

**Somaliland Draft Commercial Code 2002**

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## *Somaliland Draft Commercial Code 2002*

### **GENERAL PROVISIONS - Provisions applicable to persons carrying on trade**

#### **Article 1: Scope of Application of Civil and Maritime Codes**

- 1) Unless otherwise provided in this code, the provisions of the Civil Code shall apply to the status and activities of persons and business organizations carrying on a trade.
- 2) The relevant provisions of the maritime code shall apply to persons and business organizations carrying on maritime trade.

#### **Article 2: Traders**

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

- a) Purchase of movables or immovable with a view to re-selling them either as they are or after alteration or adaptation;
- b) Purchase of movables with a view of letting them for hire;
- c) Warehousing and storage activities
- d) Exploitation of mines, including prospecting for and working of mineral oils;
- e) Exploitation of quarries not by handicraftsmen;
- f) Exploitation of salt pans;
- g) Conversion and adaptation of chattels, such as foodstuffs, raw materials or semi-finished products not by handicraftsmen;
- h) Building, repairs, maintaining, cleaning, painting or dyeing movables not by handicraftsmen;
- i) Embanking, leveling, trenching or draining carried out for a third party not by handicraftsmen
- j) Carriage of goods or persons not by handicraftsmen;
- k) Printing and engraving and works connected with photography or cinematography not by handicraftsmen;
- l) Capturing, distributing and supplying water;
- m) Producing, distributing and supplying electricity, gas, compressed air including heating and cooling;
- n) Operating places of entertainment or radio or television stations;
- o) Operating hotels, restaurants, bars, cafes, inns, hairdressing establishments not operated by handicraftsmen and public baths and toilets;
- p) Publishing in whatever form, and in particular by means of printing, engraving, photography or recording;
- q) Operating news and information services;
- r) Operating travel and publicity agencies;
- s) Operating business as an agent, broker, stock broker or commercial agent;
- t) Operating a banking and money changing business, and
- u) Operating an insurance business.

#### **Article 3**

- 1) The provisions of this code relating to traders shall not apply to handicraftsmen.
- 2) Handicraftsmen are persons who carry on an independent activity, who live mainly on their own manual work, who may carry on their activity with the assistance of members of their

family and of not more than three employees or apprentices and who by such material only as is necessary for carrying out their activities, without setting up stocks.

- 3) Handicraftsmen may use mechanical power
- 4) Handicraftsmen are subject to the provision of any special law relating to their activities.

#### **Article 4**

Persons incapable under the civil code

Persons incapable under the civil code may not carry on any trade.

#### **Article 5**

Right to act as a trader, prohibitions and restrictions:

- 1) Subject to such prohibitions or lawful restrictions regarding unfair competition as may be prescribed, any person or business organization has the right to carry on any trade in accordance with the provisions regulating such trade. With the provisions regulating such trade.
- 2) Particular persons may be restricted or prevented from acting as traders or from carrying on a particular trade by legal provisions setting up prohibitions or incompatibilities.
- 3) Law in respect of particular trades may impose specific requirements as to age, qualifications, sex, nationality or license.

#### **Article 6**

Effect of Prohibitions and Restrictions

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

### **CHAPTER ONE: COMMERCIAL EMPLOYEES**

#### **Article 7**

Definitions

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

#### **Article 8: Labour Code Applicable**

Without prejudice to the provisions of this code, the provisions of the labour code relating to contracts of employment shall apply to commercial employees.

#### **Article 9: Agents**

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

**Article 10**

Powers of employees in charge of sales.

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

**Article 11: Managers**

Definition

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

**Article 12: Publicity**

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

**Article 13: Power of Manager**

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

**Article 14: Commercial Representatives**

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

**Article 15: Commercial Agents**

Definitions

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

**Article 16: Commercial Brokers**

## Definition

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

**Article 17: Notice to Parties**

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

**Article 18: Commission Agents**

## Definition

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

**Article 19: Commercial Register**

The commercial register shall be kept in Hargeisa by the department of commerce of the ministry of commerce

**Article 20: Official Commercial Bulletin**

- 1) All principal or subsidiary entries and all complementary entries, alterations or deletions shall be published in the official commercial bulletin
- 2) The department of commerce of the ministry of commerce shall issue the official commercial bulletin.

**Article 21: Requirements to Issue Commercial License**

The following documents are required prior the issuance of commercial license by the ministry of commerce:

- a) Application to obtain a license
- b) Statement of registration signed by the attorney-general
- c) Articles of association,
- d) Fixed asset
- e) Bank balance of 5,000,00 SL shillings (Deposit)
- f) Police testimony
- g) Tax clearance certificate
- h) Membership registration of chamber of commerce.

**Article 22: Prohibition**

No person shall engage in any commercial activity unless registered in the commercial register.

#### **Article 23: Effective Date of Registration**

Registration shall be effective from the date of entry of the commercial register.

#### **Article 24: Cancellation of Registration**

- 1) The ministry of commerce shall decide to cancel the registration after being aware of the fact that either the business person has ceased to operate his business or there is a lawful decision prohibiting him to carry on his business.
- 2) Any registered person may apply for the registration to be cancelled within two months from his ceasing to carry on trade.
- 3) The heirs of a deceased trader shall apply for the registration to be cancelled within two months from the death.
- 4) Where the heirs carry on the trade under joint ownership, they shall apply for a new registration to be entered.
- 5) Where the joint ownership is dissolved the entry made under sub-article (4) shall be cancelled and the person to whom the business is assigned shall apply for a new registration.
- 6) Where a business organization is dissolved and wound-up, the liquidators shall apply for the registration of the business organization in the commercial register to be cancelled. The business organization shall have no legal personality after cancellation has been published in the official commercial bulletin.
- 7) The business person whose registration is cancelled shall get upon his request a certificate of cancellation of registration on payment of the fee prescribed by the regulations.

#### **Article 25: Issuance of Substitute Commercial License**

Any person whose commercial license is lost or damaged may apply in writing to the ministry of commerce to obtain a substitute commercial license upon payment of the fee prescribed by the regulations.

#### **Article 26: Registration of Trade Names**

Trade names shall be registered with commercial license.

### **CHAPTER TWO: PARTINERSHIP**

#### **Article 27**

Definition

- 1) Partnership is the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
- 2) A partnership can not be formed with more than ten persons in banking and twenty persons in other types of business.  
A partnership with persons exceeding the above limits must be registered under a companies Act.

#### **Article 28: Contributions**

- 1) Each partner shall make a contribution, which may be in money, debts, other property or skill.



- 2) Unless otherwise agreed, contributions shall be equal and of the nature and extent required for carrying out the purposes of the partnership.

### **Article 29: Partners**

Any person who has the capacity to enter into a contract can be a partner.

### **Article 30: Joint Ownership**

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

### **Article 31: The Partnership Agreement**

The partners shall draw up the partnership agreement. It shall contain:

- 1) The name, address and nationality of each partner
- 2) The firm-name,
- 3) The head office and branches, if any;
- 4) The nature of business;
- 5) Place of business and the business address;
- 6) Duration of the partnership and the mode of dissolution;
- 7) The amount of capital to be contributed by each partner,
- 8) The share of profits to be taken by each partner;
- 9) The mode of management.
- 10) The powers of the partners;
- 11) Term on which a partner can retire;
- 12) Expulsion of partners; and
- 13) Introduction of new partners.

### **Article 32: Registration of Partnerships**

- 1) The registration of a partnership is not compulsory but optional;
- 2) Where a partnership is to be registered, the following statement must be released to the commercial registrar, without prejudice article 21 of the commercial code:
  - a) The firm-name;
  - b) The place or principle place of business of the firm;
  - c) The branch names, if any;
  - d) The date when each partner joined the firm;
  - e) The names in full and permanent addresses of the partners,
  - f) The duration of the firm.
- 3) The statement, mentioned under sub-article (2) of this article must be signed and verified by all the partners or their agents specially authorized on this behalf.
- 4) Unregistered firms cannot file suits or claim set-off.

### **Article 33: Modification of the Agreement**

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

### **Article 34: Majority**

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

#### **Article 35: Rights and Duties of Partners**

- 1) Partners are bound to carry on the business of the firm to be greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.
- 2) Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.
- 3) A partner is not entitled to receive remuneration for taking part in the conduct of business;

#### **Article 36: Management of a Firm**

Subject to any agreement to the contrary, the following rules apply as regards the management of a firm:

- a) Every partner has a right to take part in the conduct of the business;
- b) Every partner is bound to attend diligently to his duties in the conduct of the business;
- c) Any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right so express his opinion before the matter is decided but no change may be made in the nature of the business without the consent of all the partners; and
- d) Every partner has a right to have access so and to inspect and copy any of the books of the firm.

#### **Article 37: Profit Sharing**

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

#### **Article 38: Manner of Distributing Profits and Losses**

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

#### **Article 39: Reports**

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

#### **Article 40: Use of Partnership Property**

- 1) Property, debts and rights brought into or acquired by the partnership shall belong to the partners in common under the terms of the partnership agreement.

- 2) No partner may use partnership property against the interests of the partnership or so as to prevent his co-partners from using such property in accordance with their rights.

#### **Article 41: Relations of the Partnership with third Parties**

- 1) Every partner is liable, jointly with all the other partners and also severally for all acts of the firm done while he is a partner.
- 2) Where, by the wrong full act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner.

#### **Article 42: Creditors of the Partnership**

- 1) The creditors of the partnership may claim against partnership assets.
- 2) They may also claim against the personal property of the partners who shall, unless otherwise agreed, be jointly and severally liable to them for the obligations of the partnership. A partner who is sued on his personal property may require, as though he were a guarantor, that the creditor first distain the property of the partnership.

#### **Article 43**

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

#### **Article 44: Rights of In-coming Partners**

A new partner can be introduced only with the consent of all the partners. The share of profits which a new partner is entitled to get is fixed at the fines he becomes a partner. He is liable for all the debts of the firm after the date of his admission but he is not responsible for any act of the firm done before he became a partner, unless otherwise agreed.

#### **Article 45: Dissolution and Winding-up of Partnership**

Definitions

- 1) Dissolution of a firm means the end of a firm by the break up of the relation of partnership between all the partners.

#### **Article 46: Grounds for Dissolution**

- 1) A partnership may be dissolved any time with the consent of all the partners of the firm.
- 2) A partnership shall be dissolved where one of the partners dies or is no longer able, under the law, to be a partner.
- 3) A partnership shall be dissolved where a partner is declared bankrupt.
- 4) The partnership may by agreement continue as between the remaining partners, or with the heirs or representatives of the deceased, in cable or bankrupt partner.
- 5) The happening of an event, which makes the business of the firm unlawful, may dissolve a partnership.

#### **Article 47: Expulsion of a Partner**

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

**Article 48: Paying out Partner Leaving**

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

**Article 49: Partnership for an Indefinite Period**

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

**Article 50: Withdrawal of a Partner**

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

**Article 51: Powers of Managers after Dissolution**

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

**Article 52: Appointment of Liquidators**

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

**Article 53: Duties and Responsibilities of Liquidators**

- 1) Unless otherwise provided in the partnership agreement or by law, the liquidators shall have the same duties and responsibilities as managers.
- 2) The appointment of liquidators may be revoked by the decision of all the partners, or by the court at the request of one partner.

