorter period. In all events, the term shall commence from the date the work was awarded.
3. The provisions of this Article shall not apply to any right of recourse by the contractor against the subcontractors.

Article 712

1. Where the work of the engineer is limited to the design of the building or structure in whole or in part, the contractor shall be liable for such defects that may arise from the design but not for defects due to the method of construction and execution.
2. Where the employer assigns the engineer to supervise the execution in whole or in part, such engineer shall also be liable for such defects that may arise from the method of execution supervised by him.

Article 713

1. The contractor shall be liable only for defects of execution to the exclusion of defects from faulty design, unless such defects can be reasonably detected by the contractor according to professional practice.
2. However, the contractor shall be liable for defects arising from the design if the engineer who prepared the design is employed by the contractor.

Article 714

An action for liability shall prescribe after the expiry of three years from the time of the collapse of the building or structure or the detection of a defect therein.

Article 715

Any provision intended to discharge the contractor or the engineer from liability or to limit such liability shall be void.

**Chapter Two: Agency**

Article 716

Agency shall be defined as a contract under which the agent undertakes to do any legal act for the account of the principal.

**1st: Elements of Agency**

Article 717

The agency contract shall not be valid unless the principal has the capacity to do the act, the subject matter of the agency.

Article 718

Article 719

Agency in general, without specific designation of the subject matter of the agency, shall not grant the agent any capacity other than in administrative acts. The term "administrative acts" shall include lease, provided that it does not exceed three years; maintenance and safekeeping works; collection of rights; and repayment of debts. This expression shall also include any disposition as required for management.

Article 720

The agency contract shall not grant the agent any capacity other than to do such acts as stated therein and any ancillary things in accordance with the nature of such acts and the applicable practice.

Article 721

1. Any act other than the administrative acts shall require a special agency, particularly for gifts, sale, reconciliation, mortgage, acknowledgement, arbitration, putting to oath and pleading before the courts of law.
2. A special agency shall be valid in a particular type of legal act, even if the subject matter of such act is not specifically determined, unless it is an act of gift.

**2nd: Effects of Agency**

**Obligations of the Agent**

Article 722

1. The agent shall be bound by the agency contract without exceeding its limits.
2. The agent may exceed the limits of the agency contract where it is impossible to notify the principal in advance and the circumstances most probably indicate that the principal will have agreed to such act. In such event, the agent shall notify the principal of such excess.

Article 723

1. Where the agency contract is without consideration, the agent shall use the same standard of care as he would in his own acts, but not beyond that of a reasonable person.
2. Where the agency is with consideration, the agent shall use the care of a reasonable person at all times.

Article 724

The agent shall provide his principal with all necessary information in connection with performance of the agency and provide a report thereof supported by documents, unless the agreement or the nature of the transaction requires otherwise.

Article 725

The agent may not use the assets of his principal for his own account without the consent of the principal; otherwise the principal may demand that the agent pay indemnity as assessed by the court according to the requirements of justice and the prevailing circumstances.

## Article 726

1. In the event of multiple agents, where each agent is assigned under a separate contract, each of them may individually perform the required acts unless the principal authorises the agents to act jointly.
2. Where such agents are assigned under a single contract without any authority to act individually, they shall act jointly, unless the exchange of opinion is not required for a specific act.

## Article 727

1. Multiple agents shall be jointly liable where the agency is indivisible or where the damage suffered by the principal arises from a common mistake of the agents.
2. However, the agents shall not be jointly liable for any act of each agent which exceeds the limits of or abuses the agency.

## Article 728

1. Where an agent delegates a third party to perform the agency without authority to do so, the agent shall be liable for the act of such third party as if such act is the act of the agent himself. In such event, the agent and his delegate shall be jointly liable.
2. Where the agent is authorized to delegate performance of the agency but no delegate is designated, the agent shall be liable only for his mistake in nominating or giving instructions to the delegate.
3. In both events, the principal and the representative of the agent may have recourse against each other directly.

### Obligations of the Principal

## Article 729

1. The agency shall be without consideration unless otherwise agreed or unless otherwise implicitly understood by the agent.
2. Where the parties agree on a fee, such fee shall be assessed at the discretion of the court, unless voluntarily paid by the principal upon the performance of the agency.

## Article 730

1. The principal shall reimburse the agent all costs incurred by him in the normal performance of the agency, irrespective of how successful the agent is in such performance.
2. Where performance of the agency requires that the principal provide to the agent amounts to be spent on the affairs of the agency, the principal shall provide such amounts on demand by the agent.

## Article 731

The principal shall be liable for any damage suffered by the agent in the normal performance of the agency, excluding damage arising from the agent's mistakes.

### Article 732

Where more than one principal appoints a single agent to perform a common act, all such principals shall be jointly liable against the agent for the performance of the agency, unless agreed otherwise.

### Article 733

The provisions of Articles 83 to 87 herein concerning representation in contracts shall apply to the relationship between the principal and the agent with third parties dealing with such agent.

## **3rd: Termination of Agency**

### Article 734

The agency shall terminate upon the completion of the acts described therein or upon the expiry of its term. The agency shall also terminate on the death of the agent or the principal unless it is granted in favour of the agent or a third party or unless it is intended to be completed upon the death of the principal.

### Article 735

1. The principal may at any time terminate or limit the agency, even if there is an agreement to the contrary.
2. However, where the agency is issued in favour of the agent or a third party, the principal may not terminate or limit such agency without the consent of such agent or third party.
3. In all events, the principal shall indemnify the agent for any damage suffered by the agent due to his removal at any improper time or without good cause.

### Article 736

1. The agent may at any time withdraw from the agency, even if there is an agreement to the contrary, by giving notice to the principal. The agent shall be obligated to indemnify the principal against any damage suffered by the principal due to such withdrawal at any improper time or without good cause.
2. Unless he has compelling reasons, the agent may not withdraw from the agency if a third party has an interest therein, provided that such third party shall be notified of such withdrawal in order to give him adequate time to decide what is in his best interest.

### Article 737

1. Irrespective of the manner of termination of the agency, the agent shall complete the acts commenced to such stage where no damage may be suffered by the principal.
2. Where the agency is terminated due to the death of the agent, his heirs shall, provided that they have the capacity and are aware of the existence of the agency, notify the principal of such death or take such appropriate steps on behalf of the principal.

**Article 738**

Deposit shall be defined as a contract whereby a person undertakes to receive a thing from another person for safekeeping and to return it in kind.

**1st: Effects of Deposit**

**Obligations of the Depositary**

**Article 739**

The depositary shall receive the deposited thing and may not use it without the consent of the depositor.

**Article 740**

1. Where the deposited thing is without consideration, the depositary shall use the same care as in his own acts, but not beyond the care of a reasonable person.
2. Where the deposited thing is with consideration, the depositary shall use the care of a reasonable person at all times.

**Article 741**

The depositary may not, without the consent of the depositor, delegate any other person to safekeep the deposited thing, unless due to urgent necessity.

**Obligations of the Depositor**

**Article 742**

The deposit shall be without consideration. Unless required otherwise by agreement or by practice, where the parties agree on a fee the depositor shall pay such fee on the termination date of the deposit.

**Article 743**

The depositor shall reimburse the depositary for any costs incurred by him in safekeeping the deposited thing and shall indemnify him against any damage due to such deposit.

**2nd: Termination of Deposit**

#### Article 744

The deposit contract shall terminate upon the expiry of the agreed term. Where such term is not mutually agreed, expressly or impliedly, either party may terminate the deposit contract upon notice to the other party at the appropriate time.

#### Article 745

The depositor may at any time demand return of the deposited thing. Where the term of the deposit is determined in favour of the depositor or the depositor is authorized to use the deposited thing, the depositor shall indemnify the depositor for the profit lost during the remaining period.

#### Article 746

Where the term of deposit is determined in favour of the depositor and the depositor is unable for urgent reasons to continue safekeeping the deposited thing, the latter may demand termination of the deposit contract prior to the expiry of the agreed period, provided that the depositor is notified to accept return of the deposited thing at such appropriate time.

#### Article 747

The deposit contract shall terminate upon the death of the depositor, unless agreed otherwise.

#### Article 748

1. Upon termination of the deposit contract, the depositor shall return the deposited thing and its revenues to the depositor, who shall indemnify the depositor against any loss arising from the deposit.
2. The deposited thing shall be returned to its place of safekeeping and the costs of return shall be borne by the depositor.
3. All of the above shall apply unless agreed otherwise.

#### Article 749

1. Where the heir of the depositor sells the deposited thing in good faith and the depositor cannot recover it from the purchaser, the heir shall be liable only to return the sale price to the depositor or to transfer to the depositor any rights of the heir against the purchaser.
2. Where the deposited thing is donated, the heir shall be liable only to repay its value at the time of the donation.

### 3rd: Certain Types of Deposits

#### Article 750

Where the deposited thing is an amount of money or a consumable thing and the depositor is authorized to use it, the contract shall instead be deemed a loan.

Article 751

1. Owners of hotels and the like who are required to exercise care in safely keeping things brought by guests, shall be liable, even for the acts of those who frequently visit such enterprises.
2. However, such owners shall not, in respect of money, securities and valuable things, be liable for any indemnity in excess of QR 10,000 (ten thousand) unless such owners undertake to keep such things safely or refuse without good cause to accept such things for safekeeping while they are aware of the value of such things.

Article 752

1. Guests of hotels and the like who have deposited things with the owner for safekeeping shall notify him of any theft, loss or damage immediately upon becoming aware thereof. Where a guest fails without good cause to notify the owner immediately, he shall forfeit any right to demand indemnity from the owner.
2. A claim by a guest against the owner shall prescribe after the lapse of a period of six months from the date of his departure from the hotel.

Article 753

Any provision to discharge or limit the liability of the owner of a hotel and the like shall be void.

**Chapter Four: Receivership**

Article 754

Custodianship shall be defined as a contract under which the concerned parties assign to another person a disputed movable asset, real property, or a combination thereof for safekeeping and subsequent return, together with its revenues, to the party for whom the right is established.

Article 755

The court may order appointment of a custodian:

1. In any of the events set forth in the preceding Article, unless the concerned parties mutually agree on a custodian.
2. Where the holder of an interest in a movable asset or real property has good cause to fear imminent risk of loss or damage to it if it remains in the possession of the assigned person.

Article 756

Whether custodianship is consensual or judicial, the custodian shall be appointed by the unanimous agreement of all concerned parties. In the event of disagreement, the court shall appoint such custodian.

Article 757

The agreement or judgment appointing the custodian shall determine the rights, powers and obligations of the custodian, otherwise the provisions of deposit and agency shall apply to the extent not in conflict with the provisions of the following Articles.

## Article 758

1. The custodian shall maintain the asset or property in his custody and management and shall use the care of a reasonable person in so doing.
2. The custodian may not delegate any of his powers to any of the concerned parties without the consent of the other parties or under a court order.

## Article 759

The custodian may not, other than as required for management, perform any act without the unanimous agreement of all the concerned parties or under a court order.

## Article 760

1. The custodian shall keep regular accounting books and records.
2. The custodian shall, at least once a year, provide a report on the things delivered to him and the associated costs reflected in supporting documents and receipts. If appointed by the court, the custodian shall provide a copy of his report to the court clerk's office.

## Article 761

1. Unless custodianship is accepted as contribution, the custodian shall receive a fee.
2. The custodian may recover any expenses incurred by him in maintaining and managing the asset entrusted to him.

## Article 762

1. Custodianship shall terminate by unanimous agreement of the concerned parties or by court order. Custodianship shall also terminate upon the expiry of its term, if any.
2. In such event, the custodian shall return the asset in his custody to any person nominated by the concerned parties or determined by the court.

### **Part 4: Aleatory Contract**

#### **Chapter One: Gaming and Betting**

## Article 763

1. Any agreement on gambling or wager shall be void.
2. Any person who loses a bet or wager may recover such loss within three years from the time of suffering such loss, even if agreed otherwise. Such person may prove such loss by supporting documentation.

## Article 764

1. Notwithstanding the provisions of the preceding Article, sporting competitions or competitions of strength shall be excluded.
2. The money may be provided by a single competitor. Where such money is provided by more than one competitor, at least one other person who has not contributed to such money shall participate in the competition, provided that such other person is as well qualified in that discipline as the other competitors.
3. Such money may be paid by a person other than the competitors, provided that it is not a bet between them on the winning competitor.
4. The competitors may not agree that any money be paid by the loser.

## **Chapter Two: Life Annuities**

### Article 765

1. A person may undertake to pay a regular salary for life to another person without consideration.
2. Such obligation to pay the salary may be effective immediately or upon the death of the obligor.

### Article 766

The provisions of the preceding Article shall not apply to such salary for life as provided by security and pension regulations against such instalments paid by the beneficiaries.

### Article 767

1. Salary may be applicable throughout the life of the obligee, the obligor or any other person.
2. Unless otherwise agreed, salary shall be deemed applicable throughout the life of the obligee.

### Article 768

No disposition creating the obligation to pay such salary shall be valid unless made in writing, subject to any special form for voluntary contribution contracts as required by law.

### Article 769

It may be agreed not to attach such salary.

### Article 770

1. The beneficiary shall not be entitled to salary other than for the period of the life of the obligee.
2. Where payment is made in advance, the beneficiary shall be entitled to the mature instalment.

## Chapter Three: Insurance Contract

### Article 771

Insurance shall be defined as a contract under which the insurer undertakes to pay to the insured or the beneficiary a sum, a fixed salary or any other financial consideration upon the occurrence of an insured incident as set out in the contract, in consideration of a premium or other financial payment to the insurer.

### 1st: Conclusion of Insurance Contracts

### Article 772

Insurance against damage shall not be valid unless based on lawful interest.

### Article 773

Insurance shall not be valid where the insured risk ceases to exist or if such risk occurs prior to the elaboration of and mutual agreement to the contract.

### Article 774

1. The contract shall not be concluded unless the insurer signs the insurance policy and this policy is delivered to the insured. Where the contract is concluded, the request for insurance with the representations and warranties contained therein shall form part of the insurance contract.
2. Even prior to the delivery of the insurance policy to the insured, the contract shall be deemed concluded if the insurer responds to the request for insurance by the delivery to the insured of a temporary coverage memorandum which includes the substantial provisions of the insurance contract and the obligations of both parties to each other.
3. However, where the insured provides a receipt confirming payment of part of the insurance consideration, he may prove by all means of evidence that the contract has been concluded, even if he has not received a temporary coverage memorandum.

### Article 775

The conditions concerning invalidity or extinguishment may not be held against the insured unless they are expressly stated, nor the arbitration clause unless in the form of a special agreement separate from the general conditions.

### Article 776

No provision that the right of the insured shall lapse due to the late notification of the insured incident to the required authorities or entities, or the late provision of necessary documents, shall be valid unless the circumstances indicate that the delay is based on good cause shown.

### Article 777

1. Any condition in the insurance policy that may exclude from the scope of the policy such acts that are in violation of the governing laws and regulations shall be invalid, unless such exclusion is specific;
2. Any arbitrary condition, the breach of which proves to have no effect on the occurrence of the insured risk, shall be invalid.

## Article 778

Other than in insurance contracts not provided for by law, the insurer and the insured may, if the term of insurance exceeds five years, demand termination of the contract at the end of every five years of the term of insurance, by giving notice to the other party by registered letter at least six (6) months prior to the expiry of such term. Such provision shall be stated in the insurance policy.

## Article 779

1. Other than in insurance contracts not provided for by law, it may be agreed under a condition expressly contained in the insurance policy to extend the contract automatically, unless the insured notifies the insurer at least thirty (30) days prior to the expiry date of the contract of his intention not to renew it.
2. Such extension shall be on a year-to-year basis and any agreement that the insurance may be extended for more than one year shall be void.

## Article 780

1. Any application dispatched by the insured to the insurer by registered letter in connection with the extension or amendment of the contract or its validity after being suspended shall be acceptable unless the insurer rejects such application within twenty (20) days from the date of receiving such application.
2. However, where the consent by the insurer depends on a medical examination or the application relates to the increase in the insurance amount, only the express consent of the insurer shall be effective.

## 2nd: Obligations of the Insured

## Article 781

The insured shall:

1. Clearly state at the time of entering into the insurance contract all such information known to him which the insurer may require for assessing the risks to be insured. In particular, facts in the form of answers to questions printed by the insurer are significant;
2. Immediately upon becoming aware thereof, notify the insurer of any circumstances that may increase the risks, unless the law provides otherwise regarding any type of insurance.
3. Pay the consideration of insurance on its maturity date.
4. Notify the insurer of every incident that may make the insurer liable.

