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## **ARGENTINA COMMERCIAL CODE**

### **PRELIMINARY TITLE**

I. The provisions of the Civil Code shall apply to cases which are not specifically governed by this Code.

II. In matters in which private agreements may vary the general law, the nature of the acts authorizes the judge to inquire whether reference to custom is essential to the act in order to give contracts and acts their due effect according to the presumed intention of the parties.

III. Judges are forbidden to issue general or governing resolutions, their duty being always to confine themselves to the particular case which they are trying.

IV. It is competent solely to the Legislative Power to interpret the law in such a way as to bind every one.

Such an interpretation shall take effect from the date of the interpreted law; but cannot apply to cases already finally concluded.

V. Mercantile customs may supply rules for the determination of the meaning of the technical words or phrases of commerce and for the interpretation of mercantile acts and agreements.

## BOOK I. COMMERCIAL PERSONS

### TITLE I. MERCHANTS

#### CHAPTER 1. MERCHANTS IN GENERAL AND ACTS OF COMMERCE

##### Art. 1. (Commercial Code)

The law declares to be merchants all individuals who, having legal capacity to contract, practice on their own account acts of commerce, making that their habitual profession.

##### Art. 2. (Commercial Code)

As a general rule, every person who makes a profession of buying or selling merchandise is termed a merchant. Particularly is he termed a merchant who buys and manufactures merchandise in order to sell it by wholesale or retail.

Booksellers, haberdashers and shopkeepers of every class who sell merchandise which they have not manufactured are also merchants.

##### Art. 3. (Commercial Code)

Retail merchants are those who habitually, as regards things which are measured, sell by meters or liters; as regards things which are weighed, by less than 10 kilograms, and as regards things which are counted, by separate parcels.

##### Art. 4. (Commercial Code)

Those men of business who are engaged in ventures abroad are merchants, as well as those who confine their trade to the interior of the State, and whether they are engaged in a single branch or in several branches of commerce at the same time.

##### Art. 5. (Commercial Code)

All who according to the law possess the quality of merchants are subject to the commercial jurisdiction regulations, and legislation.

Acts of merchants are always presumed to be acts of commerce, in the absence of evidence to the contrary.

##### Art. 6. (Commercial Code)

Those who perform casual acts of commerce are not considered merchants. Nevertheless, so far as concerns disputes which arise over such transactions, they are subject to the commercial laws and jurisdiction.

##### Art. 7. (Commercial Code)

If an act is commercial with regard to one only of the parties, all the contractors are, by reason thereof subject to the mercantile law, except with regard to the provisions respecting the persons of merchants and unless it appears from the provisions of the said law that it refers only to the contractor with regard to whom the act has a commercial character.

Art. 8. (Commercial Code)

The law declares the following to be general acts of commerce:

1. Every acquisition for valuable consideration of a movable or of a right over movable, in order to profit by its alienation, whether in the same state in which it was acquired or after giving it another form of greater or less value;
2. The transfer to which the previous paragraph refers;
3. Every exchange, brokerage and auction transaction;
4. Every transaction in bills of exchange or local bills; checks and every other kind of paper whether nominative or to the bearer;
5. Undertakings for manufacturing, commission agents, commercial agents, depositories and transport of merchandise and persons by water or land;
6. Insurance, and limited companies, whatever may be their object;
7. Freight, construction, buying and selling of vessels, equipment, provisions and everything relating to maritime commerce;
8. Transactions of factors, bookkeepers and other merchants; employees, so far as concerns the business of the merchant to whom they are subordinate;
9. Letters of credit, guarantees, pledges and other accessories of a commercial transaction;
10. Agreements on wages of workers and other employees of merchants;
10. Other acts specifically subjected to this Code.

CHAPTER 2. LEGAL CAPACITY TO PRACTICE COMMERCE

Art. 9. (Commercial Code)

Every person who, according to the ordinary laws, has the free management of his property is legally capable of practicing commerce.

Those who, by the same laws, are not bound by their agreements and contracts, are to the same extent legally incapable of performing acts of commerce, subject to the modifications made in the following articles.

Art. 10. (Commercial Code)

Every person above 18 years of age can practice commerce provided that he is proved to be emancipated or legally authorized.

Art. 11. (Commercial Code)

Emancipation is lawful:

1. Which contains the express authorization of the father or of the mother, as the case may be;
2. When inscribed and published in the proper Tribunal of Commerce.

On these requirements being fulfilled, the minor will be reputed of age for all commercial acts and obligations.

Art. 12. (Commercial Code)

A child above 18 years of age who has been a partner with his father, mother or both, in business, will be reputed and authorized and of full age for all legal purposes in the mercantile transactions of the partnership.

An authorization, once granted, can only be withdrawn from a minor by a judge, at the insistence of the father, mother, guardian, or the Ministry for the protection of minors, according to the circumstances, and after a previous trial of the case. This withdrawal, in order to take effect with respect to third parties who are not aware of it, must be registered and published in the proper Tribunal of Commerce.

Art. 13. (Commercial Code)

The marriage of a female merchant does not alter her commercial rights and obligations. It is presumed that she is authorized by her husband, so long as he does not give notice to the contrary by circular directed to the persons with whom she has had commercial relations, and inscribed in the proper commercial Register and published in the newspapers of the place.

Art. 14. (Commercial Code)

A married woman of full age can practice commerce with the authorization of her husband of full age, given by the notarial instrument duly registered, or if there has been a legal separation of property.

In the first case, all the property of the conjugal partnership is bound by the results of the trading, and in the second, only the separate property of the wife, the profits which belong to her, and those which she acquires subsequently.

Art. 15. (Commercial Code)

The authorization may be tacit, when the wife practices commerce in the view and with the permission of her husband, in the absence of a contrary declaration by him duly registered and published.

Art. 16. (Commercial Code)

A wife cannot be authorized by the Judges to execute acts of commerce against the wish of her husband.

Art. 17. (Commercial Code)

When authorization to practice commerce has been granted a wife can bind herself by all acts resulting thereto, without a particular authorization being necessary.

Art. 18. (Commercial Code)

The authorization by the husband to perform acts of commerce only comprises those which are of that nature.

A wife who is authorized to practice commerce is presumed to be authorized to appear in court in respect of the acts and contracts relating to her business. In case of opposition at the instance of her husband, the judges can grant the authorization.

Art. 19. (Commercial Code)

Both a minor and a married woman, who are merchants, can mortgage their immovable property to secure the obligations which they contract as merchants.

The burden of proof that the agreement took place with respect to an act of commerce falls on the creditor.

Art. 20. (Commercial Code)

A married woman, although she has been authorized by her husband to practice commerce, cannot charge or mortgage the immovable property of her husband, nor that which belongs in common to both spouses, unless that power has been expressly conferred in the notarial instrument of authorization.

Art. 21. (Commercial Code)

The revocation of the authorization granted by a husband to his wife in terms of Art. 18 only takes effect if it is made by a notarial instrument duly registered and published.

It will take effect as regards a third person after being inscribed in the Commercial Register and published by advertisements in the newspapers (if any).

Art. 22. (Commercial Code)

The following are forbidden to practice commerce on the ground of incompatibility of status:

1. Ecclesiastical corporations;
2. Clergy of whatever degree so long as they wear clerical garments;
3. Civil Magistrates and Judges in the territory where they exercise their authority and jurisdiction under permanent warrant.

Art. 23. (Commercial Code)

In the prohibition of the preceding article, the power of lending money at interest is not included, provided that the persons mentioned therein do not make an habitual profession of commerce in the exercise of this power. Nor does it include the power of being shareholders in any kind of mercantile company, so long as they do not take part in the administrative management.

Art. 24. (Commercial Code)

The following are prohibited for legal capacity:

1. Those subject to an interdiction;
2. Bankrupts who have not obtained their discharge, except as limited by Art. 1575.

### CHAPTER 3. THE REGISTER OF MERCHANTS

Art. 25. (Commercial Code)

In order to enjoy the protection which this Code gives to commerce and the persons of the merchants, the latter must be registered at the tribunal of Commerce of their address. If there is not a Tribunal of Commerce there, the register shall be kept at the corresponding Court of the Justice of the Peace.

Art. 26. (Commercial Code)

All merchants inscribed on the register shall enjoy the following advantages:

1. The credit given to their books in accordance with Art. 63;
2. The right to apply for composition with their creditors;
3. Mercantile moratorium;
4. Discharge in bankruptcy;
5. The right to carry out the functions of a receiver in composition.

In order that the inscription may have legal effect it must be made at the commencement of the business, and when the merchant is not under the necessity of invoking the privileges mentioned.

Art. 27. (Commercial Code)

The Inscription of the merchant must be made in the Register of Commerce by the applicant presenting a petition which contains:

1. His name, status and nationality, and if there is a partnership, the names of the partners and the partnership name adopted;
2. A statement of the nature of the trade or business;
3. The place or address of the establishment or office;
4. The name of the manager, factor or employee whom he places at the head of the establishment.

Art. 28. (Commercial Code)

Minors, children of the family, and married women must add these descriptions of their civil capacity.

Art. 29. (Commercial Code)

Inscription in the Register will be ordered by the Tribunal of Commerce or Justice of the Peace without charge, whenever there is no reason to doubt that the applicant enjoys the credit and probity which ought to characterize a merchant of his class.

The Justice of the Peace shall send each month a list of the persons registered to the Tribunal of Commerce, who shall cause them to be added to the Register.

Art. 30. (Commercial Code)

The Tribunal of Commerce shall refuse registration if it finds that the applicant has not legal capacity to practice commerce, saving a right of appeal to the Superior Tribunal by a person who thinks himself aggrieved.

If the refusal is made by a Justice of the Peace, the appeal shall be to the Tribunal of Commerce.

Art. 31. (Commercial Code)

Every alteration made by the merchants in the particulars specified in Art. 27 shall be brought to the cognizance of the Tribunal, with the same procedures and results.

Art. 32. (Commercial Code)

A person who is inscribed on the register is considered to possess the quality of merchant, with all the legal effects, from the day of inscription.

## TITLE II. OBLIGATIONS COMMON TO ALL MERCHANTS

## CHAPTER 1. GENERAL PROVISIONS (Art. 33)

### Art. 33. (Commercial Code)

Those who make commerce a profession, contract thereby the obligation to submit themselves to all acts and forms enacted by the mercantile law.

Among these acts are:

1. Inscription in a public register, both of the list of merchants and of the documents which require the same according to the law;
2. The duty of pursuing a uniform system of bookkeeping and of keeping the books necessary to that end;
3. The preservation of the correspondence which has relation to the merchant's business as well as of all books of account;
4. The duty to render accounts as required by the law.

## CHAPTER 2. PUBLIC REGISTER OF COMMERCE

### Art. 34. (Commercial Code)

In each ordinary Tribunal of Commerce there shall be a public register of commerce, in charge of the proper secretary, who shall be responsible for the correctness and lawfulness of the entries.

### Art. 35. (Commercial Code)

The list of the merchants who qualify themselves before the Tribunal, shall be inscribed in a special register, and all documents which are produced to the Registry shall be recorded in order of number and date and as many volumes shall be made as there are special subject in the Register.

### Art. 36. (Commercial Code)

The inscription of the following documents pertains to the public register of commerce:

1. The marriage settlements which merchants execute or have executed at the time of devoting themselves in commerce, and the notarial instruments made in cases of restitution of the wife's property, and the documents of title to the wife's property.
2. Judgments of divorce or separation of property, and the realizations made to determine the character and amount thereof, which the husband should deliver to his wife who has been divorced or who has obtained separation of property;
3. The notarial agreements of mercantile partnerships, with whatever object, excepting joint ventures;



4. Powers of attorney granted by merchants to managers or subordinates to direct or manage their mercantile business, and the revocations thereof;

5. Authorizations granted to minors, and their revocation; and generally, all the documents the registration whereof is specifically ordered in this Code.

Art. 37. (Commercial Code)

A general index shall be kept in alphabetical order of all the recorded documents, with a statement in the margin of each article of the reference to the number, page and volume of the register where it is entered.

Art. 38. (Commercial Code)

The books of the register shall have numbered pages and all the leaves shall be authenticated by the presiding judge of the Tribunal of Commerce at the time when each new register is opened.

Art. 39. (Commercial Code)

Every merchant is bound to produce at the general registry the document which ought to be registered, within 15 days of the date of its execution.

In the case of marriage settlements and other documents relating to persons who are not merchants, but who subsequently become such, the 15 days shall be reckoned from the date of the registration of the merchant. After this time has expired, the inscription can only be made in the absence of opposition by an interested party, and it shall only take effect from the date of the registration.

Art. 40. (Commercial Code)

For persons who reside away from the place where the commercial register is established, the 15 days in the preceding article shall begin to be reckoned from that following the arrival of the second post leaving the address of those persons after the date of the documents which have to get registered.

Art. 41. (Commercial Code)

Repealed by Law No. 19,550 of April 15, 1972.

Art. 42. (Commercial Code)

Powers of attorney conferred on commercial managers and subordinates for managing the mercantile business of their principals, shall not give a right of action, as between principal and agent, unless they are produced for registration. The provisions of this Code in the Chapter "Managers and Subordinate Commercial Employees" as regards the effects of obligations contracted by the attorney must be observed.

### CHAPTER 3. COMMERCIAL BOOKS

Art. 43. (Commercial Code)

Every merchant is bound to keep account and justification of his transactions and to keep mercantile accounting records organized on a uniform accounting basis, resulting in an accurate view of his business and a clear justification of each and every one of the transactions which should be entered on the accounting records. The accounting vouchers must be supported with the respective documentation.

Art. 44. (Commercial Code)

Merchants must keep the following books, also in a special manner imposed by this Code or other laws, as an indispensable duty:

1. Daybook;
2. Stockbook and Balances;

Without prejudice to the fact that the merchant must keep registered accounting books and documentation under an adequate accounting system which shall exhibit the importance and nature of his activities, the accounting records and documentation must clearly show his business managerial acts and net worth.

Art. 45. (Commercial Code)

In the daybook shall be entered day by day, and according to the order in which they are effectuated, all the transactions effectuated by the merchant, bills of exchange and all other documents of credit (Papeles de credito) which he may give, receive, guarantee or endorse; and generally, whatever he may receive or deliver on his own account or that of another, and by whatever title, so that each entry may show who is the creditor and who the debtor in the transaction to which it refers.

It is sufficient to enter domestic expenses in a lump sum on the date on which they leave the cashier's office.

Art. 46. (Commercial Code)

If the merchant keeps a cashbook, it is not necessary that he enter in the daybook the payments which he makes or receives in cash. In that case the cashbook is considered an integral part of the daybook.

Art. 47. (Commercial Code)

Retail dealers must enter day by day in the daybook the sum total of the cash sales, and separately, the sum total of the sales on credit.

Art. 48. (Commercial Code)

The stockbook shall commence with an exact account of the money, movable and immovable property, credits and every other kind of asset which forms the capital of the merchant at the time of beginning of his business.

Afterwards, every merchant shall draw up within the first 3 months of each year, and shall write out in the same book, a general balance sheet of his business, comprising

therein all his property, credits and shares, as well as all his outstanding debts and liabilities at the date of the balance, without any concealment or omission whatever.

The stockbooks and general balance sheets shall be signed by all interested in the establishment who are present at the time of their being drawn up.

Art. 49. (Commercial Code)

It will be sufficient to enter in the stockbooks and general balance sheets of partnerships, the assets and liabilities common to the partnership estate, without including the separate property and liabilities of each partner.

Art. 50. (Commercial Code)

Retail dealers are not bound to make a general balance sheet more than once every three years.

Art. 51. (Commercial Code)

All balance sheets must express the financial situation on their date accurately and exactly compatible with their purpose. Except where legal rules or regulations provide otherwise, their entries shall be made on the basis of the open accounts and in accordance with uniform criteria of valuation.

Art. 52. (Commercial Code)

At the close of each fiscal year every merchant is obligated to draw up a book of inventories and balances, in addition to an accounting statement demonstrating profits or losses, resulting therefrom accurately and evidently.

Art. 53. (Commercial Code)

The books which are declared indispensable (Art. 44) shall be bound, stitched and paginated. In this form each merchant shall produce them to the Tribunal of Commerce of his address, in order that all the leaves may be authenticated or stamped as the proper Superior Tribunal may determine, and that there may be placed on the first leaf a note of the number of leaves which the book contains, dated and signed by the Judge and a Secretary.

In places where there is no Tribunal of Commerce, these formalities shall be performed by a Justice of the Peace.

Art. 54. (Commercial Code)

In keeping both the books prescribed by Art. 44 and the extra books not required by the law, it is forbidden:

1. To alter in the entries the consecutive order of dates and transactions which must be entered according to the provisions of Art. 45;
2. To leave blanks or spaces, as all entries must be successive, without there being between them any space for intercalations or additions;

3. To make interlineations, erasures or corrections; but all mistakes and omissions which may be made must be corrected by a fresh entry, made on the date on which the omission or mistake is noticed;

4. To spoil any entry;

5. To mutilate any part of the book, to tear out a leaf or alter the binding and paging.

Art. 55. (Commercial Code)

Mercantile books which lack any of the formalities prescribed in Art. 53 or have any of the defects or imperfections noted in the preceding article, have no value in an action in favor of the merchant to whom they belong.

Art. 56. (Commercial Code)

A merchant who omits any of the account books which are declared indispensable by Art. 44, or who conceals them when ordered to produce the same, shall be judged by the entries in the books of his adversary, both in the action which gave rise to the order for production and any other action which he may have pending.

Art. 57. (Commercial Code)

No authority, Judge or Tribunal may order any pretext make of an official inquiry to ascertain whether merchants keep regular books or not.

Art. 58. (Commercial Code)

General production of the books of merchants may only be ordered at the insistence of a party in suits relating to succession community of property or partnership, mercantile management or agency on another's account and in case of insolvency or bankruptcy.

Art. 59. (Commercial Code)

In cases not within those specified in the preceding article, production of merchant's books against their will can only be ordered at the instance of a party and by a Judge to the extent that it is relevant to the point or question in dispute.

In that case, the examination of the books which are produced shall take place in the presence of their owner or of his representative, and shall be confined exclusively to the entries which are relevant to the question in dispute.

Art. 60. (Commercial Code)

If the books are away from the place where the Court which ordered their production sits, this shall take place where the said books are, and in no case shall it be ordered that they be brought to the place of hearing.

Art. 61. (Commercial Code)

When a merchant has kept extra books, their production may be ordered in the same way and in the same cases as prescribed in the three preceding articles.

Art. 62. (Commercial Code)

Every merchant may keep his books and sign the business documents himself or by another. If he does not himself keep the books there is a presumption that he has authorized the person who does keep them.

Art. 63. (Commercial Code)

Commercial books kept according to the prescribed form and requirements shall be admitted in Court as evidence between merchants on a fact of their commerce, in the way and in the cases expressed in this Code.

As against the merchants to whom the books belong and their successors, the entries shall be evidence, although they are not in form, without admitting evidence to disprove them. But the opposite party cannot accept the favorable entries and disprove those which prejudice him, but having adopted this means of proof he shall be bound by the combined entries relevant to the point in dispute.

Commercial books shall also be evidence in favor of their owners when the opposite party does not produce entries to the contrary made in the books lawfully kept or some other full and conclusive evidence.

Nevertheless, in that case the Judge has power to weigh the evidence, and not to require supplementary evidence if he thinks is necessary.

Finally, when there is a contradiction between the books of the litigants and all are kept with the necessary formalities and without defect, the Tribunal shall put aside this means of proof, and shall proceed according to the value of other evidence which is produced, weighing it in accordance with the provisions of this Code.

Art. 64. (Commercial Code)

Commercial books will afford only a ground of proof, when noncommercial acts are written in question.

Art. 65. (Commercial Code)

Books not required by the law are not evidence in favor of a merchant in the absence of those which the law declares indispensable, unless the latter had been lost without his fault.

Art. 66. (Commercial Code)

Commercial books, to be admitted in an action must be kept in the language of this country. If they are in a different language through belonging to foreign men of business, they shall be previously translated, so far as is material, by an interpreter officially appointed.

Art. 67. (Commercial Code)

Merchants are bound to preserve their commercial books and the documents to which Art. 44 refers, for the space of 10 years, counted from the cessation of their business or commerce.

The heirs of a merchant are presumed to have the books of their ancestor and are bound to produce them as and when the person from whom they have inherited would have been so bound.

#### CHAPTER 4. RENDERING ACCOUNTS

Art. 68. (Commercial Code)

Every transaction is the subject of an account. Every account must agree with the entries in the books from which it is rendered, and must be accompanied by its proper vouchers.

Art. 69. (Commercial Code)

At the end of every transaction, and in commercial transactions of a recurring nature, the respective merchants are bound to render an account of the concluded transaction and to the end of each year in the case of a current account.

Art. 70. (Commercial Code)

Every merchant who contracts on account of a principal is bound to render a full account, proved by documents, of his commission or management.

Art. 71. (Commercial Code)

In rendering accounts, each one is responsible for the part which he bore in the administration. The expenses of rendering due accounts are always borne by the property administered.

Art. 72. (Commercial Code)

An account is understood to be referred only after all questions relating thereto have been settled.

Art. 73. (Commercial Code)

A person who allows a month to transpire after the receipt of an account, without making objections, is presumed to acknowledge to implication the correctness of the account, saving proof to the contrary and saving likewise specific provisions for certain cases. Claims may be judicial or extrajudicial.

Art. 74. (Commercial Code)

Accounts must be presented at the business address, if there are no stipulations to the contrary.

#### TITLE III. EXCHANGES AND MARKETS OF COMMERCE

Arts. 75 - 86. (Commercial Code)

Repealed by Law 17,811 on the National Securities Commission.

#### TITLE IV. AUXILIARY COMMERCIAL AGENTS

Art. 87. (Commercial Code)

The following are considered auxiliary commercial agents, and, as such, subject to the commercial laws with respect to transactions which they carry out in that character:

1. Brokers;
2. Auctioneers;
3. Warehouses and managers of depositories;
4. Managers and subordinate commercial employees;
5. Carters, carriers and transportcontractors.

CHAPTER 1. BROKERS

Art. 88. (Commercial Code)

The following conditions are required in order to be a broker:

- a) To be of age;
- b) To possess a certificate of secondary education issued or re-validated in the Republic in accordance with the regulations in force;
- c) To pass the examination for competence for the exercise of the activity, which shall be taken before any higher tribunal of the Republic competent in commercial matters, whether national federal or provincial, which shall issue the certificate of qualification for the entire territory within the country. For the purposes of the examination for competence, a representative of the professional organization with non-State public law legal personality shall be included in the tribunal, in the jurisdictions where such an organization exists. The examination must be based on basic notions concerning civil and commercial sales and purchases.

Art. 88 bis. (Commercial Code)

The following cannot be brokers:

- a) Those who cannot be merchants;
- b) Bankrupts and insolvents whose conduct has been qualified as fraudulent or culpable, up to 5 years after their rehabilitation;
- c) Those who are constrained from disposing of their assets;
- d) Those condemned for fraudulent crimes incompatible with the function which this law regulates; until after 10 years from the time their sentence was fulfilled;

e) Those temporarily or permanently excluded from carrying out the activity due to disciplinary sanction;

f) Those included in article 152 of the Civil Code.