**Article 54: Inventory**

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

**Article 55: Power of the Liquidators**

- 1) The liquidators shall take all steps necessary to complete the winding-up of the partnership.

- 2) The liquidators may sell the property of the partnership, represent the partnership in legal proceedings and may comprise or refer to arbitration any matters in issue.
- 3) The liquidators may not undertake new business in the name of partnership but may complete business already started.

#### **Article 56: Mode of Settling Accounts after Dissolution**

The settlement of accounts between partners upon dissolution is to take place in the manner provided for in the partnership agreement. Subject to such an agreement:

- 1) Losses are to be paid first out of profits, next out of capital, and, lastly, if necessary by the partners individually in the proportions in which they were entitled to share profits. Capital deficiency is to be treated as loss and is to be borne by the partners in proportion to the profit sharing ratio.
- 2) The assets of the firm including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following order:
  - a) In paying the debts of the firm to third parties,
  - b) In paying to each partner ratably what is due to him from the firm for advances as distinguished from capital;
  - c) In paying to each partner ratably what is due to him on account of capital; and
  - d) The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.
- 3) If a partner become insolvent or otherwise cannot pay his share of the contribution, the capital of the solvent partners cannot be returned in full. In this case, the solvent partners must share ratably the available assets.

#### **Article 57: Sale of Goodwill after Dissolution**

In settling the accounts of the partnership after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets and it may be sold either separately or along with other property of the partnership.

#### **Article 58: Rights of Buyer of Goodwill**

The purchaser of the goodwill gets the exclusive rights to represent himself as carrying on the old business. He also gets the exclusive right to use the name of the old partnership.

### **CHAPTER THREE: NEGOTIABLE INSTRUMENTS**

#### **Article 59: Form of Negotiable Instruments**

An instrument to be negotiable must conform to the following requirements:

- a) It must be in writing and signed by the maker or drawer;
- b) Must contain an unconditional promise or order to pay a sum certain in money;
- c) Must be payable on demand;
- d) Must be payable to bearer or to order; and
- e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

#### **Article 60: Additional Provisions not affecting negotiability**

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not effected by a provision which

- a) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
- b) Authorizes a confession of judgment if the instrument be not paid at maturity; or
- c) Waives the benefit of any law intended for the advantage or protection of the obliger; or
- d) Gives the holder an election to require something to be done in lieu of payment of money. But nothing in this article shall validate any provision or stipulation otherwise illegal.

#### **Article 61: Omissions; Seal; Particular Money**

The validity and negotiable character of an instrument are not affected by the fact that:

- a) It is not dated; or
- b) Doesn't specify the value given, or that any value had be given thereof; or
- c) Doesn't specify the place where it is drawn or the place where it is payable; or
- d) Bears a seal; or
- e) Designates a particular kind of current money in which payment is to be made. But nothing in this article shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

#### **Article 62: Instrument Payable on Demand**

An instrument is payable on demand:

- a) When it is so expressed to be payable on demand, or at sight, or on presentation,
- b) In which no time for payment is expressed.

Where an instrument is issued; accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

#### **Article 63: Instrument Payable to order**

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It maybe drawn payable to the order of:

- a) A payee who is not maker, drawer, or drawee, or
- b) The drawer or maker; or
- c) The drawee; or
- d) Two or more payees jointly; or
- e) One or some of several payees; or
- f) The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

#### **Article 64: Instrument Payable to Bearer**

The instrument is payable to bearer:

- a) When it is expressed to be so payable; or
- b) When it is payable to a person named therein or bearer; or
- c) When it is payable to the order of a fictitious or non existing person, and such fact was known to the person making it so payable; or
- d) When the name of the payee doesn't purport to be the name of any person; or
- e) When the only or last endorsement is an endorsement in black.

#### **Article 65: Ante-dated and Post-dated**

The instrument is not valid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title there to as of the date of delivery.

#### **Article 66: When Date may be Inserted**

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date doesn't avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

#### **Article 67: Liability of Person Signing in Trade or Assumed Name**

No person is liable on the instrument whose signature doesn't appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

#### **Article 68: Signature by Agent**

A duly authorized agent may make the signature of any party. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

#### **Article 69: Liability of Person Signing as Agent**

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, doesn't exempt him from personal liability.

#### **Article 70: Signature by Procreation**

A signature by "Procreation" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

#### **Article 71: Effect of Endorsement by Infant or Corporation**

The Endorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding the want of capacity, the corporation or infant may incur no liability thereon.

#### **Article 72: Forged Signature**

When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefore, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

## I. CONSIDERATION

### Article 73: Presumption of Consideration

Every negotiable instrument is deemed prima facial to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

### Article 74: Value

Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

## II. NEGOTIATION

### Article 75: What Constitutes Negotiation

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the endorsement of the holder and completed by delivery.

### Article 76: Endorsement

The endorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the endorser, without additional words, is a sufficient endorsement.

### Article 77: Endorsement must be of entire Instrument

The endorsement must be an endorsement of the entire instrument. An endorsement, which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the instrument to two or more endorsees severally, doesn't operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be endorsed as to the residue.

### Article 78: Kinds of Endorsement

An endorsement may either be written or in blank.

### Article 79: Written Endorsement, Endorsement in Blank

Written endorsement specifies the person to whom, or to whose order, the instrument is to be payable, and the endorsement of such endorsee is necessary to the further negotiation of the instrument. An endorsement in blank specifies no endorsee, and an instrument so endorsed is payable to bearer, and may be negotiated by delivery.

### Article 80: Blank Endorsement

The holder may convert a blank endorsement into a written endorsement by writing over the signature of the endorser in blank any contract consistent with the character of the endorsement.

### Article 81: Endorsement of Instrument Payable to Bearer



Where an instrument, payable to bearer, is endorsed in writing, it may nevertheless be further negotiated by delivery; but the person endorsing in writing is liable as endorser to only such holders as make title through his endorsement.

#### **Article 82: Endorsement where Payable to two or more Persons**

Where an instrument is payable to the order of two or more payees or endorsees who are not partners, all must endorse unless the one endorsing has authority to endorse for the others.

#### **Article 83: Time of Endorsement**

Except where an endorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

#### **Article 84: Place of Endorsement**

Except where the contrary appears, every endorsement is presumed prima facie to have been made at the place where the instrument is dated.

#### **Article 85: Transfer without Endorsement**

Where the holder of an instrument payable to his order transfers it for value without endorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferor acquires in addition, the right to have the endorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the endorsement is actually made.

### **III. RIGHTS OF THE HOLDER**

#### **Article 86: Right to Sue**

The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

#### **Article 87: Holder in due Course**

A holder in due course is a holder who has taken the instrument under the following conditions:

- a) That it is complete and regular upon its face;
- b) That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact;
- c) That he took it in good faith and for value;
- d) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

#### **Article 88: Notice before full Amount is paid**

Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefore, he will be deemed a holder in due course only to the extent of the amount therefore paid by him.

#### **Article 89: When Title Defective**

The title of a person who negotiates an instrument is defective when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

#### **IV. RIGHTS OF THE HOLDER**

##### **Article 90: Liability of Maker**

The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his capacity to indorse.

##### **Article 91: Liability of Drawer**

The drawer by drawing the instrument admits the existence of the payee and his capacity to indorse; and engages that, on due presentment, the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

##### **Article 92: Liability of Acceptor**

The acceptor by accepting the instrument, engages that he will pay it according to the tenor of his acceptance and admits:

- a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
- b) The existence of the payee and his capacity to endorse.

#### **V. PRESENTATION FOR PAYMENT**

##### **Article 93: Effect of want of Demand on Principal Debtor**

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms payable at special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and endorsers.

##### **Article 94: Presentment where Instrument is not payable on demand and where payable on demand**

Where the instrument is not payable on demand, presentment must be paid on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

##### **Article 95: What constitutes a sufficient Presentment**

Presentment for payment, to be sufficient, must be made:

- a) By the holder, or by some person authorized to receive payment on his behalf;
- b) At a reasonable hour on a business day;
- c) At a proper place as herein defined;

- d) To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

#### **Article 96: Place of Presentment**

Presentment for payment is made at the proper place:

- a) Where a place of payment is specified in the instrument and it is there presented;
- b) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
- c) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

#### **Article 97: Instrument must be exhibited**

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid, must be delivered up to the party paying it.

#### **Article 98: Presentment where Instrument payable at Bank**

Where the instrument is payable at a bank, presentment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

#### **Article 99: Presentment where Principal Debtor is Dead**

Where the person primarily liable on the instrument is dead and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found.

#### **Article 100: Presentment to Persons Liable as Partners**

Where the persons primarily liable on the instrument are liable as partners and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

#### **Article 101: Presentment to Joint Debtors**

Where there are several persons, not partners, primarily liable on the instrument and no place of payment is specified, presentment must be made to them all.

#### **Article 102: When Presentment not required to charge the Drawer**

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

#### **Article 103: When Presentment not required to charge the Endorser**

Presentment is not required in order to charge an endorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

#### **Article 104: When delay in making Presentment is excused**

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

**Article 105: When Presentment for payment is excused**

Presentment for payment is excused:

- a) Where, after the exercise of reasonable diligence, presentment, as required by this code, cannot be made;
- b) Where the drawee is a fictitious person;
- c) By waiver of presentment, express or implied.

**Article 106: When Instrument dis-honored by non-payment**

The instrument is dishonored by non-payment when:

- a) It is duly presented for payment and payment cannot be obtained or is refused; or
- b) Presentment is excused and the instrument is overdue and unpaid.

**Article 107: Liability of Person Secondarily Liable, when Instrument Dishonored**

Subject to the provisions of this code, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

**Article 108: Time of Maturity**

Every negotiable instrument is payable at the time fixed therein without grace.

**Article 109: Time, how Computed**

When the instrument is payable at a fixed period after date, after sight, or after that happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

**Article 110: Rule where Instrument Payable at Bank**

Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

**Article 111: What Constitutes Payment in Due Course**

Payment is made in due course when it is made at or after the maturity of the payment to the holder thereof in good faith and without notice that his title is defective.

**VI. NOTICE OF DISHONOR**

**Article 112: To whom Notice of Dishonor must be Given**

Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each endorser, and any drawer or endorser to whom such notice is not given is discharged.

**Article 113: Procedure of Notice**

Time, procedure, other conditions or requirements, and parties to be given notice shall be detailed and by regulations issued by the government.

## **VII. DISCHARGE OF NEGOTIABLE INSTRUMENTS**

### **Article 114: Instrument; how Discharged**

A negotiable instrument is discharged:

- a) By payment in due course by or on behalf of the principle debtor.
- b) By payment in due course by the party accommodated, where the instrument is made or accepted for his accommodation,
- c) By the intentional cancellation thereof by the holder;
- d) By any other act which will discharge a simple contract for the payment of money.
- e) Where the principal debtor becomes the holder of the instrument at or after maturity in his own right.

### **Article 115: When Persons Secondarily Liable on the Instrument are Discharged**

A person secondarily liable on the instrument is discharged:

- a) By any act which discharges the instrument;
- b) By the intentional cancellation of his signature by the holder;
- c) By the discharge of a prior party;
- d) By a valid tender or payment made and by a prior party;
- e) By a release of the principal debtor unless the holder's right of recourse against the party secondarily liable is expressly reserved;
- f) By any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved.