## Article 782

1. The insurance contract may be revoked in favour of the insurer if the insured omits or misrepresents any information, provided that such omission or misrepresentation may, in the opinion of the insurer, adversely affect the subject matter of the risk or decrease the gravity or contingencies of its occurrence.
2. Where a fact is revealed prior to the occurrence of the risk, the insurer may consider the contract invalid after ten (10) days from the date of a notice given by the insurer to the insured by registered letter unless the insured accepts an increase in the premium *pro rata* to the increased risk. In the event of revocation of the contract as above, the insurer shall repay the insurance amount to the insured or repay such part of the insurance amount where no corresponding risk is borne by the insurer.

Where the fact is revealed after the occurrence of the risk, the insurer may reduce the insurance amount *pro rata* to the amount of premiums actually paid compared with the amount of premiums that should have been paid if the risk had been properly notified to the

## Article 783

1. Other than in insurance contracts not provided for by law, where the insured risks increase, the insurer may notify the insured in such manner as provided in the preceding Article that the contract is deemed revoked, unless the insured accepts, within such time as determined by the insurer, an increase in the insurance premium *pro rata* to such increase of the risk.
2. However, the insurer may not insist on such increase of the risk if the insurer, after becoming aware of such increase in any way, expresses his intention to maintain the contract in force or, in particular, continues to collect the premiums or pays indemnity upon the occurrence of the insured risk.

## Article 784

The insurance contract shall remain valid without any increase in premiums if the risk occurs or the possibility of its occurrence increases:

1. Due to any act intended to protect the interest of the insurer; or
2. Due to such acts in compliance with a humanitarian duty or for the public interest.

## Article 785

Where the insurance premium involves considerations that may increase the insured risk and then such considerations cease to exist or are impaired during the term of the contract, the insured may, notwithstanding any agreement to the contrary, demand termination of the contract without claiming any indemnity whatsoever, or a reduction in the premium for the next period *pro rata* to the cessation of such considerations, in accordance with the application of the insurance tariff on the date of the contract.

## Article 786

1. Each premium shall be payable at the beginning of the relevant period, unless agreed otherwise. The term "insurance period" shall mean such period for which the premium is calculated. For the avoidance of doubt, the insurance period shall be one year.
2. No insurer that may have delivered the insurance policy prior to the payment of the first premium may hold to any condition of the policy that the contract shall not come into force until the payment of such premium.

## Article 787

1. Unless agreed otherwise, all premiums other than the first shall be paid at the domicile of the insured. However, the premium shall be payable at the domicile of the insurer if, upon being notified to do so, the insurer fails to pay such premium on its maturity date.
2. Any condition that premiums are to be paid at the head office of the insurer shall be invalid if the insurer has usually collected the premiums at the domicile of the insured.

## Article 788

1. Where a premium is not paid on its maturity date, the insurer may notify the insured by registered letter to pay the premium and of the consequences of such late payment.
2. Upon giving such notice, the running of prescription of the claim on the premium shall be suspended.

## Article 789

1. Other than in insurance contracts not provided for by law, where the insured fails to pay a premium despite being notified to do so, the insurance contract shall be suspended after thirty (30) days from the date of such notice.
2. Upon the expiry of such suspension, the insurer may apply to the court to enforce the contract or notify the insured in such manner as set forth in the preceding Article that the contract is terminated.
3. Suspension shall cease where the insurer omits to terminate the contract by the maturity date of the new premium.
4. Where, prior to such termination, the outstanding premiums together with any other accrued expenses are paid, the validity of the contract shall resume on the day following such payment.
5. Any agreement to discharge the insurer from his obligation to notify the insured or to shorten the times as provided under clauses 1 and 2 of this Article shall be void.

### **3rd: Obligations of the Insurer**

#### Article 790

Upon the occurrence of the insured risk or the maturity of the premium under the contract, the insurer shall pay the insurance amount due within thirty (30) days from the date on which the beneficiary provides the required statements and documents in support of his right.

#### Article 791

In insurance against damage, the insurer shall commit to indemnify the insured against damage arising from the occurrence of the insured risk, provided that such indemnity does not exceed the insurance amount.

#### Article 792

1. In the event of multiple insurance contracts on a single thing or a single interest for an aggregate amount in excess of the value of the insured thing or interest, each insurer shall pay such part equal to the ratio of the insured amount borne to the aggregate value of all insurances, provided that the amount to be received by the insured shall not exceed the value of such damage.
2. Where any of such insurers becomes insolvent, the other insurers shall bear his share *pro rata* to the insurance amount undertaken by each insurer, provided that the amount paid by each insurer shall not exceed the amount insured by such insurer.
3. It may be agreed to distribute liability among the insurers on any other basis.

#### Article 793

1. In insurance against damage, the insurer may by law, to the extent of the indemnity paid by him, subrogate the insured in such claims that the insured may have against the person liable for the insured damage, unless such person is a relative or a son-in-law of the insured living together with him, or a person for whom the insurer is liable.
2. The insurer shall not be liable to the insured for the payment of the insurance amount or any part thereof if such subrogation is impossible due to the insured.

#### Article 794

In any event that the insurer may reinsure with third parties such risks insured with the insurer, the insurer alone shall remain liable to the insured or the beneficiary.

## 4th: Transfer and Lapse of Rights and Obligations Arising from Insurance Contract

### Article 795

1. Rights and obligations arising from the insurance contract shall be vested in such person to whom title to the insured thing is transferred upon disposition thereof, subject to the consent of the insurer. In the event of death of the insured, such rights and obligations shall be vested in his heirs, subject to the provisions of inheritance.
2. However, the insurer and such heir may each at their sole discretion terminate the contract by registered letter to the other party.
3. The insurer shall exercise his right to terminate the contract within thirty (30) days from the date on which the heir may demand transfer of the insurance policy to him.

### Article 796

Where title to the insured thing is transferred, the transferee shall remain liable to pay the premiums, but not any future premiums, as of the date on which the insurer is notified by registered letter of such transfer of title.

### Article 797

Where there is more than one transferee or heir, and the insurance contract is applicable to all of them, they shall be jointly liable for the payment of the premiums.

### Article 798

1. Where the insured thing is charged by a mortgage, pledge or other security in kind, such right shall be transferred to the indemnity payable to the debtor under the insurance contract.
2. Where such rights are registered or notified to the insurer, even by registered letter, the insurer may not pay the indemnity to the insured without the consent of the creditors.
3. Where the insured thing is attached or a receiver appointed thereon, the insurer may, if duly notified as set out in the preceding clause, pay any amount due by him to the insured.

### Article 799

1. Where the insured becomes bankrupt prior to the expiry of the term of the contract, the insurance shall remain valid in favour of the number of creditors who may become liable directly to the insurer to pay all the premiums payable by the date of the bankruptcy judgment.
2. Either party may by registered letter terminate the contract within three months from the date of such judgment. In such event, the insurer shall repay to such creditors any part of the premium in consideration of which no interest is borne.
3. Where the insurer becomes bankrupt, the contract shall cease to be effective from the date of the bankruptcy judgment. In such event, the insured may recover such part of the premium paid for the period of such suspension.

### Article 800

1. Claims arising from the insurance contract shall prescribe after the lapse of a period of three years from the relevant incidents that may have created such claims.
2. Notwithstanding the above, such period shall not apply:
  1. In the event of not disclosing information relating to the insured risk or providing inaccurate information about the risk, other than the day on which the insurer becomes aware of such risk.
  2. In the event of the occurrence of the insured risk, other than from the date on which the concerned parties become aware thereof.

3. Where the ground of the claim made by the insured against the insurer arises from recourse by a third party against the insured, other than from the date of such claim by such third party against the insured, or from the date on which such third party receives indemnity from the insured, as the case may be.

## Article 801

1. No agreement may be concluded in violation of the provisions of this Chapter or that amends these provisions other than in the best interest of the insured or the beneficiary.
2. No agreement may be concluded to extend or shorten the applicable period of prescription as provided under the preceding Article, even where such extension or shortening is in the best interest of the insured or the beneficiary.

## Article 802

The provisions of this Chapter shall apply to all types of insurance, subject to the provisions of the laws concerning each type.

### **5th: Fire Insurance**

## Article 803

1. The insurer shall be liable for all damage that may arise from fire and for all damage arising subsequent to the start thereof.
2. Such liability shall not be limited to direct damage from the fire, but shall also extend to such damage that may be an inevitable result of such fire, particularly any damage to the insured things after taking steps to rescue them or to prevent the spread of fire.
3. The insurer shall be liable for the loss or disappearance of the insured things during the fire, unless such loss or disappearance is later proved to be due to theft.

## Article 804

The insurer shall be liable to indemnify any damage to an insured thing arising from the fire, even if such fire occurs due to a defect in the insured thing.

## Article 805

1. The insurer shall be liable for such damage that may arise from any non-deliberate mistake by the insured, and for such damage arising from a sudden accident or *force majeure*.
2. Unless otherwise agreed, the insurer shall not be liable for any loss or damage caused by the insured acting deliberately or fraudulently.

## Article 806

The insurer shall be liable for damage caused by such persons for whom the insured is responsible, irrespective of the type and extent thereof.

## Article 807

Where the insurance contract against fire relates to the movable assets of the insured as a whole, such contract shall extend to such things owned by the members of the insured's family and those supported by him, if they live together.

## **Part 5: Suretyship**

### **Chapter One: Elements of Suretyship**

#### **Article 808**

A guarantee shall be defined as a contract under which a person undertakes to the creditor to accept responsibility for the performance of an obligation by the debtor where the debtor fails to perform such obligation.

#### **Article 809**

A guarantee shall be made in writing, even if the original obligation may be established by evidence.

#### **Article 810**

1. Where the debtor undertakes to provide a guarantor, such guarantor must be solvent and resident in Qatar and the debtor shall provide a sufficient security in kind.
2. Where, after providing the guarantee, the guarantor becomes insolvent or ceases to have a domicile in Qatar, another guarantor or a sufficient security in kind shall be provided.

#### **Article 811**

The debtor may be guaranteed without his knowledge or without his consent.

#### **Article 812**

1. A future obligation may be guaranteed if the extent of the obligation of the guarantor is determined in advance. A conditional obligation may also be guaranteed.
2. Where the term of the guarantee is not determined by the guarantor in a future obligation, the guarantor may at any time withdraw such guarantee so long as the guaranteed obligation has not arisen, provided that the guarantor shall notify the creditor of such withdrawal at an appropriate time.

#### **Article 813**

1. A guarantee shall not be valid unless the original obligation is valid.
2. Where the guarantee is provided due to a lack of capacity of the debtor and his obligation is annulled, the guarantor shall be liable to the creditor to pay the guaranteed debt.

Article 814

1. It may not be agreed to guarantee an amount higher than the debt, and the terms of such guarantee may not be more rigorous than the conditions of the guaranteed debt.
2. However, a lesser amount at more generous conditions may be guaranteed.

Article 815

The guarantee shall include the ancillary costs of the guaranteed obligation and the expenses of the first claim and any new expenses upon notification of the guarantor, unless agreed otherwise.

Article 816

1. The guarantee of a commercial debt shall be deemed a civil act, even if the guarantor is a trader.
2. A guarantee arising from a backing guarantee of commercial papers or from endorsing such papers shall always be deemed a commercial act.

**Chapter Two: Effects of Suretyship**

**Surety-Creditor Relationship**

Article 817

A guarantor shall be discharged upon discharge of the debtor.

Article 818

1. The guarantor may hold to all such aspects to which the debtor may hold.
2. The guarantor may not hold to the debtor's lack of capacity to act, provided that the guarantor is aware thereof at the time of contracting.

Article 819

Where the creditor accepts to collect from a person other than the guarantor another thing in consideration of the debt, the guarantor shall be discharged, even if such thing becomes due, unless the creditor reserves the right of recourse against the guarantor.

Article 820

1. The guarantor shall be discharged to the extent of the securities missed by the creditor's mistake.
2. In this Article, the term "securities" shall mean every security allocated to secure the debt, even if decided upon providing the guarantee, and every

## Article 821

1. A guarantor shall not be discharged merely due to the failure by the creditor to take the required procedures against the debtor on the maturity date of the debt, or due to his delay in taking such procedures.
2. The guarantor shall be discharged if, within six months from the date of notification by the guarantor, the creditor fails to take such procedures, unless the debtor provides an adequate security to the guarantor.
3. The guarantor shall not be prevented from holding to his discharge from liability by any extension granted by the creditor to the debtor without the consent of the guarantor.

## Article 822

Where the debtor becomes bankrupt and the creditor fails to claim his debt in the bankruptcy proceedings, his right of recourse against the guarantor shall lapse to the extent such creditor could have recovered if he had claimed his debt therein.

## Article 823

1. Where multiple guarantors under a single contract guarantee the same debt and the same debtor and they are not jointly liable, the debt shall be divided equally among them, unless the amount secured by each of them is stated in the contract.
2. Where the guarantors enter into successive contracts, each guarantor shall be liable for the debt in full, unless the guarantor reserves the right to divide such debt.

## Article 824

1. The creditor may not demand payment of the debt by the guarantor alone without first demanding that the debtor pay this debt. The creditor may not seek seizure of the assets of the guarantor until the assets of the debtor have been depleted, and only if the guarantor is jointly liable with the debtor.
2. In either event, the guarantor shall hold to his right thereto.

## Article 825

1. Where the guarantor demands depletion of the assets of the debtor, the guarantor shall, at its own expense, direct the creditor to those assets of the debtor that may settle the debt in full.
2. No assets that the guarantor may indicate shall be effective if disputed or outside the State of Qatar.

## Article 826

In such cases where the guarantor leads the creditor to the assets of the debtor, the guarantor shall be discharged to the extent of the debt applied to such assets by the creditor and to the extent of the amount of the debt that the creditor is unable to recover from such assets due to the failure to take the required procedures in due time.

## Article 827

Where there is a security in kind on the assets of the debtor securing the debt and a guarantee is provided after or concurrently with such security, the guarantor may, if not jointly liable with the debtor, demand enforcement of the assets charged by any security in kind prior to the enforcement of the assets of the guarantor.

## Article 828

1. The creditor shall deliver to the guarantor at the time of repayment of the debt such documents as are required to assert his right of recourse.
2. Where the guaranteed debt is secured by a pledged or distrained movable asset, the creditor shall assign it to the guarantor.
3. Where the debt is guaranteed by a real estate security, the creditor shall take such procedures as required to transfer such security to the guarantor. The guarantor shall bear the expenses of such procedures, provided that the guarantor may demand that the debtor pay such expenses.

## Article 829

The guarantor may be guaranteed. In such event, the guarantor of the original guarantor may hold against the creditor to the right of recourse against the guarantor prior to recourse against the original guarantor, unless the guarantor of the original guarantor is jointly liable with the guarantor.

## Article 830

In legal, judicial or commercial guarantee, guarantors shall always be jointly liable.

## Article 831

A joint guarantor may hold to the same pleadings concerning the debt as the non-joint guarantor may hold thereto.

## Article 832

Where the guarantors are jointly liable or their guarantee is under successive contracts, and any of such guarantors repays the debt on its maturity date, such guarantor may demand that the other guarantors repay the debt *pro rata* to their respective shares of the debt and the share of such guarantor in the share of any insolvent guarantor.

## Surety-Debtor Relationship

## Article 833

1. The guarantor shall notify the debtor prior to the payment of the debt, failing which the guarantor shall lose his right of recourse against the debtor if the debtor has settled the debt or has such reasons on the maturity date to believe that the debt is invalid.
2. Where the debtor has not objected to the payment, the guarantor shall have the right of recourse against the debtor, even if the debtor has paid the debt or has such reasons on the maturity date to believe that the debt is invalid or extinguished.

Article 834

1. A guarantor that may have settled the debt may demand that the debtor pay such debt if the guarantee is made in favour of such debtor, whether such guarantee is made with or without the knowledge of the debtor or without his objection.  
2. The guarantor shall have the right to demand that the debtor pay the initial amount of the debt, the ancillary costs and the expenses of the first claim, together with any expenses at the time of notification of the debtor by the guarantor of the procedures taken against the guarantor.

Article 835

Where the guarantor pays the debt, he may subrogate the creditor in all rights against the debtor. However, where the guarantor pays part of the debt only, the guarantor may not demand that the debtor repay such part until the creditor has recovered the rest of his right from the debtor.

Article 836

In the event of multiple debtors of a single debt, they shall be jointly liable for such debt. The guarantor of all such debtors may demand that any of them repay the debt.

**SECTION TWO: Rights in rem**

**BOOK ONE: Principal Rights in rem**

**Part 1: Right of Ownership**

**Chapter One: General Provisions**

**SubChapter One: Scope of Right of Ownership**

Article 837

The exclusive owner of a thing shall, within such limits as provided by law, have the right to use, utilize and dispose of such thing.