Art. 89. (Commercial Code)

Every broker is bound to register himself at the Tribunal of Commerce of his address. The application for registration shall contain:

1. Statements of being the required age;
2. Of having had an address for more than one year in the place where he proposes to be a broker.
3. Of having practiced commerce on his own account or in the house of a broker or wholesale merchant, as partner or manager, or at least as bookkeeper, with efficiency and honor.

Those who carry on the business of brokers without fulfilling these conditions or having the qualifications expressed in the preceding paragraph shall have no right of action to recover any sort of commission.

Art. 90. (Commercial Code)

Before entering upon the exercise of their functions brokers must take oath before the Tribunal of Commerce of their address faithfully to fulfill the duties imposed on them.

Art. 91. (Commercial Code)

Brokers must make an exact and methodical entry of all the transactions in which they take part, making a note of each one in a paged pocketbook, immediately after it is concluded.

In each entry there shall be expressed the names and addresses of the contracting parties, quantity and price of the goods which form the subject of the bargain, the times and conditions of payment, and all the circumstances which may contribute to the greater clearness of the business.

The entries shall be made in strict order of date, numbered successively from one onwards, the enumeration concluding with the end of each year.

Art. 92. (Commercial Code)

In transactions concerning bills of exchange, they shall note the dates, terms, due dates, places on which they are drawn, the names of the drawer, endorsers and drawee, and the bargains relating to exchange, if any.



In insurance, there shall be expressed with reference to the policy, the names of the insurer and assured, the subject matter insured, its value according to the agreement arranged between the parties, the place of loading and discharge, and the description of the vessel in which the carriage is effected, which shall include its name, register, flag and tonnage, and the means of the master.

Art. 93. (Commercial Code)

All the entries in the pocketbook shall be transferred each day to a register, and copied literally, without corrections, abbreviations or intercalations, the same numbering being kept as in the pocketbook.

The register shall have the same formalities as are prescribed in Art. 53 for the merchants' books, on pain of a fine which shall be fixed by the regulations.

In order that the necessary investigations may be made, the said register may be ordered to be produced in Court at the instance of a party interested, or even officially by order of the Judges and Tribunals of Commerce.

Art. 94. (Commercial Code)

A broker may only certify what is stated in the register, making reference thereto.

Only by virtue of an order of a competent authority may he give advice of what he has seen and heard in relation to his business transactions.

Art. 95. (Commercial Code)

A broker who shall certify contrary to what is stated in his books shall be deprived of his office and shall incur the penalties of the crime of falsity.

Art. 96. (Commercial Code)

Brokers must, before all things, assure themselves of the identity of the persons between whom the business in which they take part is being transacted, and of their legal capacity to make the contracts.

If they knowingly or by culpable ignorance take part in a contract made by a person who cannot legally make it, they shall be liable for the damage which follows as the direct and immediate result of the legal incapacity of the contractor.

Art. 97. (Commercial Code)

Brokers are not responsible and cannot be made responsible for the solvency of the contracting parties.

However, in transactions concerning bills of exchange and nominative securities, they shall be guarantors for the delivery of the material subjectmatter of the security to the taker, and for the delivery of the value to the assignor, and responsible for the authenticity of the signature of the last assignor, unless it has been expressly stipulated in the contract that the interested parties shall effect delivery direct.

Art. 98. (Commercial Code)

Brokers must carry through their transactions with correctness, precision and clearness, without making false representations which may induce the contracting parties to make a mistake.

If by this means they induce a merchant to consent to a prejudicial contract, they shall be liable for the loss which they caused him.

Art. 99. (Commercial Code)

The offering of an object of commerce under a description different from that which is attributed to it by the general usage of commerce, and the giving of false information as to the price of the subjectmatter of the transaction which is current in the place, shall be considered false representation.

Art. 100. (Commercial Code)

They shall keep everything which concerns the transactions entrusted to them rigorously secret; under the strictest responsibility for the damage which may result from not so doing.

Art. 101. (Commercial Code)

In sales made with their intervention, they are bound to assist in the delivery of the goods sold, if the interested parties or any one of them demand it.

Unless the contracting parties expressly relieve them from this obligation, they are likewise bound to preserve the samples of all merchandise sold with their intervention, up to the time of delivery, taking all necessary precautions for the proof of identity.

Art. 102. (Commercial Code)

Within 24 hours following the conclusion of a contract, the brokers must deliver to each of the contracting parties a signed note of the entry made in their Register of the concluded negotiation.

This note shall refer to the Register and not to the pocketbook.

If a broker does not deliver the note within the 24 hours, he shall lose the right to his commission which he may have required, and shall be liable to and make good any damages.

Art. 103. (Commercial Code)

In the transactions in which, by the agreement of the parties or by provision of the law, written contracts are necessary, the broker is bound to have all the contracting parties present at its execution, and to certify at the foot that it was made with his intervention, retaining a copy which he shall be responsible for keeping.

Art. 104. (Commercial Code)

In case of the death of a broker or his dismissal from his office, he himself or his heirs respectively must deliver his Registers to the proper Tribunal of Commerce.

Art. 105. (Commercial Code)

Brokers are forbidden:

1. Every kind of arrangement or negotiation, direct or indirect, in their own name or that of another, for entering into a partnership of any class or denomination and for taking a share in merchant vessels or their cargoes, on pain of loss of office and nullity of the contract;
2. To undertake to recover or make payments on another's account, on pain of loss of office;
3. To acquire for themselves or for any person of their immediate family, the things whose sale has been entrusted to them or those which they may have given to another broker to sell, even when they make a solemn declaration that the one or the other is buying for private consumption, on pain of suspension or loss of office at the discretion of the Tribunal according to the gravity of the case.

Art. 106. (Commercial Code)

There is not included in the provisions of the preceding article the acquisition of securities in the public debt or shares in limited companies of which, however, brokers cannot be directors, administrators or managers under any right whatever.

Art. 107. (Commercial Code)

Every guarantee, aval or security given by a broker in respect of the contract or transaction made with his intervention, whether it is set forth in the principal or in a separate contract, is void and shall have no effect in law.

Art. 108. (Commercial Code)

Brokers are likewise forbidden:

1. To take part in contracts which are illegal or disapproved by the law whether on account of the status of the contracting parties or of the nature of the subject matter of the contract, or of the agreements or conditions connecting therewith;

2. To offer bills of exchange or securities of any other kind, or merchandise coming from persons who are known in the place, unless a merchant is present and vouches for the identity of the person;

3. To take part in a contract of sale of goods, or in negotiating bills of exchange, belonging to a person who has suspended payment;

4. To have, beyond of his brokerage, an interest in a higher price which he may obtain in the transactions or to demand a brokerage larger than the established legal brokerage or than that which the proper legislative authorities shall have enacted in future, saving an agreement to the contrary.

Art. 109. (Commercial Code)

A broker whose books are found without the formalities specified in Art. 93, or without the entry of any of the matters mentioned in Arts. 91 and 92, shall be subject to payment of damages and to suspension for 3 to 6 months.

In case of a second offense he shall be deprived of his office.

Art. 110. (Commercial Code)

A broker who in the exercise of his functions makes use of deceit or fraud shall be deprived of his office and shall be subjected to the proper criminal prosecution.

Brokers who contravene the provisions of the present Chapter for which no penalty is specified shall be subject to the same punishment and damages, according to the circumstances and the discretion of the Tribunal.

Art. 111. (Commercial Code)

When only one broker takes part in a transaction he shall receive brokerage from each of the contracting parties.

If more than one broker takes part, each shall only have the right to demand brokerage from his principal.

Brokerage is due although the contract is not concluded through the fault of one of the contracting parties, or when the negotiation has been begun by the broker and the principal has entrusted its conclusion to another person or has concluded it himself.

Art. 112. (Commercial Code)

A broker who becomes bankrupt shall be deprived of his office by the Tribunal and his bankruptcy shall be considered fraudulent within the meaning of Art. 1550.

## CHAPTER 2. AUCTIONEERS

Arts. 113-122. (Commercial Code)

Repealed by Law 20,266 concerning Auctioneers.

### AUCTIONEERS LAW - LAW 20,266

(Article 28 of this Law incorporated it into the Commercial Code)

#### QUALIFYING CONDITIONS

Article 1. (Auctioneers Law)

In order to be an auctioneer the following qualifying conditions are required:

- a) To be of age and to not have any of the disabilities of art. 2;
- b) To possess a certificate of secondary education issued or re-validated in the Republic in accordance with the regulations in force;
- c) To pass the examination for competence for the exercise of the activity, which shall be taken before any higher tribunal of the Republic competent in commercial matters, whether national federal or provincial, which shall issue the certificate of qualification for the entire territory within the country. For the purposes of the examination for competence, a representative of the professional organization with non-State public law legal personality shall be included in the tribunal, in the jurisdictions where such an organization exists. The examination must be based on basic notions concerning civil and commercial sales and purchases and the legal process in aspects pertinent to the exercise of the profession.

#### DISABILITIES

Article 2. (Auctioneers Law)

The following cannot be auctioneers:

- a) Those who cannot be merchants;
- b) Bankrupts and insolvents whose conduct has been qualified as fraudulent or culpable, up to 5 years after their rehabilitation;
- c) Those who are constrained from disposing of their assets;
- d) Those condemned with an accompanying penalty of disqualification for carrying out public duties, and those condemned for theft, larceny, extortion, swindling and other frauds, usury, bribery, embezzlement of public wealth and crimes against the public faith, until after 10 years from the completion of the sentence;
- e) Those temporarily or permanently excluded from carrying out the activity due to disciplinary sanction;
- f) Those included in article 152 bis of the Civil Code.

## REGISTRATION

### Article 3. (Auctioneers Law)

Whoever seeks to carry out the activity of an auctioneer must be registered in the register corresponding to the jurisdiction in which he shall have to fulfill his duties. He must comply with the following requirements in order to register:

- a) Possess the certificate provided in letter c) of art. 1;
- b) Accredited good conduct;
- c) Establish domicile in the jurisdiction that corresponds to his registration;
- d) establish a real or personal guarantee to the order of the organization that controls the register, the class and amount of which shall be determined thereby in a general manner.

### Article 4. (Auctioneers Law)

The governance of the register in each jurisdiction shall be in the charge of the professional or judicial organization which the respective local legislation has determined.

### Article 5. (Auctioneers Law)

The authority that is in charge of the register shall order the formation of individual files for each one of the persons registered, in which the personal data and the registration shall be exhibited, and any amendments made therein. Said files shall be public.

### Article 6. (Auctioneers Law)

The guarantee to which art. 3, letter d) refers, cannot be attached and shall only be used for the payment of damages and losses caused in the registered activity, for which the sums thereof shall be declared liable, and for the fines which might apply, in which cases the interested party shall duly proceed to the immediate replacement of the guarantee, under warning of the suspension of the registration.

## INCOMPATIBILITY

### Article 7. (Auctioneers Law)

Public employees, even when registered as auctioneers, shall not be compatible for carrying out auctions ordered by the branch of the authority or administration of which they are a part, except in the event of provisions of special laws and in the case of article 25.

## FACULTIES

### Article 8. (Auctioneers Law)

The following are the faculties of auctioneers:

- a) To effect sales in public auction of any kind of property, except as limited by special laws;

- b) To inform on the sales or market value of the property for whose auction this law empowers them;
- c) To obtain the reports or certificates necessary for compliance with the obligations provided in art. 9 directly for the public offices and official and private banks;
- d) To request the necessary measures to guarantee the normal development of the auction from the competent authorities.

## OBLIGATIONS

### Article 9.

The following are obligations of auctioneers:

- a) To keep the books which are established in Chapter VIII;
- b) To prove the existence of the titles invoked by the person who can legitimately dispose of the property by auction. In the case of auction of real estate, they must also show the conditions of ownership thereof;
- c) To have a written agreement with the person who can legitimately dispose of the property on the expenses of the auction and the manner of satisfying them, conditions of sale, place of auction, ways and means of the payment of the price and other instructions relative to the act, there being a duly express proof in the cases in which the auctioneer is authorized to sign the instrument that documents the sale in the name of the party who can legitimately dispose of the property;
- d) To announce the auctions with the necessary publicity, duly indicating in all cases his name, special address and registered address, date hour and place of the auction and the description and condition of the property and its conditions of ownership.

In cases of auctions carried out by companies, the registration data in the Public Commercial Register must also be indicated.

In the case of auctions of lots in quotas or located in towns in formation, the plans must have proof of their measurement by a competent authority and of the distance existing between the portion to be auctioned and the nearest railway stations and national or provincial highways. The type of pavement, water and sanitary works and public services shall be indicated, if they exist;

- e) To carry out the auction on the date, hour and place stipulated, placing a banner with his name and, if applicable, the name, trade name or firm name of the company to which they belong in a visible place;

- f) To explain in a loud voice, prior to commencement of the auction, in the national language, and with precision and clarity the nature, legal conditions, qualities of the property and liens which burden it;
- g) To accept the bid only when it is made vocally; otherwise the bid shall remain inefficacious;
- h) To sign the instrument documenting the sale, along with the contracting parties, after proof of their identity; this instrument shall contain the rights and obligations of the parties. The instrument shall be drawn up in 3 copies and must be duly stamped, one copy of which shall remain in the possession of the auctioneer. In the case of personal property whose possession was conveyed to the purchaser in the same act, which was sufficient for the transfer of ownership, the respective receipt shall be sufficient;
- i) To demand and receive from the purchaser, in actual cash, the amount of the token or account of the price, in the proportion established in the publicity and to give the corresponding receipts;
- j) To render documented accounts and deliver the balance resulting within a period of 5 days, unless there exists an agreement to the contrary, loss of the commission being incurred if he does not do so;
- k) To keep, if applicable, the copies, certificates and reports relative to the property that he auctioned until the time of the final transfer of ownership;
- l) In general, to fulfill the other obligations established by the laws and regulations in force.

#### Article 10. (Auctioneers Law)

Without prejudice to the obligations established in this law, when auctioneers carry out their activity, the owner of the effects which are going to be sold not being present, they shall be deemed consignees subject to the provisions of arts. 232 et seq. of the Commercial Code, as regards their rights and obligations.

#### RIGHTS

#### Article 11. (Auctioneers Law)

An auctioneer has a right to:

- a) Collect a commission in accordance with the tariffs applicable in the jurisdiction, except auctioneers who are employees, contracted or from auction or consignment enterprises that receive the sums which they have agreed upon for their services, a guaranteed commission possibly also being stipulated in the terms of art. 256 of the Commercial Code;
- b) To receive reimbursement of the auction expenses agreed upon and realized from the seller;



Article 12. (Auctioneers Law)

In the cases in which after the auction procedure has begun, the auctioneer does not carry it out for causes not due to him, he shall have a right to receive the commission which the court shall determine in accordance with the amount of the work carried out and the expenses which he has paid out. He shall have the same right if the auction fails for lack of bids.

Article 13. (Auctioneers Law)

The commission shall be determined on the basis of the price actually obtained. If the sale is not carried out, the commission shall be determined on the basis of the property to be auctioned, in which case it shall be that. In default of a basis it shall be for the value of the place in the time provided for the auction.

Article 14. (Auctioneers Law)

If the auction is cancelled for reasons not due to the auctioneer, he shall have a right to the payment of the commission that corresponds, which shall be charged to the party that caused the cancellation.

Article 15. (Auctioneers Law)

Auctioneers may establish companies of any of the types provided in the Commercial Code, except cooperatives, with the purpose of carrying out auctions exclusively. In this case, each one of the members of the company must establish the guarantee specified in art. 3, letter d).

Article 16. (Auctioneers Law)

In companies whose object is the carrying out of auctions, an auctioneer who carries them out and the administrators or members of the board of directors of the company, shall be jointly and severally liable in an unlimited manner along with the company for damages and losses which they might occasion as a consequence of the auction. These companies must carry on auctions through registered auctioneers who are registered in special registers that the organization in charge of registration shall keep.

## BOOKS

Article 17. (Auctioneers Law)

Auctioneers and companies to which art. 15 refers must keep the following books, authenticated by the Public Commercial Register of the jurisdiction:

- a) journal of incoming property, where the property they receive for sale shall be entered, with an indication of the necessary specifications for its due identification, the name and surname of whoever conferred the job, on whose behalf it is to be sold and the conditions of its disposal;
- b) journal of outgoing property, in which daily sales shall be entered, indicating on whose behalf they were made, who purchased them, price and conditions of payment and other specifications which are deemed necessary;

c) transaction accounts, documenting transactions carried out between the auctioneer and each one of his principals.

This article is not applicable to auctioneers who are employees, contracted or from auction or consignment enterprises.

Article 18. (Auctioneers Law)

Auctioneers must file a copy of the documents which are drawn up through their intervention, on the transactions which are carried out through their agency.

## PROHIBITIONS

Article 19. (Auctioneers Law)

Auctioneers are prohibited from the following:

- a) To give discounts, bonuses or reduction of commission tariffs;
- b) To participate in the price obtained in the auction under their charge, not being able to make agreements for differences to their favor or to that of third persons;
- c) To transfer, rent or furnish their banner, or delegate or permit auctions to be given by unregistered persons under their name or that of the company to which they belong;

In case of absence, sickness or grave impediment of the auctioneer, duly proved before the authority in charge of the register, the auction may be delegated to another registered auctioneer, without prior notice;

- d) To purchase property which had been entrusted to them to sell on behalf of third parties, directly or indirectly;
- e) To purchase the same property for himself or to adjudicate them or accept bids on them from his spouse or relatives within the second degree, partners, employers or employees;
- f) To sign the instrument documenting the sale without express authorization from the person who can legitimately dispose of the property to be auctioned;
- g) To withhold the price or part of the price received, insofar as it exceeds the amount of the expenses agreed upon and of the commission which belongs to them;
- h) To utilize the words "judicial", "official" or "municipal" in any manner, when the auction is not of that nature, or any other term or expression that would cause deception or confusion;
- i) To accept low offers and mention their admission in the publicity, except in the case in which the laws so authorize it;

j) To suspend auctions where bids exist, unless there is a fixed base which has not been reached.

## PENALTIES

### Article 20. (Auctioneers Law)

Incompliance with the obligations established in Chapter VI and carrying out acts prohibited in chapter IX shall make the auctioneer liable for penalties that may be fines up to \$..... (this amount is variable), suspension of his registration for up to 2 years and his cancellation. The determination, application and graduation of these penalties shall be the duty of the authority in charge of the register in each jurisdiction and shall be appealable before the corresponding commercial tribunal.

### Article 21. (Auctioneers Law)

The penalties which shall be applied shall be listed in the individual file of the auctioneer provided in art. 5.

### Article 22. (Auctioneers Law)

An auctioneer by whose fault an auction is suspended or cancelled shall lose his right to collect the commission and to be reimbursed the expenses, and he shall be liable for the damages and losses occasioned.

### Article 23. (Auctioneers Law)

No person may announce or carry on auctions without being registered under the conditions provided in article 3. Whoever violates this rule shall be reprimanded by the organization in charge of the register with a fine of up to \$..... (this amount is variable), and also closure of the respective premises or office shall be disposed; all without prejudice to the penal liability which might correspond. The organization in charge of the register, shall proceed to force entry with the help of the police force into the addresses where it is presumed that the aforementioned violations are being committed and, once it is proved that they are being committed, shall apply the penalties provided, without prejudice to the reports of a penal nature, if they apply. The order of forced entry and closing of premises must be issued by the competent judicial authority. In all the cases, penalties of fine and closure shall be appealable before the corresponding commercial tribunal.

## GENERAL PROVISIONS

### Article 24. (Auctioneers Law)

Auctioneers that on the effective date of this law are registered, shall continue the exercise of their activities, complying with the requirements mentioned in letters b), c) and d) of article 3.

### Article 25. (Auctioneers Law)

Auctions that the National State, the provinces and the municipalities carry out, when they act as private persons, as well as self-sufficient entities, banks and enterprises of the

national State, provinces or municipalities, shall be governed by the provisions of their respective ordinances and, by this law, insofar as it does not oppose the ordinances.

Article 26. (Auctioneers Law)

Until the professional or judicial organization that shall take charge of the registration of auctioneers in the Federal Capital and in the National Territory of Tierra del Fuego, Antarctic Argentina and the Islands of the South Atlantic shall be determined, the court from which the public commercial register depends shall be so designated.

Article 27. (Auctioneers Law)

Public auctions disposed by judicial authority shall be governed by the provisions of the procedural laws pertinent thereto and by this law, insofar as the latter is not opposed thereto.

Article 28. (Auctioneers Law)

This law shall be applied in all the territory of the Republic and its text shall be incorporated into the Commercial Code.

Article 29. (Auctioneers Law)

This law shall enter into effect 90 days from its publication

Article 30. (Auctioneers Law)

Arts. 113 to 122 of the Commercial Code are repealed.

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### CHAPTER 3. WAREHOUSEMEN AND MANAGERS OF DEPOSITORIES

Art. 123. (Commercial Code)

Warehousemen and managers of depositories are bound:

1. To keep a book with the formalities required by Art. 53, without leaving blanks, or making interlineations, erasures or corrections;
2. To enter in the same book in numerical order and by chronological order of day, month and year, all the goods which they receive, expressing the quality of the goods, the names of the persons who remit them and to whom they are delivered, with the marks and numbers thereon, noting their despatch in a convenient manner;
3. To give proper receipts, stating in them the quality, quantity, numbers and marks, causing to be weighed, measured or counted, at the time of receipt, those articles which are susceptible of being weighed, measured or counted;
4. To keep safely the goods received and to take care that they do not deteriorate; effecting to that end, and on account of the owner, the same measures and expenditure as they would if they were their own;

5. To show to buyers on order of the owners, the articles or goods deposited.

Art. 124. (Commercial Code)

Warehousemen and managers of depositories are answerable to those interested for the prompt and faithful delivery of the goods received, on pain of imprisonment, whenever they do not effect delivery within 24 hours of having been judicially ordered so to do on production of the proper receipts.

Art. 125. (Commercial Code)

Both seller and buyer of articles in warehouses or depositories may demand that the goods be reweighed or recounted at the time of dispatch, without being bound to pay for such operation.

Art. 126. (Commercial Code)

Warehousemen and managers of depositories are liable for theft which may happen in the warehouses or depositories, unless they are committed by vis major, which must be proved immediately after the event on citation of the parties interested or their representatives.

Art. 127. (Commercial Code)

They are likewise answerable to the interested parties for embezzlement and omissions of their managers, foremen and subordinates as well as for the damages which may result from the failure to take steps in fulfillment of the provisions of Art. 123, No. 4.

Art. 128. (Commercial Code)

In all cases in which they may be obliged to pay the parties for deficiency in goods or any other damage, the valuation shall be made by expert arbitrators.

Art. 129. (Commercial Code)

Warehousemen and managers have the right to demand the agreed reward, or in the absence of agreement, the customary reward, with power to refuse delivery of the goods until payment.

However, if there is any counterclaim against them, they can only demand the payment into the Court of the reward or rent.

Art. 130. (Commercial Code)

Warehousemen and managers of depositories have a prior right and a right of detention over the goods in their warehouses or depositories, at the time of the bankruptcy of the merchant who is owner of the goods, for the payment of the rent and the expenses of their preservation, with the preference enacted in the Title "Different Classes of Debts and Their Priorities".

Art. 131. (Commercial Code)

The provisions of Title "The Deposit" apply to warehousemen and managers of depositories.