### **Article 116: Right of Party who Discharges Instrument**

Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent endorsement and against negotiate the instrument, except;

- a) Where it is payable to the order of third person and has been paid by the drawer, and
- b) Where it was made or accepted for accommodation and has been paid by the party accommodated.

### **Article 117: Renunciation by Holder**

The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made. At or after the maturity of the instrument discharges the instrument. But a renunciation doesn't affect the rights of a holder in due course without notice. A renunciation must be in writing unless the instrument is delivered up to the person primarily liable thereon.

### **Article 118: Unintentional Cancellation and Burden of Proof**

A cancellation made unintentionally or under a mistake or without the authority of the holder, is inoperative but where an instrument or any signature thereon appears to have been cancelled,

the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.

#### **Article 119: Alteration of Instrument**

Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent endorsers. But when an instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration, he may enforce payment thereof according to its original tenor.

#### **Article 120: What Constitutes a Material Alteration**

Any alteration, which charges:

- a) The date,
- b) The sum payable, either for principal or interest;
- c) The time or place of payment;
- d) The number or the relations of the parties;
- e) Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

### **BILLS OF EXCHANGE** **VIII. FORM AND INTERPRETATION**

#### **Article 121: Bill of Exchange, Defined**

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or after a fixed or determinable future time a sum certain in money to order or to bearer.

#### **Article 122: Bill not an Assignment of Funds in Hands of Drawee**

A bill of itself doesn't operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

#### **Article 123: Bill Addressed to more than one Drawee**

A bill may be address to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or in succession.

#### **Article 124: Inland and Foreign Bills of Exchange**

An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within Somaliland. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

#### **Article 125: When Bill may be treated as Promissory Note**

Where in a bill the drawer and drawee are the same person or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument at his option either as a bill of exchange or as a promissory note.

**Article 126: Referee in case of need**

The drawee of a bill and any endorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by non-acceptance or non-payment, such person is called a referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

**IX. ACCEPTANCE****Article 127: Acceptance, how made**

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

**Article 128: Holder entitled to acceptance on face of Bill**

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and, if such request is refused, may treat the bill as dishonored.

**Article 129: Acceptance by separate Instrument**

Where acceptance is written on a paper other than the bill itself, it doesn't bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

**Article 130: Promise to accept, when equivalent to acceptance**

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

**Article 131: Time allowed drawee to accept**

The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; the acceptance, if given, dates as of the day of presentation.

**Article 132: Liability of drawee returning or destroying bill**

Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

**Article 133: Acceptance of incomplete bill**

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

**X. PRESENTMENT FOR ACCEPTANCE**

**Article 134: When presentment for acceptance must be made**

Presentment for acceptance must be made:

- a) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
- b) Where the bill expressly stipulates that it shall be presented for acceptance; or
- c) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

**Article 135: When failure to present releases drawer and endorser**

Except as herein provided, the holder of a bill which is required by the next preceding article to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all endorsers are discharged.

**Article 136: Presentment, how made**

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

- a) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;
- b) Where the drawee is dead, presentment may be made to his personal representative;
- c) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

**Article 137: On what days presentment may be made**

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment, other than non-working days.

**Article 138: Presentment where time is insufficient**

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has no time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and doesn't discharge the drawers endorsers.

**Article 139: Duty of holder where bill not accepted**

Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and endorsers.

**Article 140: Rights of holder where bill not accepted**



Where a bill is dishonored by non-acceptance, an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary.

## XI. PROTEST

### **Article 141: In what cases protest necessary**

Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-payment, is must be duly protested for non-payment. If it is not so protested, the drawer and endorsers are discharged. Where a bill doesn't appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

### **Article 142: Protest; how made**

The protest must be annexed to the bill or must contain a copy thereof, and must be under the hand or seal of the notary making it and must specify:

- a) The time and place of presentment;
- b) The fact that presentment was made and the manner thereof;
- c) The cause and reason for protesting the bill;
- d) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

### **Article 143: Protest; by whom made**

Protest may be made by:

- a) A notary public; or
- b) By the court.

### **Article 144: Protest; when to be made**

When a bill is protested, such protest must be made on the day of its dishonor unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

### **Article 145: Protest; where made**

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

### **Article 146: Protest for non-acceptance and non-payment**

A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

### **Article 147: Protest before maturity where acceptor insolvent**

Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors before the bill matures, the holder may cause the bill to be protested for better security against the drawer and endorsers.

**Article 148: When protest dispensed with**

Protest is dispensed with by any circumstances, which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

**Article 149: Protest where bill is lost and so forth**

When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

**XII. ACCEPTANCE FOR HONOR****Article 150: When bill may be accepted for honor**

When a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

**Article 151: Acceptance for honor; how made**

An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor and must be signed by the acceptor for honor.

**Article 152: When deemed to be an acceptance for honor of the drawer**

Where an acceptance for honor doesn't expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

**Article 153: Liability of the acceptor for honor**

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

**Article 154: Agreement of acceptor for honor**

The acceptor for honor, by such acceptance, engages that he will, on due presentment, pay the bill according to the terms of his acceptance provided it shall not have been paid by the drawee and provided also that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

**Article 155: Maturity of bill payable after sight; accepted for honor**

Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

**Article 156: Protest of bill accepted for honor, and so forth**

Where a dishonored bill has been accepted for honor supra protest or contains a referee in case of need, it must be protested for non-payment before it is protested for payment to the acceptor for honor or referee in case of need.

**Article 157: Presentment for payment to acceptor for honor; how made**

Presentment for payment to the acceptor for honor must be made as follows:

- a) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.
- b) If it is to be presented in some other place than the place where it was protested, than it must be forwarded within a reasonable time.

**Article 158: When delay in making presentment is excused**

The provisions of Article \_\_\_\_\_ shall apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

**Article 159: Dishonor of bill by acceptor for honor**

When the bill is dishonored by the acceptor for honor, it must be protested for non-payment by him.

**XIII. PAYMENT FOR HONOR**

**Article 160: Who may make payment for honor**

Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

**Article 161: Payment for honor; how made**

The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

**Article 162: Declaration before payment for honor**

The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

**Article 163: Preference of parties offering to pay for honor**

Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

**Article 164: Effect on subsequent parties where bill is paid for honor**

Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged but the payer for honor is subrogated for, and succeeds to, both the rights

and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

**Article 165: Where holder refuses to receive payment supra protest**

Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any part who would have been discharged by such payment.

**Article 166: Rights of payer for honor**

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the pretest.

**XIV. PROMISSORY NOTES**

**Article 167: Promissory note, defined**

A negotiable promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer where a note is drawn to the maker's own order, it is not complete until endorsed by him.

**XV. CHECKS**

**Article 168: Check, defined**

A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this code applicable to a bill of exchange payable on demand apply to a check.

**Article 169: Time within which a check must be presented**

A check must be presented for payment within reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

**Article 170: Certification of check; effect of**

Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

**Article 171: Effect where the holder of check procures it to be certified**

Where the holder of a check procures it to be accepted or certified, the drawer and all endorsers are discharged from liability thereon.

**Article 172: When check operates as an assignment**

A check of itself doesn't operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

**CHAPTER FOUR: CONTRACTS OF CARRIAGE**

**Article 173: Contract of Carriage**

A contract of carriage is a contract whereby a person, called the carrier, undertakes for reward to carry persons, baggage or goods and to convey them to a specified place.

**Article 174: Baggage**

- 1) Objects, which a passenger causes to be carried with him, such as objects contained in trunks, baskets, bags or other packages of a similar nature, shall be deemed to be baggage.
- 2) Objects which a passenger is allowed to carry with him and which are not registered by the carrier shall be deemed to be hand-baggage.
- 3) Objects which are entrusted to and taken over by the carrier shall be deemed to be registered baggage.

**Article 175: Carriage by Land**

The provisions of this chapter shall apply to any person who undertakes for reward to carry persons, baggage or goods by land, in particular by road or railway.

**Article 176: Carriage by Air**

The provisions of the chapter shall apply to the carriage by air of persons, baggage or goods.

**Article 177: Carriage by Sea**

The relevant provisions of the maritime code shall apply to the carriage by sea of persons, baggage or goods.

**I. TRANSPORT TITLES****A. Passenger's Ticket****Article 178: Ticket may be required**

- 1) A contract of carriage of persons shall come into being where the parties agree. The carrier may require the passenger to procure for himself and to preserve until completion of the voyage a transport title such as a bill, ticket or season ticket.
- 2) Provisions may be made to the effect that a person who travels without a ticket shall be liable to pay a surcharge in addition to the cost of the journey.
- 3) The cost of transportation and the time of departure and arrival shall be specified on the passenger's ticket.

**B. Luggage – Tickets****Article 179: Right of Passenger**

The passenger may require the carrier to deliver to him in respect of registered baggage-ticket showing the date and place of issue, the place from and to which the baggage is to be carried, the number of pieces and the weight of the baggage, and the cost of transport unless it is included in the cost of the passenger's transport.

**Article 180: Purpose of Luggage-ticket**

- 1) Unless the contrary is proved, a luggage-ticket shall be proof of the registration and conditions of transport of the baggage.
- 2) The provisions of this chapter shall apply and the contract of carriage shall be valid and remain in force notwithstanding that there is no luggage-ticket or no valid ticket or the ticket has been lost. The carrier shall hand the baggage to the person who requires it without a luggage-ticket unless such person can show that he is entitled to the luggage.

### **C. Transport Titles in respect of goods**

#### **Article 181: Transport Title not issued, not valid or lost**

The provisions of this chapter shall apply and the contract of carriage of goods shall be valid and remain in force notwithstanding that there is no valid ticket or the title has been lost.

#### **Article 182: Issue of Consignment note**

Any carrier of goods may require the sender to prepare and to hand to him a document called a consignment note. Any sender may require the carrier to accept such consignment note.

#### **Article 183: Copies of Consignment note**

- 1) Three copies of the consignment note shall be made
- 2) The first copy shall be signed by the sender and shall remain with the carrier.
- 3) The second copy shall be signed by the sender and carrier and remain with the goods.
- 4) The third copy shall be signed by the carrier and handed by the carrier to the sender after the goods have been accepted.

#### **Article 184: Particulars to Consignment note**

The consignment note shall show:

- 1) The date and place of issue;
- 2) The place from and to which the goods are to be carried;
- 3) The names and addresses of the sender and addressee;
- 4) The name of the carrier;
- 5) The means of transport;
- 6) The nature, number, volume or weight of the goods;
- 7) The distinguishing marks or numbers affixed on the parcels, if any;
- 8) The cost of transport, the time within which and the route whereby the goods are to be carried.

#### **Article 185: Consignment note to order**

A consignment note may be made to order where the sender and the carrier agree.

#### **Article 186: Other Documents**

Where the sender and the carrier agree, a consignment note may be replaced by the other document, such as a receipt delivered by the carrier on the sender having made all appropriate statements.

#### **Article 187: Effect of Transport titles**

Unless the contrary is proved, a consignment note or receipt delivered by the carrier shall be a proof of the making of the contract, of the receipt of the goods and of the nature, number, volume or weight of the goods.