Article 838

Title to a thing shall include its parts, revenues, products and ancillary costs, unless there is an agreement to the contrary.

Article 839

1. Title to the land shall include the surface of the ground and above or in the ground to such extent useful to enjoy such land upward and downward as applicable.  
2. It may be stipulated by law or by agreement that the title to the surface of the ground is separate from the title to anything above or in the ground.

## Article 840

No person may be deprived of his property other than in such events as provided by law and in such manner as contained therein, in consideration of a fair indemnity.

### Subchapter Two: Restrictive Covenants on Ownership

## Article 841

1. The owner shall not abuse his right to such extent that may cause damage to a neighbouring property.
2. A neighbour may not demand that his neighbour indemnify such shared damage that cannot be avoided, but such neighbour may demand that the damage be remedied to the extent in excess of the shared limit, taking into account the applicable practice, the nature of the real estate, the location of each real property in connection with the other real property, and the proposed purpose of each property. No license issued by the competent authorities may prevent the use of such right.

## Article 842

1. Where the owner of land without access to a highway or with insufficient access thereto is unable to gain access to it without incurring high costs or experiencing considerable difficulty, such owner shall, in consideration of a fair compensation, have the right of way in the neighbouring lands to such extent as required to use the land in a shared manner, so long as the land is not accessible through the highway. Such right may not be exercised other than in such real property where access shall cause the least damage and through such location that may achieve this.
2. However, if such inaccessibility to the highway arises from the division of a real property on the basis of a legal act and an adequate passage can be made in parts, no right of way may be claimed other than in those parts.

## Article 843

Any owner may force his neighbour to demarcate the boundaries of their adjacent properties. Both owners shall bear the costs of demarcation equally.

## Article 844

1. The owner of a common wall may use it for the intended purpose and may rest the ceiling on such wall without overloading it or preventing the other partner from using it.
2. Where the common wall is not fit for its intended purpose, the cost of its repair or refurbishment shall be borne by the partners *pro rata* to their respective shares.

## Article 845

1. The owner may raise a common wall where there is a compelling interest in doing so, provided that no gross damage is sustained by the other partner. Only the owner erecting the wall shall bear the costs of raising and maintaining the wall, and he shall ensure its construction is sufficient to render it sound.
2. Where the wall cannot bear any additional height, any of the partners may rebuild the wall at his cost and in such manner that any additional thickness shall be made from the side of the partner who initiated the wall's construction. The rebuilt wall, excluding the raised part, shall remain common, without any right of indemnity to the neighbour who raised the wall.

## Article 846

A neighbour who has not contributed to the costs of the raised wall may become a partner in the raised part if he pays fifty (50) percent of such costs and fifty (50) percent of the value of the land where such additional thickness, if any, is made.

## Article 847

Unless evidence to the contrary is presented, a wall separating two buildings at the time of its construction shall be deemed common to both.

## Article 848

1. A neighbour may not force his neighbour to build a wall around his wall or to waive part of the wall or the land on which the wall is built, other than where provided by law.
2. However, the owner of a wall may not demolish it voluntarily without good cause if such demolition may cause damage to a neighbour whose property lies behind such wall.

## Article 849

No owner may have openings or holes in his wall overlooking the property of his neighbour other than within such limits as provided by law.

## Article 850

1. Where the contract or testament includes a condition not to dispose of a property, such condition shall not be valid unless based on lawful motive and limited to a reasonable period of time.
2. A motive may be lawful if such prevention of disposal is intended to protect a lawful interest of the disposer, or of the person disposed to, or of a third party.
3. A reasonable time may be for as long as the lifetime of the disposer, or of the person disposed to, or of a third party.

## Article 851

1. Where the condition preventing such disposal is valid and the condition debtor disposes in breach of such condition, the condition creditor and the party benefiting from such condition may demand annulment of the disposal in breach.
2. A disposal in breach shall be valid if authorized by the condition creditor. A party in whose favour the condition is issued may authorize such disposal as well, unless in conflict with the motive on which the condition is based.

### **Subchapter Three: Common Ownership**

#### **Provisions relating to Common Ownership**

## Article 852

Where a right in kind in a thing is held by more than one person, and the share of each of them is not divided, they shall be partners in common and shall hold equal shares, unless evidence to the contrary is presented.

Article 853

1. Any partner in common shall hold his share in full and shall have the right to use such share and dispose thereof, provided that no damage is incurred by the other partners.
2. Where such disposal is based on a divided part of the property held in common, and at the time of division such part is not within the share of the transferor, the right of the transferee at the time of such disposal shall be transferred to such part allocated to the transferee by division. The transferee shall be entitled to annul the disposal if such transferee has no knowledge that the transferor is not the owner of the divided share.

Article 854

All the partners shall have the right to manage the property held in common, unless agreed otherwise.

Article 855

1. The majority partners may, on the basis of the value of the shares, conduct any of the usual management activities and may appoint from the number of partners or from third parties a manager to conduct such activities. The majority partners may lay down a constitution for management.
2. Resolutions issued by the majority partners shall apply to all the partners and their successors, whether the successor is general or special.

Article 856

Where the required majority as provided by the preceding Article is not available, the court may, on demand by any partner, take such measures as necessary and may, if required, appoint such person to manage the common property.

Article 857

Where a partner undertakes any of the usual management activities without any objection by the majority partners at such appropriate time, such partner shall be deemed a representative of all the partners.

Article 858

1. Partners holding at least seventy-five (75) percent of the common property may, in order to facilitate the utilization of such property, resolve any substantial changes and amendments to the intended purpose of such property within the limits of usual management, provided that the other shareholders are notified of such resolution in writing prior to making such amendments or changes. Any partner opposing such resolution may refer such objection to the court within thirty (30) days from the date of the notice.
2. Where the court adopts the resolution of the majority partners, it court may order such measures as it may deem appropriate. In particular, it may order the opposing partner be given a guarantee by the other partners to ensure payment of any compensation that may become payable to such opposing partners.

Article 859

Article 860

The costs of maintaining and managing the common property and all costs resulting therefrom shall be borne by all the partners *pro rata* to their respective shares, unless all the partners agree otherwise or the law provides otherwise.

Article 861

Partners holding at least seventy-five (75) percent of the common property may resolve to dispose thereof on the basis that division thereof may adversely affect the interests of the partners, provided that the other partners are notified of such resolution in writing. Any opposing partner may refer his objection to the court within sixty (60) days from the date of the notice. The court shall either authorize or reject the disposal according to the circumstances.

Article 862

1. A partner in any common property or combination of property may recover, prior to the division, such common share sold by another partner to a third party other than by public auction in accordance with the procedures as provided by law, within thirty (30) days from the date on which such partner becomes aware of such sale or is notified thereof. Such recovery shall be affected by such notice to both the seller and the purchaser. The recovering partner shall substitute the purchaser in all his rights and obligations to the extent of the costs incurred by the purchaser.
2. Where there is more than one recovering partner, each may recover such common share to the extent of his share in the common property.

**Termination of Common Ownership by Partition**

Article 863

1. Any partner may demand division of the common property unless forced to keep it in common by law or by agreement. The retention of a property in common shall not be enforceable for a period longer than five years. Where such period does not exceed five years, the agreement shall apply to such partner and his successor.
2. However, the court may, on demand by a partner, order the property to be kept in common for a period as determined by the court, even if such period exceeds the agreed period or, where there is no agreement to keep the property in common, whenever any urgent division is not in the interest of the partners. The court may order such division prior to the expiry of the agreed period on good cause shown.

Article 864

1. All of the partners may agree to divide the common property in such a manner as they deem fit, unless otherwise provided by law.
2. Division by agreement may not be made where a partner is incapacitated, unless such partner has a guardian, or where a partner is absent and such absence is confirmed.

Article 865

1. A partner may request annulment of an agreed division if such partner suffers an injustice exceeding twenty (20) percent in value. Valuation shall be made according to the value of things at the time of division.
2. The annulment claim shall prescribe after a period of one year has elapsed from the date of division.
3. The defendant may avoid a judgment of annulment if the claimant completes in cash or in kind any deficiency in his share.

## Article 866

1. Where the partners contest division of the common property, any person willing to withdraw from such community shall file a claim for division before the court of first instance.
2. The court may in its sole discretion appoint one or more experts to assess the common property and to divide the shares, if the property is divisible in kind, without a considerable decrease in its value.

## Article 867

1. Portions shall be based on the smallest share, even if division is partial.
2. Each partner shall be allocated his share if the partners so agree or if division on the basis of the smallest share is not possible.
3. Where a partner cannot be allocated his share in kind, he shall be compensated in line with such deficiency.

## Article 868

1. Upon settlement of disputes in connection with the formation of portions and any other disputes, and if such portions are assigned by way of allocation, the court may rule to give each partner his share as divided and assigned to him.
2. Where portions are formed on the basis of the smallest share, the court shall make the division by ballot and shall confirm such division in its minutes, and shall give each partner his allocated shares.

## Article 869

1. Where division in kind is not possible or may cause a considerable decrease in the value of the property proposed to be divided, the court may order the sale of such property in accordance with the Procedural Law.
2. The court may order limitation of the bidding to the partners as they may unanimously demand, unless any of them is incapacitated and without a guardian or is confirmed absent.

## Article 870

1. The creditors of any partner may, whether the division is consensual or judicial, object to division in kind or the sale of the property by auction carried out without their involvement. Such objection shall be dispatched to each partner by registered letter. In the event of objection, the partners shall be obliged to involve the objecting creditors at all stages and procedures of division.
2. In all cases where rights are registered prior to such division or to the filing of the claim, the creditors shall be involved.
3. Division shall not be effective against creditors who may object or whose rights are registered where such creditors have not been involved in the stages and procedures of division.
4. Upon such division, creditors who have not objected and whose rights are not registered may not object to such division other than in the event of fraud.

## Article 871

A partner to division shall be deemed as the owner of a share transferred to such partner from the time of holding the property in common and nothing of the other share having been acquired by such partner.

Article 872

1. The parties to division shall be liable among them for any liability or entitlement in connection with a share allocated to any party for such reason arising prior to the division.
2. Where the share of a partner is due in full or in part, such partner may demand cancellation of the division and the making of a new division if this causes no damage to any of the partners to the division or to third parties. Where cancellation is not demanded or a new division cannot be made, each of the partners shall be obliged *pro rata* to his share to indemnify any person entitled to compensation on the basis of the value of the divided property at the time of division. Where any partner becomes insolvent, his share toward such compensation shall be divided among the person entitled to the compensation and all the other solvent partners.
3. However, compensation shall not apply where there is an express agreement to be discharged from such compensation in connection with the relevant event. Compensation shall also not be applicable where entitlement is attributable to the mistake of the partner to the division itself.

Usufruct of Division of Common Property

Article 873

1. All of the partners may agree to allocate to each of them a divided part equal to his share of the common property and may assign to his partners in consideration thereof the right of usufruct to the other parts. Such agreement may not exceed five years.
2. Where no such term is determined or the agreed period expires without any new agreement and the partners continue to utilize the parts allocated to them respectively, without any objection by any of them, such term shall be one year, to be renewed for a similar term unless any partner notifies the other partners at least three months prior to the expiry of the current year that he is not willing to renew the usufruct division of common property.

Article 874

Where the usufruct division of common property as provided in the preceding Article lasts for fifteen (15) years, the division shall be final unless the partners agree otherwise. Where a partner in common acquires any divided part of the common property for fifteen (15) years, it shall be assumed that his acquisition of such part relies on a usufruct division of common property.

Article 875

All of the partners may agree that the usufruct division of common property and their utilization thereof shall be based on rotation, each for such period *pro rata* to their share.

Article 876

1. During the final division, the partners may agree to divide the common property by usufruct division. Such division shall remain until the final division.
2. Where usufruct division of common property is not agreed by the partners, the court may on demand by any partner order such division upon seeking the assistance of an expert, as applicable.

Article 877

The capacity, rights and obligations of the parties to usufruct division of common property, and holding to such capacity, rights and obligations against third parties, shall be governed by the provisions of the lease contract, unless such provisions are in conflict with the nature of such division.

## Obligatory Common Ownership

### Article 878

Where the proposed purpose of the common property is to remain held in common, the partners may not demand division of such property, and no partner may dispose of his share in a manner contrary to that proposed purpose.

## Family Ownership

### Article 879

Members of a single family united by a common business or interest may agree in writing to create a family property. Such property shall be either an estate inherited by them in which they agree to make the whole or any part of such estate a family property, or any other property held by them which they agree to make part of such family property.

### Article 880

1. It may be agreed to create a family property for no longer than fifteen (15) years, provided that a partner may request the court to authorize such partner to dispose of his share in such property prior to the expiry of the agreed date, provided that such request is found to be well reasoned and justified.
2. Where the lifespan of such property is not determined for a particular length of time, each partner may withdraw from such property after six months from the date of giving notice to his partners of his intention to dispose of his share.

### Article 881

1. Partners may not demand division so long as the family property continues to exist. No partner may dispose of his share to a third party to the family without the unanimous agreement of the partners.
2. Where a third party to the family becomes a holder of the share of a partner voluntarily or compulsorily, such third party shall not be a partner to a family property without such partner's consent and that of the other partners.

### Article 882

1. Partners holding the majority shares may appoint from their number one or more managers. Unless agreed otherwise, a manager may make changes to the purpose of the family property to improve the methods of benefiting from such property.
2. The manager may be removed in the same manner as appointed, even if otherwise agreed. The court may also remove such manager on demand by any partner if such removal is well reasoned and justified.

### Article 883

Notwithstanding the preceding provisions, the rules of common property and the rules of agency on family property shall apply.

## Ownership of Floors and Apartments

## Article 884

1. Where there are multiple owners of the different floors or apartments of a building, such owners shall be deemed partners in the ownership of the common parts, particularly:
2. The plot on which the building, yards, external walkways, gardens and parking lots are located;
3. The foundations, ceilings, columns and main walls;
4. Entrances, corridors, stairs and lifts;
5. Places allocated for services, security and other utilities of the building;
6. All types of piping and installations, other than those inside the floor or apartment for the use of the owner of such part only.
7. All of the above shall apply unless otherwise provided for in the title deeds.

## Article 885

1. Common parts to be used by some owners only shall be the common property of such owners only.
2. In particular, partitions between two parts of a floor shall be deemed common property between their owners.

## Article 886

The share of any owner of the common parts shall be proportional to its divided part of the building. The value of such part shall be assessed on the basis of its area and location at the time of construction of the building.

## Article 887

Common parts shall be indivisible. The owner may not dispose of such parts separately from the divided part allocated to him. Any disposal of such divided part shall include the share of such owner in the common parts.

## Article 888

Every owner may, in order to use the part allocated to him by division, use the common parts as determined, subject to the rights of other owners.

## Article 889

1. No variation to the common parts may be made without the consent of all the owners, even at the time of refurbishment of the building.
2. However, any owner may, upon approval by the owners holding the majority shares, make such variation of the common parts at his own cost, provided that such variation may improve the utilization of such parts without changing their purpose and without causing damage to the other owners.
3. Where the holders of the majority shares do not grant such approval, the owner may petition the court for permission to carry out the variation, unless the law provides otherwise.

## Article 890

No owner may do anything that may threaten the safety of the building or change its layout or external appearance.

## Article 891

1. The costs of protection, maintenance, management and refurbishment of the common parts shall be borne by all the owners *pro rata* to their respective share in such parts.
2. However, the costs of common services that belong to some owners or are clearly not used by the owners to the same extent shall be distributed *pro rata* to the benefit derived by each floor or apartment from such services.
3. All of the above shall apply unless otherwise agreed.

## Article 892

No owner may waive his share of the common parts to avoid contribution to the costs as provided by the preceding Article.

### Association of Owners

## Article 893

1. Where a common title to a real property is divided into floors or apartments, the owners holding the majority shares may form an association among them.
2. The objectives of the association may include the construction or purchase of real properties and the distribution of their units to the members of the association.
3. The association shall have a corporate personality.

## Article 894

The association may establish a constitution to ensure good use and management of the common property. All of the owners shall be invited by registered letter to attend a meeting for this purpose. Resolutions shall be passed with the consent of the holders of seventy-five (75) percent of the shares.

## Article 895

Where there is no such constitution for management, or where certain issues are not contained therein, the association shall be entitled to manage the common parts and its resolutions shall be binding on the owners, provided that they are invited, as provided by the preceding Article, to attend the meeting. Such resolutions shall be passed with the consent of the holders of seventy-five (75) percent of the shares.