#### CHAPTER 4. MANAGERS AND SUBORDINATE COMMERCIAL EMPLOYEES

##### Art. 132. (Commercial Code)

A manager is the person to whom a merchant entrust the administration of his business or that of a separate establishment.

No one can be a manager who has no legal capacity for practicing trade.

##### Art. 133. (Commercial Code)

Every manager must be appointed as such by a special authorization of the employer or the person on whose account the business is carried on.

This authorization shall only take effect from the date on which it is entered on the Commercial Register.

##### Art. 134. (Commercial Code)

Absence of the formalities prescribed by the foregoing article only produces effect as between the principal and his manager but not in respect to third parties with whom the latter has contracted.

##### Art. 135. (Commercial Code)

Managers appointed in general terms are understood to be authorized for all acts which the direction of the establishment requires.

An owner who intends to limit these powers must express in the authorization the restrictions to which the manager is to be subject.

##### Art. 136. (Commercial Code)

Managers must conduct the business in the name of their principal.

In all documents which they sign in such business, they must state that they sign with the authority of the person or society which they represent.

##### Art. 137. (Commercial Code)

When dealings are conducted as provided by the foregoing article, all the obligations which managers contract devolve on the principals.

Actions brought to compel their fulfillment shall bind the property of the establishment and not that of the manager, unless they are mixed together in such a way that they cannot easily be separated.

Art. 138. (Commercial Code)

Contracts made by the manager of a commercial or manufacturing establishment, which is well known to belong to a certain person or partnership, are understood to be made on account of the owner of the establishment, even when the manager does not so state at the time of making them, provided that such contracts affect subject matters included in the course of business of the establishment, or if they are of another nature, when the manager has acted under the order of his principal, or the latter has ratified his action in express terms or by positive acts which induce a legal presumption.

Art. 139. (Commercial Code)

Apart from the cases provided for in the foregoing article, every contract made by a manager in his own name directly binds him to the person with whom he contracts.

Nevertheless, if the transaction is made on account of the manager's principal and the other contracting party proves it, he shall have an option to bring his action against the manager or his principal, but not against both.

Art. 140. (Commercial Code)

Cocooners of an establishment, although not partners, are jointly and severally liable for the obligations contracted by their manager.

The same rule applies to the heirs of the principal after acceptance of the inheritance.

Art. 141. (Commercial Code)

No manager may do business on his own accord, or have any interest in his own name or that of another, in business transactions of the same kind as those which are entrusted to him, unless it be with the express authority of his principal.

If he does so, the profits shall belong to the principal without the latter being liable for the losses.

Art. 142. (Commercial Code)

Principals are not exonerated from the obligations which managers contract in their name, even when they prove that they have enacted without their order in a particular transaction, provided that the manager was authorized to effect it according to the authority by virtue of which he acts, and that the transaction belongs to the course of business of the establishment which is under his direction.

They cannot withdraw from the fulfillment of the obligation contracted by their managers, or the pretext that the latter abused their trust or the powers conferred on them, or that they consumed for their own advantage the goods which they acquired for their principals, saving their actions for indemnity against the managers.

Art 143. (Commercial Code)

Fines incurred by the manager for contravention of the fiscal laws or regulations in carrying out of the business entrusted to him shall bind the property which he administers, saving the right of the owner against the manager if the latter be guilty of the acts giving rise to the fine.

Art. 144. (Commercial Code)

The representative capacity of the manager is not interrupted by the death of the owner, unless and until the powers are revoked; but it is interrupted by alienation of the establishment made by the owner.

Nevertheless, the contracts which he makes are valid, until the revocation or alienation comes to his notice in a lawful way.

Art. 145. (Commercial Code)

Managers shall observe the same rules for keeping accounts with respect to the establishment which they administer, as are prescribed generally for merchants.

Art. 146. (Commercial Code)

He only has the legal character of manager within the provisions of this section who is the manager of a commercial or manufacturing establishment on another's account, authorized to administer and direct it to contract in respect of the subject matter thereof with greater or less powers as the owner may have considered convenient.

The other employees with fixed salaries, whom merchants are accustomed to employ as helpers in their business, have not the power to contract and bind their principals, unless such authorization has expressly been granted to them from transactions specially entrusted to them, and unless they have the legal status which is necessary for making valid contracts.

Art. 147. (Commercial Code)

A merchant who confers on a subordinate of his house the exclusive control of one part of its administration, such as the negotiation of bills of exchange, the collection and receipt of principal sums under his own signature and other like matters in which is necessary to sign documents which produce obligations and rights of action, is bound to give him special authorization for all the transactions comprised in the said control, which shall be noted and registered as prescribed in Art. 133.

It shall not, therefore, be lawful for commercial subordinates to draw, accept or endorse bills, place receipts on them, or to sign any other document of charge or release with respect to the commercial transactions of their principals, unless they are authorized with adequate power lawfully registered.



Art. 148. (Commercial Code)

Notwithstanding the provisions of the preceding article, every bearer of a document which is a declaration of receipt of the sum due is considered authorized to receive its amount.

Art. 149. (Commercial Code)

If a merchant sends to those who do business with him a circular in which he mentions a subordinate in his house as authorized for certain of his business transactions, the contracts which the latter makes with the persons to whom the circular was sent are valid and binding, so far as they refer to the part of the administration confided to him.

Similar communication is necessary in order that the correspondence of merchants signed by their subordinates may result in obligations contracted by correspondence.

Art. 150. (Commercial Code)

The provisions of Arts. 136, 137, 139, 142, 143, 144 and 145 apply likewise to subordinates who are authorized to conduct a commercial transaction or any part of the business of their principals.

Art. 151. (Commercial Code)

Subordinates employed to sell by retail in shops or public warehouses are reputed to be authorized to receive the price of the sale which they make, and their receipts made out in the name of the principals are valid.

The subordinates who sell in wholesale warehouses have the same power, provided that the sales are for cash and payment is made in the warehouse itself. But when money is to be received elsewhere, or arises from sales on credit, the receipts must be necessarily signed by the principal, or his manager or lawful attorney appointed to collect.

Art. 152. (Commercial Code)

Entries made in the books of any commercial house by the bookkeepers or subordinates entrusted with the bookkeeping, produce the same effect as if they had been personally made by the principals.

Art. 153. (Commercial Code)

Whenever a merchant entrusts a subordinate with the receipt of merchandise which is brought or which comes into his possession by any other title, and the subordinate receives them without objection or protest, the delivery is good and the principal has no claim, except in the cases provided for in the titles "Sales" and "Affreightment" (Arts. 472, 473, 1078 and 1079).

Arts. 154-160. (Commercial Code)

Repealed by Law 20,744 - on Labor Contracts.

Art. 161. (Commercial Code)

Neither commercial managers nor subordinates may delegate to others, without written authority of their principals, any orders or commands which they receive from them, and in the case of their being carried out otherwise, they shall answer directly for the acts of their subordinates and for the obligations which they have contracted.

## CHAPTER 5. CARTERS, CARRIERS AND TRANSPORT CONTRACTORS

Art. 162. (Commercial Code)

Undertakings such as railroads, troopships, trucking, and in general all those which undertake to carry merchandise or persons for reward, portage or freight, must faithfully effect delivery in the time and at the place agreed; must employ all measures and means adopted by persons who are careful in the fulfillment of their duties in similar cases, so that the goods and articles do not deteriorate; paying to this end the necessary expenses on account of the owners. They are responsible to the parties, in the absence of an agreement to the contrary, for damages resulting from their own malversation and omission and that of their managers, subordinates and other agents.

Art. 163. (Commercial Code)

When a carrier does not himself effect the transport, except by the means of another undertaking, he retains his character of carrier as regards the undertaking entrusted with the transport.

Art. 164. (Commercial Code)

Contractors and commission agents for transport, in addition to their duties

as mercantile agents, are bound to keep a separate register with the formalities of Arts. 53 and 54, in which they shall enter in consecutive order of numbers and dates all the goods with whose transport they are entrusted, with a statement of their quality and quantity, the person who loans them, their destination, the name and address of the consignee, and of the carrier and the price of the carriage.

Art. 165. (Commercial Code)

Both the consignor and the carrier may mutually demand a dated and signed bill of lading which shall contain:

1. The name and addresses of the owner or consignor of the goods, or the carrier or transportagent, and of the person or to whose order the goods are to be delivered, if the bill of lading is not "to bearer", and the place where the delivery must be effected.
2. Statement of the goods, their generic character, weight, measurement or number of parcels, their exterior marks or signs, class, and if in bales, the character of the latter;
3. The agreed freight and whether paid or not;
4. The time within which the delivery must be made;

5. All other circumstances which have formed part of the agreement.

Art. 166. (Commercial Code)

The bill of lading may be nominative, to order or to bearer.

The assignee, endorsee or bearer of the bill of lading is subrogated to all the obligations and rights of the consignor.

Art. 167. (Commercial Code)

The bill of lading is the legal contractual document between the consignor and carrier, and by its contents all disputes arising from the carriage of the goods shall be decided, and no defense to the contrary shall be admitted except that of involuntary misstatement or mistake in its terms.

If there is no bill of lading, or if it is impugned for one of the causes mentioned in the preceding paragraph, the case shall depend on the result of the evidence which each party produces in support of their respective claims; but the consignor must before all things prove the delivery of the goods to the carrier, if the latter denies it.

The value can only be proved by the external appearance of the goods.

Art. 168. (Commercial Code)

Any collateral stipulation, which is not stated in the bill of lading, shall have no effect against a third person who is a consignee, or lawful holder.

Art. 169. (Commercial Code)

If the carrier accepts the goods to be transported without reserve, it shall be presumed that they have no apparent defects.

Art. 170. (Commercial Code)

The responsibility of the carrier begins to run from the moment at which he receives the merchandise by himself or by a person appointed for that purpose, and it does not end until after delivery is effected.

Art. 171. (Commercial Code)

A carrier is responsible for the subsequent carriers entrusted with the continuation of the transport. The latter are entitled to declare on the duplicate of the bill of lading, the condition in which the subject matter of the carriage is at the time of their receiving it, there being a presumption, in the absence of such declaration, that it was received in good condition and agreeable to the bill of lading.

Subsequent carriers are subrogated to the rights and obligations of the first carrier.

Art. 172. (Commercial Code)

All damage suffered by the goods during transport, arising from inherent defect, vis major or unforeseen accident are at the risk of the consignor, if there is no stipulation to the contrary.

The proof of any one of these facts lies on the carrier or transport agent.

Art. 173. (Commercial Code)

A carrier shall not be responsible for money, jewels or goods of great value or for securities, if the passengers or consignors have not declared their contents at the time of delivery and agreed to the conditions of the transport. In case of loss or damage he shall not be bound to pay more than the declared value.

Art. 174. (Commercial Code)

With respect to things which by their nature are subject to diminution in weight, or measure, a carrier may limit his liability to so much per cent, previously fixed, and this shall apply to each parcel if the subject matter is divided into parcels.

The express limitation of responsibility shall not apply if the consignor or consignee proves that the diminution does not arise as a consequence of the nature of the subject matter, or that in the circumstances of the case it could not reach the stated amount.

Art. 175. (Commercial Code)

Except in the cases provided for in Art. 172, a carrier is bound to deliver the goods loaded in the same conditions as he has received them, as shown by the bill of lading, there being a presumption in the absence thereof that he has received them in good condition and without apparent defects in packing.

Art. 176. (Commercial Code)

Although the damage or loss arises from unforeseen accident or inherent defect of the thing loaded, the carrier shall be bound to indemnify if it is proved that the damage or loss arose from his negligence or culpa, in failing to employ measures or precautions usually taken in the same circumstances by diligent persons.

Art. 177. (Commercial Code)

In the case of transport of certain species of fragile goods or goods easily subject to deterioration, of animals, or even of transport made in a special manner, the railroad management may stipulate that the loss or damage is to be presumed to be derived from the defect of said transported goods, from their very nature, or from the act of the consignor or consignee, if their own culpa is not proved.

Art. 178. (Commercial Code)

Carriers may reject parcels which are in bad condition for transport. However, if the consignor insists on their being received, the carrier shall be bound to carry them, but

shall be exempt from all liability if he causes his objection to be stated in the bill of lading.

Art. 179. (Commercial Code)

The indemnity which a carrier must pay in case of loss or deviation shall be assessed by experts according to the value of the goods at the time and place of delivery, and with regard to the description made of them in the bill of lading.

In no case may the consignor be allowed to prove that among the goods mentioned in the bill of lading there were others of greater value, or bullion.

Art. 180. (Commercial Code)

When the effect of the damage is only to diminish the value of the goods, the obligation of the carrier is confined to the payment of the amount of the deterioration, according to the award of experts, as in the case of the preceding article.

Art. 181. (Commercial Code)

If by reason of the damage the goods are rendered useless for sale and application to the objects proper to their use, the consignee shall not be bound to accept them to the account of the carrier, and may demand their value at the price current on that day at the place of delivery.

If among the goods there are found any parcels in good condition without any defect, the foregoing provision with respect to deteriorated goods shall apply, and the consignee shall accept those which are not damaged, if the separation can be made in distinct parcels, without dividing a given subject matter, or a suite into parts.

Art. 182. (Commercial Code)

Doubts which arise between consignee and carrier about the condition of the goods at the time of delivery shall be decided by the arbitration of experts, who shall state the result in writing.

Art. 183. (Commercial Code)

An action for deterioration or damage to the goods discovered at the time of opening the parcels, shall only lie against the carrier within the 24 hours following their receipt, although no signs of the loss or damage claimed were visible on the outside.

At the end of this time, there shall be no claim against the carrier about the condition of the goods received.

Art. 184. (Commercial Code)

In the case of the death or injury of a passenger, occurring during carriage by rail, the company shall be bound to pay full compensation, notwithstanding any agreement to the

contrary, unless it is proved that the accident arose from vis major or happened by fault of the victim or of a third person for whom the company is not civilly responsible.

Art. 185. (Commercial Code)

Animals, carriages, boats, equipment and all other principal or accessory aide to transport are especially bound in favor of the consignor for the payment of the goods delivered.

Art. 186. (Commercial Code)

When there is an express agreement as to the road by which the transport is to be effected, the carrier may not vary it, on pain of being liable for all the losses and depreciation, although they may proceed from some one of the causes mentioned in Art. 172, unless the stipulated road is impossible or offers greater risks.

If no bargain has been made about the road, the choice of the one which suits him shall be at the discretion of the carrier, provided that the road goes direct to the place where he has to deliver the goods.

Art. 187. (Commercial Code)

Delivery of the goods must take place within the time fixed by the agreement, laws and bylaws and, in the absence thereof, by commercial usage.

Railroads must transport merchandise in a time which does not exceed one hour for every 10 kilometers or for a minimum distance which the administrative power may fix, reckoned from 12:00 on the night following the receipt of the goods.

Art. 188. (Commercial Code)

In the case of delay in effecting the transport for longer than that enacted in the preceding article, the carrier shall lose part of the price of the transport in proportion to the duration of the delay, and the whole price of the transport, if the delay lasts twice the time of that enacted for effecting the same, besides the obligation of paying any greater loss which may be proved to have been suffered through the said cause.

A carrier shall not be responsible for delay, if he proves that it has arisen from unforeseen accident, vis major or act of the consignor or consignee.

The lack of sufficient means of transport shall not suffice to excuse the delay.

Art. 189. (Commercial Code)

If to the contract of transport is added a penal clause for the non-performance or delay in delivery, the carrying out of the contract may always be claimed as well as the penalty.

In order to be entitled to the agreed penalty, it is not necessary to prove damage, and the amount of the penalty may be deducted from the agreed price. If it is proved that the immediate and direct damage which has been suffered is greater than the penalty, the excess may be claimed.

If the carrier be exempted from liability according to the provisions of Arts. 172 and 188 the penalty shall not be paid.

Art. 190. (Commercial Code)

If there is no time stipulated for the delivery of the goods, the carrier shall be bound to transport them in the first journey which he makes to the place where he has to deliver them.

If he is a transport agent, he is bound to send them off in the order of their receipt, without giving preference to those received later. In case of not doing so, both (agent and carrier) shall be answerable for the damage resulting from the delay.

Art. 191. (Commercial Code)

The consignor or the lawful holder of a bill of lading may alter the destination of the goods, and the carrier or transport agent is bound to fulfill the new order, if he receives it before delivery is made or demanded in the stipulated place, being entitled in that case to demand the return of the first bill of lading and the drawing up of a new one.

However, if the alteration of the destination of the cargo involves alternation of route or one which is beyond the place mentioned for the delivery in the bill of lading, the new freight shall be fixed by common accord. In the absence of agreement, the carrier fulfills his obligation by effecting delivery in the place appointed in the first contract.

Art. 192. (Commercial Code)

If the transport has been hindered or extraordinarily delayed by unforeseen accident or vis major, the carrier must immediately advise the consignor, who shall be entitled to rescind the contract, on repaying the carrier the expenses which he has incurred and returning the bill of lading.

If the accident happens during the transport, the carrier shall also be entitled to part of the freight, in proportion to the distance traversed.

Art. 193. (Commercial Code)

If a contract is made for a vehicle which is to go empty with the exclusive object of receiving merchandise at a fixed place and transporting it to a place indicated, the carrier is entitled to the stipulated freight, although the transport is not effected, on proof of the following facts:

1. That the consignor or his factor has not delivered the goods offered;
2. That in spite of the measures he has taken, he has not obtained another cargo for the place he came from.

If the carrier has carried a cargo on the return voyage, he can only recover from the original consignor the difference between the two freights.

Art. 194. (Commercial Code)

If the consignee is not to be found at the address indicated in the bill of lading, or refuses to receive the goods, the carrier shall claim judicial deposit to the order of the consignor, or principal, without prejudice to the right of third persons.

Art. 195. (Commercial Code)

The carrier or transport agent has no right of action to investigate the title of the consignor or consignee to the goods.

He must deliver them without any delay or deviation to the person designated in the bill of lading.

If he does not do this, he makes himself liable for all damages resulting from the delay.

Art. 196. (Commercial Code)

A carrier shall not be bound to effect delivery of the transported goods, until the person who presents himself to receive them has fulfilled the obligations incumbent on him.

In the case of disagreement, if the consignee pays the amount which he believes to be due, and pays the difference into Court at the proper time, the carrier must deliver the transported goods to him.

Art. 197. (Commercial Code)

If it is not possible to discover the consignee, or if he is absent from the place, or being present refuses to receive the goods, the carrier shall deposit them in the place which the Commercial Judge, or in default, the Magistrate, shall fix, on account of the person who ought to receive them.

The condition of the merchandise shall be examined and certified by one or two experts, whom the same judge shall choose.

Art. 198. (Commercial Code)



A consignee shall be entitled at his own expense to test the condition of the transported goods at the moment of delivery even when there are no external signs of damage.

The carrier may, on his part, demand of the consignee the opening and examination of the parcels at the time of his receiving them, and if the latter refuses or omits to take the required measures, the carrier shall be exempt, by this sole fact, from all liability which does not arise from fraud or bad faith.

Art. 199. (Commercial Code)

Carriers and transport agents are liable for damages resulting from their own omission or that of their subordinates, in fulfilling the formalities of the fiscal laws and regulations, during the whole course of the journey and up to the entry of the goods at the place of their destination. But if they have proceeded in virtue of an order of the consignor or consignee of the merchandise, they shall be exempt from that liability, without prejudice to the penalties which either party may have incurred according to the law.

Art. 200. (Commercial Code)

The transported goods shall be specially bound for the payment of freights, expenses and dues incurred in the transport. This right is transferred from one carrier to another up to the last who effects delivery of the goods, in whom are vested all the rights of action of those who have preceded him in the transport.

This privilege ceases as soon as the transported goods pass to a third possessor, or if the carrier does not make use of his right within the month following the delivery.

In either case he shall only rank as an ordinary personal creditor against the receiver of the goods.

Art. 201. (Commercial Code)

The expenses of which the foregoing article speaks comprise those which the carrier may have incurred to obviate the effect of some vis major or of damage, even when this provision departs from the terms of the contract.

Art. 202. (Commercial Code)

Consignees cannot postpone payment of the freights of the goods which they receive, after the expiration of 24 hours following their delivery.

In the case of longer delay, and when there is no claim for loss or damage, the carrier may claim judicial sale of the transported goods, up to a quantity sufficient to cover the price of the freight and expenses which have been occasioned.

Art. 203. (Commercial Code)

If the carrier brings his action within one month following the day of the delivery, his right remains although the consignee has become insolvent or bankrupt.

Art. 204. (Commercial Code)

Railway companies are bound to receive all goods delivered to them for transport to their stations or to those of other lines which connect with them.

Bylaws and stipulations of companies which have offered their services to the public, excluding or limiting the obligations and responsibilities imposed by this Code, shall be null and void.

Art. 205. (Commercial Code)

Actions arising from a contract of transport may be brought before the judicial authority of the place in which the representative of the carrier resides, or in the case of railroads, before the judicial authority of the station of departure or arrival.

For this purpose the provisions of Art. 135 shall apply to station masters.

Art. 206. (Commercial Code)

The provisions of this Title apply to transport effected by boats, lighters of all sizes, long boats, whale boats, canoes and other small vessels of similar nature.

## BOOK II. COMMERCIAL CONTRACTS

### TITLE I. COMMERCIAL CONTRACTS AND OBLIGATIONS IN GENERAL

#### CHAPTER 1. CONTRACTS AND OBLIGATIONS IN GENERAL

Art. 207. (Commercial Code)

The civil law applies to commercial matters and business, as far as it is not altered by this Code.

Art. 208. (Commercial Code)

Commercial contracts may be proved:

1. By notarial instruments;
2. By notes made by brokers, and by certified extracts from their books;
3. By private documents, signed by the contracting parties, or by some witness at their request and in their name;
4. By written or telegraphic correspondence;
5. By merchants' books and by accepted invoices;
6. By admission of the party and by oath;

7. By witnesses.

Presumptions are also admissible according to the rules enacted in the present Title.

Art. 209. (Commercial Code)

Proof by witnesses is only admissible in contracts the value of which does not exceed 200 silver pesos, except in the cases expressly mentioned in this Code.

In matters of the larger amount, oral proof shall only be admitted after a foundation of written evidence.

Any document, whether notarial or private, which emanates from all opposite side, from its author or from a party interested in the defense or who would be interested if he were alive, is considered as the foundation of written evidence for this purpose.

Art. 210. (Commercial Code)

Contracts for which special forms or procedures are definitely enacted by this Code, shall not give rise to any action at law if those forms or procedures have not been observed.

Art. 211. (Commercial Code)

Documents of commercial contracts in which there are blanks, erasures or alterations, not authenticated by the contracting parties under their signature, shall not be admissible.

An exception is made when proof is offered that the erasure or alteration has been purposely made by the party interested in the nullity of the contract.

Art. 212. (Commercial Code)

Absence of statement of the cause or a statement of false cause in obligations transferable by endorsement forms no defense against a third party who is a holder in good faith.

Art. 213. (Commercial Code)

If a broker takes part in a transaction, the contract will be held perfect as soon as the contracting parties have accepted the proposals of the broker without any reserve or condition. When accepted the proposals of the broker without any reserve or condition. When acceptance has been expressed, there is no room for change of mind of the parties.

Art. 214. (Commercial Code)

Telegraphic correspondence is governed by the same provisions as epistolary, both for making contracts and for other juridical effects.