## **RIGHTS AND DUTIES OF PARTIES TO A CONTRACT OF CARRIAGE**

### **I. Rights and Duties of Sender and addressee**

#### **Article 188: Statements by sender**

- 1) Each piece of the consignment shall show:
  - a) The name and address of the sender and addressee;
  - b) The place from and to which the goods are to be carried;
  - c) The nature, number, value or weight of the goods;
  - d) The distinguishing marks or numbers affixed on the parcels, if any
- 2) The sender shall be liable for any damage caused to the carrier or to a person for whom the carrier is responsible arising out of irregular, inaccurate or incomplete statements relating to the consignment.

#### **Article 189: Packing**

- 1) Where the nature of the goods is such that packing is necessary, the sender shall pack the goods so that they be not lost or damaged nor likely to damage persons, baggage or other goods carried.
- 2) The sender shall be liable for any damage arising out of defective packing. The carrier shall be liable for such damage where he accepted to carry the goods and he knew that they were not packed or the packing was defective.

#### **Article 190: Rights of sender to dispose of the goods**

- 1) Where he carries out all his duties under the contract of carriage the sender may dispose of the goods, either by taking them back from the carrier or by stopping them during their transport or by causing them to be delivered during the transport before they arrive at the place of destination to a person other than the addressee named in the contract.
- 2) Where a transport title has been delivered to the sender, he may not dispose of the goods unless he produces the title to the carrier.

#### **Article 191: When sender may not dispose of the goods**

The sender may not dispose of the goods after the transport title has been handed to the addressee or where the goods have been carried to their destination and the addressee has required the carrier to deliver them to him.

#### **Article 192: Cost of Transport**

- 1) The cost of transport and all incidental expenses shall be met by the sender.
- 2) Where the goods have been sent carriage forward, the sender and the addressee who accepted the consignment shall be jointly and severally liable for the cost of transport and all incidental expenses.

### **II. Duties of Carrier of goods or registered baggage.**

#### **Article 193: Conveyance of goods and baggage**

- 1) The carrier shall, within the agreed time, convey the goods to the agreed place with all customary code and deliver them to the addressee.
- 2) The shall in the same manner convey registered baggage and deliver it to the addressee or the person acting on his behalf.

#### **Article 194: Notice to addressee**

Where the goods cannot be delivered at the addressee's domicile or are not taken away by the addressee, the carrier shall without delay inform the addressee of the arrival of the goods and of the time when and place where they are available.

#### **Article 195: Goods, which cannot be delivered**

- 1) Where goods cannot be delivered, the carrier shall without delay inform the sender and require him to give instructions. Where the carrier cannot keep the goods in his custody, he shall move the court to order that the goods be deposited with a third party.
- 2) Where goods which cannot be delivered are of a perishable nature and the carrier cannot receive the sender's instructions in due time, he shall cause the goods to be sold.

#### **Article 196: Baggage which cannot be delivered**

- 1) Where registered baggage cannot be delivered at the addressee's domicile and is not taken away on arrival by the passenger or the person acting on his behalf, the carrier shall where possible require the passenger to give instructions.
- 2) Where the carrier cannot keep the registered baggage in his custody or such baggage is of a perishable nature, the provisions of Article 195 shall apply.

### **III. Duties of parties to a contract of carriage**

#### **Article 197: Duties of Passenger**

The passenger shall pay the fee agreed in the contract, present himself at the time and place of departure and comply during the journey with the instructions given by the carrier or prescribed by law.

#### **Article 198: Duties of Carrier**

The carrier shall carry the passenger safely to his destination and shall comply with the terms of the contract as to time and comfort.

### **LIABILITY OF THE CARRIER**

#### **Article 199: Hand Baggage**

Hand baggage shall remain in the passenger's custody and the carrier shall not be liable for the loss of or damage to such baggage.

#### **Article 200: Loss of or damage to goods or registered baggage**

Without prejudice to the provisions of the following articles, the carrier shall be liable for the loss, whether total or partial, of goods or registered baggage or for any damage thereto or delay in the conveyance thereof.



**Article 201: Liability excluded in certain cases**

The carrier shall be relieved in whole or in part of his liability under Article 200 where he can show that the loss, damage or delay was due in whole or in part to force majeure, an inherent defect in the object carried or the fault of the sender or addressee.

**Article 202: Wear and Tear**

The loss of weight or volume which goods or registered baggage suffer by reason of the transport shall be regarded as an inherent defect and the carrier shall be liable for such loss only as exceeds customary limits.

**Article 203: Provisions excluding liability**

- 1) The carrier may by agreement relieve himself of liability for delay in the conveyance of goods or registered baggage.
- 2) Any provision relieving the carrier of liability for loss of or damage to goods or registered baggage shall be of no effect.

**Article 204: Limitation of liability**

The carrier may by agreement limit his liability for any total or partial loss of or damage to goods or registered baggage. Any such limitation shall be of no effect where the agreed compensation is so proportionate to the value of the object carried as to make the carriers liability negligible.

**Article 205: Liability of carrier of passengers**

Without prejudice to the provisions of the following articles, a person who carries passengers shall be liable for any delay in the carriage and for the death of or bodily injury to a passenger due to an accident occurring during the journey or whilst the passenger was mounting or alighting.

**Article 206: Liability excluding in certain cases**

The carrier shall be relieved in whole or in part of his liability for death or bodily injury under article 204 where he can show that the accident was due in whole or in part to force majeure, the act of a third party or the fault of the passenger himself.

**Article 207: Limitation of liability**

The carrier's liability or compensation shall be as determined by law applicable to compensation.

**Article 208: Provisions excluding liability**

The carrier may by agreement relieve himself of liability for any delay in the carrying.

**Article 209: Liability of successive carriers**

- 1) Where a contract of carriage is performed by more than one carrier, the passenger or those having rights from him may only claim against the carrier in charge of that part of the journey during which the accident or delay occurred unless it has been expressly specified that the liability of the first carrier would extend to the whole journey.

- 2) The respect of goods or registered baggage, the sender may claim against the first carrier and the addressee may claim against the last carrier. The sender and addressee may in addition claim against the carrier in charge of that part of the carrying during which the loss, whether total or partial, the damage or the delay occurred.
- 3) The carriers mentioned in sub-article (2) shall be jointly and severally liable to the sender and addressee.

### **LEGAL PROCEEDINGS**

#### **Article 210: Expert opinion, deposit and sale**

- 1) Where a dispute arises as to goods or registered baggage, the court within whose area of jurisdiction the goods or baggage are, may on application allow the calling of expert evidence. The applicant shall give notice thereof to all interested parties except in cases of urgency where notice may be waived by the court.
- 2) The court may order the goods or baggage to be deposited with a third party.
- 3) The court may order the goods or baggage to be sold on having checked the condition thereof.

#### **Article 211: Acceptance and protest**

- 1) Unconditional acceptance of goods or registered baggage shall be a bar to any claim for total or partial loss, damage or delay being brought against the carrier, unless there has been fraud on the carrier's part.
- 2) The carrier shall be liable for any non-apparent damage where the addressee enters a protest against the carrier as soon as he is aware of such damage or within not more than seven days from the delivery of the goods or baggage.

#### **Article 212: Limitation**

- 1) Any claim arising out of a contract of carriage shall be barred after two years from the day when the passengers' goods or registered baggage have or should have arrived at their destination or when their carrying was abandoned.
- 2) Where a claim is barred, the creditor may not set up his claim by way of counter claim nor by way of defense.

## **IV. CARRIAGE BY AIR**

### **General provisions**

#### **Article 213: Scope of Application**

The provisions of this chapter shall apply to the carriage of persons, baggage or goods by aircraft whether for reward or for free of charge.

#### **Article 214: Definition of Aircraft**

Any apparatus capable of raising or circulating in the air shall be deemed to be an aircraft within the meaning of the preceding article.

## **TRANSPORT TITLE**

### **A. Passenger's Ticket**

**Article 215: Issue of ticket**

- 1) A ticket shall be delivered to any person to be carried by air.
- 2) The ticket shall show:
  - a) The place and date of issue
  - b) The name and address of the carrier
  - c) The place from and to which the passenger is to be carried and the place of call, if any
  - d) The fare of transport.
- 3) The ticket shall contain a notice informing the passenger that the carrier liability is limited for death or bodily injury and for the loss of or damage to baggage.

**Article 216: Purpose of Ticket**

- 1) Unless the contrary is proved, the ticket shall be proof of the making and conditions of the contract of carriage.
- 2) The provisions of this chapter shall apply and the contract of carriage shall be valid and remain in force notwithstanding that there is no ticket or no valid ticket or the ticket has been lost. Where the carrier agrees to a passenger embarking without a ticket or where the ticket doesn't contain the notice provided in article 288 (3), the provisions regarding the carrier's liability shall not apply.

**B. Luggage Ticket****Article 217: Issue of Luggage-ticket**

- 1) A luggage ticket shall be issued where registered baggage is to be carried by air.
- 2) The luggage-ticket shall show:
  - a) The place and date of issue,
  - b) The name and address of the carrier,
  - c) The number of the passengers ticket
  - d) The place from and to which the baggage is to be carried;
  - e) The number and weight of the pieces.
- 3) Where the luggage ticket is not connected with the passenger's ticket under article 216 or is not included there in, it shall show that the carrier's liability is limited in respect of the loss of or damage to the baggage.

**Article 218: Purpose of Luggage-ticket**

- 1) Unless the contrary is proved, the luggage ticket shall be proof of the registration of the baggage and of the conditions of the contract of carriage.
- 2) The provisions of this chapter shall apply and the contract of carriage shall be valid and remain in force notwithstanding that there is no luggage-ticket or no valid ticket or the ticket has been lost. Where the carrier accepts the baggage without a luggage-ticket or where a luggage-ticket is not connected with or included in a passenger's ticket and doesn't contain the notice provided in article 229 (3), the provisions regarding the carrier's limited liability shall not apply.

**C. Bill of Lading****Article 219: Issue of Bill of Lading**

Any carrier of goods may require the sender to prepare and to hand to him a document called a bill of lading. Any sender may require the carrier to accept such bill of lading.

**Article 220: Bill of Lading not issued, not valid or lost**

The provisions of this chapter shall apply and the contract of carriage shall be valid and remain in force notwithstanding that there is no bill of lading or no valid bill or the bill has been lost.

**Article 221: Copies of bill of lading**

- 1) Three copies of the bill of lading shall be prepared by the sender and delivered to the carrier together with the goods.
- 2) The first copy shall bear the words: "for the carrier" and shall be signed by the sender.
- 3) The second copy shall bear the words: "for the addressee". It shall be signed by the sender and carrier and shall remain with the goods.
- 4) The third copy shall be signed by the carrier and handed to the sender after the goods have been accepted by the carrier.

**Article 222: Signatures**

- 1) The carrier shall sign the bill of lading before the goods are loaded.
- 2) The carrier's signature may be replaced by a stamp. The sender's signature may be printed or replaced by a stamp.
- 3) Unless the contrary is proved, the carrier shall be deemed to act on behalf of the sender where he prepares the bill of lading at the request of the sender.

**Article 223: More than one parcel**

Where more than one parcel is to be carried, the carrier may require the sender to prepare separate bills of lading.