## Article 896

The association may, subject to the consent of the holders of majority shares, impose any common insurance against such risks that may threaten the real property or all the members. The association may also authorize the performance of any works or installations that may increase the value of the real property, in whole or in part, at the cost of such owners who may require such works or installations, in accordance with such conditions, compensations and other obligations in favour of the members.

## Article 897

1. Any loan granted by the association to any of the members to be able to perform his obligations shall be secured by a lien on such part allocated to such member and on his share of the common parts of the real property.
2. The class of such lien shall be calculated from the date of its registration.

## Article 898

1. The association shall have a secretary, appointed by a majority vote of shareholders, to execute its resolutions. Where such majority is not available, the secretary shall be appointed under an order issued by the chairman of the court of first instance on demand by any of the members, upon notification of the other owners, to hear their statements. The secretary shall, where applicable, take any initiatives required to maintain, repair and protect all the common parts, and may demand any concerned party to perform any obligations pertaining thereto, unless otherwise provided in the constitution of the association.
2. The secretary shall represent the association before the courts, even in suits against the owners, as applicable.

## Article 899

1. The fee of the secretary shall be determined in the resolution or order appointing him.
2. The secretary may be removed by a resolution issued by the holders of majority shares or under an order issued by the chairman of the court of first instance upon notification of the members to hear their statements on such removal.

## Article 900

1. Where a building is destroyed by fire or any other cause, the members shall comply with resolutions passed by the holders of majority shares regarding its renovation.
2. Where the association resolves to renovate the building, any indemnity payable due to its destruction shall be subject to the rights of the holders of registered debts.

### **Lower Floors and Upper Floors**

## Article 901

1. The owner of a lower floor shall perform such maintenance and repairs as required to prevent the upper floors from collapsing.
2. Where the owner of the lower floor refuses to perform such works, the court shall order the sale of the lower floor or authorize the owner of the upper floor to perform such works at the expense of the owner of the lower floor.

## Article 902

1. Where the building collapses, the owner of the lower floor shall rebuild that area. Where he refuses to do so, the court may order the sale of the lower floor, unless the owner of the upper floor requests the rebuilding of the lower floor at his own cost.
2. Where the owner of the upper floor has built the lower floor, he may prevent the owner of the lower floor from using or living in such floor until such owner pays whatever amount is due to the owner of the upper floor. The owner of the upper floor may also obtain permission from the court to lease or occupy the lower floor in order to recover his right.

Article 903

The owner of the upper floor may not increase the height of his building so that it causes damage to the lower floor.

**Chapter Two: Causes for Acquisition of Ownership**

**Subchapter One: Initial Acquisition of Ownership (Appropriation)**

Article 904

A person who holds a movable asset for the purpose of acquisition shall become the owner thereof.

Article 905

1. A movable asset shall be free for acquisition where its owner abandons it for the purpose of waiving his ownership.
2. Wild animals shall be free for acquisition so long as they remain loose. Where any such animal is caught and then set free, it shall become free for acquisition once again if its owner fails to follow it immediately or stops following it.
3. Tame animals shall become free for acquisition where they had previously been accustomed to return to their usual place but subsequently lost this habit.

Article 906

Where no person is able to prove the origin of buried or hidden treasure, one fifth of such treasure shall be paid to the person who finds it and the balance either to the owner of the property on or in which the treasure is found, or to the holder of title to the property, or to the creator of the waqf or his heirs.

Article 907

The rights to hunt on land and to fish in the ocean, and the rights to waif, to archaeological things and to any metals in the ground, shall be regulated by special laws.

Article 908

Any real property without an owner shall be the property of the State.

**Subchapter Two: Acquisition of Ownership among Living Persons**

**Accession**

## Article 909

Anything on or over the ground, including buildings or other constructions or cultivated areas, shall be deemed constructed or planted by the owner of the land at its cost and shall be deemed as the property of such owner, unless evidence to the contrary is presented.

## Article 910

1. The owner of a plot shall be the owner of any building, plantation or other construction thereon that has been created with materials owned by a third party, if such materials cannot be removed without gross damage to the plot or such constructions, or can be removed but no claim to recover such materials has been made by their owner within one year from the date on which he became aware that such materials have been incorporated in the plot or such constructions.
2. Where the owner of the plot acquires such materials, he shall pay their value at the time they are incorporated in the plot. However, where such materials are recovered by their owner, they shall be removed at the cost of the owner of the plot. In either event, the owner of the materials shall be entitled to indemnity, as applicable.

## Article 911

1. Where a person uses his own materials to build constructions on a plot owned by another person but without his consent, the owner may demand their removal at the expense of the builder with indemnity, as applicable, within one year from the date on which such owner becomes aware of the existence of such constructions, or keep such constructions against payment of their value as removed, or pay for the increased value of the plot due to such constructions.
2. A person who builds constructions may demand their removal if this causes no damage to the plot, unless the owner thereof elects to retain the constructions in accordance with the provisions of the preceding clause.

## Article 912

1. Where a person who builds constructions as provided for in the preceding Article believes in good faith that he has the right to do so, the owner of the land may not demand their removal but shall have the option to pay the value of the materials and the labour wages or to pay any increased value in the land due to such constructions.
2. However, if such constructions are so large that the owner of the land cannot afford either of the payments described above, he may demand transfer of the title to the land to the owner of the new constructions in consideration of a fair compensation.

## Article 913

The provision of the preceding Article shall apply if a third party builds constructions with his own materials with the prior consent of the owner of the plot, unless agreed otherwise.

## Article 914

1. Where a partner builds constructions for himself on an apportioned part of the common land without the consent of the other partners, such partner shall be the absolute owner of such constructions if they fall in his share upon division.
2. However, where such constructions fall in the share of another partner, such partner may not have the right to demand removal of the constructions and shall, if the owner of the constructions does not demand their removal, pay to such owner either amount as set forth in clause 1 of Article 912 herein.

## Article 915

The court may, at the request of any person who undertakes to pay the consideration or compensation in accordance with the preceding four Articles, decide the appropriate steps to execute its judgment. In particular, the court may order the payments be made by regular instalments, provided that adequate securities are provided.

## Article 916

Where the owner of the land, upon construction of a building thereon, trespasses on a minor part of the adjacent land, the court may order acquisition of that part occupied by such building in consideration of a fair compensation.

## Article 917

1. Where a person builds constructions on another person's land using materials owned by a third party, the owner of such materials may demand that the person who acquires such materials pay indemnity. The owner of such materials may demand that the owner of the land pay indemnity not exceeding the balance amount payable by the owner of the land from the value of such constructions.
2. Where the person who has made such constructions acts in good faith, the owner of the materials may demand that the constructions be removed, provided that no damage is caused to the land.

## Article 918

Where the movable assets of different owners are so connected that they cannot be separated without causing damage, and unless there is an agreement between the owners, the court may decide the dispute, taking into consideration such damage that may occur, the condition of the parties to the dispute, and the good or bad faith of each of them.

## Legal Acquisition

## Article 919

As in the case of other rights in kind, title to a movable asset and real property shall be transferred by any legal act, provided that the disposing party is the owner of the disposed right, subject to the provisions of Articles 246 and 247 herein.

## Preemption

## Article 920

Pre-emption is a right that authorizes, upon the sale of real property, subrogation of the purchaser in such events and on such terms as provided in the following Articles.

## Article 921

The pre-emption right shall be available to:

1. The owner of the property if the attached right of usufruct is sold in full or in part.
2. A partner in common if a common share of a common property is sold to a third party.

3. The holder of the right of usufruct if the property attached with such right is sold in full or in part.
4. The owner of rented land if all the right to such rented land is sold in full or in part; and the holder of such right if all or part of the land attached with such right is sold.
5. A neighbouring owner in any of the following cases:
  6. Where the real property is a building or land prepared for building.
  7. Where the sold land has a right of usufruct on the neighbouring land or vice versa.
  8. Where the neighbouring land is adjacent to the sold land from two directions and its value is at least fifty (50) percent of the price of the sold land.

## Article 922

1. Where more than one person uses the right of pre-emption, this right shall be exercised in the order as provided by the preceding Article.
2. Where more than one person of the same class uses the right of pre-emption, each of them may exercise such right *pro rata* to his share. However, as between neighbours, the holder of a higher right of pre-emption than the others shall come first.
3. Where the purchaser meets such conditions to exercise the pre-emption right in accordance with the provision of the preceding Article, such purchaser shall have priority to exercise his pre-emption right ahead of the holders of the pre-emption right of the same or lower class, but those of a higher class shall have priority ahead of such purchaser.

## Article 923

1. The right of pre-emption may not be exercised in any of the following cases:
  1. Where the sale is made at a public auction in accordance with such procedures as provided by law;
  2. Where the sale is between parents and their children, spouses, relatives up to the fourth degree, or between sons-in-law up to the second degree;
  3. Where the sold property is intended as a place for worship or to be annexed to a place of worship.
2. The trustee of waqf or the beneficiary thereto may not use the right of usufruct without the consent of the creator of the waqf to merge the property, the subject matter of such pre-emption right, in the waqf.

## Article 924

Where a person purchases a property over which the pre-emption right may be exercised and then sells this property prior to registering the intention of the holder of such a right to exercise it, the right of pre-emption may be exercised only by the second purchaser and only on the terms of the purchase.

## Article 925

Where a real property is sold to many persons in common, the pre-emption right may not be exercised other than over the whole property. However, if in the contract a share allocated to each of them is determined, the person that may exercise such right shall have the right to exercise it over the whole property or one or more shares thereof, subject to the applicable rules demanding the exercise of the right of pre-emption.

## Article 926

1. Either the seller or the purchaser may give an official notice to the holder of the right of pre-emption of such sale.
2. Such notice shall include the following information, failing which it shall be invalid:
  3. The name, surname and domicile of the seller and the purchaser;
  4. An adequate description of the sold property; and
  5. A description of the price, official charges and the terms of sale.

Article 927

1. Any person who proposes to exercise the right of pre-emption shall notify the seller and the purchaser of his intention within fifteen (15) days from the date of becoming aware of the sale, otherwise his right shall lapse. The time for distance, as applicable, may be added to such term.
2. The notice of intention to exercise the right of pre-emption shall be formal, otherwise it shall be invalid. Such notice shall not be considered as evidence against any third party unless registered.

Article 928

The holder of a pre-emption right may file a pre-emption claim against the seller and the purchaser within thirty (30) days from the date of notice of such intention, after such holder lodges the real sale price with the court treasury in whose jurisdiction the property is located, otherwise his right shall lapse.

Article 929

A final judgment confirming the pre-emption right shall be deemed a title deed for the holder of such right, subject to the rules concerning registration.

Article 930

1. The holder of the pre-emption right shall, as against the seller, subrogate the purchaser in all his rights and obligations.
2. However, the holder of the pre-emption right may not benefit from the time granted to the purchaser to pay the price without the consent of the seller.
3. Where a third party becomes entitled to any sold property upon exercising the right of pre-emption, the holder of the pre-emption right shall have recourse against the seller only.

Article 931

1. Where the purchaser constructs any buildings or cultivates an area on a plot prior to being notified by the holder of the pre-emption right of his intention to exercise such right, the holder thereof shall be liable, at the discretion of the purchaser, to pay either the amounts spent by the purchaser on the construction or cultivation or the increased value of the real property due to such construction or cultivation.
2. Where the purchaser builds such constructions after being notified by the holder of the pre-emption right of his intention to exercise such right, the holder thereof may demand removal of the constructions. However, where the holder of the pre-emption right elects to keep such constructions, he shall pay only the amounts spent by the purchaser on the constructions or the increased value of the real property due to such constructions.

Article 932

No official mortgage or right of jurisdiction against the purchaser or any right in kind created by or against the purchaser shall apply to the holder of the pre-emption right, provided that such mortgage or right is created upon registering the declaration of the intention to exercise the right of pre-emption. However, the registered creditors shall maintain their priority rights in connection with the price of the real property repaid to the purchaser.

Article 933

The right of pre-emption shall lapse in any of the following cases:

1. Where the holder of the pre-emption right waives his right, whether expressly or impliedly, even prior to the sale.
2. Where the holder of the pre-emption right fails to notify his intention to exercise such right within six months from the date of registration of the sale agreement.
3. In any other events as provided by law.

#### Article 934

The right of pre-emption shall not lapse on the death of its holder but shall be vested in his heirs.

### **Possession**

#### **Definition and Elements of Possession**

#### Article 935

Acquisition shall be a material position under which a person controls an exercisable right by commencing works usually performed by the holder of title.

#### Article 936

Acquisition by third parties of the funds of the state or other public corporate persons, or of charitable waqf or any right in kind therein, shall not be effective other than in such events and on such terms as provided by law.

#### Article 937

Acquisition shall not apply to any act by a person which is merely a permissible practice or one tolerated by a third party.

#### Article 938

Acquisition by brokerage shall be valid whenever the broker acquires in the name of the concerned party and was connected to the holder in a way that deems the broker liable to comply with the holder's instructions in connection with such acquisition.

#### Article 939

A person without capacity or with deficient capacity may acquire property through legally-recognized representation.

## Article 940

A person acquiring in the name of another person may not claim acquisition to the contrary, as this person may not change by himself for himself the capacity of such acquisition, but such capacity shall change by the act of a third party or by the act of the acquirer deemed an objection to the right of the person in whose name acquisition is made. Acquisition in its new form shall be effective only from the time of the act that brings about such a change.

## Article 941

Acquisition shall not apply to disingenuous acts. Where an acquisition is based on coercion, is made secretly or involves ambiguity, it shall not be effective against the person coerced, or from whom such acquisition is concealed, or to whom it is ambiguous, other than from the time such defects are remedied.

### **Proof of Possession**

## Article 942

Where it is established that acquisition has arisen at any particular prior time and exists at present, it shall be deemed valid during the period between both dates, unless otherwise established.

## Article 943

Any acquirer of a right shall be deemed its owner, unless otherwise established.

## Article 944

Where several persons dispute the acquisition, it shall be assumed that the person who may first have material control shall be the acquirer, unless otherwise established. Where such control is transferred by a former acquirer, it shall be assumed that such acquisition is for the account of such transferor.

### **Good and Bad Faith of Possessors**

## Article 945

1. Any acquirer shall be deemed *bona fide* if not aware of the trespass of a third party right, unless such ignorance arises from his gross negligence.
2. Where the acquirer is a corporate person, the intention of its representative shall be the decisive issue.
3. Good faith shall always be presumed unless evidence to the contrary is provided, and unless the law provides otherwise.

## Article 946

1. An acquirer shall become *mala fides* from the time of becoming aware that his acquisition constitutes trespass against third party rights or from the

time he gives notification of the defects in his acquisition in the statement of claim.

2. A person who makes an acquisition by coercion may also be deemed *mala fides*.

## Article 947

Acquisition shall maintain its initial possessory capacity until evidence to the contrary is provided.

### Transfer of Possession

## Article 948

Acquisition shall be transferred to the general successor in its descriptions, provided that if the original acquirer acted in bad faith and the successor proves that his acquisition is in good faith, the successor may insist on his good faith.

## Article 949

Acquisition shall be transferred from the acquirer to another person if they agree to it, and such other person shall be able to control the right, the subject matter of acquisition, even without physical delivery of the thing, the subject matter of the right.

## Article 950

Acquisition may be transferred without physical delivery if the acquirer continues to be in possession for the account of his successor in acquisition or the successor continues in possession but for his own account.

## Article 951

The delivery of documents in connection with the goods entrusted to the carrier or stored in warehouses shall be as effective as the delivery of the goods themselves, provided that if a person receives such documents and another person receives the goods, and both act in good faith, the person who received the goods shall have priority.

## Article 952

A special successor may consolidate in his own acquisition the acquisition of his predecessor with all the effects of such acquisition by law.

### Loss of Possession

## Article 953

Acquisition shall be lost if the acquirer waives his actual control of the right or loses it in any other way.

## Article 954

1. Acquisition shall not be lost if actual control is delayed by a temporary prohibition.
2. Where acquisition relates to real property and the acquirer is deprived and then recovers such acquisition, or files a claim within one year from the loss of such acquisition to recover it, such acquisition shall be deemed as not having been lost at all.
3. Acquisition shall cease where such prohibition continues for one year, which arises from a new acquisition against the will of the acquirer or without its knowledge. Such year shall be calculated from the time of commencement of such acquisition if in public, or from the time the first acquirer becomes aware thereof if in secret.

### Protection of Possession (Three Actions of Possession)

## Article 955

1. The acquirer of real property shall, within one year from the loss of such acquisition, demand reacquisition thereof. Where such loss of acquisition is for a secret reason, such year shall commence from the date of disclosure of such reason.
2. Any person in acquisition on behalf of another person may also recover such acquisition.