Art. 215. (Commercial Code)

Consent to a commercial act shown to an agent or emissary, binds the giver thereof, even before it is transmitted to him who sent the messenger.

Art. 216. (Commercial Code)

A condition subsequent is understood to be implicitly comprised in all bilateral or reciprocal contracts, where one of the parties does not fulfill his promise. Moreover, in contracts in which part of the performances have been fulfilled, those that shall have been fulfilled shall remain firm and shall produce the corresponding effects, insofar as they are concerned.

If the performance is not executed, the creditor may require the party in default to fulfill his obligation within a period not less than 15 days, unless custom or an express agreement establishes a lesser period, along with damages and losses derived from the delay; after the expiration of the period without the performance having been fulfilled, the contract shall be dissolved, entitling the creditor to collect damages and losses resulting from the non-performance of the contract.

The parties may expressly agree that the contract shall be dissolved if any obligation is not fulfilled with the ways and means agreed upon; in this case the dissolution of the contract shall be produced ipso jure and shall produce effects by which the interested party shall authentically notify the party in default his wish to dissolve the contract.

The party not in default may enforce the performance of the agreement on the other party and apply for payment of damages and losses. The contract may be dissolved even when the performance of the contract had been demanded; but performance may not be required when dissolution had been demanded.

Art. 217. (Commercial Code)

The words of contracts and agreements must be understood in the sense which general use gives them, although the person bound thereby claims that he has understood them otherwise.

Art. 218. (Commercial Code)

The following shall afford the bases of interpretation, when it is necessary to interpret the clauses of a contract.

1. Where there is ambiguity in the words, the mutual intention of the parties should be sought rather than the literal meaning of the terms;
2. Equivocal or ambiguous clauses must be interpreted by means of clear and precise terms employed elsewhere in the same document, taking care to give them, not so much meaning which generally suits them, as that which belongs to them from the effect of the general context;

3. Clauses which are susceptible of two meanings, from one which would result the validity and from the other the nullity of the transaction, must be understood in the former sense.

If both would equally give validity to the transaction, they must be taken in the sense which most agreed with the nature of the contracts and the rules of equity;

4. The acts of the contracting parties subsequent to the contract, which have relation to the matter in dispute will afford the best explanation of the intention of the parties at the time of making the contract;

5. Transactions of merchants are never presumed to be gratuitous;

6. The usage and practice generally observed in commerce in cases of like nature, and especially the custom of the place where the contract is to be performed, shall prevail over any contrary meaning which is attempted to give to the words;

7. In doubtful cases which cannot be decided according to the enacted bases, ambiguous clauses must always be interpreted in favor of the obligor, that is to say, with a meaning that shall relive him.

Art. 219. (Commercial Code)

If in drawing up a contract any term is omitted which is necessary to its performance, and the interested parties are not agreed as to the true meaning of the bargain, there is a presumption that they are subject to the usage and practice in such cases among the merchants in the place of the performance of the contract.

Art. 220. (Commercial Code)

When generic terms, which can be applied to different values of quantities have been used in a contract to denote money weight or measure, the obligation shall be understood to be contracted in that species of money, weight or measure which is in use in contracts of like nature.

## TITLE II. AGENCY, COMMISSIONS OR CONSIGNMENTS

Art. 221. (Commercial Code)

A commercial mandate, in general, is a contract by which one person bonds himself to manage one or more lawful commercial businesses which another entrusts to him.

A commercial mandate is not presumed to be gratuitous.

Art. 222. (Commercial Code)

A mandate is specially so called when he manages the business operates in the in the name of the person who has entrusted it to him.

A commission or consignment is so called, when the person who on behalf of others transacts matters individually determined, either operates in his own name or under the name of the firm which he represents.

#### CHAPTER 1. COMMERCIAL AGENCY

##### Art. 223. (Commercial Code)

A commercial mandate, however general its terms may be, can have only commercial acts as its object.

It never extends to acts which are not those of commerce, unless it is otherwise expressed in the mandate.

##### Art. 224. (Commercial Code)

An agent may resign the mandate at any time on giving notice of his resignation to the principal.

Nevertheless, if that resignation damages the principal, the agent must indemnify him, unless:

1. The performance of the mandate depends on the supply of funds and the agent has not received them or they have been insufficient;
2. If the agent finds it impossible to continue the agency without personally suffering considerable damage.

##### Art. 225. (Commercial Code)

When reference is made in the power to special regulations or instructions, these are considered as integral part thereof.

##### Art. 226. (Commercial Code)

If the carrying out of the mandate is left to the discretion of the agent, the principal is bound by whatever the former may prudently do with the object of fulfilling his commission.

##### Art. 227. (Commercial Code)

A principal must indemnify his agent for the losses which he may suffer through the vice or defect of the subject matter of the mandate, although the former was ignorant thereof.

##### Art. 228. (Commercial Code)

An agent with disposal funds of the principal in his hands cannot refuse to fulfill his orders with relation to the employment or disposition thereof, on pain of being liable for the damages which may result from that fault.

##### Art. 229. (Commercial Code)

An agent is bound to bring to the notice of his principal facts which are of such a nature that they may influence him to revoke the mandate.

Art. 230. (Commercial Code)

A merchant who promises the performance of an act by a third person, is bound to perform it personally, or to pay a proper indemnity, if the third person does not perform the act or deed promised.

Art. 231. (Commercial Code)

If the promise consisted in an obligation to perform an act, the promisor must in all cases give what is promised, without indemnity being permitted, unless the giving has become impossible.

He who accepts the promise of the performance of an act by a third person, is bound to the latter as if he had contracted with him.

In all cases, ratification by the third party converts the act into a true mandate with all its legal effects.

## CHAPTER 2. COMMISSIONS OR CONSIGNMENTS

Art. 232. (Commercial Code)

Between principal and factor there is the same relationship of rights and obligations as between principal and agent, with the extension and limitations provided in this chapter.

Art. 233. (Commercial Code)

A factor is directly bound to the persons with whom he contracts, without the latter having any right of action against the principal, or the principal against them, unless the factor has assigned his rights in favor of one of the parties.

Art. 234. (Commercial Code)

By virtue of the assignment, all defenses which the factor could raise are available for the principal; but the legal incapacity of the former cannot be pleaded, although it is proved, so as to annul the effects of the obligation contracted by the former.

Art. 235. (Commercial Code)

A factor is free to accept or refuse the commission which is offered to him. If he refuses, he ought to advise the principal within 24 hours, or by the second post. If he does not do so, he will be liable for the damages which may result to the principal from his not having received the said advice.

Nevertheless, a merchant entrusted by another merchant to take measures to preserve a bad debt due to him, or the actions which the laws allow, cannot refuse to accept the

mercantile agency when by refusing it, the debt or the rights, whose preservation it was endeavored to secure, would be lost.

Art. 236. (Commercial Code)

A factor who declines to accept the commission which is offered him, is nevertheless bound to secure the preservation of the goods in question and avoid all imminent danger, until the principal has transmitted his orders.

If those orders do not arrive in time, in proportion to the distance to the address of the principal, he may apply to judicial deposit of the goods and the sale of sufficient thereof to cover the amount of the expenses paid by the factor in the receipt and preservation of the goods.

Art. 237. (Commercial Code)

A factor must take the same measures when the presumed value of the goods consigned cannot cover the expenses which he has to pay for the transport and receipt thereof.

The Judge shall assent to the deposit and order the sale, after hearing the creditors in respect of the said expenses and the attorney of the owner of the goods, if any presents himself.

Art. 238. (Commercial Code)

A factor who expressly or tacitly accepts the mandate, is bound to fulfill it, in conformity with the orders and instructions of the principal.

In default thereof, or if it is impossible to receive them in proper time, or if the principal has authorized him to act at his discretion or any unforeseen event has occurred, he may perform the commission, by acting as he would in his own business and conforming himself to the usage of commerce in like cases.

Art. 239. (Commercial Code)

A commission is indivisible. The acceptance of one part is considered the acceptance of the whole, and it lasts as long as the business entrusted is not completely concluded.

Art. 240. (Commercial Code)

Whatever be the words used by the principal in the correspondence, from the time that he requests or orders his correspondent to do a certain thing, it is understood that he gives him authority sufficient for everything relating to the transaction ordered.

Art. 241. (Commercial Code)

A factor who has promised to advance the funds necessary for the fulfillment of the commission entrusted to him, with an agreed form of repayment, is bound to observe the same and fulfill the agency, without being able to plead that the funds have not been provided, unless a notorious want of credit on the part of the principal intervenes.



Art. 242. (Commercial Code)

A factor who departs from the instructions he has received, or in carrying out his agency does not comply with commercial usage, shall be liable to the principal for damages.

Nevertheless, exceeding the commission is justifiable:

1. If an advantage results to the principal;
2. If the transaction entrusted does not admit of delay, or if loss might result from delay, provided that the factor has acted according to the custom generally followed in commerce;
3. If the principal has approved or ratified the transaction with full knowledge of the circumstances.

Art. 243. (Commercial Code)

All the damaging consequences of a contract made by a factor against the instructions of his principal, or in abuse of his authority, shall be borne by the said factor, without prejudice to the validity of the contract.

In consequence of this provision, the factor who makes any sale on another's account, at a price lower than that appointed, shall pay his principal the damage which has been occasioned to him from the difference in price, the sale, nevertheless remaining valid.

Whenever a factor, entrusted with a purchase, has exceeded the price stated to him by the principal, the latter has a discretion to accept the contract as made, or to leave it to be borne by the factor, unless the latter agrees to receive only the price which was stated to him, in which case, the principal cannot reject the purchase made at his order.

If the excess of the factor consists in the thing purchased not being of the commissioned quality, the principal is not bound to make himself responsible for it.

Art. 244. (Commercial Code)

A factor is bound to comply with the obligations prescribed by the fiscal laws and regulations, in respect of the transactions which have been entrusted to him.

If he has contravened them or has been negligent in complying with them, the liability shall be his, although he pleads that he has acted with the express order of the principal.

Art. 245. (Commercial Code)

A factor must promptly communicate to his principal all the suitable information about the negotiations placed in his care, in order that the latter may confirm, correct or alter his orders, and when he has concluded a transaction, he must without fail advise him within 24 hours, or by the post nearest to the day on which the agreement was concluded.

If this is not done, besides the ordinary liabilities, he shall be charged with all the damages which may result from any changes which the principal may make in his instructions.

Art. 246. (Commercial Code)

A principal who does not answer within 24 hours, or by the second post, to the letter of advice in which the factor informs him of the result of the agency, is presumed to approve the conduct of the factor, although he may have exceeded the limits of the mandate.

Art. 247. (Commercial Code)

A factor is responsible for the preservation of the goods, whether consigned to him or bought or received on deposit, or to forward them to another place, saving (loss by) unforeseen accident or vis major or if the deterioration has proceeded from the inherent defect of the thing.

Art. 248. (Commercial Code)

A factor is bound to advise the principal within 24 hours or by the second post, of any damages suffered by the goods in his control, and to state the true origin of the loss in legal form.

Art. 249. (Commercial Code)

A factor must take the same measures whenever on the receipt of the consigned goods, he notes that they are damaged, diminished or in a different condition from that stated in the bills of lading or charter party, invoices or notices.

If the factor is negligent, the principal shall have a right of action to make him liable for the goods in the terms described in the bills of lading, invoices or notices, without the admission of any defense except proof of having taken the said measures.

Art. 250. (Commercial Code)

If any alternation occurs in the goods consigned which makes a sale urgent to save part of their value, the factor shall proceed with the sale of the damaged goods by public auction, for the benefit and on account of the owners.

Art. 251. (Commercial Code)

A factor may delegate his agency to another, even when he has no express power to that effect, if the nature of the transaction so requires, or if it is necessary from some unforeseen and unusual event.

The substitution may be made in his name or in that of the principal. In the first case, the agency proceeds through the medium of the subfactor. In the second, it passes to him entirely.

Art. 252. (Commercial Code)

A factor who has made the substitution in virtue of powers which he had to that effect, or from the nature of the transaction requiring it, or as a result of an unforeseen event, is not liable for the act of the subfactor, if he proves that he faithfully transmitted the orders of the principal and that the former enjoyed good commercial credit.

If the substitution is made without necessity or authority the principal has a direct right of action against the subfactor and the factor.

Art. 253. (Commercial Code)

In no case will the principal have to pay more than one commissions, unless it is a matter of different business or of transactions which must be realized in different places.

Art. 254. (Commercial Code)

A factor cannot alter the marks on the goods which he has bought or sold on another's account, unless he has an express order to that effect from the principal.

Art. 255. (Commercial Code)

All the savings and benefits made by a factor in contracts made on another's account shall redound to the profit of the principal.

Art. 256. (Commercial Code)

When a factor, besides his ordinary commission, receives another called del credere, the risks of collection are borne by him, and he has a direct obligation to pay the principal the resulting balance in his favor, by the same stipulated times, as if the factor has himself been the buyer.

If the del credere commission has not been agreed in writing, and yet the principal has accepted or consented to it, but impugns the amount, it shall be understood to be according to the custom of the place where the factor resides, and in default of custom, that which may be decided by arbitration.

Art. 257. (Commercial Code)

A factor who, without authorization from his principal, makes loans, advances or sales on credit, takes on his own account all the risks of collection, the amount whereof the principal may demand as cash, assigning to the factor all interests, advantages and benefits which may result from the credit granted by the latter and disapproved by the former.

Nevertheless, a factor is presumed to be authorized to grant the credits in the place, whenever there is no contrary order of the principal.

Art. 258. (Commercial Code)

A factor is not liable in case of the insolvency of the person with whom he has contracted in fulfillment of his agency, provided that they were reputed to be suitable persons at the time of the contract, except in the cases within Art. 256, or if he acts with guilt or fraud.

Art. 259. (Commercial Code)

Whenever a factor sells on credit, he must state the names and addresses of the buyers and the stipulated times for payment, in the accounts and notices which he gives to the principal.

If he has not made that explicit statement, it is presumed that the sales were for cash, without proof to the contrary being allowed.

Art. 260. (Commercial Code)

A factor who does not effect the collection of the moneys of his principal, at the time when they are due according to the conditions and agreements of each transaction, is liable for the consequences of his omission.

Art. 261. (Commercial Code)

In mercantile agencies involving bills of exchange or other negotiable instruments, it is always understood that the factor, who endorses them, guarantees those which he acquires or negotiates on another's account.

He can only be entirely excused from endorsing them when there is an express agreement between the principal and factor which exonerates the latter from the said liability, in which case the bill must be drawn or endorsed in the name of the principal.

Art. 262. (Commercial Code)

Factors cannot acquire by themselves or by an intermediary, goods whose disposal has been entrusted to them, unless there is an express consent of the principal.

Art. 263. (Commercial Code)

The express consent of the principal is also necessary for a factor to be able to acquire, in pursuance of his commission, goods under his control, whether they be his or another's.

Art. 264. (Commercial Code)

In the cases to which the two preceding articles refer, a factor has no right to receive the usual commission, but only that which has been expressly stipulated.

When there is no stipulation or agreement between the parties, the commission shall be confined to half of the usual commission.

Art. 265. (Commercial Code)

Factors cannot have goods of the same species belonging to different owners and under the same mark, without distinguishing them by a countermark to avoid confusion and distinguish the proper ownership.

Art. 266. (Commercial Code)

When goods of different principals are comprised in the same transaction, or those of the factor with those of some principal, the proper distinction must be made in the invoices, with an indication of the marks and countermarks which designate the origin of each parcel, that belonging to each other being noted by a separate entry in the books.

If there is the slightest difference in the quality of the goods, the contract can only be made at different prices.

Art. 267. (Commercial Code)

A factor who has credits against one and the same person, originating in transactions made on account of different principals, or on his own account and another's shall note in all payments made by the debtor, the name of the interested party on whose account each of them is received, and shall likewise express it in the document of discharge which he gives to the debtor.

Art. 268. (Commercial Code)

When the application of the payment is made by the same debtor in respect of different transactions and owners is not expressed in the receipts and books as prescribed in the preceding article, it shall be applied pro rata to each credit which is equally due, excepting that of the factor, if any.

Art. 269. (Commercial Code)

A factor who diverts the funds of his principal from the destination ordered, shall be liable to interest from the day when the said funds came into his control, and for the loss resulting from the failure to fulfill the order; without prejudice to the criminal proceedings to which he may be subject in case of deceit or fraud.

Art. 270. (Commercial Code)

Every factor is responsible for loss or deviation of the case for current money belonging to the principal, which he has in his control, although the damage or loss proceeds from unforeseen accident or violence, unless the contrary has been expressly agreed, and saving the defenses arising from special circumstances, the appreciation of which is committed to the prudence and circumspection of the Tribunal.

Art. 271. (Commercial Code)

Risks which occur in the return of the funds from the control of the factor to the hands of the principal, are borne by the latter, unless the former has departed from the orders received in the mode of making the remittance, or if none have been received, from the usual means in the place or remittance.

Art. 272. (Commercial Code)

A factor who, without express authority of the principal, effects a transaction at prices and with conditions more onerous than those current in the place at the time it was effected, shall be liable for damages, without his being excused by the fact that he has effected like transactions on his own account.

Art. 273. (Commercial Code)

A factor who has received an order to make some insurance, shall be liable for damages resulting from not having effected it (provided that he has sufficient funds of the principal to pay the premium on the insurance) and from failing to give timely notice to the principal of the causes which have prevented him from fulfilling his agency.

If the assurer becomes bankrupt, during the currency of the risk, the factor is bound to renew the insurance if no other course has been advised to him.

It is understood that the said insurance can only be effected in accordance with the provisions of Art. 512.

Art. 274. (Commercial Code)

Every factor has the right to claim from the principal a commission from his work, which, if it has not been expressly agreed, shall be determined by the commercial usage of the place where the agency has been performed.

Art. 275. (Commercial Code)

If the transaction or mandate is concluded, the commission is due in full; but in case of death or dismissal of the factor, there is only due the part which corresponds to the acts which he has performed.

Nevertheless, when a principal revokes the mandate before its conclusion, without proof of a cause, arising from the culpa of the factor, the latter can never be paid less than half the commission, although it be not exactly that which corresponds to the works performed.

Art. 276. (Commercial Code)

A principal is bound to pay in cash, if there is no bargain to the contrary, the amount of all the expenses and disbursements made in fulfilling the commission, with proper interest for the time between the disbursement and effective payment.

Art. 277. (Commercial Code)

As soon as the agency is completed, a factor on his part, is bound to render to the principal a detailed and proved account of all the transactions and the quantities delivered or received, paying to the principal the balance in his favor by the means which the latter may direct.

In the case of delay he is liable for interest from the date of the application for payment.

Art. 278. (Commercial Code)

A factor whose accounts are proved to disagree with the entries in his books, or who has exaggerated or altered the prices or expenses paid, shall be punishable as guilty of a crime, according to the penal laws.

Art. 279. (Commercial Code)

Goods consigned, as well as those acquired on account of the principal, are understood to be specially bound to the payment of advances made, the expenses of carriage, preservation and other lawful expenses, as well as to proper commissions and interest.

The following are the consequences of the said obligation:

1. No factor can be compelled to deliver goods which he has received or acquired on commission, without being previously reimbursed for his advances, expenses, commissions and interest, if any;
2. In case of insolvency he shall be paid out of the proceeds of the goods, with the preference enacted in section 1500.

Art. 280. (Commercial Code)

In order to enjoy the preference enacted in the preceding section, it is necessary that the goods be under the control of the consignee, or at his disposal, or at least the despatch to the consignee has taken place, and that he has received a duplicate of the bill of lading.

Likewise he shall enjoy the right of detention, if the goods are in transitu towards an insolvent, on proof of remittance by means of bills of lading or a date anterior to the declaration of bankruptcy.

Art. 281. (Commercial Code)

Advances made on goods consigned by a person residing at the same place as the factor are not comprised in the provisions of Art. 279. They shall be considered as loans on pledge if the circumstances enacted in Title "Pledge" are fulfilled.

### TITLE III. COMPANIES AND PARTNERSHIPS

Repealed by the Law of Commercial Companies (No. 19,550 of April 25, 1972). In accordance with Article 384 of the Commercial Companies Law, the provisions thereof shall be incorporated into the Commercial Code.

## COMMERCIAL COMPANIES ACT

(Law 19,550 of April 25, 1972, as amended by Laws No. 19666 of June 7, 1972, No. 19880 of Oct. 18, 1972, No. 20337, No. 20468 of June 6, 1973, No. 21304 of May 6, 1976, No. 21,357 of July 26, 1976, No. 22182, No. 22686, No. 22,903 of Sept. 9, 1983, No. 22985 of 1984; No. 23576 of 1988 and No. 24,435 of 1995)

### CHAPTER I - GENERAL PROVISIONS

#### SECTION I. THE EXISTENCE OF THE COMMERCIAL COMPANY

##### Art. 1. Concept or Nature of Company

There will be a commercial company when two or more persons, in an organized manner, in accordance with one of the types provided for in this law, are required to make contributions applying them to production or interchange of goods or services, participating in the profits and supporting the losses.

##### Art. 2. Subject of Law

The company is a subject of law with a scope established in this Law.

##### Art. 3. Associations Under the Form of a Company

Associations, whatever be their object, that adopt a form of company under any of the types provided, are subject to their provisions.

#### SECTION II. FORM, EVIDENCE, AND PROCEDURE

##### Art. 4. Form

The contract by which a company is constituted or modified will be granted by public or private instrument.

##### Art. 5. Inscription in the Public Commercial Registry

A contract which has been amended or constituted will be registered in the Public Commercial Register of the company's domicile, under the terms and conditions of articles 36 and 39 of the Commercial Code. The registration shall be made after being ratified by the incorporators before a court that will dispose it, except when it is extended by public instrument, or if the signatures are authenticated by a notary public or any other competent official.

Regulation If the constitutive contract provided a regulation, the latter will be registered with identifying bonds.

The same inscriptions will be recorded in the Public Commercial Register corresponding to the branch office.



Art. 6. Faculties of the Court

The court should verify the fulfillment of all the legal and fiscal requisites. In this case it will order the recording and prior publication that will correspond.

Art. 7. Registration Effects

The company shall be considered as regularly established only when it has been registered in the Public Commercial Register.

Art. 8. National Registry of Joint Stock Companies

In the case of joint stock companies, the Public Commercial Register, whatever its jurisdictional territory, will remit an affidavit of the documents with the voucher of the recording in the National Register of Joint Stock companies.

Art. 9. File

In the registers, after registration, there will be a file for each company, with the duplicates of miscellaneous records and other documents relative to the same, whose consultation will be open to the public.

Art. 10. Publicity of Limited Liability and Joint Stock Companies

Limited liability companies and joint stock companies should publish a notice for one day in the corresponding daily legal publications; this notice should contain:

(a) On the occasion of their establishment:

1. Name, age, civil status, nationality, profession, domicile, number of the identity document of the associates.
2. Date of the instrument of constitution.
3. The firm name or trade name of the company.
4. Domicile of the company.
5. Company purpose.
6. Length of duration.
7. Capital stock.
8. Composition of the organs of administration and control, names of their members and duration of their offices, as the case may be.
9. Organization of the legal representation.