**Article 224: Particulars in the bill of lading**

- 1) The bill of lading shall show:
  - a) The place and date of issue,
  - b) The place from and to which the goods are to be carried,
  - c) The name and addresses of the sender, the addressee and the first carrier,
  - d) The nature, number of pieces, volume or weight of the goods;
  - e) The distinguishing marks or numbers affixed on the parcels, if any;
  - f) The condition of the goods and the nature and condition of packing, if any;
  - g) The cost of transport;
  - h) The time within which and the route whereby the goods are to be carried;
- 2) The bill of lading shall contain a notice informing the sender of the carrier's limited liability for loss of or damage to the goods.

**Article 225: Bill of Lading to order**

Where the sender and carrier agree, the bill of lading may be to order.

**Article 226: Bill of lading not issued or incomplete**

Where the carrier accepts goods to be loaded without a bill of lading having been prepared or containing the notice provided in article 234(2), the provisions regarding the carrier's limited liability shall not apply.

#### **Article 227: Liability**

- 1) The sender shall be liable for the accuracy of the statements he makes in the bill of lading.
- 2) He shall be liable for any damage caused to the carrier or to a person for whom the carrier is responsible arising out of irregular, inaccurate or incomplete statements in the bill of lading.

#### **Article 228: Effect of bill of lading**

- 1) Unless the contrary is proved, a bill of lading shall be proof of the making of the contract, of the receipt of the goods and of the conditions of transport.
- 2) Statements as to the weight, size and packing of the goods and to the number of parcels shall be deemed to be correct unless the contrary is proved.
- 3) Statements as to the quantity, volume or conditions of the goods may be proved against the carrier only where the accuracy of the bill of lading has been checked by the carrier in the presence of the sender and the result of the check certified on the bill of lading, or where such statements relate to the apparent condition of the goods.

### **RIGHTS AND DUTIES OF SENDER AND ADDRESSEE**

#### **Article 229: Right of sender to dispose of goods**

- 1) Where he carries out all his duties under the contract of carriage, the sender may dispose of the goods, either by withdrawing them from the airport at plane of departure or destination, or by stopping them at a place of call or by causing them to be delivered during the carrying or on completion of the carrying to a person other than the addressee named in the bill of lading or by requiring them to be flown back to the airport at the place of departure.
- 2) The sender may exercise his rights under sub-article (1) where no damage is caused thereby to the carrier or other senders. He shall be liable for all expenses arising out of the exercise of such rights.
- 3) The carrier shall forthwith inform the sender where instructions given by the sender under sub-article (1) cannot be carried out.

#### **Article 230: Failure to produce bill of lading**

- 1) A carrier who complies with instructions given by the sender without requiring the sender to produce his copy of the bill of lading shall be liable for any damage caused thereby to any person who may have regularly obtained the bill of lading.
- 2) A carrier who has paid compensation for damages under sub-article (1) may claim against the sender for the reimbursement of such compensation.

#### **Article 231: When sender may not dispose of the goods**

The sender may not exercise his rights under article 230 as from the date when the addressee may exercise his rights under article 242, unless the addressee cannot be found or refuses to accept the goods or the bill of lading.

#### **Article 232: Rights of addressee**

- 1) Unless the sender exercises his rights under article 239, the addressee may on the arrival of the goods at their destination require the carrier to hand to him the copy of the bill of lading and to deliver the goods to him.
- 2) The provisions of sub-article (1) shall not apply unless the addressee carries out his duties as to payment and transport under the bill of lading.

#### **Article 233: Notice to addressee**

Unless otherwise agreed, the carrier shall forthwith inform the addressee of the arrival of the goods.

#### **Article 234: Loss of the goods**

Where the carrier admits that goods have been lost or where the goods have not arrived within seven days from the days on which they were due, the addressee may require the carrier to discharge his liability under the contract of carriage.

#### **Article 235: Rights exercised on behalf of a third party**

Where they comply with the conditions laid down in the contract of carriage, the sender and addressee may exercise all their rights under the preceding articles in their own name, whether on their own behalf or on behalf of a third party.

#### **Article 236: Relations between sender and addressee**

Nothing in article 239 – 245 shall affect the relations between the sender and addressee nor the relations between third parties who have rights from the sender or addressee.

#### **Article 237: Information to be given by sender**

- 1) The sender shall give all information and annex to the bill of lading all documents necessary for complying with customs, dues or control regulations before the goods can be delivered to the addressee.
- 2) The sender shall be liable for any damage caused to the carrier where he doesn't give such information or documents or gives inaccurate or incomplete information or documents.
- 3) The provisions of sub-article (2) shall not apply where a fault has been committed by the carrier or his agent.
- 4) The carrier shall not be bound to examine whether the information or documents given to him are accurate or sufficient.

### **LIABILITY OF THE CARRIER**

#### **Article 238: Injury to the person**

The carrier shall be liable for the death of or bodily injury to a passenger due to an accident occurring a board an aircraft or whilst the passenger was embarking or disembarking.

#### **Article 239: Loss of or damage to baggage or goods**

The carrier shall be liable for the loss of or damage to registered baggage or goods due to an occurrence having taken place whilst such baggage or goods were carried by air.

#### **Article 240: Carrying by Air**

- 1) Carrying by air within the meaning of article 239 shall include the time within which the baggage or goods are in the carrier's custody, whether at the airport or in the aircraft or in any other place not being an airport where the aircraft may have to land.
- 2) Carrying by air shall not include any carrying by land, sea or river taking place outside an airport. In cases of carrying by land, sea or river taking place with a view to loading, delivering or transshipping, any loss or damage shall be deemed to have occurred while the baggage or goods were carried by air, unless the contrary is proved.

#### **Article 241: Delay**

The carrier shall be liable for any delay in carrying passengers' baggage or goods.

#### **Article 242: Proof of care by carrier**

The carrier shall not be liable where he can show that he and his agents have taken all measures necessary for averting the damage or that such measures could not be taken.

#### **Article 243: Injured party at fault**

The court may reduce or waive the carrier's liability where the carrier can show that the damage was caused in whole or in part by the injured party himself.

#### **Article 244: Limitation of liability for damage to persons, baggage or goods**

The carrier's liability for damage to persons and damage or loss to baggage or goods shall be as specified by the international conventions on carriage by air.

#### **Article 245: Legal proceedings**

- 1) An action for damages under article 239 – 241 may only be brought on the conditions and subject to the limits provided in this chapter.
- 2) The provisions of sub-article (1) shall also apply to claims under article 238, without prejudice to the persons who are entitled to claim and to their respective rights.

#### **Article 246: Acceptance and protest**

- 1) Unless the contrary is proved, unconditional acceptance of baggage or goods by the addressee shall be proof that the goods have been delivered in good condition and in accordance with the bill of lading.
- 2) In cases of damage, the addressee shall enter a protest against the carrier as soon as he is aware of the damage or within not more than seven day from the delivery of the baggage and not more than fourteen days from the delivery of the goods.
- 3) In cases of delay, protest shall be entered within not more than twenty-one days from the date on which the baggage or goods were delivered to the addressee.
- 4) Protest under this article shall be entered by a notice on the bill of lading or by any other document sent to the carrier within the periods provided in this article.
- 5) Where protest is not entered in due time, no claim may be brought against the carrier, unless there has been fraud on the carrier's part.

#### **Article 247: Death of debtor**

Where the debtor dies, claims for damages under this chapter shall be brought against those having rights from him.

#### **Article 248: Jurisdiction**

- 1) Any claim for damages under this chapter may be brought, in the discretion of the plaintiff, either before the court of the place where the carrier is domiciled, has his principal place of business or has an agent who made the contract or before the court of place of destination.
- 2) Any provision contrary to the provisions of sub-article (1) shall be of no effect.
- 3) In respect of carriage of goods, provisions may be made with a view to arbitration, provided such arbitration is to take place in any of the places mentioned in sub-article (1)

#### **Article 249: Limitation**

Any claim for damages under this chapter shall be barred after two years from the day when the aircraft arrived or should have arrived or when the carrying was abandoned.

#### **Article 250: Definition of Days**

For the purpose of this chapter "days" shall include all days, whether working days or holidays.

### **CHAPTER FIVE: ARBITRATION**

#### **Article 251: Arbitration Agreement**

An arbitration agreement is an agreement whereby the parties to a dispute entrust its solution to one or more arbitrators who may be named therein or not.

#### **Article 252: Requirements**

An arbitration agreement, to be valid and binding, must be in writing, such an agreement must satisfy all the essential elements of a valid contract.

#### **Article 253: Restriction**

Only persons who are capable of entering into contracts can refer disputes to arbitration.

#### **Article 254: Capacity and Form**

- 1) The capacity of a right to dispose of a right without consideration shall be required for the submission to arbitration of a dispute concerning such right.
- 2) The arbitration agreement shall be drawn in the form required by law for disposing without consideration of the right to which it relates.

#### **Article 255: Object of Contract and Arbitration clause**

- 1) The dispute referred to arbitration may be an existing dispute.
- 2) The parties to a contract may also submit to arbitration disputes which may arise out of the contract in the future.
- 3) An arbitration agreement relating to future disputes shall not be valid unless it concerns disputes, which flow from a contract or other specific legal obligations.

#### **Article 256: Interpretation**



The provisions of the arbitration agreement relating to the jurisdiction of the arbitrators shall be interpreted restrictively.

**Article 257: Scope of Jurisdiction**

- 1) The arbitration agreement may authorize the arbitrator to decide difficulties arising out of the interpretation of the agreement itself.
- 2) It may in particular authorize the arbitrator to decide disputes relating to his own jurisdiction.
- 3) The arbitrator may in no case be required to decide whether the arbitration agreement is or is not valid.

**Article 258: Appointment of Arbitrator (s) by the parties**

- 1) The arbitrator (s) may be appointed either in the arbitration agreement or subsequently.
- 2) The arbitration agreement may provide that there shall be one arbitrator or several arbitrators.
- 3) Where the arbitration agreement fails to specify the number of arbitrators or the manner in which they shall be appointed, each party shall appoint one arbitrator.

**Article 259: Appointment of Arbitrator by the arbitrators or by the court**

- 1) Unless otherwise provided, where there is an even number of arbitrators they shall, before assuming their functions, appoint another arbitrator who shall as of right preside the arbitration tribunal.
- 2) Where their number is odd, the arbitrators shall appoint the president of the arbitration tribunal from among themselves.
- 3) Failing agreement between the arbitrators, the appointments provided in sub-article (1) and (2) shall be made by the court at the request of one of the parties.

**Article 260: Procedure for appointment**

- 1) Where necessary, the party availing himself of the arbitration agreement shall specify the dispute he wishes to raise and appoint an arbitrator.
- 2) Notice thereof shall be given to the other party, and where appropriate,

**Article 261: Time limit**

- 1) Where the other party or the person required to appoint an arbitrator fails to do so within thirty days, the court shall appoint such arbitrator.
- 2) The time-limit shall run from the day when the notice provided in Article 260 (2) reached its destination.
- 3) Modifications to these rules may be provided in the arbitration agreement.

**Article 262: Equality of Parties**

The arbitration agreement shall not be valid where it places one of the parties in a privileged position as regards the appointment of the arbitrator.