## Article 956

1. Where a period of less than one year has expired from the time of loss of acquisition, only a person not relying on a preferred acquisition may recover such acquisition. The expression "preferred acquisition" shall mean an acquisition based on a legal instrument. If none of the acquirers holds such instrument, or if they have equal instruments, preferred acquisition shall be the first in sequence.
2. Where loss of acquisition is by trespass, the acquirer may in all events recover such acquisition within one year from such trespass.

## Article 957

Within the time limit provided by law, the acquirer may file the recovery claim against the new acquirer of the real property, even if acting in good faith.

## Article 958

Where the acquirer of real property continues in such acquisition for one year and then such acquisition is trespassed, such acquirer may file a claim to prevent such trespass within one year from its occurrence.

## Article 959

1. The acquirer of real property may, if his acquisition continues for one full year and he justifiably fears that new works may threaten or damage his acquisition, file an action to stop such works within one year from their commencement, unless they are already completed.

2. The court may order that such works be stopped or continued. In either case, it may order the provision of adequate security for any damage that may occur upon the execution of its judgment.

### Acquisition of Fruits by Possession

#### Article 960

1. The acquirer shall be entitled to any revenues collected and any benefit obtained by him, provided that he acts in good faith.
2. Natural or new revenues shall be deemed collected from the date of collection, while civil revenues and benefits shall be deemed collected day by day.

#### Article 961

An acquirer shall be liable from the time of becoming *mala fides* both in respect of the benefit obtained and the revenues collected by him and of those he fails to collect. The acquirer may recover any costs incurred by him in producing such revenues.

### Recovery of Expenses

#### Article 962

1. The owner whose property is returned to him shall pay to the acquirer all necessary expenses incurred by the acquirer.
2. The provisions of Articles 912 and 913 herein shall apply to such necessary expenses.
3. Where such expenses are unnecessary, the acquirer may not claim such expenses. However, he may remove any constructions built by him, provided that he shall restore the property to its original condition, unless the owner elects to keep such constructions on payment of their value as removed.

#### Article 963

The owner whose property is returned to him shall pay to the new acquirer all such expenses paid by such new acquirer to the former acquirer to such extent as the owner may be liable to pay in accordance with the preceding Article.

#### Article 964

The court may, on demand by the owner, determine as it deems fit, payment of such expenses as provided by the preceding Articles 962 and 963. The court may order payment of such expenses by regular instalment, provided that adequate securities are made available.

### Liability for Loss

#### Article 965

1. A *bona fide* acquirer shall not be liable to the person entitled to a thing for any loss or damage other than to the extent of the benefit obtained by the

acquirer from such loss or damage.

2. A *mala fide* acquirer shall be liable for the loss or damage of a thing, even where such loss or damage arises from *force majeure* or sudden accident, unless the acquirer can prove that such loss or damage would have occurred even if such thing was in the possession of its owner.

### Possession Serves as Evidence of Ownership

#### Article 966

1. Where a person holds real property or a movable asset, apparently acting as the owner or holder of any right in kind, and he continues in such acquisition for fifteen years, such acquisition shall be deemed evidence of such right.
2. Such right shall be confirmed by legal judgment if the acquirer denies the right of third parties to such real property or movable asset and claims that he holds the right thereto, even if the reason for such acquisition is not stated.

#### Article 967

The provisions of the preceding Article shall apply to the domestic waqf where such acquisition continues for thirty three years.

#### Article 968

In the event of denial, the claim of inheritance rights shall prescribe within thirty-three (33) years.

#### Article 969

The rules of prescription shall apply to the required period for considering acquisition as evidence to title, in connection with the calculation of such period and its suspension and cessation, and to the agreement to amend it, to the extent that such rules are not in conflict with the nature of the acquisition.

### Possession of Movables

#### Article 970

1. Any person who may for good reason acquire a movable asset, or any right in kind on a movable asset or bearer deed, shall become the owner of such movable asset if he acts in good faith at the time of such acquisition.
2. Where the acquisition is made in good faith and for good reason and the property is free of liens and charges in kind, the acquirer shall have freehold tenure in the property.

#### Article 971

Acquisition in itself shall be deemed evidence of the presence of good reason and good faith, unless contrary evidence is provided.

## Article 972

1. The owner of a movable asset or bearer deed, or the holder of a right in kind, may, if such asset is lost or stolen, recover it from its acquirer for good reason and in good faith within three years from the time of such loss or theft.
2. Where the acquirer has purchased the thing in a market or public auction or from a person who trades in such thing, he may demand prompt repayment of the price paid by him from any person who recovers such thing.

### **Subchapter Three: Acquisition of Ownership through Death**

#### **Inheritance & Liquidation of Estate**

## Article 973

The provisions of the Islamic *Shariah* and the relevant laws shall apply to the heirs and the determination of their shares of the estate and the transfer of the assets of the estate to such heirs.

## Article 974

1. Where the testator fails to appoint an executor, and any of the concerned parties requests appointment of a liquidator of the estate, the court shall, as applicable, appoint such person as unanimously agreed by the heirs. Where such heirs fail to agree on a liquidator, the court shall appoint the liquidator after hearing statements from as many of the heirs as possible.
2. The provisions of the special laws shall apply if the heirs include an unborn child, a person without capacity or with deficient capacity, or a person who is absent.

## Article 975

1. The appointed liquidator may reject his assignment or withdraw upon its commencement in accordance with the provisions of agency.
2. The court may, with or without a demand by any concerned party, remove the liquidator and appoint a new liquidator, provided that such removal and substitution is well reasoned.

## Article 976

1. .Where the testator appoints an executor, the court shall confirm such appointment.
2. The provisions applicable to a liquidator shall apply to the executor.

## Article 977

1. The secretary of the court shall enter on a daily basis in a general register such orders issued to appoint liquidators and to confirm the appointment of executors, including the names of the testators in alphabetical order, as applicable. The margin of the register shall be marked with every order made for the removal and withdrawal of liquidators and executors.
2. The entry of an order to appoint a liquidator shall be effective against third parties dealing with the heirs in connection with the assets of the estate as provided for in Article 1012 herein.

## Article 978

1. The liquidator shall, immediately upon his appointment, receive and liquidate the assets of the estate under control by the court. The liquidator may demand a fair fee from the court upon completion of his assignment.
2. The liquidation costs shall be applied to the estate and shall take precedence over legal costs.

## Article 979

The court may, as applicable, take all such urgent precautions to preserve the estate, with or without demand by any of the concerned parties. In particular, the court may order seals be affixed and money, securities and valuable things be deposited.

## Article 980

The liquidator shall immediately use the money of the estate to pay the costs of the funeral and burial of the dead testator according to such person's social position. The liquidator shall also obtain an order from the court of summary affairs to pay such reasonable amount of the estate to those heirs supported by the testator until the completion of the liquidation process, provided that such amount shall be deducted from the share of the concerned heir.

### Taking Inventory of the Estate

## Article 981

1. As of the time of entry of the order appointing a liquidator, the creditors may not take any action against the estate and may not continue with any action taken, other than against the liquidator.
2. On demand by any of the concerned parties, any distribution opened against the testator but not yet finally closed shall be stopped until all the debts of the estate have been settled.

## Article 982

An heir may not, prior to receipt of the certificate of succession as provided by Article 999 herein, dispose of the assets of the estate and may not collect the debts due to the estate or set off his own debt with the debt of the estate.

## Article 983

1. During the liquidation process, the liquidator shall take such precautions as required for the assets of the estate and for management acts. The liquidator shall also represent the estate in legal proceedings and collect any outstanding debts of the estate.
2. Unless paid for his work, the liquidator shall be responsible as a paid agent. The court may that demand such liquidator account for his management on specific dates.

## Article 984

1. The liquidator shall notify the creditors and debtors of the estate, inviting them to provide a statement of their rights and obligations, within two months from the date of final publication of such notice.
2. Such notice shall be posted on the bulletin board of the court in whose jurisdiction the last domicile of the testator was and of the court in whose jurisdiction area the assets of the estate are located, either in whole or in part, and shall also be published in a daily newspaper.

Article 985

The liquidator shall, within three months of his appointment, file with the clerk's office of the court a statement of the rights and liabilities of the estate, including a valuation thereof. The liquidator shall, by registered letter, also notify every concerned party of such filing within such period. The liquidator may request the court to extend such period if circumstances warrant such as extension.

Article 986

1. The liquidator may appoint an expert or a person with special knowledge to assist him in the inventory and the assessment of the value of the estate.
2. The liquidator shall confirm such rights and debts as revealed by the papers of the testator and the public registers and by any other means whatsoever. The heirs shall notify the liquidator of any information about the rights and debts of the estate.

Article 987

Any person, including an heir, who fraudulently seizes part of the estate, shall be punished by the penalty for breach of trust.

Article 988

Any dispute on the validity of the inventory, particularly in connection with the omission of any real property or rights or obligations of the estate, or the failure to confirm the foregoing, shall be referred to the court on demand by any concerned party within thirty (30) days of the date of the notice of filing the inventory list with the court.

**Discharge of the Debts of the Estate**

Article 989

Upon expiry of the prescribed time period for referring inventory-related disputes, the liquidator shall, subject to the consent of the court, settle the undisputed debts of the estate. Disputed debts shall be paid upon final resolution of the dispute.

Article 990

In the event of actual or probable insolvency of the estate, the liquidator shall stop the settlement of any debt, even those not disputed, until the final resolution of all the disputes in connection with the debts of the estate.

Article 991

1. The liquidator shall settle the debts of the estate against the rights collected, the cash available, and the price of the movable assets and securities of the estate. If such amounts are not sufficient to settle the debts, the real property of the estate shall be sold to settle such debts.
2. The movable assets and real property of the estate shall be sold at a public auction according to such procedures and on such dates as determined for compulsory sales in the Pleadings Law, unless all the heirs agree to make the sale in any other manner or by practice. Where the estate is insolvent, the unanimous consent of the creditors shall also be required. In all events, the heirs shall have the right to participate in the auction.

Article 992

At the request of all the heirs, the court may rule that a deferred debt is immediately payable and determine the amount payable to the creditor.

Article 993

1. Where the heirs fail unanimously to request the court to consider a deferred debt immediately payable, the court shall distribute the deferred debts and the assets of the estate so that each heir shall be allocated part of the total debts and total assets of the estate in accordance with his net share of the estate.
2. The court shall arrange for an adequate security on a real property or movable asset for each creditor of the estate, provided that any creditor holding a special security shall keep the same security. Where this is not possible, even by a collateral security provided by the heirs from their own money or by agreement on another settlement, the court shall arrange for security on all the assets of the estate.
3. In all cases, where the security relates to real property not previously registered, such security shall be registered in accordance with the applicable provisions for registering the right of lien.

Article 994

Upon distribution of the deferred debts, each heir may pay such amount allocated to him prior to its maturity date.

Article 995

The creditors of the estate who have not collected their rights for not appearing on the inventory list, and who have no securities on the assets of the estate, may not claim their rights from any person who may in good faith acquire a right in kind to such assets, but they may claim such rights from the heirs due to their enrichment.

Article 996

Upon settlement of the debts of the estate, the liquidator shall execute the testaments and other charges.

**Delivery and Division of the Estate Property**

Article 997

Upon performance of the obligations of the estate, the balance of the assets shall be divided among the heirs *pro rata* to their respective share by *Shariah*.

Article 998

Upon the expiry of the prescribed time period for referring inventory-related disputes, the heirs may demand to receive on a temporary basis the money and things not required for the liquidation of the estate, whether in full or in part and with or without a guarantee.

#### Article 999

The court shall give every heir a certificate of succession, or its equivalent, confirming his right to the estate and his share thereof and shall determine such assets of the estate allocated for such heir.

#### Article 1000

Every heir may demand that the liquidator deliver to him his part of the estate as apportioned, unless such heir is obliged to continue in common property by agreement or by law.

#### Article 1001

1. Where the request for division is acceptable, the liquidator shall make the division in an equitable manner, provided that such division shall not be final until unanimously approved by the heirs.
2. Where the heirs fail to agree thereon, the liquidator may file at the cost of the estate a claim for division in accordance with the provisions of the law. The costs of the claim shall be deducted from the shares of the heirs.

#### Article 1002

The provisions of division shall apply to the division of the estate, particularly those provisions related to the security against interference, entitlement, injustice and lien of partner in division.

#### Article 1003

Where the heirs disagree on the division of family papers or things holding sentimental value for them toward their testator, the court shall order either the sale or gift of such things to any of the heirs, with or without deduction of their value from the share of such heir in the estate, subject to the applicable practice and the personal circumstances of the heirs.

#### Article 1004

1. Where the assets of the estate include a farming, industrial or commercial project that constitutes a self-sustained economic unit, and the heirs fail to agree unanimously to keep such project held by them in common, it may in the circumstances be allocated in full to any of the heirs who may demand such allocation, provided that such heir is the best suited to undertake such project.
2. The price of such project shall be assessed according to its true value and shall be deducted from the share of such heir in the estate. If the ability of the heirs to undertake such project is equal, it shall be allocated to the highest bidder, provided that its price shall not be less than the price of a similar project.

#### Article 1005

Where, at the time of division, a debt of the estate is allocated to any of the heirs, the other heirs shall not secure the debtor in the event of his insolvency upon the division, unless otherwise agreed.

#### Article 1006

A testament shall be valid if the assets of the estate are divided among the heirs of the testator, so that each heir or number of heirs is allocated his or their share. Where the value of such share allocated to any heir exceeds his entitlement, such excess shall be deemed a testament.

#### Article 1007

Division added to after death may always be cancelled. Such division shall become binding upon the death of the testator.

#### Article 1008

Where, at the time of his death, the division is not inclusive of all the assets of the testator, the undivided assets shall be held in common by the heirs in accordance with the rules of inheritance.

#### Article 1009

Where any of the contingent heirs who participated in the division dies prior to the death of the testator, the divided share of such deceased heir shall be held in common by the remaining heirs in accordance with the rules of inheritance.

#### Article 1010

The provisions of division in general, excluding the provisions of injustice, shall apply to the division added to after death.

#### Article 1011

Where division is exclusive or inclusive of the debts of the estate but the creditors have not agreed on their division, each heir may, upon non-settlement of the debts in agreement with the creditors, demand division of the estate in accordance with the provisions of Article 993 herein, provided that the division as stated in the testament and the relevant considerations are taken fully into account.

#### **Provisions Applicable to Estates that have not been liquidated**

#### Article 1012

Where the estate has not been liquidated in accordance with the provisions of the preceding Articles, the ordinary creditors of the estate may enforce their rights as granted to them under the testament against the real property of the estate which is disposed thereof or against which rights in kind are created in favour of third parties, provided that such debts are entered in accordance with the provisions of the law.

## Wills

### Article 1013

The provisions of the Islamic *Shariah* and the relevant laws shall apply to the testament.

### Article 1014

1. Every legal act by a person on his deathbed, intended to be an act of gift, shall be an act added after his death, and the provisions of testament shall apply to such act irrespective of the description thereof.
2. The heirs shall prove by all evidentiary means that such legal act was made by their testator on his deathbed.
3. Where the heirs prove that such act by their testator was made on his deathbed, it shall be deemed made by way of voluntary contribution unless the beneficiary to such act can provide evidence to the contrary.
4. All of the above shall apply unless there are special provisions to the contrary.

## **Part 2: Rights Ancillary to the Right of Ownership**

### **Chapter One: Usufruct, Right of Use and Right of Occupation**

#### **Usufruct**

### Article 1015

1. The right of usufruct may be acquired by a legal disposition or pre-emption, and its acquisition shall be deemed evidence of its ownership according to Article 966 herein.
2. Usufruct may be bequeathed by will to successive persons if they are alive at the moment of the bequest, and it may also be bequeathed to a fetus *in utero*.

### Article 1016

The rights and obligations of a usufructuary shall be governed by the conditions imposed by the deed by which the usufruct is created and by the provisions contained in the following Articles.

### Article 1017

The fruits of the property subject to the usufruct shall revert to the usufructuary in proportion to the period of his usufruct, subject to the provisions of paragraph 2 of Article 1023 herein.

### Article 1018

1. The usufructuary must use the property in the state in which he received it and according to the object for which it was intended, and he must observe the rules of good management.
2. The bare owner may object to any use of the property that is unlawful or unsuitable to the nature of the property.
3. Where the owner proves that his rights are endangered, he may demand security and, if the usufructuary fails to provide such security or if, in spite of the objections of the owner, he continues to use the property unlawfully or in a manner unsuitable to its nature, the judge may order confiscation of the property and its entrustment to a third party for its management. The judge may also, in circumstances of a serious nature, declare the usufruct extinguished, without prejudice to the rights of third parties.