10. Date of the closure of the fiscal year.

(b) On amendment of the contract or dissolution:

1. Date of the company's resolution that approved the amendment of the contract or the dissolution.
2. When the amendment affects the points enumerated in paragraphs 3 to 10 of paragraph (a), the publication must determine it in the manner established therein.

#### Art. 11. Content of the Constitutive Instrument

The instrument of constitution should contain the following, without prejudice to that which may be established for certain types of companies:

- 1) the name, age, civil status, nationality, occupation and identification card number of the associates;
- 2) the firm name or the trade name, and domicile of the company.

If the contract only contains the domicile, the address of the headquarters must be registered by petition signed separately by the organ of administration. All notices effected at the headquarters will be valid and retained;

- 3) the designation of its purpose, which must be determined precisely;
- 4) capital stock, which must be expressed in Argentine currency, and the contribution of each associate should be mentioned;
- 5) term of duration, which must be determined;
- 6) organization of the administration, control, and of the meetings of associates;
- 7) rules for distributing the profits and supporting the losses. In default of the latter, they will be distributed in proportion to the contributions. If only the manner of distribution of profits is provided, it will apply also to supporting the losses, and vice versa;
- 8) in order to establish the rights and obligations between partners and with respect to third parties, the necessary clauses will be established precisely;
- 9) clauses relevant to the functioning, dissolution and liquidation of the company.

#### Art. 12. Amendments not Recorded Ineffective for the Company and Third Parties

Amendments not regularly recorded shall obligate the founding partners. They are not opposable against third parties; notwithstanding, the latter may allege them against the company and the associates, except in stock corporations and in limited liability companies.

#### Art. 13. Null Stipulations

The following stipulations shall be null and void:

1. That one or some of the partners should receive all the benefits or that they should be excluded from them, or that they should not have to contribute to losses;
2. That the silent partners should be have their contributions paid back with a designated premium or with yields, or with any additional amount, whether or not there are gains;
3. That they assure the associate his capital or capital gains;
4. That all of the gains and benefits of the company shall belong to the surviving associate or associates;
5. That they shall permit the determination of a price for the acquisition of a portion of a share by another associate which is notably different from its actual value at the time in which it was made effective.

#### Art. 14. Publicity: General Rule

Any publication that is ordered without determining the publication agency or number of days that it should be published, will be carried out only once in the daily legal publications of the corresponding jurisdiction.

#### Art. 15. Procedure: General Rule

When the law provides or authorizes the promotion of judicial action it shall be sustained by summary procedure, unless otherwise indicated.

### SECTION III. SYSTEM OF NULLITY

#### Art. 16. General Rule

Nullity or cancellation affecting the relationship of one of the associates cannot cause the nullity or termination of the contract, unless the participation or service of this partner must be considered essential, taking the circumstances into account.

In the case of a company of two associates, absence of consent shall cause the contract to be null. If there are more than two associates, it shall be annulable when the associates with the majority of capital do not consent.

#### Art. 17. Irregularity. Omission of Essential Requirements

The constitution of a company of a type not authorized by the law shall be null. The omission of any essential requirement shall make the contract annulable, but it may subsist until its judicial refutation.

#### Art. 18. Unlawful Purpose

Companies having unlawful purposes shall be absolutely null and void. Third parties of good faith can allege the existence of the company against the associates without them

being able to oppose the nullity. The associates cannot allege the existence of the company, not even for filing suit against third parties or claiming the restitution of contributions, division of the gains or the contribution to losses.

Liquidation After declaring nullity, the liquidation will proceed by whoever the court appoints.

After liquidation of assets, cancelling the company liabilities and any losses incurred, the residual shall enter into the State patrimony for the development of the common education of the respective jurisdiction.

Liabilities of Administrators and Associates Associates, administrators and whoever acts as such in the company's management shall be unlimitedly liable in solidum for company debts and losses incurred.

#### Art. 19. Company with Lawful Purpose but Illegal Activity

When a company with a lawful purpose carries on illegal activities, it shall be wound up and liquidated at the request of a party or "de officio", applying the rules set forth in article 18. Associates who accredit their good faith shall be excluded from that which is provided in paragraphs 3 and 4 of the preceding article.

#### Art. 20. Prohibited Purpose Liquidation

Companies that have a purpose prohibited with respect to type, are null with absolute nullity. Article 18 shall be applied, except for the distribution of the residual from the liquidation, which shall be adjusted to that which is provided in section XIII.

### SECTION IV. COMPANIES NOT REGULARLY ESTABLISHED

#### Art. 21. Companies Included

Companies formed with a commercial object and companies of authorized types that are not regularly established, are liable to the provisions of this section.

#### Art. 22. Regularization

Regularization is produced by adopting one of the types provided by this Law. The irregular company, or company in fact, shall not be dissolved, and the regularized company shall continue in the rights and obligations of the former; nor shall the former liability of the associates be modified.

Any of the associates may request the regularization, making timely communication to all the associates. The resolution shall be adopted by a majority vote of the associates, the pertinent instrument being duly authorized, the formalities concerning the type of company being fulfilled and registration being requested within 60 days of receiving the last communication. If majority consent is not obtained or the registration requested in time, any associate may provoke dissolution as from the date of the rejecting resolution

of the company or from the expiration date, provided that the other copartners may newly request the regularization.

**Winding up** Any of the partners of the irregular company may demand the winding up. The latter shall be accomplished on the date on which the partner shall make timely notification of that decision to all copartners, unless the majority of the copartners decide to regularize the company by the tenth day, fulfill the formalities for establishing the type of company and request its registration within 60 days, calculating both periods from the date of the last notification.

**Withdrawal of Partners** Partners voting against the regularization have the right to a sum of money equivalent to their participation in the partnership agreement, applying article 92, except item 4), unless they decide to continue in the regularized company.

**Liquidation** Liquidation shall follow the norms of the contract and this law.

**Art. 23. Liability of the Associates and those who Contract for the Company**  
Associates and those parties who shall contract in the name of the company are jointly and severally obligated for company negotiations, without invoking the benefit of article 56 or the limitations established in the company contract.

**Action Against Associates and Third Parties** Neither the company nor the associates may invoke rights or pleas arising from the company contract either with respect to any third party or among themselves, but the company may exercise rights emerging from contracts executed.

**Art. 24. Representation of the Company**  
With respect to third parties, any of the partners shall represent the company.

**Art. 25. Proof of the Company**  
The existence of the company may be accredited by any means of proof.

**Art. 26. Relationship between Company and Personal Creditors of The Partners**  
The relationship between business and personal creditors of the associates, including the case of bankruptcy, will be considered as if a regular company is being dealt with, except in respect to property whose ownership requires registration.

## SECTION V. ASSOCIATES

**Art. 27. Husband and Wife Company**  
Spouses may own joint stock companies or limited liability companies among themselves.

When one of the spouses becomes the partner of the other in companies of different types, the company must be transformed within a period of six months, or either of the spouses must transfer his share to another partner or to a third party in the same period.

#### Art. 28. Minor Beneficiaries

In cases regulated by arts. 51 and 53 of Law 14,394, where these exist minors who are heirs, the latter must be limited liability partners. The constitutive contract must be approved by the successions court.

If there exists the possibility of conflict of interest between the legal representative and the minor, an ad hoc tutor shall be designated for executing the contract and to be controller of the administration of the company if the latter should be carried out by him.

#### Art. 29. Sanction

A company that violates article 27 is null and void. Liquidation shall be according to section XIII.

Violation of article 28, without prejudice to the transformation of a company into an authorized type, shall make the minor's representative and the copartners who are of age jointly and unlimitedly liable for damages suffered by the minor.

#### Art. 30. Joint Stock Companies: Incapacity

Only corporations and companies limited by shares can make up part of joint stock companies.

#### Art. 31. Participations in Another Company: Limitations

No company, except those whose object is only financial or investment, can take or maintain participation in any one or more companies by an amount over their free reserves and half of their capital and legal reserve. An exception is made when an excess of the participation results in the payment of dividends by stock or by capitalization of reserves.

Excluded from these limitations are regular entities regulated by Law 18061. The National Executive Power may authorize, in concrete cases, exceptions to the provided limits.

Participation, whether in interest bearing shares, quotas or stocks, that exceed such amount, must be transferred within six months following the date of approval of the general balance in which the limit was exceeded. This evidence must be communicated to the participating company within the period of ten days from the approval of the referred general balance. Not transferring the excess will result in the loss of voting rights in and

corresponding benefits of the excess participations until such transfer has been carried out.

#### Art. 32. Reciprocal Participation: Nullity

The constitution of companies or the increase of capital by means of reciprocal participations shall be null and void, even by an intermediary. Founders, managers, directors and auditors shall be held unlimitedly and jointly liable for violation of this prohibition. The capital which was illegally paid in must be reduced within three months; if the contrary is the case, the company shall be dissolved as a matter of law.

A controlled company may neither participate in its controlling company nor in a company controlled by the same, in an amount greater than its reserves, in accordance with its balance sheet, excluding the legal reserve.

Interest bearing shares, quotas or stocks which exceed the established limits must be transferred within six months following the date of approval of the balance sheet in which the violation resulted. Not transferring this excess shall be sanctioned in accordance with article 31.

#### Art. 33. Controlled Companies

Controlled companies are those in which another company, directly or through another company being also controlled:

- 1) possess participation by any title, granted by the necessary votes in order to form the corporate will in company general meetings or ordinary general meetings;
- 2) execute a dominating influence as a consequence of stocks, quotas or possession of interest bearing shares, or by special existing ties among the companies.

Encumbered Companies Encumbered companies are those companies that follow Section IX of this Chapter, when one company participates in more than 10% of the capital of another.

The company that participates in more than 25% of the capital of another, must communicate it to the other company so the next ordinary general meeting will take notice of it.

#### Art. 34. Manifest Partner

The person who lends his name as a partner shall not be refuted by the real partners, whether he has or has not any part in the profits of the company; but with respect to third parties, he shall be considered as a partner with obligations and responsibilities, unless he has sued the partners for indemnification for what he has to pay.

**Hidden Partner** The liability of the hidden partner is unlimited and joint as established in article 125.

**Art. 35. Partner of a Partner**

Any partner may give a partnership participation to third parties with respect to his status as a partner. Sharers shall not be considered as partners and shall not retain any company stock; and the rules on occasional or participation companies shall be applied to them.

**SECTION VI. PARTNERS AND THEIR RELATIONS WITH THE COMPANY**

**Art. 36. Commencement of Rights and Obligations**

Rights and obligations of partners shall commence from the date established in the company's contract.

**Preceding Acts** Also applied to them shall be the acts carried out, in the name or on account of the company, by those persons who represented them and who were in charge of the administration up to such date, in accordance with the laws provided for each type of company.

**Art. 37. Delay in Contributions: Sanctions**

A partner who does not comply with the contribution under the conditions agreed upon shall become delinquent by the mere expiration of the term, and he must compensate for damages and interest. If there were no established period, the contribution shall be demanded as from the company's registration date.

The company may exclude him without prejudice to his judicial claim or it may demand his compliance to the contribution. In stock companies, article 193 shall be applied.

**Art. 38. Contribution of Assets**

Contributions may consist in either determinate or indeterminate obligations, save for those types of companies in which it is demanded that they consist in determinate obligations.

**Form of the Contribution** The fulfillment of the contribution must be adjusted to the requirements provided by the laws in accordance with the distinct nature of the assets.

**Prior Registration** If for the transference of the contribution, registration in a registry is required, the latter shall be done before the name of company in formation is registered.

**Art. 39. Determination of the Contribution**



In limited liability companies and joint stock companies, the contribution must be determined and susceptible to forced execution.

#### Art. 40. Contribution of Rights

Rights may be contributed when they refer to susceptible contributed assets, which are correctly deeded and free of litigation.

#### Art. 41. Contribution of Credits

In the case of contribution of credits, the company shall be the transferee for the purpose of the company contract. The contributor is liable for the existence and legitimacy of the credit. If the credit cannot be paid on its expiration, the partner is obliged to contribute a sum of money, that must be made in cash within a period of 30 days.

#### Art. 42. Quotable Securities

Securities quotable on the exchange, may be contributed up to their quotable value.

**Unquotable Securities** If securities are not quotable, or if they are not normally quoted in a period of three months prior to the contribution, they will be valuated according to the procedure outlined in articles 51 et seq.

#### Art. 43. Encumbered Assets

Encumbered assets can only be contributed by their value after the deduction of the encumbrance, which must be specified by the contributor.

#### Art. 44. Commercial Funds

In the case of a contribution of commercial funds, an inventory and a valuation shall be made, fulfilling the legal provisions regulating their transfer.

#### Art. 45. Contributions of Use or Enjoyment of Assets According to the Type of Company

It shall be presumed that assets were contributed in ownership if there exists no express evidence of the contribution of their use or enjoyment.

The contribution of the use or enjoyment of assets shall be authorized in certain companies. In limited liability companies and joint stock companies they are only admissible as accessory benefits.

#### Art. 46. Eviction: Consequences

Eviction authorizes the exclusion of the partner, without prejudice to his liability for damages caused. If he is not excluded, he pay the value of the asset and compensation for damages.

#### Art. 47. Eviction: Replacement of a Contributed Asset

A partner liable to be evicted may avoid exclusion if he replaces the asset substituting it for one of equal kind and quality, without prejudice to his obligation to compensate for damages caused.

Art. 48. Eviction: Usufruct

If the contribution of the partner was the usufruct of the asset, article 46 shall be applied in case of eviction.

Art. 49. Loss of the Use or Enjoyment of the Contribution

If the contribution is of use or enjoyment, unless otherwise agreed, the partner shall support the partial or total loss if it were not imputable to the company or to any of the other partners. After the company has been dissolved, the partner may demand restitution in the state in which it shall be found.

Art. 50. Accessory Profits: Requirements

It can be agreed that the partners shall effect accessory profits.

These benefits shall not be integrated into the capital, and

1) they shall be made as a result of the contract; its content, duration, nature, and consideration and sanctions in case of non-performance shall be determined.

If they do not result from the contract, they shall be considered as third party obligations;

2) they must be clearly distinguished from contributions;

3) they cannot be in cash;

4) they can only be modified in accordance with the agreement or, in the absence of such, in accordance with the obligated parties and the required majority for the reform of the contract.

When they are connected to quotas of limited liability companies, their transfer shall require the agreement of the necessary majority for the modification of the contract, unless otherwise agreed; and if they are connected to shares, the latter must be nominative and the agreement of the board of directors shall be required.

Art. 51. Valuation of Contributions in Kind

Contributions in kind shall be valued in the manner provided in the contract or, in its absence, in accordance with the market prices or with the valuation of one or more experts designated by the registration court.

Limited Liability Companies and Simple Limited Companies In limited liability companies and simple limited companies the contributions of the limited partners shall be indicated in the contract whose antecedents justify the valuation.

In case of insolvency or bankruptcy of the company, the creditors may oppose it in the period of 5 years from the time the contribution was made. The suit shall not proceed if the valuation is carried out judicially.

#### Art. 52. Opposition to the Valuation

A partner affected by the valuation may fundamentally oppose it within the fifteen working days from notification, and the registration court shall resolve it by a hearing of the intervening experts.

#### Art. 53. Corporations

In corporations, the valuation, which must be approved by the authority of the controller, without prejudice to that which is provided in art. 169, shall be made:

- 1) By the market value, when dealing with assets with a current value;
- 2) By expert valuation, when, in the controller's judgment, it cannot be replaced by reports of State divisions or bank officials.

Contributions shall be admitted when they are made for a lesser value than their valuation, but if the value is greater, a payment of the difference in the value must be made. The contributor has the right to request reduction of the payment from the resulting value of the valuation, as long as the members representing threefourths of the capital, not counting that of the interested party, accept that reduction.

#### Art. 54. Fraud or Negligence of the Member or Controller

Damage caused to a company by fraud or negligence of the members or of anyone who controls it, shall incur such parties in the joint obligation to pay compensation without their claiming compensation from the profits that their act afforded to other businesses.

A partner or controller who uses funds or goods of the company for his own use or negotiates on his own account or for that of third parties, is obligated to bring the resulting profits to the company; the losses being to his exclusive account.

#### Art. 55. Nonopposability of the legal entity

An act of the company that conceals the attainment of ends other than for business, constitutes a mere recourse for violating the law, public order, good faith or frustrating the rights of third parties, shall be imputed directly to the partners or the controllers that made it possible, for which they shall be jointly and unlimitedly liable for damages caused.

Partners' Individual Control Partners may examine books and company papers and obtain from the administrator the reports they deem pertinent.

Exclusions Unless otherwise agreed, the partners' individual control cannot be used in limited liability companies included in the second paragraph of Art. 158.

Neither may it be used by members of joint stock companies, save the assumptions of the last paragraph of Art. 284.

## SECTION VII. PARTNERS AND THIRD PARTIES

### Art. 56. Judgment Against the Company: Execution Against Partners

Judgment pronounced against a company shall have force of law judged against partners with relation to their business liability and may be executed against them, after exclusion of company assets, in accordance with the type of company dealt with.

### Art. 57. Interest Bearing Shares

A partner's creditors cannot sell the interest bearing shares; they can only be paid against profits and the liquidation quota. The company cannot be extended unless the garnishing creditor has been satisfied.

Quotas and Shares In a limited liability or joint stock company, quotas or shares belonging to the debtor may be sold under the specified conditions.

## SECTION VIII. ADMINISTRATION AND REPRESENTATION

### Art. 58. Representation: System

The administrator or representative who, in accordance with the contract or by provision of law, shall represent the company, shall be obliged to the company by all acts that are not radically different from the company purpose. This system applies even in a plural organization infraction, if, in the case of obligations contracted by means of securities, contracts between absent persons, of adhesion or concluded by means of forms, unless a third party had actual knowledge that the act would be executed in violation of plural representation.

Internal Efficiency of Limitations Legal faculties of administration or representatives with respect to third parties, shall not affect the internal validity of contractual restrictions and the liability for the violation.

### Art. 59. Duties of the Administrator: Liability

Administrators and representatives of a company must perform their duties with loyalty and with the diligence of good businessmen. Those persons who fail to meet their

obligations shall be jointly, severally and unlimitedly liable for damages and losses that result from their action or omission.

Art. 60. Appointment and Discontinuance: Registration and Publication

All appointments and dismissals of administrators must be recorded in the corresponding registers and incorporated in the respective files of the company. They must also be published in the case of a limited liability or joint stock company. In default of registration, Art. 12 will be applied without the exceptions that the same provides.

SECTION IX. DOCUMENTATION AND ACCOUNTING

Art. 61. Mechanical and Other Means

The fulfillment of the formalities provided by Art. 53 of the Commercial Code can be rescinded by keeping books in the manner that the controlling authority or Public Commercial Registry shall authorize, substituting them by controllers, mechanical, magnetic or other means, save those concerning balance sheets and inventory.

The petition must include an adequate discussion of the system, with a technical report or history of its utilization, which, once authorized, must be recorded in the inventory book and balance sheet.

Authorization petitions shall be considered automatically approved within 30 days of their effectiveness, if they do not require prior observation or if their rejection is wellfounded.

The Day book (Journal) may be kept with global entries that shall not cover periods of more than one month.

The accounting system must allow the itemization of negotiations, corresponding debit and credit accounts, and their later verification, with reference to Art. 43 of the Commercial Code.

Art. 62. Application

Companies must show the date in which the term ends in their balance sheets of the fiscal year . In the applicable manner, according to the type of company, the requirements provided in the first paragraph of Art. 67 shall be fulfilled.

Limited liability companies whose capital reaches the amount established by Art. 299, paragraph 2, and joint stock companies, must present their annual accounting statements regulated by Arts. 63 to 65 and fulfill that which is established in Art. 66.

Without prejudice to the latter, controlling companies, in accordance with paragraph 1 of Art. 33, must file consolidated annual accounting statements as complementary information, prepared in arrangement with the generally accepted accounting principles, and with the norms established by the controlling authorities.

General Rule When the amounts involved are of relative insignificance, they shall be included under miscellaneous for the purposes of an appropriate interpretation. If entries not specifically declared exist, but have relative significance, these entries must be shown separately.

The National Securities Commission and other authorities of the controller and exchanges, may demand the presentation of a statement of origin and application of funds and other documents of analysis of the accounting statements, by the end of the fiscal year from the companies included in Art. 299. Current assets minus current liabilities shall be understood as funds.

Adjustment The accounting statements corresponding to a complete or intermediate fiscal year within the same fiscal year, must be prepared in the same currency.

#### Art. 63. Balance Sheet

The general balance sheet must furnish the following information:

##### 1. In assets:

(a) Cash on hand and in the bank, other securities characterized by similar principles of liquidity, certainty, and effectively, as well as foreign currency;

(b) Credits arising from business activities. Credits with controlling, controlled or holding companies that are litigious and any other credits must be separately indicated.

Reserves for doubtful debts, discounts and bonuses shall be deducted, in the following cases:

(c) Exchange assets, grouped in accordance with the activities of the company. Raw materials, products in the process of manufacturing and finished products, merchandise for resale or rubrics required for the nature of the company's activity shall be grouped separately;

(d) Investments in public debt securities, in stocks and bonds, distinguishing those listed on the stock exchange, those carried out in controlling, controlled or linked companies, any other participation and any other investment for the exploitation of the company.

The reserve for loss or damages and devaluation shall be deducted when it corresponds.

- (e) Usable assets with indication of the accumulated amortizations;
- (f) Intangible assets by their price, with indication of the accumulated amortizations;
- (g) Expenses and charges to be accrued in future fiscal years, related to these charges, deducting, in the latter case, the corresponding accumulated amortizations;
- (h) Every other rubric that, according to its nature, should be included as an asset.

## 2. Liabilities:

I.(a) Debts indicating separately commercial banking, financial, those existing in controlling, controlled or holding companies, bonds issued by a company, dividends to pay, and debts to social welfare organizations and tax collectors.

In the same manner, other accrued liabilities to be calculated will be shown;

- (b) Provisions for contingencies that are considered susceptible of being joined to the liabilities of the company;
- (c) Any other rubric which due to its nature represents a liability for third parties;
- (d) Advance rents received and incomes whose carrying out corresponds to future fiscal years.

II.(a) Capital stock, distinguishing it from the ordinary and other classes of shares and those provided by Art. 220;

(b) Legal reserves, contractual or statutory, voluntary and those resulting from revaluation and premiums of issue.

(c) Profits of previous fiscal years and in its case, for deducting the losses;

(d) Any other rubric, which due to its nature corresponds to be included in capital, resume and result accounts.

III. Assets on deposit, endorsements and guarantees, discounted documents and any other account of order.

## IV. General presentation:

(a) The information must be gathered in a manner that it is possible to total and distinguish the liquid assets from the nonliquid assets and the current liabilities from the long term liabilities. By liquid is understood every asset or liability whose expiration or carrying out shall be produced within 12 months beginning from the date of the general balance, unless other circumstances suggest another base for such a distinction;

(b) The assets and liabilities must be recorded with an indication of whether they are documented with a real guarantee or any thing else;

(c) Assets and liabilities in foreign currency must be shown separately in the rubrics which apply to it;

(d) These entries cannot be set off among themselves.