**Article 263: Default of Arbitrator: 1. Replacement**

- 1) Where an arbitrator refuses his appointment, dies, becomes incapable or resigns, he shall be replaced by the procedure prescribed for his appointment, in accordance with the provisions of the preceding articles.
- 2) Where an arbitrator is disqualified or removed, the new arbitrator shall be appointed by the court.
- 3) The provisions of this article may be modified by agreement between the parties.

#### **Article 264: 2. Lapse of Agreement**

- 1) Where the arbitration has been named in the arbitration agreement and the parties do not agree on who is to replace him, the arbitration agreement shall lapse.
- 2) However, it shall remain valid in respect of a future dispute where, at the time when it arises, the impediment of the arbitrator has ceased.
- 3) The provisions of this article may be modified by agreement between the parties.

#### **Article 265:- Death of Party**

The death of one of the parties shall not terminate the functions of the he has appointed, unless otherwise provided by the parties.

#### **Article 266: Functions of Arbitrator**

- 1) Any person may be appointed as an arbitrator.
- 2) The person appointed as an arbitrator shall be free to accept or to refuse his appointment.

#### **Article 267: Disqualification of Arbitrator: 1. Grounds**

- 1) An arbitrator may be disqualified where he is not of age or where he has been convicted by a court, is of unsound mind, ill or absent or is for any other reason unable to discharge his functions properly or within a reasonable time.
- 2) The arbitrator appointed by agreement between the parties or by a third party may be disqualified where are any circumstances capable of casting doubt upon his impartiality or independence.
- 3) The chairman of the arbitration tribunal may be disqualified for the same reason.

#### **Article 268: 2. Demurrer**

Unless otherwise provided, a party may seek the disqualification of the arbitrator appointed by himself only for a reason arising subsequently to such appointment, or for one of which he can show that he had knowledge only after the appointment.

#### **Article 269: 3. Procedure**

- 1) An application for disqualification shall be made to the arbitration tribunal by a party before the giving of the award and as soon as such party knew of the grounds for disqualification.
- 2) The parties may stipulate that the application for disqualification be made to another authority.
- 3) Where the application for disqualification is dismissed, this decision may be appended against in court within ten days.

#### **Article 270: Removal of Arbitrator**

Where an arbitrator, having accepted his appointment, unduly delays the discharge of his duties, the authority agreed upon by the parties or, in the absence of such agreement, the court, may remove the arbitrator on the application of either party.

#### **Article 271: Penalty for non-performance**

- 1) Where a party to an arbitration agreement brings before the court a dispute covered by the agreement, refuses to perform the acts required for setting the arbitration in motion or claims that he is not bound by the arbitration agreement, the other party may in his discretion demand the performance of the arbitration agreement or consider it to have lapsed in respect of the dispute in question.
- 2) The fact that a party to an arbitration agreement applies to the court to preserve his rights from extinction shall not entail the lapsing of the agreement.

### **CHAPTER SIX: SECURITIES**

#### **1. Mortgage**

##### **Article 272: Definition**

Mortgage is a transfer of an interests in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an engagement which may give rise to a pecuniary liability.

##### **Article 273: Mortgage how made**

A mortgage may result from the law or a judgment or be created by a contract or other private agreement.

##### **Article 274: Legal Mortgage of seller of immovable**

Whoever sells an immovable shall have a legal mortgage on such immovable as a security for the payment of the agreed price and for the performance of any other obligation laid down in the contract of sale.

##### **Article 275: Legal Mortgage of co-partitioner**

- 1) A co-partitioner shall have a legal mortgage on the immovables allotted to his co-partitioners in accordance with the act of partition.
- 2) Such mortgage shall secure the payment of any compensation in cash that may be due to him or such other compensation as may be due by the co-partitioners where he is dispossessed of any property allotted to him.

##### **Article 276: Judicial Mortgage**

- 1) A court or arbitration tribunal may secure the execution of its judgments, orders or awards by granting one party a mortgage on one or more immovables the property of the other party.
- 2) The judgment or award shall specify the amount of the claim secured by mortgage and the immovable or immovables to which such mortgage applies.

##### **Article 277: Instrument Creating Mortgage**

- 1) The contract or other agreement creating a mortgage shall be of no effect unless it is made in writing.
- 2) It shall be of no effect unless it specifies in Somaliland currency the amount of the claim secured by mortgage.

#### **Article 278: Claim secured by mortgage**

- 1) A mortgage may be created to secure any claim whatsoever, whether existing, future, conditional or contingent.
- 2) It may be created to secure a claim embodied in a title to order or to bearer.

#### **Article 279: Property liable to mortgage**

- 1) A mortgage may charge an immovable only.
- 2) Nothing shall affect the provisions of this code or special laws whereby certain kinds of movables may be mortgaged.

#### **Article 280: Immovable Mortgaged**

- 1) The act creating the mortgage shall clearly specify the immovable mortgaged.
- 2) Such act shall specify in particular the commune in which the immovable is situated, the nature of the immovable and, where appropriate, the number of the immovable in the cadastral survey plan.
- 3) Where the immovable is situated in an area where there is no cadastral survey plan, not less than two of its boundaries shall be specified.

#### **Article 281: Conditions for creating a mortgage**

- 1) A mortgage may be created by the debtor or by some other person in favour of the debtor.
- 2) A person may not secure his debt by mortgage unless he is entitled to dispose of the immovable for consideration.
- 3) A person may secure the debt of another by mortgage where he is entitled to dispose of the immovable gratuitously.

#### **Article 282: Sanction**

- 1) A mortgage shall be of no effect where a person who is not entitled to dispose of the immovable as provided in Article 281 creates it.
- 2) It shall not become valid where the mortgagor subsequently acquires the right to dispose of the immovable.
- 3) A mortgage shall be of no effect where it relates to future immovables.

#### **Article 283: Ownership evidenced by title deed**

- 1) A mortgage shall be valid where it is created by a person who is the owner of the immovable under a title deed issued to him by the competent authorities.
- 2) It shall be valid notwithstanding that the title deed was issued on the basis of an act, which is invalidated, unless the person who avails himself of the mortgage is shown to be in bad faith.
- 3) In such cases, the owner who discharged the mortgage shall be compensated by an insurance fund created, in accordance with administrative regulations, by means of the fees charged on delivery of title deeds.

**Article 284: Registration necessary**

A mortgage, however created, shall not produce any effects except from the day when it is entered in the registers of immovable property at the place where the immovable mortgaged is situate.

**Article 285: Costs of Registration**

- 1) The costs of registration shall be borne by the debtor.
- 2) Whosoever has caused a mortgage to be registered for useful purposes and has advanced the costs of registration shall be refunded by the debtor.

**Article 286: Reduction of claim**

- 1) Where the debtor has discharged one fourth of the debt, he may apply for the entry to be corrected accordingly.
- 2) The creditor shall give his consent to the correction.
- 3) The fact that part of the debt has been discharged shall not enable the debtor to require that part of the immovable mortgaged be released.

**Article 287: Increase of claim**

- 1) The amount of the claim as specified in the original entry may not be increased by way of a correction made to such entry.
- 2) A new entry shall be required to secure such part of the claim as is not covered by the original entry.

**Article 288: Time for making entry**

- 1) An entry relating to a mortgage shall be of no effect where it is made after a third party who is not liable for the payment of the debt has acquired the immovable and registered his rights in the registers of immovable property.
- 2) An entry relating to an immovable shall be of no effect where it is made after an action for the attachment of the immovable has been brought and entered in the registers of immovable property or after the mortgagor has been declared bankrupt (insolvent).

**Article 289: Effect of registration**

- 1) The registration of a mortgage shall be effective for ten years from the day when the entry was made.
- 2) The effect of such registration shall continue where, prior to the expiry of the period of ten years, a new entry is made with a view to renewing the first registration.
- 3) In such case, the first registration shall be effective for ten years from the day when the new entry was made.

**EFFECT OF MORTGAGE****Article 290: Principle**

- 1) Where the immovable mortgaged is attached by the creditors of the mortgagor, the mortgagee may demand to be paid, out of the proceeds of the sale of the immovable, in priority to any other creditor.

- 2) Where the immovable has been sold by the mortgagor, the mortgagee may attach it in the hands of the purchaser whose rights have been registered subsequently to the registration of the mortgage.
- 3) The mortgagee shall in addition have all the rights of an ordinary creditor.

#### **Article 291: Prohibited provisions**

- 1) Any provision whereby the creditor may, after the debt has become due, appropriate or sell the immovable without due regard for the conditions prescribed by law shall be of no effect, notwithstanding that such provisions was made after the creation of the mortgage.
- 2) Provisions may however be made to the effect that the mortgagor shall, after the debt has become due, transfer the ownership of the immovable to the mortgagee.

#### **Article 292: Legal proceedings: 1. Jurisdiction**

Any action relating to the registration of a mortgage or the sale of the mortgaged immovable shall fall within the exclusive jurisdiction of the court of the place where such immovable is situate.

#### **Article 293: 2. Address of Service**

- 1) The mortgagor and the mortgagee shall, on the request of any interested party, specify an address for service at the place where the sittings of the court having jurisdiction are held.
- 2) Where they fail to specify such address within one month from having been required to do so, the court shall specify the place where service shall validly be made.

#### **Article 294: Curator**

The court may, on the application of any interested party, appoint a curator to a creditor whose name or domicile is unknown, where law requires the personal appearance of such creditor and urgent decisions are to be made.

### **Preferential Rights of Mortgage**

#### **A. Property to which such rights extend**

#### **Article 295: Intrinsic elements and accessories**

- 1) The mortgage shall charge the mortgaged immovable together with its intrinsic elements and accessories.
- 2) Any object expressly specified as an accessory in the act creating the mortgage shall be deemed to be an accessory.
- 3) Evidence may be adduced to rebut the presumption laid down in sub-art (2).

#### **Article 296: Rights of third parties**

The mortgagee may not enforce his rights on such intrinsic elements or accessories of the mortgaged immovable as have been separated therefore and transferred to a third party.

#### **Article 297: Improvements and buildings**

The mortgage shall apply to any improvement made on the mortgaged immovable and to the buildings, plantations and crops made on such buildings.

#### **Article 298: Prior rights of contractors and suppliers**

- 1) The contractors who built the buildings or made the improvements mentioned in Article 297 and suppliers who supplied the materials, plants seeds or fertilizers used in the improvements, buildings, plantations or crops shall have priority over mortgages on such part of the proceeds of the sale of the mortgaged immovable as is necessary to cover the costs of the improvements, buildings, plantations or crops made by them.
- 2) In cases of dispute, the court shall settle the amount to be paid in priority.
- 3) Where appropriate, the court shall settle how such amount shall be distributed among contractors and suppliers.

#### **Article 299: Rent**

- 1) Where the mortgaged immovable is leased, the mortgage shall apply to the rent having run from the day when the immovable was attached.
- 2) The lessees may not validly pay the rent to the owner of the mortgaged immovable after they have been notified of the attachment of the immovable.

#### **Article 300: Indemnities charged by mortgage**

- 1) The mortgage shall apply to any insurance compensation or compensation for damages which may be due in cases of loss or deterioration of the immovable.
- 2) The mortgage shall also apply to the compensation due to the owner whose immovable is expropriated.