## Article 1019

1. The usufructuary shall, during the continuance of his enjoyment, be liable for all normal charges in respect of the property subject to the usufruct and all expenses for repairs incidental to its maintenance.
2. The owner shall be obliged to pay abnormal expenses and the cost of heavy repairs which do not arise from any fault on the part of the usufructuary, but the usufructuary shall be bound to pay to the owner interest on the amount expended by him in this respect. Where the usufructuary has himself advanced the cost, he shall be entitled to claim repayment of the capital amount paid by him when the usufruct terminates.

## Article 1020

The usufructuary must preserve the thing with the diligence usually expected of a reasonable man. He shall be responsible for loss of the property even if, through no fault of his own, he has delayed returning the property to its owner after the termination of the usufruct.

## Article 1021

The usufructuary must give notice to the owner without delay if:

1. The property perishes, deteriorates or requires major repairs, the cost of which shall be borne by the owner,
2. It is necessary to take protective measures against an unforeseen danger.
3. A third party claims to have a right over the property.

## Article 1022

1. Where the property subject to the usufruct is a movable, an inventory must be made thereof and the usufructuary must give security in respect thereof. Where no security is given, the movable shall be sold and the proceeds invested in public funds and the income thereof paid to the usufructuary.
2. A usufructuary who has given security may use such things as are consumable, provided that he replaces them when his usufruct comes to an end. The usufructuary is entitled to the natural increase of flocks and herds after he has replaced those animals from such flocks and herds as have perished accidentally or due to *force majeure*.

## Article 1023

1. The usufruct shall terminate at the end of the period for which it was fixed. Where no period is fixed, it shall be deemed to have been created for the lifetime of the usufructuary. It shall cease in any case upon the death of the usufructuary, even where this occurs before the end of the fixed period.
2. Where there are standing crops on the land subject to the usufruct at the end of the period fixed for the usufruct or upon the death of the usufructuary, such land shall be left in the possession of the usufructuary or his heirs until the crops are ripe for harvesting, provided that the usufructuary or his heirs shall pay rent for that period.

Article 1024

Usufruct shall be extinguished by the loss of the property but shall be transmitted to any property obtained in lieu of the property destroyed.

Article 1025

1. In case of denial, any action for a usufruct shall be extinguished if such usufruct has not been used for a period of fifteen years.
2. The use of the usufruct by one of the co-owners shall, where such usufruct is exercisable by several co-owners, interrupt the prescription period for the other co-owners. Similarly, the suspension of the prescription period in favour of one of the co-owners shall suspend it for the others.

**The Right of Use and Right of Occupation**

Article 1026

Subject to the conditions laid down in the deed by which the right is created, the extent of the rights of use and of occupation shall be determined by the personal requirements of the beneficiary and of his family.

Article 1027

The right of use and the right of occupation may only be transferred to third parties by virtue of a formal provision to that effect or for sound and compelling reasons.

Article 1028

Subject to the preceding provisions, the rules as regards the right of usufruct shall apply to the right of use and the right of occupation, if they are not incompatible with the nature of these two rights.

**Chapter Two: The Right of Hekr**

Article 1029

The *hikr* shall be defined as a contract under which the tenant holds a right in kind in a waqf land that authorizes him to utilize the land by construction of a building, plantation or other installation in consideration of a particular fee.

Article 1030

Such contract may not be concluded other than out of necessity or interest, subject to the consent of the competent court in whose jurisdiction all or substantially all of the land is located. This contract shall be issued by the chairman of the court or by nominated judges or attestation officers and shall be registered in accordance with the provisions of real estate registration.

## Article 1031

1. No right of *hikr* may be arranged other than on a waqf land, subject to the provisions of clause 3 of Article 1039 herein.
2. The provisions of the following Articles, including the determination of a maximum period for the *hikr*, shall apply to all the other provisions, even those existing on the effective date of the present Law.

## Article 1032

A *hikr* contract may not be longer than sixty (60) years. Where a longer period is agreed or no such period is determined, the term of the *hikr* contract shall be sixty (60) years.

## Article 1033

1. No *hikr* contract may be concluded for an amount less than the rent of a similar land.
2. Such rent may be increased or decreased whenever the variation of the rent of a similar land exceeds one fifth, upward or downward, provided that the last assessment was made eight years earlier.

## Article 1034

1. The assessment of an increase or decrease in the rent of a similar land shall depend on the rent of the land at the time of the assessment, taking into account the specifications of the land and the demand on it by people, irrespective of whether there is a building or plantation on or in such land and without taking into consideration the development or damage by the tenant to the land itself or any modification to its specifications, and without affecting the right of decision held by the tenant concerning the land.
2. Good assessment shall apply only from the date on which the parties agree to such assessment, or otherwise from the date of filing the claim.

## Article 1035

The tenant of such land may dispose of his right, and such right may be inherited.

## Article 1036

The tenant shall be the absolute owner of any building, plantation or other installation in such rented land and may dispose of it individually or jointly with the *hikr* right.

## Article 1037

1. The tenant shall pay the agreed rent to the owner of the *hikr* land.
2. Rent shall be payable by the end of every year, unless the *hikr* contract provides otherwise.

## Article 1038

The tenant shall do all things necessary to make the land usable, subject to the agreed conditions, the nature of the land, the proposed purpose thereof and the applicable practice.

## Article 1039

1. The *hikr* contract shall terminate upon the expiry of its term.
2. However, such contract shall terminate prior to the expiry of its term if the tenant dies before any construction or plantation occurs, unless all of his heirs demand continuation of the *hikr* contract.
3. Such contract shall also terminate prior to the expiry of its term if the subject land ceases to be a waqf land, unless such cessation is due to the cancellation or shortening of the period of such waqf by its creator. In such case, the *hikr* contract shall continue until the expiry of its term.

## Article 1040

In the event of non-payment of the rent for three consecutive years, the owner of the waqf land may demand termination of the contract.

## Article 1041

1. Upon the expiry or termination of the *hikr* contract, the owner may demand either to remove the constructions or plantation or to keep them against payment of the value thereof as removed or kept, unless agreed otherwise.
2. The court may grant an extension to the owner for payment if there are exceptional circumstances justifying such extension. In such case, the owner shall issue a guarantee to secure the payment of the amount due.

## Article 1042

In the event of denial, the claim of the *hikr* right shall prescribe after a period of fifteen years if such right is not used. Such term shall be thirty-three years if the *hikr* right relates to a waqf property.

## **Chapter Three: Easements**

## Article 1043

Easement shall be defined as a right that limits the use of a real property for the benefit of another real property held by another person.

## Article 1044

1. The right of easement shall be acquired by a legal act, by pre-emption or by inheritance.
2. Acquisition shall not be considered as evidence in accordance with the provision of Article 966 herein other than in the event of apparent easements, including the right of way.

## Article 1045

1. Apparent easements may be arranged by allocation by the original owner.
2. Where it is established by evidence that the owner of two separate real properties has made an apparent demarcation between them, thereby creating a relationship of subordination between the properties that may indicate the presence of easement if the properties were owned by two different persons, and then the properties become held by two different owners without a change in their condition, the right of easement shall apply to both properties, unless there is an express provision to the contrary.

## Article 1046

1. Where there are particular limitations against the right of the owner of real property to construct a building thereon, such as an injunction preventing him from erecting a building exceeding a particular height, or from constructing it on the whole area of the property, such limitations shall act as easements on such property in favour of the real properties upon which such limitations are imposed, unless agreed otherwise.
2. Any breach of such limitations may be demanded to be remedied in kind. However, only indemnity may be ordered if the court believes that such an order is reasonable.

## Article 1047

Rights of easement shall be governed by the instrument creating them, the applicable practice and the provisions of the following Articles.

## Article 1048

1. The owner of the dominant property may perform such works thereon as necessary to be able to use and preserve his right of easement, and he shall use such right in a manner that causes the least possible damage.
2. The merging needs of the dominant property may not increase the burden of easement.

## Article 1049

The owner of the servient property shall not be obliged to carry out any work for the benefit of the dominant property, unless such additional work is required for the proper use of the easement.

## Article 1050

1. The costs of the works required to use and preserve the right of easement shall be borne by the owner of the dominant property, unless provided otherwise.
2. Where the owner of the servient property is obliged to carry out such works at his own expense, he may always avoid such obligation by assigning the

servient property, either in whole or in part, to the owner of the dominant property.

3. Where such works are also useful to the owner of the servient property, the costs of maintenance shall be divided between the parties *pro rata* to the benefit obtained by either party.

## Article 1051

1. The owner of the servient property may not do anything that may impair or burden the use of the right of easement.
2. Where the location initially identified for the use of the right of easement increases the burden of easement, or the easement prevents the making of any improvements to the servient property, the owner of the servient property may demand that the easement be moved to another location on the property or to another property held by him or by a third party, provided that such parties agree thereto. Provided, however, that the use of the easement in its new location shall be as easy for the owner of the dominant property as it was at its former location.

## Article 1052

1. Where the dominant property is divided, the right of easement shall remain valid for each part thereof, provided that such division shall not increase the burden of easement on the servient property.
2. However, where the right of easement in fact serves a single part of the dominant property, the owner of the servient property may demand termination of such right relating to the other parts.

## Article 1053

1. Where the servient property is divided, the right of easement shall remain valid for each part thereof.
2. However, where the right of easement is in fact not exercisable on some parts only of the servient property, or cannot be exercised therewith, the owner of that other part may demand termination of this right in connection with the part held by such owner.

## Article 1054

The right of easement shall terminate upon the expiry of the applicable term, the total loss of the servient property or the dominant property, or when both properties are held by a single person. However, if the unity of title to both properties terminates and the properties are rehabilitated to their original condition, the validity of the right of easement shall resume.

## Article 1055

1. In the event of denial, the claim of the right of easement shall prescribe after fifteen years if that right is not exercised. Such term shall be thirty-three years if the right relates to a waqf property. Upon the expiry of this thirty-three year period, the method of exercising the right of easement may be amended.
2. Where the right of easement is granted to several partners in common, the use of such right by any of them shall suspend the period of prescription in favour of the other partners. The suspension of such period in favour of one partner shall also, by default, suspend it in favour of the other partners.

## Article 1056

The right of easement shall terminate if circumstances or conditions have changed so that the right cannot be used. The validity of the right shall resume when such circumstances or conditions permit the exercise of the right, unless it is terminated owing to its continued non-use.

Article 1057

The owner of the servient property may release such easement in whole or in part if such right is of no benefit to the dominant property or is of limited benefit inconsistent with the corresponding burdens on the servient property.

**BOOK TWO: Ancillary Rights (Real Securities)**

**Part 1: Mortgage**

**Chapter One: Constitution of Mortgages**

Article 1058

An official mortgage shall be defined as a contract in which the creditor acquires a right over real property for the settlement of a debt owed to him by the debtor. This right entitles the creditor to take precedence over ordinary creditors and over creditors who are lower in rank to him in the settlement of his right out of the proceeds of the sale of such property, no matter who purchases it.

Article 1059

1. Official mortgage shall not be established unless made under an official paper reviewed and signed according to the law.
2. The mortgagor shall bear the costs of the mortgage contract unless there is an agreement to the contrary.

Article 1060

1. The mortgagor may be the debtor himself or a surety who is offering a real security for the advantage of the debtor.
2. In both cases, the mortgagor shall be the owner of mortgaged real property and shall have the capacity to dispose thereof.

Article 1061

1. Where the mortgagor is a person other than the owner of mortgaged real property, the mortgage contract shall become valid if acknowledged by the actual owner under an official paper notarized in accordance with the law. Where such acknowledgement is not issued, the right of mortgage over real property shall be valid only from the time at which such property becomes owned by the mortgagor.
2. The mortgage of sums of money expected to be received in the future shall be void.

Article 1062

A mortgage issued by the owner whose deed of title is invalidated, annulled, or nullified for any reason shall remain in existence in favour of the mortgagee if such creditor was *bona fide* while concluding such mortgage.

Article 1063

1. An official mortgage shall only exist over real property unless there are provisions to the contrary.
2. Real property shall be separately saleable in an auction and its nature and location shall be accurately described. This description shall be elaborated in the mortgage contract itself or in a subsequent official contract, failing which the mortgage shall be invalid.

## Article 1064

1. Official mortgage shall include the extensions that are deemed real properties.
2. Such extensions shall include, in particular, buildings and trees, easements, allocated real properties, improvements and edifices that may be profitable for the owner, whether such extensions were present at the time of mortgage or created afterwards. This shall be the case unless otherwise agreed and without prejudice to the privilege of the amounts due to contractors or engineers.

## Article 1065

Registration of attachment shall include with real property the returns and the revenues for the period following the registration. Distribution of such returns shall be similar to distribution of the price of real property.

## Article 1066

The owner of buildings situated on another person's land may mortgage such buildings officially. In this case, the mortgagee shall have the right to receive the debt from the price of the wreckage if the buildings were demolished and from the consideration paid by the owner of the land if he spared the building.

## Article 1067

1. A mortgage concluded by all owners of a joint property shall remain valid whatever the result of division or sale of such real property due to it being indivisible.
2. Where a joint proprietor has mortgaged his share in joint property or a specified part thereof, either in whole or in part, and upon division shares other than the mortgaged share are attributed to him, the mortgage shall cover part of such shares equal to the value of the originally mortgaged real property. Such share shall be by an order on application. The mortgagee shall make a new registration showing the amount of the share to which the mortgage is entered within sixty days from the date of being informed by any concerned party of the result of division. Mortgages transferred by such method shall affect neither a mortgage concluded by all the joint proprietors nor the privilege of the parties to the division.

## Article 1068

A mortgage may only be concluded either as a security for a conditional debt, a future debt, or a promised debt or as a security for an open credit, or for opening a current account, provided that a mortgage contract shall specify the amount of the guaranteed debt or the maximum limit to which such debt may reach.

## Article 1069

Every part of the mortgaged real property shall constitute a security for the whole debt and every part of the debt guaranteed by all the mortgaged real property, unless the law provides for, or it was agreed to, the contrary.

## Article 1070

1. A mortgage shall be subject to the secured debt in validity or termination unless the law provides otherwise.
2. Where the mortgagor is a person other than the debtor, such mortgagor may, in addition to his right to hold to his own aspect of pleading, hold to the debtor's aspects of pleading regarding the debt. Such right shall persist even if the debtor has himself waived such a right.

## Chapter Two: Effects of a Mortgage

### Subchapter One: Effects of a Mortgage as between the Parties

## Article 1071

The mortgagor may alienate his mortgaged real property, and any act by him shall have no effect whatsoever on the rights of the mortgagee.

## Article 1072

The mortgagor may manage the mortgaged real property and receive its yield until such yield is attached to real property.

## Article 1073

1. A lease concluded by the mortgagor shall not be applicable to the mortgagee unless the date of such lease is fixed before the registration of attachment. If the lease is dated as said or concluded after the registration of attachment and the rent is not advanced, such lease shall not be effective unless it is included in the works of the *bona fide* management.
2. Where the time between the conclusion of the lease and the registration of attachment is more than ten years, it shall not be effective against the mortgagee for more than ten years unless such lease was registered before the registration of the mortgage.

## Article 1074

1. Neither the discharge of the rent in advance for a period of more than three years, nor the subrogation thereof, shall be effective against the mortgagee unless registered on a date prior to the date of registering the attachment.
2. Where the discharge or the letter of subrogation or clearance is for a period exceeding three years, it shall not be effective against the mortgagee unless registered before the mortgage, otherwise the period shall be reduced to three years subject to the provisions of the previous Article.

## Article 1075

The mortgagor shall guarantee the safety of mortgaged real property, and the mortgagee may object to any action or default that may materially reduce the said guarantee. The mortgagee may in the event of urgency take all measures of preservation and may have recourse against the mortgagor for expenses incurred in so doing.

## Article 1076

1. Where real property is damaged or destroyed due to the mortgagor's fault, the mortgagee shall be entitled to request immediate payment of his debt

or that a sufficient security for the settlement of his debt be provided.

2. However, where the damage or destruction is not imputable to the mortgagor and the mortgagee does not accept the debt without security, the mortgagor shall have the option either to offer a sufficient security for the debt or to settle the debt before its maturity.
3. In all events, where some acts are performed and cause damage to or destruction of the mortgaged real property or cause the security to become insufficient, the mortgagee shall be entitled to request the court to stop such acts and to order measures to prevent such damage or destruction.

## Article 1077

Where the mortgaged real property is damaged or destroyed for any reason whatsoever, the mortgage shall transfer to the property that which is substituted to it, such as the compensation or the insurance amount or the indemnity of expropriation for public benefit.