#### Art. 64. Earnings Statement

The earnings statement or profits and loss accounts of the fiscal year should expose:

I.(a) the product of sales or services, grouped according to the type of activity. The cost of merchandise or products sold or services rendered shall be deducted from every total for the purpose of determining the earnings;

(b) Ordinary expenses of administration, advertising, or financing and any other expenses that are charged to the fiscal year, must be proved, especially the amounts of the following:

1. salaries of administrators, directors and trustees;
2. any fees or wages for services rendered;
3. salaries, wages and company contributions respectively;
4. expenses of studies and investigations;
5. bonuses for fees for technical services and any other related concepts;
6. expenses for publicity and advertising;
7. taxes, rates and contributions, distinguishing them separately from interest, fines and surcharges;
8. interest paid from debts with sales agents, banks or financial institutions, controlled, controlling or holding companies, and others;
9. amortizations and pensions.

When any of these rubrics is not partially or totally clear, for forming part of the cost of goods exchanged, used goods or other assets listed in the rubrics, they must be recorded as information from the board of directors or the administrative report.

(c) Profits and extraordinary expenses of the fiscal par;



(d) Adjustments for profits and expenses of previous fiscal years.

The earnings statement must be presented in a manner that separately shows gains or losses resulting from ordinary and extraordinary transactions of the company, determining the net profit or loss of the fiscal year, to which shall be added or deducted those gains or losses derived from previous fiscal years.

These entries cannot be compensated amount themselves.

II. The earnings statement must be complemented by a net worth evaluation statement. Included in it shall be the causes of the changes produced during the fiscal year in every one of the rubrics included in the net worth statement.

#### Art. 65. Complementary Notes

Complementary information not contained in the balance sheets of Arts. 63 or 64 or in its notes must be accompanied by notes and books, which shall be considered as part of it. The following enumeration is illustrative:

1. Notes referring to:

- (a) Goods of restricted availability, briefly explaining the existing restriction;
- (b) Assets encumbered with mortgages, securities or other real right, with reference to guaranteed liabilities;
- (c) Criteria used in the valuation of tangible goods, with an indication of the method used in determining the cost or value.
- (d) Procedures adopted in the case of revaluation or devaluation of assets duly indicating, additionally, if such is the case, the consequent effect of the result of the fiscal year;
- (e) Changes in the accounting procedures or preparing of the accounting statements with respect to the previous fiscal year, explaining the modifications and their effect on the earnings of the fiscal year;
- (f) Events or operations occurring between the closing date of the fiscal year and the administrative report that could significantly modify the financial situation of the company from the date of the general balance and the earnings of the fiscal year closed on that date, with an indication of the effect it has on the situation and earnings mentioned;
- (g) Earnings of transactions with controlling, controlled or holding companies, listed separately from each company;
- (h) Contractual restrictions for the distribution of profits;

(i) Amount of endorsements and guarantees in favor of third parties, discounted documents and other contingencies, accompanied by a brief explanation whenever it is necessary;

(j) Contracts executed with the board of directors which require approval in accordance with Art. 271, and their amount;

(k) The amount not integrated in the capital stock, distinguishing, as the case may be, that applying to common shares and to other classes and that which is provided by Art. 220.

## 2. Annex books:

(a) Used goods, itemizing the balance at the beginning, raises and decreases, and the balance at the close of the fiscal year for every principal account. The same treatment shall apply to amortizations and depreciation, indicating the rate and method applicable to each type of asset. The accounting of the increases and decreases in the amortizations and depreciation registered shall be indicated by a note at the bottom of the annex.

(b) Intangible goods and their corresponding amortizations with similar content to that required by the previous item;

(c) Investments and securities and their participation in other companies, itemizing the denomination of the issuing company or that in which it participates and the characteristics of the securities or participations, the face value of cost, books and contributions, employer activity and capital of the issuing company or that in which it participates. When the contribution or participation is 50% or more of the capital of the company or that in which it participates, it must be accompanied by the accounting statements that are demanded in this item. If the contribution or participation cited were to be more than 5% and less than 50%, the results of the fiscal year and the net worth shall be reported according to the last general balance of the company in which the investment or participation was made.

In the case of other investments, their contents and characteristics shall be itemized, indicating, as the case may be, the face value of cost, books, and contributions, as well as the appraised value;

(d) Resumes, itemizing for each one, the balance at the beginning, increases and decreases and the balance at the closing of the fiscal year. At the bottom of the page an explanation of the increases and decreases and the reasons for the latter should be written;

(e) The cost of merchandise or products sold, itemizing the existence of tangible goods at the beginning of the fiscal year, the purchase or the cost of production of the fiscal year, analyzing it in large rubrics, and the existence of tangible goods at the closing. In the case of services rendered, data similar to that required for the previous alternative shall be given, providing information on the cost of rendering such services;

(f) Assets and liabilities in foreign currency, itemizing the balance accounts, the amount and kind of foreign currency, the existing exchange rate or that contracted on the date of closing, the resulting balance in Argentine currency, the accounting amount and the difference, should any exist, with an indication of the respective accounting procedure.

#### Art. 66. Report

Administrators must state in their report, the situation of the company in its different transactions, as well as their judgment on the projection of the transactions and any other aspects which they deem necessary for illustrating the present and future situation of the company. The report must explain the following:

1. The reasons for significant variations of its transactions in the entries of assets and liabilities;
2. An adequate explanation of extraordinary expenses and profits as well as their origins and the contributions from profits and expenses of the prior fiscal years if they were significant;
3. The reasons for which a reserve shall be proposed to be set aside, the circumstances of which to be explained clearly;
4. The causes for the payment of dividends or the distribution of profits, in a form other than cash, shall be clearly listed;
5. Estimates or orientation on perspectives of future operations;
6. The relationship with controlled, controlling or holding companies, and their participation in credits and debits, respectively;
7. Rubrics and amounts of the cost of assets partially or totally not shown in the earnings statement (Art. 64, I6).

#### Art. 67. Copies: Deposit

Copies of the balance sheet, earnings statement of the fiscal year and the net worth evaluation statement, notes, complementary information and annex books, must remain at the company headquarters at the disposal of the partners or stockholders no less than 15 days in advance for their consideration. When it is applicable, copies of the board of directors, administrators and auditors' report shall also be at their disposal.

Within 15 days of approval, a limited liability company whose capital reaches the amount fixed by Art. 299, item 2, must forward to the Public Commercial Register a copy of each document. However, a joint stock company shall only forward one copy and the consolidated balance, to the controlling authority.

#### Art. 68. Dividends

Dividends shall only approved or distributed to the partners if actual net profits result from a balance sheet prepared in accordance with the law and bylaws and approved by the competent company organ, unless Art. 224, second paragraph, applies.

The profits distributed in violation of this rule shall be repayable except as provided in Art. 225.

#### Art. 69. Approval Objection

The right of approval or objection of the accounting statements and the adoption of resolutions in any respective order, is nontransferable and any agreement otherwise is null and void.

#### Art. 70. Legal Reserve

Limited liability companies and joint stock companies must set aside a reserve of no less than 5% of the actual net profits from the earning statement of the fiscal year, until it has reached 20% of the company's capital. When this reserve is decreased for any reason, profits may not be distributed until it has been restored.

Other Reserves In any kind of company, reserves, other than the legal reserves, may be constituted, as long as they are reasonable and respond to a reasonable administration. In joint stock companies, the decision for the constitution of these reserves shall be adopted in accordance with the last part of Art. 244 when its amount exceeds that of the capital and legal reserve; in limited liability companies, the necessary majority is required for the modification of the contract.

#### Art. 71. Profits: Previous Losses

Profits shall not be distributed until the losses from previous fiscal years have been covered.

When the administrators, managers or trustees have been paid a percentage of the profits, the general meeting may arrange for each payment even when the previous losses have not been covered.

#### Art. 72. Liabilities of Administrators and Trustees

The approval of the accounting statements shall not imply the management, the directors, administrators, managers, members of the supervisory board or trustees, whether they have voted or not in the respective decision, are thereby freed from their liabilities in respect thereof.

#### Art. 73. Minutes

The minutes of the meeting of the collective organs of the company shall be drawn up in a special book, with the formalities of the commercial books.

The minutes of the board of directors shall be signed by those present. The minutes of general meetings of joint stock companies shall be prepared and signed by the president and designated members, within 5 days.

## SECTION X. TRANSFORMATION

### Art. 74. Concept, Legality and Purpose

A transformation shall occur when a company adopts another of the provided types of companies. The company shall not be dissolved thereby and its rights and obligations shall not be altered.

### Art. 75. Prior Liability of the Members

A transformation shall not modify the prior unlimited or solidum liability, in the case of obligations that must be fulfilled after the adoption of the new type of company, unless the creditors give their express consent.

### Art. 76. Liabilities on Previous Obligations

If by reason of the transformation there should exist members who assume unlimited liability, this shall not be extended to the previous company obligations before the transformation, unless they clearly accept them.

### Art. 77. Requirements

The transformation demands the fulfillment of the following requirements:

1. Unanimous agreement on the members part, unless otherwise agreed or that which is provided for some types of companies;
2. Compilation of a special balance sheet closed at a date that shall not exceed one month from the agreement of transformation and placed at the disposal of the members at the company headquarters no less than 15 days in advance of such agreement. The same majority established for the approval of balance sheets of the fiscal year shall also be required;
3. Granting of the act that documents the transformation by the competent agencies of the company that is being transformed and the concurrence of the new executing party with evidence from the retiring members of the capital they represent, and fulfillment of the formalities of the new company adopted;
4. Publication for one day in the journal of legal publications which corresponds to company headquarters and its branches. The notice must contain:
  - (a) The date of the company resolution which approved the transformation;
  - (b) Date of the transformation document;

(c) Firm name or previous trade name, resulting in the unquestionable identity with the company that is being transformed;

(d) The members retiring or being incorporated and the capital which they represent;

(e) When the transformation affects the information to which Art. 10, section (a), items 410 refers, the publication shall so indicate.

5. The inscription of the document with a copy of the signed balance sheet in the Public Commercial Register and other registers which correspond to the type of company, by the nature of the assets that make up the ownership and liens. These inscriptions must be ordered and executed by the court or authority in charge of the Public Commercial Register, after the publication to which section 4 of this article, refers is fulfilled.

#### Art. 78. Separation (Receso)

In the event that a unanimous decision is not demanded, the members who have voted against and those absent have the right of separation without it affecting their liability against third parties for obligations incurred up to the transformation's inscription in the Public Commercial Register.

This right must be exercised within 15 days of the company approval, unless the contract establishes a different term, as well as that which is provided for some companies.

The reimbursement of the member's stock separations shall be made on the basis of the transformation balance sheet.

The company, the members with unlimited liability and the administrators shall jointly and unlimitedly guarantee to the separating members for the company obligations existing from the fiscal year of the separation up to its inscription.

#### Art. 79. Member's Preference

The transformation shall not affect the member's preference unless otherwise agreed.

#### Art. 80. Annulment of the Transformation

The company transformation agreement may be left without effect as long as it has not been registered. If it is done by means of publication, it should proceed that which is established in the second paragraph of Art. 81.

Unanimous agreement from the members is required, unless otherwise agreed, as well as that which is provided for some types of companies.

#### Art. 81. Expiration of the Transformation Agreement

The transformation agreement shall expire if at the end of 3 months of it having been executed it is not registered in the respective agency of the Public Commercial Register, unless the term was surpassed by the normal fulfillment of the transformation before the authority that should intervene or provide the inscription.

In the case that it should already be published, a new publication must be made only for the purpose of announcing the expiration of the transformation.

Administrators are jointly and unlimitedly liable for prejudice derived from not registering or publishing it.

## SECTION XI. MERGER AND SPINOFF

### Art. 82. Concept

Merger exists when two or more companies are dissolved without liquidation, in order to constitute a new company; or when one already existing is incorporated to another or others which, without liquidation, are dissolved.

Effects The new company or the incorporating company shall acquire the ownership of the rights and obligations of dissolved companies, producing the total transfer of its respective ownership at the time of its inscription in the Public Commercial Register, the final merger agreement and the contract or bylaws of the company or the increase of capital that the incorporating company would have to make.

### Art. 83. Requirements

Merger demands the fulfillment of the following requirements:

1. Prior commitment of merger. The prior merger commitment granted by the representatives of the companies shall contain:

- (a) The declaration of the reasons and ends pursued by the merger;
- (b) The special consolidated balance sheets of each company, prepared by their administrators on homogeneous bases and on the criteria of identical valuations, with reports from the trustees, if such exist, closed and arranged on the same date, which shall not be before 3 months from the signing of the commitment.
- (c) The exchange report of company participations, quotas or stocks;
- (d) The draft of the contract or bylaws of the new company or of modifications of the contract or bylaws of the absorbing company, as the case may be;

(e) The limitations that the companies agree upon in the respective administration which their transactions and guarantees established for the fulfillment of a normal activity in their management during the time that elapses until the merger is registered.

2. Company resolutions. The approval of the prior merger commitment and the special balance sheets by the companies participating in the merger, with the necessary requirements for the modification of the company contract or bylaws.

For such purpose, there must remain copies of the prior commitment and trustee report, if such exist, at the respective company headquarters, at the disposal of the members or stockholders no less than 15 days in advance of their consideration;

3. Publication. The publication of a notice for 3 days in the journal of legal publications of the jurisdiction of each company and in one of the papers of major general circulation in the Republic, which shall contain:

(a) Firm or trade name, company headquarters and the information contained in the inscription in the Public Commercial Register of each one of the companies;

(b) The capital of the new company or the amount of the increase of capital stock of the incorporating company;

(c) The valuation of the assets and liabilities of the merging companies, indicating the date to which they refer;

(d) Firm or trade name, type and domicile agreed upon for the company to be established;

(e) Details of the prior merger commitment and of the company resolutions that approved it.

Creditors Opposition Within 15 days of the last publication of the notice, the creditor of previous dates may oppose the merger.

Oppositions shall not prevent the prosecution of the merger operations, but the final approval shall not be granted until 20 days after the expiration of the term mentioned before, insofar as the opposition is not disinterested or duly guaranteed by the mergers, it may obtain judicial embargo.

4. Final approval of the merger. The final approval of the merger granted by the representatives of the companies after fulfilling the previous requirements shall contain:

(a) The company resolutions opposing the merger;

(b) The list of the members that exercise the right of separation and the capital stock that each represents;



(c) the list of guaranteed creditors having opposed the merger and of those who obtained judicial embargo; in both cases there shall be evidence of the consideration or title, the amount of the credit and the precautionary measures taken, and a list of the disinterested creditors with a brief report of their incidence in the balance sheets to which section 1, item (b) refer;

(d) The addition of the special and consolidated balances of the merging companies.

5. Register Inscription. The inscription of the final merger agreement in the Public Commercial register.

When companies that are dissolved by a merger are registered in different jurisdictions they shall authorize therein that Art. 98 has been fulfilled.

#### Art. 84. Constitution of a New Company

In the case of the constitution of a merging company, the document shall be granted by the competent agency of the merger with fulfillment of the formalities that apply to the type of company adopted. The administration agency of the created company has the duty of executing the intended transactions for cancelling the register inscription of the dissolved companies, without requiring publication in any case.

Incorporation: Statutory Reform In the case of incorporation, the fulfillment of the relevant norms of the reform of the contract or bylaws shall suffice. The administration agency of the absorbing company shall be competent to execute the necessary transactions for cancelling the registration of the dissolved companies, which in no case shall require publication.

Inscriptions in Registers In the constitution of a new company, as well as in the incorporation, the register inscriptions which correspond to the nature of the assets that make up the transferred patrimony and its encumbrances must be ordered by the court or authority in charge of the Public Commercial Register.

The resolution of the authority that orders the inscription, in which the references and vouchers of the ownership and registration annotations are spread upon the record, shall be enough documentation for the recording of the property transfer.

Administration up to the Execution Provided that it has been agreed to the contrary in the prior commitment, as from the final agreement, the administration and the representation of the dissolved merging companies shall be the duty of the administrators of the merged or incorporating company, with suspension of whoever carried it out up to that time, except in the case of the suit provided by Art. 87.

#### Art. 85. Separation Preferences

In the case of separation and preferences, that which is provided by Arts. 78 and 79 shall apply.

#### Art. 86. Annulment

The prior merger commitment may be left without effect for any of the parties, if the approved company resolutions have not been obtained in a period of 3 months. At the same time, the company resolutions may be revoked, as long as the final agreement has not been granted, with the same conditions as that established for its execution, provided that they do not cause losses to the companies, members or third parties.

#### Art. 87. Annulment: Just Causes

Any of the interested companies may request the annulment of the final merger agreement by just causes up to the moment of its recording in the register.

The request must be filed in the jurisdiction that corresponds to the place in which the agreement was executed.

#### Art. 88. Spin-Off - Concept System

Spin-off exists when:

- I. One company, not dissolved, assigns part of its ownership by merging with existing companies or by participating with them in the creation of a new company;
- II. One company, not dissolved, assigns part of its ownership by constituting one or more new companies;
- III. One company is dissolved without liquidation by constituting new companies with all of its patrimony.

Requirements Spin-off shall demand the fulfillment of the following requirements:

1. The company resolution approving the spin-off, of the contract or bylaws of the dividing company, of the reform of the contract or bylaws of the divided company, if such is the case, and the special balance sheet for that purpose, with the necessary requirements for the modification of the company contract or of the bylaws in the case of a merger. The separation and preferences follow the regulations provided by Arts. 78 and 79;
2. The special balance sheet of spin-off shall not be made before 3 months of the respective company resolution, and it shall be arranged as a general patrimony balance sheet;

3. The approving company resolution shall include the attribution of the company shares or stocks of the dividing company to the members or stockholders of the other company, in proportion to their participation in it, which shall be cancelled in the case of capital reduction;

4. The publication of a notice for 3 days in the journal of legal publications which corresponds to the company headquarters of the dividing company and in one of the papers of major general circulation of the republic which shall contain:

(a) The firm or trade name, company headquarters and the information of its inscription in the Public Commercial Register of the company which is being divided;

(b) The valuation of the assets and liabilities of the company, with indication to the date to which it refers;

(c) The valuation of the assets and liabilities that make up the intended patrimony of the new company;

(d) The firm or trade name, type and domicile the company shall have.

5. The creditors shall have the right of opposition in accordance with the merger system;

6. After the expiration of the periods corresponding to the right of separation and the rights of opposition and garnishment of the creditors, the documents of constitution of the dividing company and the modification of the other company shall be granted, registering in accordance with Art. 84.

In the case of spin-off/merger the dispositions of Arts. 8387 shall apply.

## SECTION XII. PARTIAL RESOLUTION AND DISSOLUTION

### Art. 89. Contractual Grounds

Members may anticipate, in the constitutive contract, the grounds for partial resolution and dissolution not provided in this law.

### Art. 90. Death of a Member

In general partnerships, simple limited partnerships, of capital and labor and in joint ventures, the death of a member shall partially resolve the contract.

In general partnerships and simple limited partnerships, it is legal to agree that the company shall continue with their heirs. Such agreement shall bind them without the need for a new contract, but they may qualify their incorporation with the transformation of their portion into being that of a limited partner.

### Art. 91. Exclusion of Partners

Any partner of the companies mentioned in the previous article, those of limited liability and the active partners of companies limited by shares, may be excluded if there were just cause. Any agreement to the contrary shall be null and void.

**Just Cause** There shall be just cause when the partner is negligent in the serious non-performance of his obligations. It shall also exist in the case of incapacity, disability, declaring bankruptcy or the proceedings of bankruptcy, except in those companies of limited liability.

**Annulment of Right** The right of exclusion is annulled if it is not executed in a period of 90 days following the date in which the justified act of separation was known.

**Act of Exclusion** If the exclusion is decided by the company, the transaction shall be executed by its representative or by the person which the remaining members designate, if the exclusion refers to the administrators. In both cases, the temporary suspension of the rights of the member whose exclusion is being pursued may be judicially arranged.

If the exclusion is exercised individually by one of the members, it shall be sustained with a citation of all of the members.

#### Art. 92. Exclusion: Effects

Exclusion produces the following effects:

1. The excluded member has the right to a sum of money that represents the value of his share on the date of the invocation of the exclusion;
2. If pending operations exist, the member participates in the benefit or support the losses;
3. The company may retain the excluded member's shares until the operations in course at the time of the separation are concluded;
4. In that provided by Art. 49, the excluded member may not demand the delivery of his contribution if this is indispensable for the functioning of the company, but his share shall be paid in cash;
5. The excluded member is liable to third parties for the company obligations until the modification of the contract has been registered in the Public Commercial Register.

#### Art. 93. Exclusion in a Company of Two Members

In companies with two members, exclusion shall follow when there is just cause with one of them, with the effects of Art. 92; the innocent member assumes the company's assets and liabilities, without prejudice to the application of Art. 94, item 8.

Art. 94. Dissolution: Causes

The company shall be dissolved:

1. By the members' decision;
2. By expiration of the term for which it was constituted;
3. By fulfillment of the condition for which its existence was dependent;
4. By fulfillment of the purpose for which it was formed, or by the supervening impossibility of reaching it;
5. By loss of capital stock;
6. By declaration of bankruptcy. The dissolution shall remain without effect if an agreement or resolution arrangements were executed;
7. By its merger in the terms of Art. 82;
8. By reducing to one the number of members as long as new members are not incorporated in the period of 3 months. In this time, the sole member is jointly and severally liable for the contracted company obligations;
9. By final sanction of the withdrawal of public offer or the contributions of its stocks. The dissolution may remain without effect by resolution of the extraordinary general meeting which meets within 60 days in accordance with the fourth paragraph of Art. 244.
10. By firm resolution of the withdrawal of authorization to function when special laws impose it by reason of the object.

Art. 95. Extension: Requirements

The extension of the company requires a unanimous agreement of the members, unless otherwise agreed, or incorporated in that which is provided for limited liability stock companies.

The extension must be resolved and the inscription requested before the expiration of the length of the term of the company.

Renewal In accordance with the requirements of the first paragraph, the renewal of a company may be granted as long as the appointment of the liquidator has not been recorded, without prejudice to the maintenance of the liabilities provided by Art. 99.

All further renewal agreements must be adopted by a unanimous decision without distinction of types.

Art. 96. Loss of Capital

In the case of the loss of capital stock, the dissolution shall not be produced if the members agree on the total or partial reintegration of the capital or its increase.

Art. 97. Judicial Dissolution: Effects

When the dissolution is judicially declared, the decision shall have retroactive effect as from the day in which the cause was generated.

Art. 98. Efficacy with Respect to Third Parties

The dissolution of the company, whether it is constituted regularly or not, shall only be effective with respect to third parties as from its recording on the registry and prior publication, if such is the case.

Art. 99. Administrators: Authority End Duties

The administrators, after the expiration of the length of the term of the company or of the agreement of dissolution or the declaration of having proved one of the causes of dissolution, may only attend to urgent business, and they shall adopt the necessary measures for initiating the liquidation.

Liability Any operation foreign to those purposes shall make them jointly and severally liable with respect to third parties and members, without prejudice to the liability of the latter.

Art. 100. Rules of Interpretation

In case of doubt concerning the existence of a cause for dissolution, the permanence of the company shall take precedence.

SECTION XIII. LIQUIDATION

Art. 101. Legal Status Appreciable Rules

The company in liquidation shall conserve its legal status for that purpose, and shall follow the rules applying to the type of company with which it is compatible.

Art. 102. Appointment of the Liquidator

The liquidation of the company is the obligation of the board of administration, except in special cases or specification to the contrary.