#### **Article 301: Consent of creditors to payment**

- 1) Insurance or expropriation compensation and compensation for damages may not be paid to the mortgagor unless all the mortgagees who have a registered claim on the immovable agree to such payment.
- 2) The mortgagor to whom such compensation is due shall inform all registered creditors of the amount of and reason for compensation and of the name and address of the person liable to pay it.
- 3) The creditors shall be deemed to agree to the compensation being paid to the debtor where they fail to declare their objection to the payment within thirty days from having received information as provided in sub-article (2).

#### **Article 302: Rights of mortgagor**

- 1) The mortgagor may demand that any compensation not exceeding one million Somaliland shillings be paid to him.
- 2) He may demand that any compensation be paid to him where he undertakes to use it to rebuild or repair the immovable and offers to furnish sureties or securities sufficient to guarantee that he will comply with his undertaking.
- 3) He may in any case require that compensation be paid into the hands of a trustee appointed by the court.

#### **Article 303: Mortgage of bare ownership**

A mortgage charging the bare ownership of an immovable shall, upon the extinction of the usufruct, extend to the full ownership of such immovable.

**Article 304: Reduction in value of immovable: 1. Due to mortgagor**

- 1) Where the mortgagor intentionally or by negligence reduces or endangers the value of the immovable mortgaged, the mortgagee may demand new securities.
- 2) Where the mortgagor fails to furnish such securities within the period of time reasonably fixed to him by the mortgagee, the mortgagee may demand that an adequate part of the debt be discharged.

**Article 305: 2. Due to third party acquiring the immovable**

The mortgagee may exercise against the mortgagor the rights mentioned in Article 304 where the value of the immovable mortgaged is reduced or endangered by a third party who has acquired such immovable from the mortgagor.

**Article 306: 3. Other Cases**

The mortgage shall secure the payment to the mortgagee, in priority to other creditors, of the registered amount of claim.

**B. Priority of Mortgages****Article 307: Capital of Claim**

The mortgage shall secure the payment to the mortgagee, in priority to other creditors, of the registered amount of claim.

**Article 308: Necessary expenses and Insurance premiums**

The mortgage shall secure the repayment to the mortgagee, in priority to other creditors, of the necessary expenses made by him for the preservation of the mortgaged immovable and of the insurance premiums due by the owner and which have been paid by the mortgagee.

**Article 309: Costs of Attachment proceedings**

The mortgage shall secure the repayment to the mortgagee, in priority to other creditors, of the normal costs arising from proceedings instituted by him for the attachment of the immovable.

**C. Plurality of Mortgages****Article 310: Principle**

- 1) Where several creditors have a registered claim on the same immovable, they shall rank according to the date on which they have registered their claim
- 2) No regard shall be had to the date on which the claims became certain or eligible.

**Article 311: Creditors registered on the same day**

Creditors whose claims have been registered on the same day shall rank equally and be paid on proportion to the amount of their claims.

**Article 312: Subrogation**



- 1) Any mortgagee may pay a creditor having priority with the consent of such creditor or, where the immovable is attached on the latter's request, without such consent.
- 2) The creditor who has paid shall be subrogated to the rights of the creditor whom he has paid.

### **Right to follow immovable**

#### **A. General Provisions**

##### **Article 313: Right to transferee ownership of mortgaged immovable**

- 1) He whose immovable is mortgaged shall retain the right to transfer the ownership thereof.
- 2) Any provision to the contrary shall be of no effect.

##### **Article 314: Right of Mortgagee**

The mortgagee who has registered his mortgage prior to the registration of the deed evidencing the transfer may attach the immovable in the hands of the person who acquired it.

##### **Article 315: Effect on original debtor**

- 1) The transfer of the immovable mortgaged shall bring no change in the obligations of the original debtor.
- 2) The original debtor shall however be released where the person who acquired the immovable has undertaken to pay the debt, unless the mortgagee informed the original debtor in writing that he would continue to hold him liable.
- 3) Such information shall, under pain of loss of right, be given within one year from the mortgagee having been informed of the agreement made between the original debtor and the person who acquired the immovable.

##### **Article 316: Indivisibility of Mortgage**

- 1) A mortgage is indivisible.
- 2) Where part of the immovable mortgaged is alienated or such immovable is divided, each part shall secure the full payment of the debt.

##### **Article 317: Rights of Creditor**

- 1) Registered rights in rem on an immovable mortgaged shall not affect the mortgagee where such rights have been registered after the mortgagee has registered his mortgage.
- 2) The mortgagee may cause the immovable to be sold as though such rights had not been created.
- 3) Where the immovable is attached, the beneficiary of the right in rem may demand that the value of such right be paid to him in priority to creditors whose mortgage has been registered subsequently to his own right being registered.

#### **B. Position of person acquiring the immovable**

##### **Article 318: Attachment of immovable: 1. Assimilation to surety ship**

He who acquires an immovable mortgaged may, in his relations with the mortgagee, avail himself of the rights vested in the guarantor by the provisions of the Civil Code relating to contracts in general.

**Article 319: 2. Improvements or Buildings**

- 1) He who has acquired an immovable mortgaged and has increased its value by making thereon improvements, buildings, plantations or crops, may require to be paid, out of the proceeds of the sale, an amount corresponding to the increase in the value of the immovable since the day when the transfer of ownership was registered.
- 2) Servitudes and other rights in rem which the person who acquired the immovable had on such immovable prior to acquiring it shall give rise to compensation, where they cannot survive.

**Article 320: 3. Loss or deterioration of immovable**

- 1) He who acquires an immovable mortgaged shall not be liable to the mortgagee for the loss or deterioration of the immovable.
- 2) He shall however be liable where such loss or deterioration is due to his fault or negligence and occurs after he has been informed that proceedings have been instituted for the attachment of the immovable.

**Article 321: 4. Fruits**

- 1) He who acquires an immovable mortgaged shall not account for fruits he has collected prior to attachment.
- 2) He shall cease to be the owner of such fruits on the day when the immovable is attached in his hands.

**Article 322: 5. Action for warranty**

- 1) Where the immovable is attached in the hands of the person who acquired it, such person may bring an action for warranty against the person from whom he acquired the immovable.
- 2) He may bring such action notwithstanding that he acquired the immovable gratuitously.
- 3) An action for warranty may not be brought where it is expressly prohibited in writing by the deed evidencing the transfer of ownership.

**Article 323: 6. Subrogation**

- 1) Where the immovable is attached in the hands of the person who acquired it, such person shall be subrogated to the rights of the mortgagee.
- 2) He may not avail himself of such subrogation to the detriment of third parties who have acquired for consideration, from the debtor or guarantor, an immovable intended to secure the debt.

**Article 324: 7. Appointment of Curator**

- 1) He who acquired the immovable may, where he is not personally liable for the payment of the debt under the mortgage, demand that proceedings for attachment instituted against him be discontinued.
- 2) In such case, he may appoint or cause to be appointed by the court a curator against whom the proceedings shall be continued.
- 3) The curator shall specify an address for service at the place where the sittings of the court of competent jurisdiction are held.

**Article 325: Voluntary discharge of debt**

- 1) He who acquires an immovable mortgaged may pay a creditor having a registered claim on such immovable with the consent of such creditor or, where the immovable is attached on the latter's request, without such consent.
- 2) In such case, he shall be subrogated to the rights of such creditor and merger may not be raised against him.

**Article 326: Redemption of mortgage: 1. When possible**

He who acquires an immovable mortgaged redeem the mortgage where he is not personally liable for the payment of the debt under the mortgage.

**Article 327: 2. Offer to Redeem**

He who intends to redeem the mortgage shall serve on the registered creditors and on the person from whom he acquired the immovable a document specifying.

- a) The nature and date of the title by virtue of which he acquired the immovable and the date on which he registered his rights; and
- b) Any particulars necessary for identifying the immovable, such as the place where such immovable is situate and its number in the cadastral survey plan; and
- c) The price he paid for the immovable or its estimate value, where he acquired it gratuitously; and
- d) An offer to pay such price or value; and
- e) A list of the mortgages registered on the immovable together with the name of the registered creditors, the amount of the claims and the date of registration of the mortgages; and
- f) His address for service at the place where the sittings of the court of competent jurisdiction are held.

**Article 328: 3. Offer may not be withdrawn**

- 1) He who offered to redeem the mortgage shall be bound by his offer for a period of sixty days.
- 2) He may not withdraw his offer during this period unless all the persons to whom such offer was made agree to the withdrawal.

**Article 329: 4. Offer Accepted**

- 1) The creditors shall be deemed to accept the offer where they do not reject it within sixty days from the day when it was made.
- 2) The amount offered shall in such case be distributed among the creditors according to their rank.

**Article 330: 5. Offer rejected**

- 1) Where a creditor refuses the offer, the immovable shall be sold by public auction.
- 2) The creditors who have refused the offer shall advance the costs of such sale by auction.

**Article 331: 6. Costs of Sale by auction**

- 1) The costs of the sale shall be borne by the purchaser, where the immovable is sold at a price exceeding by ten percent the price under Article 327.

- 2) In other cases, such costs shall be borne by the creditors who rejected the offer of redemption.

#### **Article 332: 7. Time for making offer**

No offer to redeem the mortgage may be made after proceedings for attachment have been instituted and an entry to this effect has been made in the registers of immovable property.

### **C. Special Provisions applicable to guarantor**

#### **Article 333: Presumption**

He who has mortgaged his immovable to secure the debt of another person shall be presumed not to have bound himself on his other property.

#### **Article 334: Position of Guarantor**

Without prejudice to the provisions of Article 335 and 336, the guarantor shall be assimilated to the person who acquires an immovable mortgaged.

#### **Article 335: Right of Mortgagee**

- 1) Where the guarantor intentionally or by negligence reduces or endangers the value of the immovable mortgaged, the mortgagee may require him to produce new securities.
- 2) The mortgagee shall have the same right where the value of the immovable is intentionally or negligently reduced or endangered by a third party who acquired the immovable from the guarantor.

#### **Article 336: Other Differences**

- 1) Where the immovable is attached in his hands, the guarantor may the guarantor may not bring an action against the person from whom he acquired the immovable.
- 2) He may not require that proceedings for attachment instituted against him be discontinued.
- 3) He may not offer to redeem the mortgage.

### **EXTINCTION OF MORTGAGE**

#### **Article 337: Principle**

A mortgage shall be extinguished where the registration of the mortgage is cancelled in the registers of immovable property.

#### **Article 338: Grounds for cancellation**

Any interested party may require the registration to be cancelled where:

- a) The claim secured by the mortgage is extinguished; or
- b) The mortgagee has renounced his mortgage; or
- c) The immovable mortgaged has been sold by auction and the proceeds of the sale have been distributed among the creditors or
- d) The amount accepted by the creditors in cases of an offer of redemption has been distributed among the creditors.

#### **Article 339: Mortgage of usufruct**

- 1) Any interested party may require the cancellation of the registration of the mortgage of an usufruct, where such usufruct is extinguished.
- 2) The usufructuary may not renounce the usufruct to the detriment of the mortgagee.

#### **Article 340: Renunciation of Mortgage**

- 1) Where the creditor renounces his mortgage, such renunciation shall be of no effect unless it is made expressly and in writing.
- 2) Unless otherwise agreed, such renunciation shall not imply that the mortgagee renounces his claim.