## Article 1078

1. The mortgagee may obtain fulfilment of his rights from such mortgaged real property according to the applicable procedures.
2. Where such real property does not fulfil the mortgagee's debt, he may have recourse for the remainder of the debt against other assets of the mortgagor as a normal debtor.

## Article 1079

1. Where the mortgagor is a person other than a debtor, attachment shall not be imposed on the mortgagor's assets except the mortgaged assets, and he may not plead to dispossess the debtor from his properties unless there is an agreement to the contrary.
2. The mortgagor may avoid any procedure against him if he waived the mortgaged real property in accordance with the situation and in accordance with the provisions that the possessor shall follow in transferring real property.

## Article 1080

Any condition that may give the mortgagee the right, when the debt is not settled at the maturity date, to possess real property mortgaged in consideration of the debt or any other price or to sell such property without following the procedures provided by the law, shall be invalid even if such condition is stipulated after the conclusion of the mortgage.

### **Subchapter Two: Effects of Mortgage with regard to Third Parties**

## Article 1081

1. A mortgage shall not be effective against third parties unless it is registered before the third party acquires any real right over the mortgaged real property without prejudice to the provisions of bankruptcy.
2. It shall not be valid to hold against third parties to transfer a right guaranteed by a registered mortgage, nor to hold to the right arising from the subrogation of the debtor by another person for such right under the law or by agreement. In addition, it shall be invalid to hold to the transfer of the rank of the mortgage in favour of another mortgagee unless the same is entered in the margin of the original registration.

## Article 1082

The effect of a mortgage shall be restricted to the sum specified in the attached list of information or the due amount, whichever is lesser.

Article 1083

A mortgage shall lapse if not renewed within ten (10) years from the date of its conclusion, provided that the mortgagee shall conclude another mortgage if possible under the law, which rank shall be from the date of concluding the same, and every renewal thereof shall be effective only for ten years from the date thereof.

Article 1084

A mortgage shall be renewed even during the procedures of attaching the mortgaged real property. However, it shall not be necessary to renew a mortgage if the right has expired or real property is discharged and, in particular, if real property is sold under a judgment and the date for increasing the ten-year period has expired.

Article 1085

A mortgage may not be cancelled unless under a final judgment or with the consent of the mortgagee according to an official decision by him.

Article 1086

Where the cancellation is subsequently invalidated, the mortgage shall regain its original rank even though the cancellation shall have no retroactive effect in respect of the entries and registrations made during the period between the mortgage's cancellation and its invalidation.

Article 1087

The mortgagor shall bear the expenses of the mortgage, its renewal and cancellation unless agreed otherwise.

**1st: Right of Preference**

Article 1088

Mortgagees obtain their rights from the normal debtors under mortgage from the proceeds of mortgaged real property or from the property which has been substituted to it, according to the rank of each of them, even if they have performed their registration on the same date.

Article 1089

The rank of mortgage shall take effect from the date of its registration, even if the debt guaranteed by the mortgage is conditional or is a future or a promised debt.

Article 1090

The registration of the mortgage shall require the incorporation of the expenses of the contract, its registration and renewal in the distribution and in the same rank of the mortgage.

Article 1091

A mortgagee may assign the rank of his mortgage within the limits of the debt guaranteed by this mortgage to another mortgagee regarding the same mortgaged real property. It shall be permitted to hold against such mortgagee all the pleading which the debtor may hold against the original mortgagee. All the exceptions which may be opposed to that other creditor may also be opposed to the first creditor save for those that relate to the lapse of the right of the first creditor if the said lapse has occurred subsequent to the assignment of his rank.

**2nd: Right of Tracing**

Article 1092

1. When the debt is mature, the mortgagee may execute the mortgaged real property in possession of the possessor thereof unless the possessor elects to settle the debt or discharge the real property from mortgage or assign such mortgaged property.
2. Any party to whom the ownership of such property or any mortgageable right in kind in respect thereof is transferred for any reason whatsoever shall be deemed the possessor of the mortgaged real property without being personally responsible for the debt guaranteed under such mortgage.

Article 1093

The possessor may, upon the maturity of the debt guaranteed under the mortgage, discharge such debt and its supplements, including the expenses of the procedures from the date of being notified to settle the debt. This right shall remain until the date of sale and in such event the possessor shall have the right to claim all the amounts paid by him from the debtor and the former owner of the mortgaged real property. The possessor may in respect of his rights subrogate the creditor who obtained the debt save for the rights relating to securities submitted by a person other than the debtor.

Article 1094

The possessor may, upon the maturity of the debt guaranteed under the mortgage, discharge such debt and its supplements, including the expenses of the procedures from the date of being notified to settle the debt. This right shall remain until the date of sale and in such event the possessor shall have the right to claim all the amounts paid by him from the debtor and the former owner of the mortgaged real property. The possessor may in respect of his rights subrogate the creditor who obtained the debt save for the rights relating to securities submitted by a person other than the debtor.

Article 1094

The possessor shall keep the registration of the mortgage in which he subrogated the mortgagee and renew such registration whenever required until the registrations on real property at the time of registration of the possessor's title of deed are cancelled.

## Article 1095

1. Where there is an amount sufficient to fulfil all the debts of the debtors whose rights are registered in respect of real property and such amount is due from the possessor because of possessing the mortgaged real property, each creditor may require the possessor to repay his debt provided that such creditor's title deed is registered.
2. Where the debt due from the possessor is not mature immediately, or it is less than the debts due to the creditors or it is different from such debts, the creditors may, if in agreement, demand that the possessor pay his debts to the extent of the amounts due to them. Payment shall be in accordance with the conditions under which the possessor assumed in his original covenant for payment and within the agreed period in which the payment should be settled.
3. In both events, the possessor may not dispose of his obligation by waiving real property. However, where the possessor repaid his debts, real property shall be deemed discharged of every mortgage. The possessor shall hold the right to request the cancellation of any attachments regarding the mortgage.

## Article 1096

1. Where the possessor has registered his title deed, he may discharge real property of any mortgage that was registered before the registration of such deed.
2. The possessor may use such right even before the creditors submit an application for attachment of real property or serve a notice on the possessor. Such right shall remain until the date of issuing the list of the sale conditions.

## Article 1097

Where the possessor wishes to discharge real property, he shall serve a notice on each of the creditors whose rights are registered. The said notice shall include the following information:

1. An extract from his title deed, including the kind and date of disposal in addition to an accurate description of real property and the name of the previous owner thereof. If such disposal was a sale, the price and its supplements shall also be stated.
2. The date and registration number of the possessor's title.
3. Rights which were registered on real property before registering its title deed, the date of such registrations, the amounts of such rights and the names of the creditors.
4. The amount which the possessor estimates as the price of the real property. Such amount shall not be less than the price which is taken as a base for estimating the price in the event of dispossessing real property for public interest. This amount shall not be less than the remaining amount of the price being due from the possessor if such a disposal is a sale. If the parts of real property are associated with different mortgages, the value of each part should be estimated separately.

## Article 1098

The possessor shall state in the notice provided for in the previous Article that he is ready to settle the registered debts to the extent of the property's valuation. The possessor shall not be obliged to accompany the offer with the cash amount. However, the offer shall be restricted to expressing the willingness to settle the due amount immediately, whatsoever the date of maturity of the registered debts.

## Article 1099

1. Every creditor may register his right, and every guarantor of a registered right may apply for the sale of real property requested to be discharged. Such right may be exercised within thirty (30) days from the date of the last official notice.
2. Such application shall be under a notice to be addressed to the possessor or to the previous owner. The applicant shall deposit with the court's treasury an amount sufficient to cover the expenses of the sale in an auction. The applicant may not refund the expenses paid by him if the auction was not closed with a price higher than the amount offered by the possessor, and the application shall be invalid if these conditions are not fulfilled.
3. The applicant may not waive his application unless with the consent of all the registered creditors and all the guarantors.

Article 1100

Where an application for sale of real property is submitted, the applicable procedures of compulsory sale shall be followed and the sale conducted pursuant to the request of the party interested in the urgent sale, whether an applicant or possessor. The person commencing the procedures shall state in the notice of sale the estimated value of the real property.

Article 1101

Where the sale of the real property is not requested by the specified date and under the applicable situations, or if the sale is applied for but the price offered in an auction is not higher than the amount offered by the possessor, the ownership of the real property, free from any registered right shall be granted finally to such possessor. This shall be the case if he paid the estimated price of such property to the creditors whose rank allows them to receive their right from such owner, or if he deposited such amount with the court's treasury.

Article 1102

1. The mortgaged real property shall be vacated under a report to be submitted by the possessor to the competent court's clerk's office, and he shall request that the same be noted in the margin of the attachment registration. The creditor initiating the procedures shall be notified of such vacation within five days from the date of deciding thereon.
2. Any person who has an interest in urgent procedures may apply before the competent court of summary affairs for the appointment of a receiver against those attachment procedures which are to be executed and the possessor may be appointed as a receiver if he requested the same.

Article 1103

Where the possessor did not elect to fulfil the registered debts or to discharge real property from the mortgage or to vacate such property, the creditor-mortgagee may not execute attachment procedures against the possessor unless he has first notified him to pay the due debt or to vacate such property. Such notice may be addressed after or at the same time as the registration of attachment.

Article 1104

1. The possessor who registered his title deed, and who is not a litigant in the suit in which the debtor is the judgment debtor, may hold to the aspects of pleading which the debtor may have held to if the judgment for the debt was subsequent to the registration of the possessor's title deed.
2. The possessor may in all events hold to the pleadings which the debtor may still have the right to hold thereto following the judgment.

Article 1105

The possessor may enter the auction provided that he shall not offer a price less than the remaining amount due from him off the price of such property under sale.

Article 1106

Where the mortgaged real property was sold compulsorily, even after taking the discharging or vacation procedures and the auction was knocked down to the possessor, he shall be deemed the owner of such property by virtue of his original title deed. In such case, the real property shall be discharged of any registered right if the possessor paid the price which the auction knocked down or deposited it with the court's treasury.

#### Article 1107

Where the auction in the situations provided for under the previous Article was knocked down to a person other than the possessor of such property, such person shall receive his right on behalf of the possessor of the property pursuant to the judgment of sale.

#### Article 1108

Where the proceeds of the property sold in the auction exceeded the amount due to the creditors whose rights are registered, such excess shall be payable to the possessor and his creditors-mortgagees shall be entitled to recover their debts from it.

#### Article 1109

The possessor shall have the right of easement and other rights in kind which he had before the transfer of real property to him.

#### Article 1110

The possessor shall return the proceeds of real property from the time he was notified of the payment or vacation. If the procedures were abandoned for three years, the proceeds shall be calculated only from the date of addressing a new notice to him.

#### Article 1111

1. The possessor shall have recourse for the claim for guarantee against the previous owner within the limits of the right of recourse granted to the successor against his predecessor from whom he acquired ownership either by commutation or gratuitously.
2. The possessor shall also have recourse against the debtor for any excess amount he may have paid, for any reason whatsoever, in addition to what was due from him according to his title deed. The possessor shall also be substituted to the creditors whose rights he has settled and he shall, in particular, be subrogated to the securities provided to them by the debtor to the exclusion of any securities provided by any person other than the debtor.

#### Article 1112

The owner shall be personally responsible to the creditors for any destruction or damage which may occur to the property due to his fault.

### **Chapter Three: Extinguishment of Mortgage**

#### Article 1113

The official mortgage shall terminate upon the expiry of the secured debt. If the cause of termination of the debts vanishes, the mortgage shall recover its validity without any infringement upon the rights of any *bona fide* third party, which he may have acquired between the expiration of the debt and the recovery of its validity.

#### Article 1114

Where the procedures of discharge are fulfilled, the right of the official mortgage shall expire finally even if the ownership of the possessor who discharged the property has terminated.

#### Article 1115

Where the mortgaged real property is sold by a compulsory sale at auction, whether against the owner, its possessor, or the receiver who received such property upon vacation, the rights of mortgage registered on such property shall terminate upon the deposition of the price offered in the auction or upon the payment thereof to the registered creditors whose rank authorizes them to receive their rights from such price.

### **Part 2: Lien**

#### Article 1116

1. Each creditor who obtains an enforceable judgment issued in the subject matter of the suit and which binds the debtor to something may in good faith obtain a lien on the property of his debtor as a security for the original debt and expenses.
2. The creditor may not, after the death of the debtor, obtain a lien on any property of the estate.

#### Article 1117

The lien may not be obtained under a judgment issued by a foreign court or under an award issued by arbitrators, unless such judgment or award becomes enforceable.

#### Article 1118

The lien may be obtained under a judgment confirming a compromise or an agreement between the adversaries. However, such lien may not be obtained under a judgment confirming the authenticity of such signature.

#### Article 1119

The lien may not be obtained except on specific property or assets owned by the debtor at the time of obtaining and entering an order of lien permitting the sale of such property by auction.

#### Article 1120

1. The creditor who wishes to obtain a lien on the property of his debtor shall file an application before the court of first instance in whose jurisdiction the properties for which the creditor wishes to obtain such lien are situated.
2. Such application shall be accompanied by an official copy of the judgment or a certificate from the clerk's office of the court, including the pronouncement of such judgment and the following information:
  1. The name of the creditor, his title, profession, and original domicile or chosen domicile as he may specify if his original domicile is not situated in the court's jurisdiction.
  2. The name of the debtor, his title, profession and domicile.
  3. The date of the judgment and the court which issued it.
  4. The amount of the debt. Where the debt stated in the judgment is not defined, the chairman of the court shall assess and determine the amount for which the lien shall be ordered.
  5. The exact description and location of the properties, together with the papers confirming the value thereof.

## Article 1121

1. The chairman of the court shall record his order of lien at the bottom of the application.
2. After an order of lien is issued, the amount of the debt and the value of the property as set out in the application shall be assessed on an approximate basis. The chairman of the court may, if necessary, limit the lien to certain property or to one part thereof, if he decides that such limitation is sufficient to secure the payment of the original debt and the expenses payable to the creditors.

## Article 1122

The clerk's office of the court shall serve on the debtor the notification of the order of lien on the same day on which such order is issued, and shall also affix such order on the copy of the judgment or the certificate attached to the application for the lien, and shall further serve a notice on the court which issues such judgment in order to endorse such order on each copy or another certificate delivered to the debtor.

## Article 1123

1. The debtor may apply for grievance against the order of lien before the judge who issues such order. He may also file such application before the court of first instance.
2. Each order or judgment revoking the order of lien shall be referred to in an entry in the margin.

## Article 1124

Where the chairman of the court rejects the application for lien filed by the creditor, whether at the first instance or after the grievance filed by the debtor, the creditor may file grievance against such rejection before the court of first instance.

## Article 1125

Where the debtor is insolvent when the order of lien is issued, the creditor who obtains such lien may not hold thereto, notwithstanding his good faith, against any other creditor the date of whose right is fixed and precedes the entry of the order of lien.

## Article 1126

1. Any interested party may request that the lien be reduced to the proper limit if the value of the property for which such lien is charged exceeds the amount sufficient for the security of the debt.
2. The reduction of the lien shall be made either by limiting it to part of the property or assets for which such lien is charged or by transferring it to another property whose value is sufficient to provide security for the debt.

## Article 1127

The creditor who obtains an order of lien shall have the same rights of the creditor who obtains an official mortgage. The provisions applicable to the official mortgage shall apply to the lien, particularly in connection with the entry, renewal, cancellation and subdivision of the lien, and its effects and expiration, without prejudice to the specific provisions herein.

### **Part 3: Pledge**

#### **Chapter One: Creation of Pledge**

## Article 1128

Possessory pledge shall be defined as a contract by which a person undertakes, by providing security for a debt owed by him or by a third party, to deliver to the creditor or to a stakeholder appointed by two contractors, a property which entails a material right to the creditor who is thereby authorized to retain the property until the debt is fully paid, and to have priority over normal creditors and creditors of a lower rank after acquiring his right from the price of this property, no matter under whose control it may be.

## Article 1129

Nothing shall be subject to possessory pledge save for movable or real estate properties that can be sold independently by auction.

## Article 1130

The provisions of Articles 1061, 1062, 1066, 1068, 1069 and 1070 herein regarding the official mortgage shall apply to possessory pledge.

## Article 1131

A jointly owned property may be pledged by possessory pledge, and the provisions of Article 1067 shall apply to such pledge.

## Article 1132

Unless agreed otherwise, possessory pledge shall include all the accessories annexed to the property pledged.

## Article 1133

A pledged property may be a security for several debts if the person receiving such property agrees to retain it for the person owing such debts.

## Chapter Two: The Effects of Pledge

## Article 1134

1. The pledgor shall deliver the pledged property to the creditor-pledgee or the stakeholder appointed by the two contractors for such purpose.
2. The provisions regarding the obligation to deliver a sold property shall apply to the obligation to deliver the pledged property.