In its default, the liquidator or liquidators shall be appointed by a majority of votes within 30 days of the company entering into liquidation. If they have not appointed the liquidators or if they do not carry out that position, any member may request the omitted appointment or new election to the judge.

Registration. The appointment of the liquidator must be recorded in the Public Commercial Register.

Removal. The liquidators may be removed by the same majority required to appoint them. Any member or partner, or auditor, if applicable, may request judicial removal for a just cause.

#### Art. 103. Obligations, Inventory and Balance Sheets

Liquidators are obliged to prepare, within 30 days of assuming their position, an inventory and balance sheet of the capital stock, which they shall place at the disposition of the members. These may, by a majority vote, extend the period up to 120 days.

Nonfulfillment: Sanction The nonfulfillment of this obligation is cause for removal and makes them lose the right of compensation as well as making them liable for damages and prejudice caused.

#### Art. 104. Periodical Information

At least quarterly, the liquidators must inform the members as to the state of the liquidation; in limited liability companies whose capital reaches the amount established by Art. 299, item 2, and in stock companies, the report shall be issued to the receivership.

Balance Sheet If the liquidation is extended, annual balance sheets shall also be prepared.

#### Art. 105. Authority

Liquidators shall represent the company. They are authorized to execute all necessary acts to realize the assets and cancel the liabilities.

Members' Instructions They are subject to the members' instructions, which shall be imparted in accordance with the type of company, under pain of incurring liability for damages and losses caused by nonfulfillment of such duty.

Proceedings They shall proceed using the firm or trade name of the company in addition to "in liquidation". This shall make them jointly and severally liable for damages and losses.

#### Art. 106. Owed Contributions

When the company's funds are insufficient to satisfy the debts, the liquidators are obliged to demand from the members the contributions they owe in accordance with the type of company or the constitutive contract.

#### Art. 107. Spin-off and Partial Distribution

If all the company obligations have been sufficiently guaranteed, partial distribution may be made.

Stockholders representing onetenth of the capital stock in stock companies and any partner in other types of companies, may require, under those conditions, partial distribution. If there are no liquidators, the incidence shall be judicially resolved.

**Publication and Effects** The partial distribution agreement shall be published in the same form and with the same effects as the capital reduction agreement.

#### Art. 108. Obligations and Liabilities

The liquidators' obligations and liabilities are governed by the dispositions established for administrators in everything which is not established by this section.

#### Art. 109. Final Balance Sheet and Distribution

After paying the company's liabilities, the liquidators shall prepare a final balance sheet and the distribution plan; they shall reimburse the share of capital and unless otherwise arranged by the contract, the surplus shall be distributed proportionally with the participation of each member in the profits.

#### Art. 110. Communication of the Balance Sheet and Spin-off Plan

The final balance sheet and the distribution plan, undersigned by the liquidators, shall be communicated to the members, who may oppose them in the term of 15 days. If such is the case, the corresponding judicial suit shall be brought up within the following 60 days. All the objections shall be accumulated in a class case.

In limited liability companies whose capital reaches the amount established by item 2, Art. 299, as well as in stock companies, the final balance sheet and the distribution plan undersigned also by the auditors, shall be submitted for the approval of the general meeting. The dissenting or absent partners or stockholders may judicially object to these operations in the period established in the previous paragraph calculated as from the approval by the general meeting.

#### Art. 111. Distribution: Execution

The approved final balance sheet and the distribution plan shall be added to the company file in the Public Commercial register and the procedure for its execution shall begin.

**Destination upon Failure to Claim** The amounts not claimed within 90 days of the presentation of such documents into the Public Commercial Register shall be deposited in an official bank at the disposal of the holder of the claim. After 3 years without claim, they shall be assumed by the school authority of the respective jurisdiction.



#### Art. 112. Cancellation of the Registration

After the liquidation has ended, the registration of the company contract in the Public Commercial Register shall be cancelled.

Conservation of Books and Papers In default of the members' agreement, the Court Register shall decide who shall keep the books and other company documents.

### SECTION XIV. JUDICIAL INTERVENTION

#### Art. 113. Procedure

When the administrator or administrators of a company execute acts or neglect acts whose omission places the company in serious danger, judicial intervention shall proceed as a precautionary measure with the sureties established in this section, without prejudice to the application of specific rules for the different types of companies.

#### Art. 114. Requirements and Evidence

The applicant shall verify his condition of a member, the existence of the danger and its seriousness, which exhausted the resources agreed in the company contract and brought suit of removal.

Restrictive Criteria The court shall appraise the procedure of the intervention with restrictive criteria.

#### Art. 115. Classes

The intervention may consist in the appointment of a supervisor, of one or more coadministrators, or of one or more administrators.

Mission Attributions The court shall establish the mission which they shall accomplish and the assigned attributions in accordance with their functions, without their being greater than those granted to administrators by this law, or the company contract. It shall determine the length of the intervention, which may only be extended by a summary proceeding of its necessity.

#### Art. 116. CounterPrecautions

The petitioner must render the counterprecaution that is established, in accordance with the circumstances of the case, and the losses that the measure may cause to the company as well as the litigation costs.

#### Art. 117. Appeal

The resolution which the intervention provides is appealable only for an effect to be returned.

### SECTION XV. COMPANY CONSTITUTED ABROAD

#### Art. 118. Applicable Law

A company constituted abroad is governed, as far as its existence and form, by the laws of its place of constitution.

Isolated Acts It shall be enabled to carry out isolated acts in the country and, in isolated cases, may be tried in court.

Customary Execution For the customary execution of proceedings included in the company's purpose, establishing branches, making entries or any other type of permanent representation, it should:

1. Verify the existence of the company in agreement with the laws of its state;
2. Establish a domicile in the Republic fulfilling the publication and inscription demanded by this law for companies constituted in the Republic;
3. Justify the decision for creating such a representation and appoint the person who shall be in charge of it.

If a branch is dealt with, the capital being assigned shall also be determined when special laws apply.

#### Art. 119. Unknown Type

Art. 118 shall be applied to an unknown type of company under the laws of the Republic which is constituted in another state. The court of registration shall determine the formalities to be complied with in each case, subject to the criteria of maximum rigor provided by this law.

#### Art. 120. Accounting

It is obligatory for such company to keep separate accounting in the Republic and present it to the controller that applies to that type of company.

#### Art. 121. Representatives: Liabilities

The representative of each company constituted abroad has the same liabilities as those provided by this law for administrators and, in those provided for the type of companies not regulated, the directors of corporations.

#### Art. 122. Summons to Court

The summons of a company constituted abroad may be carried out in the Republic:

- (a) Originating in an isolated act in the person of the mandate who intervened in the act or in a contract that motivated the lawsuit;

(b) If there exists a branch, entry or other kind of representation, it shall be the person of the representative.

#### Art. 123. Constitution of a Company

In order to constitute a company in the Republic, it should previously be established before the Court Register that the company has been constituted in accordance with the laws of its respective country and its validated company contract, amendments and other documentation, as well as that which is relative to its legal representatives, should be registered in the Public Commercial Register and in the National Corporation Register, as the case may be.

#### Art. 124. Company with Domicile or Principal Purpose in the Republic

The company constituted abroad that has its headquarters or its principal purpose which is to be fulfilled in the Republic, shall be considered as a local company for the purposes of fulfilling the formalities of its constitution or reform and controlling its performance.

### CHAPTER II. COMPANIES IN PARTICULAR

#### SECTION I. GENERAL PARTNERSHIP

##### Art. 125. Characterization

Members acquire subsidiary, unlimited joint and several liability for company obligations.

Agreement otherwise is not exceptionable to third parties.

##### Art. 126. Trade Name

The trade name shall be completed with the words "sociedad colectiva" or its abbreviation.

If it acts under a firm name, it shall be formed with the name of one, several or all of the members. It shall contain the words "y compania" or its abbreviation if all the names of the members do not appear.

Modification When the firm name is modified, this circumstance shall be clear in its employment in such manner that undoubtedly results in the identity of the company.

Sanction The violation of this article shall make the signee jointly and severally liable with the company for the obligations contracted.

##### Art. 127. Administration: Contract Silence

The contract shall regulate the administration of the company. In default thereof, any of the members, without distinction, may administrate it.

##### Art. 128. Indistinct Administration

If the administration was entrusted to several members without determining their functions or if one may act without the other, it shall be understood that they may indistinctly carry out any administration act.

**Joint Administration** If it has been specified that one may not act without the other, neither of them may individually act, even if it is found impossible for the coadministrator to act, without prejudice of the application of Art. 58.

#### Art. 129. Removal of the Administrator

The administrator, whether he is a member or not or even if he is appointed in the company contract, may be removed by a majority decision at any time, without invocation of cause, unless agreed otherwise.

When the contract requires that just cause be given, he shall keep his position until the judicial decision has been handed down, if he should deny the existence of such cause, except for a provisional separation by the application of Section XIV of Chapter I. Any member may judicially reclaim it with invocation of just cause. Members who disagree with removal of an administrator whose appointment was an express condition of the constitution of the company, have the right to separate.

#### Art. 130. Resignation Liability

An administrator, even if he is a partner, may resign at any time, unless otherwise agreed, but he is liable for the losses that his resignation may cause if it is fraudulent or without due notice.

#### Art. 131. Contract Modification

All contract modifications, including the transfer of shares to another member, requires the consent of all the members, unless otherwise agreed.

**Resolutions** The other company resolutions shall be adopted by a majority vote.

#### Art. 132. Majority: Concept

In this section, majority is understood to be the absolute majority of capital, except if the contract establishes a different system.

#### Art. 133. Acts in Competition

A partner may not execute on his own account or another, transactions that cause competition with the company, except by an express and unanimous consent of the copartners.

**Sanctions** The violation of this prohibition authorizes the exclusion of the member, the incorporation of obtained benefits and indemnification for the damages.

## SECTION II. SIMPLE LIMITED PARTNERSHIP

### Art. 134. Characterization

The active partner or partners shall be liable for company obligations as members of a general partnership, while the limited partner or partners are liable only to the extent of the capital which they are obliged to contribute.

Trade Name The trade name shall be completed with the words "sociedad en comandite simple" or their abbreviation.

If it acts under a firm name, it shall be formed exclusively with the name or names of the active partners, and in accordance with Art. 126.

### Art. 135. Contribution of the Limited Partner

The capital of the limited partner shall be solely made up of the contribution of debts to be fulfilled.

### Art. 136. Administration and Representation

The administration and representation of the company is executed by the partnership members or third parties which are appointed, and the norms concerning administration of general partnerships shall be applied.

Sanctions The violation of this article and the second and third paragraphs of Art. 134, shall make the signer jointly and severally liable with the company for the obligations contracted.

### Art. 137. Prohibition for the Active Partner Member Sanctions

A limited partner may not interfere in the administration; if he should, he shall be unlimitedly, jointly and severally liable.

His liability shall be extended to the acts in which he had not intervened when his administrative acts have been habitual.

Neither may he be a mandate. The violation of this prohibition shall make the limited partner liable as in the cases in which he interfered, without prejudice to obligating the company in accordance with the mandate.

### Art. 138. Authorized Acts of the Partnership

Acts of testing, inspection, vigilance, verification, opinion or advice are not included in the provisions of the preceding article.

Art. 139. Company Resolutions

For the adoption of company resolutions, Art. 131 and 132 shall be applied.

Partnership members have a vote in the consideration of accounting statements and the appointment of the administrator.

Art. 140. Bankruptcy, Death, and Incompetence of the General Partner

Notwithstanding that which is provided by Arts. 136 and 137, in case of bankruptcy, insolvency, death, incompetence or disability of all the general partners, the limited partner may carry out the urgent transactions which require the management of the company business without incurring the liabilities of Arts. 136 and 137 while the situation is regularized.

Regularization: Term, Sanction The company shall be dissolved if it is not regularized or transferred in the term of 3 months. If the partners do not fulfill the legal dispositions, they shall be unlimitedly, jointly and severally liable for the obligations contracted.

SECTION III. PARTNERSHIP OF CAPITAL AND LABOR

Art. 141. Characterization Liability of the Members

The partner or partners supplying capital are liable for the results of company obligations as are partners of general partnerships; those who only contribute their services are liable up to the amount of the gains not received.

Art. 142. Firm Name Addition

The firm name shall be composed of the words "sociedad de capital e industria" or its abbreviation.

If it performs under a firm name, the name of the partner supplying his labor may not appear in it.

Violation of this article shall make the signer jointly and severally liable with the company for the obligations contracted.

Art. 143. Administration and Representation

The representation and administration of the company may be executed by any of the members, in accordance with that provided in Section I of the present chapter.

Art. 144. Silence on the Portion of Profits

The contract must determine the share of the working partner in the company profits. When it has not been provided, it shall be established judicially.

Art. 145. Company Resolutions

Art. 139 is to be applied to this company, calculating for voting purposes the capital of the working partner by that of the capital partner with the lowest contribution.

Death, Incompetence or Disability of a Member of the Board of Directors,  
Bankruptcy Art. 140 shall also be applied when the Industrial member does not execute the administration.

## SECTION IV. LIMITED LIABILITY COMPANY

### 1. NATURE AND CONSTRUCTION

#### Art. 146. Characterization

The capital is divided in quotas; members limit their liability to the paying in that which they subscribe or acquire, without prejudice to the guarantee to which Art. 150 refers.

Maximum Number of Members The number of members shall not exceed 50.

#### Art. 147. Trade Name

The trade name may indicate the name of one or more members and it must contain the indication "sociedad de responsabilidad limitada" or its abbreviation or the initials S. R. L..

Omission: Sanction Its omission shall make the manager unlimitedly, jointly and severally liable for acts executed in those conditions.

### 2. CAPITAL AND COMPANY QUOTAS

#### Art. 148. Division in Quotas Value

The company quotas shall have equal value, which shall be of 10 pesos or its multiplier.

#### Art. 149. Integral Subscription

The capital must be totally subscribed in the record of the constitution of the company.

Cash Contributions Cash contributions must be at least 25% paid in, and must be completed in a term of 2 years. Its fulfillment shall be credited at the time of ordering its inscription in the Public Commercial Register, with the deposit voucher of an official bank.

Contribution in Kind Contributions in kind must be totally paid in, and their value shall be justified in accordance with Art. 51. If the members decide to carry out a valuation by a judicial expert, the liability for the valuation that Art. 150 advises shall cease.

#### Art. 150. Contribution Guarantee

Partners unlimitedly, jointly and severally shall guarantee to third parties that the contributions shall be paid in.

**Undervaluation of Contributions in Kind** The undervaluation of contributions in kind, at the time of the contribution or increase of capital, shall make the partners jointly, severally and unlimitedly liable before third parties for the term of Art. 51, last paragraph.

**Transfer of Quotas** The guarantee of the member exists for the company obligations contracted up to the moment of its registration. The purchase guarantees the contributions in the terms set forth in the first and second paragraph, without distinction between previous or posterior obligations from the date of registration.

A member who has not completely paid in the quotas, is jointly and severally obligated with the assignee for those which have not yet been paid in. The company shall not demand the payment without a previous summons of the delinquent member.

**Contrary Agreement** Any contrary agreement shall be ineffective with respect to third parties.

#### Art. 151. Supplementary Quotas

The constitutive contract may authorize supplementary quotas of capital, which may be totally or partially required only by the company by means of an agreement of the members who represent more than half of the capital stock.

**Integration** The members are obligated to pay them in once the decision has been published and registered.

**Proportionality** They must be in proportion with the number of quotas which each member held at the moment in which they were agreed to be effective. The balance from the date of registration shall be included.

#### Art. 152. Assignment of Quotas

Quotas are freely transferable, unless otherwise provided by the contract.

The transfer of the quotas has effect before the company from the time the member or purchaser hands over to the management an example or copy of the assignment or transfer, with the verification of the signature if he performs with a document not officially recorded.



The company or member may exclude only by just cause the member so incorporated, proceeding in accordance with that provided by Art. 91, provided that in this case the exception established in its second paragraph is applicable.

The transfer of quotas is opposable by third parties from their registration in the Public Commercial Register, which may be required by the company; it may also be petitioned by the transferor or purchaser by showing the title of the transfer and the up to date voucher of its communication to the management.

#### Art. 153. Limitations for the Transfer of Quotas

The company contract may limit the transfer of quotas but it shall not prohibit this transfer.

Clauses which require the majority or unanimous consent of the members or those which confer a preferential right on the members or on the company, are lawful if the latter purchases the quotas with profits or available reserves or reduces its capital.

In order for these clauses to be valid, the contract must establish the procedures in which the granting of the consent or the exercise of the option to buy, shall be subject, but the term for notifying the decision to the member who propose the transfer, shall not exceed 30 days from the date on which he communicated the name of the interested party and the price to the management. At the time of its expiration the consent shall be considered granted if the preference has not been exercised.

**Forced Execution** In the case of forced execution in the transfer of limited quotas, the resolution which arranges for an auction shall notify the company at least 15 days in advance of the auction. If in that time, the creditor, debtor and the company do not reach an agreement on the sale of the quota, an auction shall be held. The court shall not adjudicate if within 10 days the company presents a purchaser, or the company or the members exercise the option to buy for the same price, depositing the amount.

#### Art. 154. Judicial Action

If at the time of exercising the preferential claim, the members or the company object to the price of the quotas, they must state the price they consider an adjustment to the actual price. In this case, unless the contract provides other rules for the solution of the deferment, expert judicial appraisal shall determine the price; but the objectors shall not be obligated to pay a larger price than that of the proposed transfer, nor should the member charge a lesser price than that offered by those who exercised the option. The expenses of the procedure shall be charged to the side that tried to get a higher price than that established by the judicial appraisal.

If he is denied consent to transfer quotas with limited transferability, the person who proposes the transfer may appear before the court with a company hearing which shall authorize the transfer if there exists no just cause for opposition. This judicial declaration shall also concern the expiration of the preferential claim of the company as well as that of the members who opposed the transfer of the quota.

#### Art. 155. Incorporation of Heirs

If the contract provides for the incorporation of a member's heir, the agreement shall be obligatory for him and for the members. His incorporation shall be made effective when his qualifications are verified; in the interim, the administrator in succession shall act as his representative.

The limitations of the transferability of quotas shall, in these cases, not be opposable to the transfers which the heirs carry out within 3 months of their incorporation. But the company or the members may exercise the option of buying for the same price, within 15 days of communicating to the management the proposal of the transfer, which must be made known to the members in an immediate form and up to the date means.

#### Art. 156. Joint Ownership

When there exists joint ownership of a company quota, Art. 209 shall apply.

**Real Right and Precautionary Measures** The constitution and the cancellation of usufruct, securities, attachment or other precautionary measures concerning quotas, shall be recorded in the Public Commercial Register. That which is provided by Arts. 218 and 219 shall be applied.

### 3. COMPANY AGENCIES

#### Art. 157. Management Appointment

The administration and representation of the company corresponds to one or more managers, members or not, appointed for a determined or undetermined time in the constitutive contract or subsequently. Alternates may be elected for vacancies.

**Plural Management** If the management is plural, the contract may establish the functions of each competent manager in the administration or impose joint or collective administration. In the case of silence, it shall be understood that they may indistinctly carry out any administrative transaction.

**Rights and Obligations** The managers have the same rights, obligations, prohibitions and incompatibilities as the directors of a corporation. They must not participate, on their own account or another, in acts that compete with the company, unless there is express authorization and unanimous decision of the members.

Liability Managers shall be individually or jointly liable according to the organization of the management and the establishment of rules and regulations for its functioning established by the contract. If a plurality of managers participated in the same events generating liability, the court may establish the portion belonging to each one for the reimbursement of losses, attending to their own personal acts. Provisions relative to the liability of directors shall be applied when the management forms a group.

Revocability Revocability shall not be limited, except when the appointment was an express condition of the constitution of the company. In this case the second part of Art. 129 shall be applied, and the discontent members shall have the right to separate.

#### Art. 158. Optional Control

A controlling agency, auditing or supervisory board may be established, which shall be governed by the provisions of the contract.

Compulsory Control The auditing or supervisory board are compulsory in a company whose capital reaches the amount established by item 2 of Art. 299.

Supplementary Norms Both the optional control as well as the compulsory control are supplementary as applied to the rules of the corporation. The attributions and duties of these agencies shall not be less than those established for such a company when they are compulsory.

#### Art. 159. Company Resolutions

The contract shall provide the form of considering and reaching company agreements. In its absence, company resolutions adopted by the votes of the members, shall be valid when communicated to the management by any type of procedure that guarantees their authenticity, within 10 days of the simultaneous conference, by means of an up to date measure; or those which result from a written declaration in which all the members express the meaning of their vote.

General Meetings In the companies whose capital reaches the amount established in item 2 of Art. 299, the members gathered in the general meeting shall resolve the accounting statements of the fiscal year, for which consideration shall be convened, within 4 months of its closure.

This general meeting shall abide by the rules provided by the corporation, replacing the means of convening by a citation personally notified or by any other up to date means.

Domicile of the Members All communications or citations must be directed to the domicile expressed in the constitution document, unless he has notified a change to the management.

#### Art. 160. Majorities

The contract shall establish the rules applicable to the resolutions whose purpose is its modification. The majority must represent a minimum of more than half the capital stock.

In default of the contractual regulations, the vote of threequarters of the capital stock shall be required.

If only one member represents the majority vote, additionally, the vote of another shall be needed.

The transfer, merger, elimination, extension, renewal, transfer of the domicile abroad, the fundamental change of the purpose and every agreement that increases the company's obligations or the liability of the members who voted against, grants them the right of separation in accordance with that provided by Art. 245.

The absent members or those who voted against the increase of the capital, have the right to subscribe to proportional quotas of their company participation. If they do not assume this right, they may increase other members and, in its default, incorporate new members.

Company resolutions which do not concern the modification of the contract, appointment and revocation of managers and auditors, shall be adopted by the majority of the capital present at the general meeting or participating in the agreement, unless the contract demands a higher majority.

#### Art. 161. Vote: Calculation, Limitations

Each quota gives the right of one vote and establishes the limitations of personal order provided for the stockholders of the corporation in Art. 248.

#### Art. 162. Records

A company resolution not adopted in the general meeting shall be recorded in the book demanded by Art. 73, by means of records which shall be arranged and signed by the managers within 5 days of having concluded the agreement.

In the record, for the purpose of counting the votes, there must be evidence of the answers given by the members and their meanings. The documents in which these answers are evident must be kept for 3 years.

## SECTION V. CORPORATION

### 1. NATURE AND CONSTITUTION

#### Art. 163. Characterization

The capital shall be represented by shares and the members limit their liability to the paying in of shares subscribed.

#### Art. 164. Trade Name

The trade name may include the name of one or more persons of visible existence and it must contain the expression "sociedad anomina", its abbreviation or the initials, S.A..

Omission: Sanction The omission of this item shall make the representatives of the company jointly, severally and unlimitedly liable with it for transactions executed under those conditions.

#### Art. 165. Constitution and Form

The company shall be constituted by a public instrument and by a sole deed or by public subscription.

#### Art. 166. Constitution by Sole Act Requirements

If the company is constituted by a sole act, the constitution instrument shall contain the requirements of Art. 11 and the following:

Capital 1. With respect to capital stock: the nature, types, issue formalities and other characteristics of shares, and, as the case may be, the increase systems.