#### **Article 341: Creditor making subrogation impossible**

Where the mortgage applies to an immovable which is not the property of the debtor, the cancellation of the registration may be sought where the creditor makes it impossible for the owner of such immovable to be subrogated to the rights of the creditor.

#### **Article 342: Conditions for canceling registration**

- 1) No registration shall be cancelled unless the court so orders.
- 2) The court shall order cancellation where the creditor agrees in writing to the cancellation
- 3) The creditor shall be liable where he refuses without good cause to agree to the cancellation.

#### **Article 343: Effect of cancellation**

- 1) Where the registration is cancelled, such cancellation shall benefit the creditors having registered their claims after the entry which is cancelled.
- 2) The owner may not create a new mortgage to replace the mortgage the registration of which has been cancelled.

#### **Article 344: Cancellation made without good cause**

- 1) Where a registration has been cancelled, such registration shall in no case revive, notwithstanding that the cancellation was made without good cause.
- 2) The mortgage which has been cancelled without good cause shall be registered again and shall be effective from the day of the new registration.
- 3) Nothing shall affect the liability of the person who caused the registration to be cancelled without good cause.

### **PLEDGE**

#### **Contracts of Pledge in General**

##### **Article 345: Definition**

A contract of pledge is a contract whereby a debtor undertakes a thing, called the pledge, to his creditor as security for the performance of an obligation.

##### **Article 346: Person furnishing the pledge**

A contract of pledge may be made between the creditor and a third party to secure the debt of another person.

**Article 347: Debt Guaranteed**

A contract of pledge may be made in order to guarantee a future or conditional debt.

**Article 348: Form of Contract**

- 1) The maximum amount of the debt guaranteed shall in all cases be specified in the contract of pledge or the contract shall be void.
- 2) The contract of pledge shall not be valid except where it is evidenced by writing and as from the day when such deed acquires undisputed day.

**Article 349: Pledge**

- 1) The pledge may consist of a chattel, a totality of effects, a claim or another right relating to movable property.
- 2) It must be capable of being sold separately by public auction.

**Article 350: Creditor's Possession**

- 1) The creditor shall be deemed in possession of the pledge where the document of title without which the pledge cannot be disposed of has been delivered to him.
- 2) The provisions of sub-article (1) shall apply in particular where a voucher for goods warehoused, or the bill of lading or way-bill in the case of goods in transport, has been endorsed in his favour.

**Article 351: Possession by an agreed third party**

- 1) The parties may agree that the pledge be delivered to a third party acceptable to them both.
- 2) The rights and duties of such third party shall be as prescribed by the provisions relating to the bailment of goods or warehousing.

**Article 352: Debtor's possession**

- 1) The furnishing of a pledge without dispossession of the debtor may be made in such cases only as are expressly provided by law.
- 2) In all other cases, the contract shall be of no effect where it stipulates that the pledge shall remain with the debtor.

**RIGHTS AND DUTIES OF PLEDGER****Article 353: Ownership of pledge**

- 1) The pledger shall retain his rights on the pledge, save for the restrictions arising out of the contract of pledge.
- 2) He may dispose freely of his rights and may in particular alienate the pledge and re-pledge it subsequently.

**Article 354: Cost of maintaining and preserving the pledge**

The pledger shall reimburse the pledgee for expenses incurred in maintaining and preserving the pledge.

**Article 355: Abuse by creditor**

Where the creditor fails to observe the provisions of the law in respect of the pledge, the pledger may demand that it be delivered to a trustee.

**Article 356: Premature payment of the debt**

- 1) The pledger may at any time demand the return of the pledge by paying the debt secured by it.
- 2) Any stipulation to the contrary shall be of no effect.

**Article 357: Pledge furnished by a third party**

- 1) Where the pledge has been furnished by a third party, no contract between the creditor and the debtor made subsequently to the furnishing of the pledge may impair the third party's position.
- 2) The pledger may set up against the creditor all the defenses the debtor himself could have raised, without it being possible to set up against him the fact that the debtor had waived them.

**RIGHTS AND DUTIES OF PLEDGEE****Article 358: General Principle**

The pledgee shall have on his debtor's property the rights of a creditor.

**Article 359: Use of the pledge**

The pledgee may not make use of the pledge without the pledger's consent, except where such use is necessary for its preservation.

**Article 360: Fruits**

- 1) Where the pledge produces fruits, the creditor, or the custodian of the pledge, shall collect them.
- 2) The fruits shall become the property of the pledgee.
- 3) The value of the fruits produced by the pledge shall be applied successively to the expenses incurred for the custody and preservation of the pledge, to the capital of the debt secured.

**Article 361: Action for possession**

- 1) The pledgee may bring actions for possession in respect of the pledge,
- 2) The custodian of the pledge shall inform the pledgee and the pledger without delay of circumstances requiring the institution of such actions.

**Article 362: Third party's claim to the pledge**

The pledgee may exercise the rights deriving from the contract of pledge notwithstanding that the pledge has been delivered to him by a person who was not authorized to dispose of it.

**Article 363: Exception**

- 1) The owner of the pledge may take it back where he shows that the pledgee knew or should have known, on the making of the contract, that the other party was not authorized to pledge the thing.
- 2) He may also take the pledge back by discharging the debt secured by it.

#### **Article 364: Return of Pledge**

- 1) The creditor shall return the pledge to the pledger or to the person designated by him, where the contract of pledge is extinguished by payment of the debt or for any other reason.
- 2) Until the pledge is returned, he shall be liable for the loss of or damage to the pledge.

#### **Article 365: Lien**

The pledgee may retain the pledge until monies due to him have been paid in full.

#### **Article 366: Subrogation to property rights**

Where the pledge is lost or damaged for any reason whatsoever, the pledgee's right shall apply to the compensation due for its replacement from the person liable for the loss or deterioration, from the insurer or from the person who has expropriated it.

### **EXTINCTION OF CONTRACT OF PLEDGE**

#### **Article 367: Accessory character of the contract**

The contract of pledge shall be extinguished and the pledge shall be returned where the debt it guaranteed is discharged.

#### **Article 368: Indivisibility of pledge**

The creditor may not be compelled to return the pledge or part thereof until he has been paid in full, notwithstanding that the debt or pledge is divisible.

### **SALE OF PLEDGE**

#### **Article 369: Commissoria lex**

- 1) Any agreement, even subsequent to the furnishing of the pledge; authorizing the creditor, in the event of non-payment on the due date, to take possession of the pledge or to sell it without complying with the formalities required by law shall be of no effect.
- 2) It may however be agreed, after the debt has become due, that the debtor shall make over the pledge to the creditor in settlement of the debt.

#### **Article 370: Effect on third parties**

- 1) The contract of pledge shall not affect third parties unless the pledge is in the possession of the pledgee, or the person designated for the purpose by the parties, at the time when the pledgee invokes the contract.
- 2) The contract of pledge shall be of no effect where at that time the pledge is still in the debtor's possession or it has returned to his possession with the pledgee's consent or it is in the possession of a third party from whom the creditor cannot demand its return.

#### **Article 371: Default**



- 1) Before causing the pledge to be sold, the pledgee shall call upon the pledger to discharge his obligation and give him due notice that upon default, he will cause the pledge to be sold.
- 2) Similar notice shall be given to the third party who has furnished the pledge.

#### **Article 372: Sale of Pledge**

- 1) Where within fifteen days from the notice provided in Article 371, no objection has been raised or the objection is dismissed, the pledgee may cause the pledge to be sold by public auction.
- 2) Where the pledge is quoted on the market or has a current price, the pledgee may cause it to be sold by private contract through the intermediary of a person authorized to make such sales.

#### **Article 373: Limitation by the court**

The court may, on the application of the pledger, limit the creditor's right to the sale of one of the pledges, which is sufficient to pay off the pledgee.

#### **Article 374: Assignment of pledge to the pledgee**

The pledgee may apply to the court to order that the pledge be given to him in payment, to the extent of the amount due to him, according to an expert valuation or the current price of the pledge, where it is quoted on the market.

#### **Article 375: Priority right**

- 1) The pledgee may be paid out of the proceeds of the sale of the pledge before all other creditors.
- 2) In addition to the debt specified in the contract of pledge, the pledge shall secure the contractual interest and legal interest on the debt and the debt and the expenses incurred for the custody, preservation or sale of the pledge.

#### **Article 376: Limitation of creditor's rights**

- 1) The pledgee may not enforce his priority right arising out of the contract of pledge beyond the maximum amount specified therein.
- 2) The pledgee may not enforce his priority right to obtain security for another debt, even if incurred subsequently to the contract of pledge, owned to him by the debtor or pledger.

#### **Article 377: Disposal of proceeds**

- 1) The proceeds shall be attributed to the creditor to the amount of the debt due to him and shall be deemed to have been paid by the pledger.
- 2) The balance of the proceeds shall be handed over to the pledgee.

#### **Article 378: Several pledges**

- 1) Where the pledge is in cumbrered with several rights of pledge, the creditors shall be paid according to their rank.
- 2) The rank shall be determined by the dates on which the various pledges where entered into.

#### **Article 379: Purchaser's rights**

The purchaser of the pledge shall acquire the ownership thereof free of any encumbrance.

#### **Article 380: Creditor's liability**

A creditor who sells a thing belonging to a third party which has been duly pledged shall not be liable unless he knew or should have known, on the making of the contract that it belonged to the third party.

### **PLEDGING OF NEGOTIABLE INSTRUMENTS**

#### **Article 381: Obligations Guaranteed**

- 1) Transferable securities may be pledged to guarantee the execution of any obligation even where, in the case of sums of money, the amount due is not specified.
- 2) The provisions of sub-article (1) shall apply to a guarantee of obligations which are only contingent at the time of setting up of the pledge.

#### **Article 382: Forms**

- 1) A guaranteed creditor who already holds the securities involved in some other manner shall be deemed to be put in possession as pledgee from the date of the contract.
- 2) Where securities pledged are held by a third party already in possession in some other manner, the guaranteed creditor shall be deemed to be in possession from the time when the third party possessor has placed the said securities in a special account which he shall open on first call.
- 3) In the case of securities in respect of which there is a certificate in a specific name constituting an entry in the register of the company issuing the securities, the guaranteed creditor shall be deemed to be in possession from the time when the transfer by way of guarantee has been entered.

#### **Article 383: Undertakings of pledger**

Where the pledger is not personally responsible for the obligation guaranteed, he shall only be bound as a material surety.

#### **Article 384: Security set up by bare owner**

The security set up by a bare owner on securities subject to a usufruct shall extend as of right to the full title at the termination of the usufruct.

#### **Article 385: Status of a third party possessor**

A third party agreed upon as possessor by way of pledge shall be deemed to have relinquished any right of detainer to his advantage in respect of all earlier grounds unless he has expressly reserved thereon in giving his acceptance.

#### **Article 386: Preferred rights of pledgee**

The preferred right of the pledgee subsist at the date thereof, both as between the parties and as regards third parties, on the proceeds, amounts reimbursed or instruments of replacement of the securities pledged.

#### **Article 387: Failure of pledger to meet his obligations**

Where the pledger fails to meet his obligations, the debt guaranteed shall become due immediately, unless new securities of an equivalent amount are produced without delay to replace the security which does no longer exist or is imperiled.