## Article 1135

Where the pledged property returns to the possession of the pledgor, the pledge shall be terminated unless the pledgee proves that such return was for a purpose other than termination, without prejudice in all events to the rights of third parties acting in good faith.

## Article 1136

The pledgor shall be answerable for the safety of the pledged property and the effect of the pledge, and he may not perform any act which may reduce the value of the pledged property or prevent the pledgee from exercising his right arising from the contract. The pledgee may, in urgent cases and at the cost of the pledgor, take all actions required to maintain the pledged property.

## Article 1137

The provisions of Articles 1076 and 1077 herein regarding the damage or destruction of the officially mortgaged property and the transfer of the mortgagee right from the mortgaged property to the property that substituted it shall apply to possessory pledge.

## Article 1138

Where the pledgee receives the pledged property, he must exercise the care of a reasonable person to keep and maintain it. He shall be liable for its loss or destruction unless he proves that such loss or destruction was due to a cause beyond his control.

## Article 1139

1. The pledgee may not enjoy the use of the property pledged without consideration.
2. Unless agreed otherwise, the pledgee must fully invest the pledged property depending on its nature.
3. Any net revenues and benefits the pledgee might receive from the use of the pledged property shall be deducted from the amount secured by the pledge, even if not yet due. The deduction shall be made first from costs incurred by the pledgee in maintaining and repairing the property, then from

any indemnities, then from any expenses, and finally from the original debt.

## Article 1140

1. The pledgee shall manage the pledged property and must exercise the care of a reasonable person. He may not modify the manner in which the property is used without the consent of the pledgor, and he shall notify the pledgor of any matter that requires his intervention.
2. Where the pledgee misuses such right or mismanages the property or is grossly negligent, the pledgor may demand that the property be put under receivership or that he retrieve it against paying all amounts payable by him.

## Article 1141

The pledgee shall return the pledged property to the pledgor upon receiving all his rights and relevant accessories, expenses and indemnities.

## Article 1142

The provisions of Article 1079 herein regarding the liability of the mortgagor who is not the debtor, and the provisions of Article 1080 herein regarding the possession condition when the debt is not settled and selling without procedures, shall apply to possessory pledge.

## Article 1143

A pledge in favour of a third party shall be effective where the pledged property is under the control of the pledgee or the stakeholder agreed upon by both contractors.

## Article 1144

1. The pledge shall entitle the pledgee to retain the pledged property, without prejudice to the rights of third parties under the law.
2. Where the pledgee loses control of the property against his will or without his knowledge, he shall be entitled to regain it according to the provisions of acquisition.

## Article 1145

The pledge is not limited to the security of the original right, but is also, and similarly, a security for:

1. The necessary expenses incurred in maintaining the property.
2. The indemnities arising from defects in the property.
3. The expenses relating to the contract creating the debt, the pledge contract and registration thereof, when necessary, and the expenses of executing the pledge.

## Article 1146

The possessory pledge shall expire upon the expiry of the debt secured therewith, and shall be effective again if the reason for the expiry of the debt ceases to exist, without prejudice to the rights of *bona fide* third parties which arise between the expiry of the pledge and its re-effectiveness.

## Article 1147

The possessory pledge shall also expire for to the following reasons:

1. Where the pledgee, being competent to discharge the pledgor of the debt, waives the pledge. A waiver may be implicitly inferred when the pledgee chooses to surrender the pledged property or agrees to dispose of it without reservations. However, if the secured debt is due to third parties, such waiver by the pledgee shall not be valid in relation to the rights of third parties unless it is approved by such third parties.
2. Where the property is destroyed or the pledged right has expired.
3. Where the pledge and possession are vested in the same person.
4. Upon the compulsory sale of the pledged property by auction.

### **Chapter Four: Certain Types of Pledge**

#### **Subchapter One: Pledge of an Immovable**

## Article 1148

Possessory pledge of a real property shall only be effective towards any third party when the possession of the real property passes to the pledgee and the pledge is registered. The provisions relating to the registration of the official mortgage shall apply to the registration of such possessory a pledge.

## Article 1149

1. The creditor-pledgee may lend or lease the pledged property to the pledgor without affecting the validity of the pledge *vis-à-vis* any third parties.
2. Where such lease is agreed to in the pledge contract, it must be entered in the register. However, where such lease is agreed at a later date, it must be stated in the margin of the register. Such statement, however, shall not be necessary where the lease is automatically renewed.

## Article 1150

1. A creditor-pledgee shall be required to maintain the real pledged property and pay the expenses necessary for such maintenance as well as the annual taxes and charges levied, provided that they shall then be deducted from the yield of the property pledged or from the proceeds upon its sale and according to the rank of the creditor-pledgee's debt.
2. The creditor shall be discharged of such obligations if he waives the pledge.

#### **Subchapter Two: Pledge of Movables**

## Article 1151

Possessory pledge of a movable property shall only be effective towards any third party where the possession of the real property passes to the pledgee and the pledge contract is reduced to writing and reflects a fixed date and the amount secured by the pledge and pledged movable property. Such fixed date shall determine the rank of the debt.

## Article 1152

1. The provisions relating to the effects of the possession of movable properties and the instruments given to such owner shall apply to the possessory pledge of movables.
2. The pledge in particular, if acting in good faith, may hold to his right to the pledged property even if the pledgor may not dispose thereof. On the other hand, any possessor acting in good faith may hold to his right in the pledged property, even after the date of the pledge.

## Article 1153

1. Where the pledged property is at the risk of damage, destruction or loss of value such that there is a reasonable fear that it will be insufficient to secure the right of the pledgee, and the pledgor does not request that it be substituted for something else, the pledgee or the pledgor may request the court for authorization to sell it by auction or at its market price.
2. Where he authorizes the sale, the judge shall decide upon depositing the proceeds. The right of the pledgee shall then be transferred from the property to the proceeds.

## Article 1154

The pledgor may request the court to authorize the sale of the pledged property, even before the debt becomes due, if a favourable opportunity presents itself. In such a case, if the court grants the authorization, it shall also determine the conditions of sale and shall decide upon how the proceeds are dispersed.

## Article 1155

The creditor may, if his right is not granted, request the court for an authorization to sell the property pledged by auction or at its market price.

## Article 1156

The preceding provisions shall apply in so far as they do not contradict the provisions of the Laws of Commerce and particularly the laws providing for possessory pledges of movables.

### **Subchapter Three: Pledge of Debts**

## Article 1157

1. The pledge of a debt shall only be effective towards the debtor if he has been notified thereof or he has given his consent thereto.
2. Such pledge shall only be effective towards any person other than the debtor where the pledged debt instrument is received by the pledgee or the stakeholder. The rank of the debt shall be determined by the date on which the debtor was notified or has given his consent.

## Article 1158

Nominal bonds or promissory notes may be pledged according to the special procedures provided for in the law regulating their assignment, provided that it is stated that the assignment is performed by way of pledge. Notification thereof shall not be required.

## Article 1159

Debts which may not be the subject of assignment or attachment may not be pledged.

## Article 1160

Settlement, renewal, set-off, unity of disclosure or discharge of a pledged debt shall not be valid towards the creditor-pledgee without his consent. Similarly, no modification in the debt that may cause damage to the pledgor shall be valid without his consent.

## Article 1161

1. A pledgee may receive sums on a periodic basis related to the pledged debt and must, in such a case, deduct all such sums from the expenses and from the principal amount of the debt, unless otherwise agreed.
2. The creditor-pledgee shall be required to preserve the debt pledged and, where any payments are to be settled from the said debt without the interference of the pledgor herein, he must pay it in the place and at the time determined for the settlement and he must also notify the pledgor accordingly.

## Article 1162

1. In the case of a pledged debt, the debtor may avail himself toward the creditor-pledgee of all the pleas connected with the validity of the right secured by the pledge, as well as all the pleas which he may oppose to his initial creditor.
2. All of the above shall be within the restrictions imposed on the debtor regarding the pleas which he may oppose to the assignee in the cases of assignment.

## Article 1163

1. The debtor, in the case of a pledged debt, shall be required to settle the debt of the pledgor and the pledgee together, if it falls due prior to the maturity of the debt secured by the pledge. The pledgor and the pledgee may request the debtor to deposit the amounts paid, and the right to the pledge shall then be transferred to the deposited amounts.
2. The pledgor and the pledgee may cooperate in using that which the debtor paid in the method most beneficial to the pledgor, without causing damage to the pledgee, and make a new pledge for the benefit of the debtor.

## Article 1164

Where both the pledged debt and the debts secured with a pledge fall due and the pledgee is not paid, he may receive from the pledged debt that which is due to him or request the sale of this debt according to Article 1155 herein.

**Article 1165**

1. Preference shall be a priority granted by law for a particular right according to its description.
2. A right shall have no preference other than under a provision of the law.

**Article 1166**

1. The class of preference shall be determined by law. Unless expressly provided in a preferred right to its class of preference, such a right shall be deemed an inferior class to any preference whose class is determined.
2. Where preferred rights are of the same class, they shall be entitled to a *pro rata* value, unless provided otherwise.

**Article 1167**

General preferred rights shall apply to all the movable assets and real properties of the debtor. However, special preferred rights shall be limited to a particular movable asset or real property.

**Article 1168**

1. Even if relating to real property, general preferred rights shall not be required to be registered. Such registration shall also not be required for real preferred rights securing amounts payable to the Treasury.
2. All such preferred rights shall have priority over any other real preferred right or any formal mortgage right, irrespective of the date of its registration. However, as between them, real preferred rights securing amounts payable to the Treasury shall prevail over the general preferred rights.

**Article 1169**

General preferred rights shall not create a right of succession, subject to the provisions of the law concerning the real preferred rights securing amounts payable to the Treasury.

**Article 1170**

Special preferred rights applicable to a real property shall be governed by the provisions of formal mortgage to such extent not in conflict with the nature of such rights. In particular, the provisions of endorsement and registration, and the effects of registration and renewal or deletion in connection with such registration, shall apply.

**Article 1171**

1. The right of preference may not be held thereto against such person that may acquire a movable asset in good faith.
2. Within the meaning of this Article, the term "acquirer" shall include the landlord of a real property, in connection with the movable assets in the leased property, and the owner of a hotel, in connection with the luggage of his guests.

3. Where the creditor for good reason fears the loss of the movable asset charged with a right of preference in its favour, the creditor may apply to appoint a receiver for such asset.

## Article 1172

Preference shall be governed by the same provisions applicable to the formal mortgage in connection with the loss or damage of a thing.

## Article 1173

The right of preference shall terminate in the same manner as the right of formal mortgage and the right of pledge, to such extent that this is not in conflict with the nature of the right of preference, unless there is any provision to the contrary.

### **Chapter Two: Kinds of Privileges**

## Article 1174

The rights as provided by the following Articles, in addition to any preferred rights as contained in special provisions, shall be considered as preferred rights.

### **Subchapter One: General Privileges and Special Privileges over Movables**

## Article 1175

1. Legal costs incurred in favour of all the creditors to preserve, sell and distribute the assets of the debtor shall have a lien on such assets.
2. Such costs shall be payable prior to any other right, even when preferred or secured by a mortgage.
3. Legal costs paid for the preservation and sale of such assets shall have precedence over the costs in connection with the distribution procedures.

## Article 1176

1. Amounts payable to the Treasury, including taxes, fees and charges of any kind whatsoever, shall have a lien under such conditions as provided by the relevant laws.
2. Such amounts shall be applied to the price of the assets charged with such lien in the possession of any person, prior to any other right, even if such right is preferred or secured by mortgage, other than legal costs.

## Article 1177

1. Amounts incurred to preserve a movable asset and to make any repairs thereto shall have a lien on such asset in full.
2. Such amounts shall be applied to the price of the movable asset upon deduction of the legal costs and those amounts payable to the Treasury. As between such amounts, they shall have priority to each other according to the date of payment thereof in reverse order.

## Article 1178

1. To the extent they are due and payable in the last six months, the following rights shall have right of lien on all the movable assets and real properties of the debtor:
  1. Such amounts payable to servants, workers and any other wage labourers, including their wages and salaries of any kind whatsoever.
  2. Such amounts due in connection with food, clothing and other supplies to the debtor and his dependents.
  3. Amounts payable by the debtor to those whom the debtor is obliged to support.
2. Upon deduction of the legal costs, the amounts payable to the Treasury and the preservation and repair costs, such amounts shall be recovered. As between them, such amounts shall be payable *pro rata*.

## Article 1179

1. Amounts paid for seed, fertilizer and other fertilization materials, pesticides and insecticides, and amounts paid in cultivation and harvest works, shall have a lien on the relevant crop or harvest. Such amounts shall be of one and the same class.
2. Such amounts shall be applied to the price of the crop or harvest only upon collection of the rights as provided under the preceding Articles.
3. Amounts paid in connection with farming machinery and tools shall have the right of lien of the same class on such machinery and tools.

## Article 1180

1. The rental of buildings and lands for a period of two years, or for the term of the lease if shorter, and any other right of the landlord under the lease contract, shall all have a lien on any attachable movable asset or produce of the land contained in the leased property belonging to the tenant.
2. Unless any third party provides evidence to his title thereto, assets in the leased property shall be deemed to belong to the tenant.
3. A lien shall also apply to movable assets, crops and harvests that belong to the subtenant, provided that the landlord explicitly prohibits the tenant from subleasing. Where no such condition is provided in the lease contract, the lien shall apply only to such amounts payable to the original tenant by the subtenant at such time when the landlord notifies the subtenant not to pay such amounts to the original tenant.
4. Where, despite the objection of the landlord or without his knowledge, a lien against charged assets is removed from the leased property and there are insufficient assets in the leased property to secure preferred rights, the lien on such removed assets shall remain valid without prejudice to the title of such *bona fide* third party to such assets. The lien shall remain valid, even if it may prejudice the right of any third party, for three years from the date of such removal, provided that the landlord enforces an attachment on such assets in due time by law. However, where such assets are sold to a *bona fide* purchaser in a public market or a public auction or by a person who trades in similar assets, the landlord shall repay the sale price to the purchaser.
5. Such preferred rights shall be applied to the price of such lien on charged assets upon settlement of the rights as provided in the preceding Articles, other than such rights not effective against the landlord in his capacity as a *bona fide* acquirer.

## Article 1181

1. Amounts payable for board and lodging by a guest to the owner of a hotel shall have a lien on the luggage of the guest in the hotel or in its facilities.
2. Luggage in the hotel shall be deemed the property of the guest unless any third party provides evidence to the contrary. The owner of the hotel may object to the transfer of the luggage from his hotel where he has not received full payment for board and lodging from the guest. Where, despite the owner's objection or without his knowledge, the luggage is removed or transferred, the right of lien shall remain valid without prejudice to the rights acquired by third parties in good faith..
3. A lien of the owner of a hotel shall rank *pari passu* with the lien of the landlord. In the event of a conflict, the former right in time shall prevail, unless such a right is not effective against the other.

## Article 1182

1. The seller of a movable asset shall have a lien on the sold asset to the extent of the sale price and other ancillary costs payable to the seller. Such lien shall remain valid so long as the sold asset maintains its description, without prejudice to the rights of third parties in good faith, subject to the provisions concerning commercial transactions.
2. Such lien shall rank second in connection with the rights as provided in the preceding Articles. However, such lien shall have precedence over the lien of the landlord and the lien of the owner of a hotel if it is established that the landlord and the owner of the hotel have been aware of such lien at the time of placing the sold asset in the leased property or in the hotel.

## Article 1183

1. Where partners divide a movable asset, they shall have a right of lien thereon as security for their respective rights of recourse due to such division, and a right to collect their respective shares of such asset.
2. A lien of such a partner shall rank *pari passu* with the lien of a seller. In the event of a conflict, the former lien in time shall have precedence.

### **Subchapter Two: Special Privileges over Immovable**

## Article 1184

1. The seller of real property shall have a lien on the sold real property to the extent of the sale price and ancillary costs payable to the seller.
2. The lien shall be registered even if the sale is registered, and it shall be effective from the time of such registration.

## Article 1185

1. Amounts payable to contractors and engineers instructed to construct, reconstruct, repair or maintain buildings and other constructions, shall have a lien on such buildings and constructions to the extent of such extra value of the real property at the time of its sale due to such works.
2. Such lien shall be registered and it shall be effective from the time of such registration, subject to the provisions of Article 1064 herein.

## Article 1186

1. Where partners divide any real property held in common by them, the right of each of them to have recourse against the others due to such division and to collect his share from such real property shall be secured by a lien on all the divided shares allocated to the other partners.
2. Such lien shall be registered and it shall be effective from the time of such registration.