Subscription and Paying in of the Capital 2. The subscription of the capital, the amount and form of paying in and, if it applies, the period of payment for the owed balance, which shall not exceed 2 years.

Election of Directors and Auditors 3. The election of a member of the administration agency and controlling agency, establishing the period of deviation in those positions.

All the signers of the formation deed shall be considered founders.

#### Art. 167. Administrative Procedure

The formation deed shall be filed before the controller's authority for the verification of the fulfillment of legal and fiscal requirements.

Court Register Authority After accepting the formation, the file shall be passed on to the Court Register, who shall order its recording if he should judge it proper.

Regulations If the bylaws provide regulations, they shall be recorded with identical requirements.

Authorized for the Constitution If there are no special mandates appointed for carrying out procedures to create the company, it shall be understood that the statutory representatives shall be authorized to carry them out.

#### Art. 168. Constitution by Public Subscription Program Approval

In constitution by public subscription, the promoters shall draw up a plan of establishment by public or private instrument, which shall be submitted for the approval of the controlling authority. He shall approve it when it fulfills the legal conditions and regulations. It shall be pronounced in the period of 15 working days; its delay shall authorize the recourse promised in Art. 169.

Inscription After the plan has been approved, it must be presented for its registration in the Public Commercial register in a period of 15 days. If this registration is omitted in that period of time, the administrative authorization shall automatically expire.

Promoters All the signers of the program shall be considered promoters.

#### Art. 169. Recourse against Administrative Decisions

The administrative resolutions of Art. 167, as well as those dictated in constitution by public subscription, are appealable before the appellate court which hears recourse against decisions of the Court Register. The appeal shall be admissibly filed within 5 days of the notification of the administrative resolutions and the proceedings shall be raised in the following 5 days.

#### Art. 170. Control of the Plan

The establishment plan must contain:

1. Name, age, status, nationality, profession, identity document number and domicile of the promoters;
2. Terms of the bylaws;
3. Nature of the shares; amount of the issues planned; conditions of the subscription contract and advance payments which obligate them;
4. Determination of a bank with which the promoters must execute a contract with the purpose that it assumes the functions granted to him as a representative of future subscribers.

For these reasons, the bank shall take the preparation of the corresponding documentation, the reception of the subscriptions and the advance cash payments of capital into its care, the first of which may not be less than 25% of the nominal value of the subscribed shares.

Contributions in kind shall be precisely individualized. In those cases in which an inventory is necessary for the determination of the contribution, it shall be deposited in a bank. In all cases the final value must result from the opportune application of Art. 53;

5. Advantages or possible benefits which the promoters plan to reserve for themselves.

The signatures of the grantors must be verified by a public notary or any competent official.

#### Art. 171. Period of Subscription

The period of subscription shall not exceed 3 months, calculated from the inscription to which Art. 168 refers.

#### Art. 172. Subscription Contract

The subscription contract must be prepared with 2 copies, by the bank and it must contain the transcribed program which the subscriber shall declare he knows and accepts. He shall subscribe it, and additionally include:

1. The name, age, status, nationality, profession, domicile of the subscriber, and identity number;
2. The number of the shares subscribed;
3. Advance cash payment of contributions fulfilled in that transaction. In the case of contributions not in cash, the information to which item 4 of Art. 170 refers, shall be established;
4. The registration records of the program;
5. the summons of the constitutive meeting, which must be made in a period no greater than 2 months from the expiration date of the subscription, and the agenda.

The second copy of the contract with the payment receipt made, whenever it corresponds, shall be given to the interested party by the bank.

#### Art. 173. Failure of the Subscription: Reimbursement

If the subscriptions are not covered in the period established, the contracts shall be resolved as a matter of law, and the bank shall immediately refund all interested parties the total amount delivered, without any discount.

Art. 174. Excess in Subscription

When the subscription exceeds the provided amount, the constitutive meeting shall decide its reduction at pro rata or it shall increase the amount of the subscription.

Art. 175. Promoters' Obligations

Promoters must fulfill all the management and procedures necessary for the constitution of the company, up to the carrying out of the constitutive meeting, in accordance with the procedure established by the following articles.

Execution of Suits Suits for the fulfillment of these obligations may only be brought by the representative bank of the joint subscribers. The latter only have the right to bring individual suits with reference to special matters pertaining to their contracts.

Subsidiary Application of the Rules on Bonds Otherwise, the regulations on the issue of bonds shall be applied to the relations between promoters, the intervening bank and the subscribers, as far as it is compatible with their nature and purpose.

Art. 176. Constitutive Assembly: Execution

The constitutive meeting must be executed in presence of the intervening bank and shall be presided by a notary of the controlling authority; it shall remain constituted with half plus one of the subscribed shares.

Failure of the Summons If it should fail, the promotion of the company shall be said to have ended and the securities shall be returned in accordance with Art. 173, without prejudice to the transactions of Art. 175.

Art. 177. Voting Majority

Each subscriber shall have the right to the same number of votes as the shares which he has subscribed and paid in by the established means.

The decision shall be adopted by the majority of subscribers present who represent no less than onethird of subscribed capital with voting rights, provided that it may be stipulated differently.

Art. 178. Subscribing Promoters

Promoters may be subscribers. The intervening bank may be the representative of subscribers.



#### Art. 179. Constitutive General Meeting: Agenda

The general meeting shall resolve whether the company shall be constituted and, in an affirmative case, the following subjects which must form part of the agenda:

1. Gestures of the promoters;
2. Company bylaws;
3. Provisional valuation of the contributions not in cash, in case of existence. The contributors shall not have the right to vote in this decision;
4. Appointment of directors and auditors or supervisory boards, if such is the case;
5. Determination of the period during which the balance of the contributions in cash shall be paid in;
6. Any other business which the bank considers of interest for including it in the agenda;
7. Appointment of 2 subscribers or representatives with the purpose that they approve and sign, jointly with the president and delegates of the bank, the minutes of the general meeting which shall be drawn by the organization of the controller.

Promoters who are also subscribers, must not vote on the first item.

#### Art. 180. Approval, Publication and Inscription

After the records have been drawn up, the procedure for the approval, publication and registration shall begin in accordance with that provided by Art. 10 and 167.

**Deposit of the Contributions and Delivering of Documents** After the records have been drawn up, the bank shall deposit the funds received in an official bank and deliver the documents referring to the contributions to the board of directors.

#### Art. 181. Documentation of the Term in Formation

Promoters must hand over to the board of directors the documentation relative to the constitution of the company and other transactions performed during their formation.

The board of directors must demand the fulfillment of this obligation and return the documentation relative to the transactions which were not ratified by the general meeting.

#### Art. 182. Liability of the Promoters

In the consecutive constitution, promoters are unlimitedly, jointly and severally liable for obligations contracted for the constitution of the company, including the expenses and commission of the intervening bank.

Liability of the Company Once registered, the company shall assume the obligations legitimately contracted by the promoters and it shall reimburse them for expenses paid, if their management is approved by the constitutive meeting or if their expenses were necessary for its constitution.

Subscribers' Liabilities The subscribers shall not be liable for any of the obligations mentioned.

Art. 183. Transactions fulfilled during the founding period Liabilities

The directors only have the authority to obligate the company with respect to transactions necessary for its constitution and those relative to the company purpose whose execution during the founding period was expressly authorized in the constitutive act. The directors, founders and the company in formation are jointly, severally and unlimitedly liable for these transactions as long as the company is not registered.

For the remaining transactions fulfilled before registration, the persons who contracted such transactions and the directors and founders who agreed to them shall be unlimitedly, jointly and severally liable.

Art. 184. Assumption of Obligations for the Company Effects

Once the constitutive contract is inscribed, the transactions necessary for its constitution and those made in virtue of express authority consulted in the constitutive act, shall remain as originally fulfilled by the company. the promoters, founders and directors are freed before third parties for emerging obligations for these acts.

Within 3 months of the registration, the board of directors may resolve the assumption of obligations by the company resulting from other acts executed before the registration, giving account of it to the ordinary general meeting. If it should disapprove of the action, the board of directors shall be liable for damages and losses, applying Art. 274. The assumption of these obligations by the company shall neither free those who contracted it from liability, nor those directors and founders who consented to it.

Art. 185. Promoters' and Founders' Benefits

Promoters and founders must not receive any kind of benefits which might impair the capital stock. Any agreement otherwise is null and void.

Its compensations may consist in the participation up to 10% of the profits, for the maximum term of 10 fiscal years in which they are distributed.

## 2. CAPITAL

Art. 186. Total Subscription Minimum Capital

The capital must be totally subscribed at the time of the execution of the formation deed. It must not be less than 100,000 Argentine pesos. This amount may be adjusted by the Executive Power each time he deems it necessary.

Terminology In this section "capital stock and subscribed capital" shall be used indistinctly.

Subscription Contract In the case of an increase of capital by subscription, the contract must be extended to 2 copies and contain:

1. The name, age, status, nationality, profession, domicile and identity number of the subscriber or information of his individualization and register or authorization in cases of legal persons;
2. The amount, face value, types and characteristics of the subscribed shares;
3. The price of each share and the total subscribed; the form and conditions of payment;
4. Contributions in kind shall be precisely individualized. In the cases where an inventory is necessary for the determination of the contribution, the goods shall remain deposited in the company headquarters for its consultation by the stockholder. In all cases, the final value must result from the opportune application of Art. 53.

#### Art. 187. Minimum PayUp of Capital in Cash

The cash payup of contributions shall not be less than 25% of the subscription; its fulfillment shall be justified at the time of their recording with the proof of their deposit in an official bank, which, after being fulfilled, shall be liberated.

Contributions in Kind Contributions in kind, must be fully paidin. They may only consist in obligations and their fulfillment shall be justified at the time of requesting the approval mentioned in Art. 167.

#### Art. 188. Increase of Capital

The bylaws may provide for the increase of capital stock up to 5 times its original amount. It shall be decided by the general meeting without requiring a new administrative approval. The general meeting shall only delegate to the board of directors the period of omission and form and conditions of payment, without prejudice to that established in Art. 202. The general meeting resolution shall be published and registered.

In corporations authorized for making public offers of their shares, the general meeting may reserve the capital without limit or necessity of modifying the bylaws. The board of directors may take the issue by delegation of the general meeting, one or more times, within 2 years starting from the date of its execution.

Art. 189. Capitalization of Reserves and Other Situations

The proportion of each stockholder must be respected in the capitalization of reserves and other special funds subscribed in the balance sheet, as well as in the payment of dividends with shares and in similar procedures for which whole shares must be delivered.

Art. 190. Prior Subscription of Previous Issues

New shares may only be received when previous ones have been subscribed.

Art. 191. Increase of Capital Insufficient Subscription

Even when the capital increase has not been totally subscribed in the term provided by the issuing conditions, the subscribers and the company shall not be fixed from the assumed obligations, unless provided otherwise by the conditions of issuance.

Art. 192. Delay: Exercising Rights

Delay in paying up of contributions shall be produced in accordance with Art. 37, and it automatically suspends the rights inherent to the delinquent shares.

Art. 193. Delay in Paying Up Contribution Sanctions

The bylaws may provide that the subscription rights corresponding to shares in delinquency, be sold in a public auction or by means of an agent of the stock exchange, if the case were of contributed shares. Charged to the delinquent subscribers shall be the auction expenses and monetary interests, without prejudice of their liability for damages.

It may also be established that their rights expire; in this case, the sanctions shall be effective after prior notification to pay in within a period not greater than 30 days, with loss of the sums contributed. Without prejudice, the company may opt for the fulfillment of the subscription contract.

Art. 194. Preferential Subscription

(Amended by Law No. 24,435, promulgated January 11, 1995, published in Boletín Oficial of January 17, 1995) Common stocks, being of simple or plural vote, grant the holder the preferential right of subscription of new stocks of the same kind in proportion to those he has, except in the case of Art. 216, last paragraph; the holder also has the right of increasing in proportion those stocks he has subscribed at each opportunity.

When, with the agreement of the different kinds of stocks expressed in the form established by Art. 250, the proportionality is not maintained between them, their holders shall be considered as making up one class for the execution of the preferential right.

Offer to Stockholders The company shall make an offer to stockholders by means of 3 notices in the journal of legal publications and additionally in one of the papers of major general circulation in the Republic, when the case is of companies included in Art. 299.

Term of Execution Stockholders may exercise their right of option within the 30 days following the date of the last publication if the bylaws do not establish a longer term.

In the case of companies that make a public offering, the extraordinary general meeting may reduce this period up to a minimum of 10 days both for stocks and for debentures convertible into stocks.

Bonds Convertible to Stocks Stockholders shall also have the preferential right of subscription of bonds convertible to stocks.

Limitation Extension The rights which this article recognizes shall not be cancelled or given conditions, except that which is provided in Art. 197, and they may be extended by the bylaws or resolution of the general meeting which provided the issue of preferred stocks.

#### Art. 195 Judicial Action of the Injured Party

A stockholder whom the company deprives of the right of preferential subscription, may judicially demand that it cancel the subscriptions that would correspond to him.

Compensation If, because of shares delivered, the cancellation provided cannot proceed, the injured stockholder has the right that the company and directors jointly compensate him for damages caused. The indemnity in no case shall be less than triple the par value of the stocks he could have subscribed in accordance with Art. 194, calculating the amount of the same in constant currency since the issue.

#### Art. 196. Period for Carrying it out

The stocks of the previous article must be promoted in a period of 6 months beginning from the expiration date of the subscription term.

Holders The suits may be brought by the injured stockholder or any of the directors or auditors.

#### Art. 197. Limitation to the Preferential Right Conditions

The extraordinary general meeting, with the majorities of the last paragraph of Art. 144, may resolve in particular and exceptional cases, when the interests of the company demand it, the limitation or suspension of the preferential right in the subscription of new shares under the following conditions:

1. That its consideration be included in the agenda;

2. That it deals with shares to be paid in with contributions in kind or that they be given in payment of preexisting obligations.

**Art. 198. Capital Increase Public Offering**

The increase of capital may be accomplished by a public offering of stocks.

**Art. 199. Nullity Sanction**

An issue of stocks carried out in violation of a public offering shall be null and void.

**Incontestability of Rights** The title or certificates issued in consequence and the resulting rights of the same are incontestable to the company, partners and third parties.

**Art. 200. Nullity Suit Execution**

The directors, members of the supervisory board and auditors are jointly, severally and unlimitedly liable for damages originating from the company, and to stockholders for issues of stock made in violation of the public offering system.

A subscriber may demand the nullity of the subscription and severally demand from the company, directors and members of the supervisory board and auditors, compensation for the damages.

**Art. 201. Information**

For the purposes of its register, the company shall communicate to the authority of the controller and to the Public Commercial Register, the subscription of the capital increase.

**Art. 202. Issue Under Par Prohibition Issue with Premiums**

The issue of stocks under par shall be null and void, except in that provided by Law 19,060.

They may be issued with a premium which the extraordinary general meeting shall establish, maintaining equality in each issue. In companies authorized to make a public offering of their stocks, the decision shall be adopted by an ordinary general meeting which may delegate the directing authority to establish the premium within the limits which must be established.

The balance which the amount of the premium shall issue, after discount of the issue expenses, shall make up a special reserve. It shall be distributed according to the requirements of Arts. 203 and 204.

**Art. 203. Voluntary Reduction of Capital**

Voluntary reduction of capital must be resolved by the extraordinary general meeting with an established report by the auditors, if such is the case.

Art. 204. Requirements for its execution

The resolution concerning the reduction shall give the creditors the right regulated in item 2 of Art. 83, and it must be recorded prior to the publication which it requires.

This disposition shall not rule in the case of the amortization of paidin shares or when carried out with profits or free reserves.

Art. 205. Reduction by Losses: Requirements

The extraordinary general meeting may resolve the reduction of capital by reason of losses suffered by the company, in order to reestablish the equilibrium between the capital and capital stock.

Art. 206. Compulsory Reduction

Reduction is compulsory when the losses amount to the reserves and 50% of the capital.

### 3. STOCKS

Art. 207. Equal Value

Shares shall always be of equal value and expressed in Argentine currency.

Diverse Classes of Stocks The bylaws may promise diverse classes of stocks with different rights; within each kind the same rights shall confer. Any disposition to the contrary shall be null and void.

Art. 208. Form of the Certificates

The certificates may represent one or more shares and they may be bearer or nominative; in the latter case, they may be endorsable or not.

Global Certificates Companies authorized for a public offering may issue global certificates of their paidin shares, with the requirements of Arts. 211 and 212, for their recording in collective deposit systems. For such purpose, they shall be considered final, negotiable and divisible.

Quoted Certificates Companies must issue representative titles of their shares in the amounts and proportions that are established by the stock exchange regulations where they were quoted.

Provisional Certificates As long as the shares are not fully paidin, only provisional nominative certificates shall be issued.

Once paid in, the interested parties may request their registration in the accounts of registered shares or the handing over of the final bearer certificates, if the bylaws do not provide otherwise.

Until this delivery is fulfilled, the provisional certificate shall be considered final, negotiable and divisible.

**Recorded Shares** The bylaws may authorize that all shares or some of them, not be represented in titles. In this case, they must be recorded in accounts kept by their holders by the issuing company in a register of recorded shares to which Art. 213 shall be applied as pertinent or by Commercial or investment banks, or in authorized safe deposit boxes.

The quality of the stockholder is presumed by the vouchers of open accounts in the register of the recorded shares. In all cases the company shall be liable before all stockholders for errors or irregularities on their accounts, without prejudice to the liability of the bank or safe deposit box before the company, as the case may be.

The company, banking institution or safe deposit box, must grant the stockholder a voucher of the opening of his account and all movement recorded in it. Every stockholder also has the right to receive, at any time, evidence of the balance in his accounts, at his expense.

**Art. 209. Indivisibility Joint Ownership Representative**  
Shares are indivisible.

If there is joint ownership, joint ownership rules shall be applied. The company may demand the unification of the representative in order to exercise the right and fulfill the company obligations.

**Art. 210. Assignment: Guarantee of Successive Members Effects of Payments by a Member**

A member who has not completed paying in his shares, shall be unlimitedly, jointly and severally liable for the payments owed by the assignees. A member who makes any payment shall be a joint owner of the shares assigned with proportion to that paid.

**Art. 211. Formalities Essential Details**

The company bylaws shall establish the formalities of the shares and provisional certificates.

Mention of the following is essential:

1. Trade of the company, domicile, date and place of constitution, duration and registration;



2. Capital stock;
3. The number, face value and type of share which the title represents and the rights it conveys;
4. In provisional certificates, the annotation of that which has been paidin.

Variations of the preceding items, except those relative to the capital, must be included in the certificates.

#### Art. 212. Numeration

The titles and shares represented shall be organized in correlative numeration.

Signature: Its Replacement They shall be subscribed by a signature of someone no less than a director or auditor. The controlling authority may authorize, in each case, its replacement by a stamp which guarantees the authenticity of the titles and the companies shall inscribe a facsimile of these in their files.

Coupons The coupons may be endorsed to the bearer even in the case of nominative shares.

#### Art. 213. Register Book of Shares

A register book of shares shall be kept with the formalities of commercial books, to be freely consulted by the stockholder, in which the following shall be entered:

1. Kinds of shares, and rights and obligations they entail;
2. Statement of paidin capital, indicating the name of the subscriber;
3. If they are made out to the bearer, their numbers; if they are nominative, the successive transfers with detail of the dates and identification of the purchasers;
4. The real rights encumbered in nominative shares;
5. The conversion of certificates, with the information corresponding to new ones;
6. Any other item which derives a judicial situation of shares and its modifications.

#### Art. 214. Transferability

The transfer of shares shall be open.

The bylaws may limit the transferability of nominative or recorded shares, provided that they may import the prohibition of their transfer.

The limitation must be shown in the title or on the recording on account, its vouchers and respective statements.

#### Art. 215. Nominative and Recorded Shares Transfer

The transfer of nominative or recorded shares and the real rights they convey, must be notified in writing to the issuing company or institution that keeps the register and records it in the corresponding book or account. It shall be effective against the company and third parties from its recording.

In the case of recorded shares, the issuing company or institution that keeps the register, shall circulate a notice to the holder of the account in which a debit is made due to the transfer of shares, within 10 days of its recording, in the domicile where it was constituted; in companies subject to public offering of shares, the authority of the controller may regulate other measures of informing the members.

Endorsable shares are transferred by an uninterrupted chain of endorsements and for the execution of his rights, the endorser shall request their register.

#### Art. 216. Common Stocks: Voting Rights

Every common stock gives the right of one vote. The bylaws may create classes which recognize up to 5 votes for common stocks. The voting privilege is incompatible with preferential ownership.

Stocks with privileged voting may not be issued after the company has been authorized to make a public offering of their stocks.

#### Art. 217. Preferred Stock Voting Rights

The stocks with owner preference may lack votes, except for the matters included in the fourth paragraph of Art. 244, without prejudice to his right of assisting in the voice assemblies.

They shall have the voting right during the time they are found in delay of receiving the benefits which constitute their preference.

They shall also have voting rights if they are quoted on the stock exchange and if such quotation was suspended or withdrawn for any cause as long as the situation lasts.

#### Art. 218. Usufruct of Stocks Usufruct Right

The associate shall be considered as the actual owner.

The usufructuary has the right of receiving the profits obtained during usufruct. This right shall not include profits passed on to reserves or capitalized, but it shall include those corresponding to stocks engaged by the capitalization.

**Successive Usufructuaries** The dividend shall be received by the holder of the title at the time of payment; if there are several usufructuaries they shall be distributed at pro rata for the duration of their rights.

**Rights of Actual Owner** The exercise of the other rights derived from being an associate, including participation in the results of liquidation, shall belong to the actual owner, unless otherwise agreed by the legal usufruct.

**Stocks not Paid In** When stocks are not totally paid up, the usufructuary, in order to keep his rights, must make the corresponding payments, without prejudice to repeating those of the actual owner.

#### Art. 219. Common Pledge Attachment

In the case of the constitution of a pledge or judicial lien, the rights correspond to the owner of the stocks.

**Creditor's Obligations** In such situations, the bearer of the real right or lien is obligated to facilitate the exercise of ownership rights by means of the deposit of the stocks or by any other procedure which guarantees his rights. The owner shall support the expenses resulting.

#### Art. 220. Purchase of his Stocks by the Company

The company may purchase the stocks it issued, only under the following conditions:

1. In order to cancel them, with prior agreement to reduce the capital;
2. Exceptionally, with net gains or free reserves, when they are completely paid in, and in order to avoid serious damages, which shall be justified in the next ordinary general meeting;
3. By paying up the credit of an establishment which it purchased or of a company which it incorporated.

#### Art. 221. Purchased Stocks not Cancelled Sale

The board of directors shall sell the purchased stocks in items 2 and 3 of the previous article, within the term of one year; unless it is extended by the general meeting. The preferential right provided in Art. 194 shall be applied.

Suspension of Rights The rights corresponding to those stocks shall remain suspended until their sale; if they shall not be calculated for the determination of the quorum or the majority.

Art. 222. Stocks in Guarantee: Prohibition

The company shall not receive stocks in guarantee.

Art. 223. Amortization of Stocks

The bylaws may authorize the total or partial amortization of paidup stocks, with realized and net profits, under the following conditions:

1. Prior resolution of the general meeting which establishes the just price and assures the equality of the stockholders;
2. When it is made by drawing, it shall be practiced before the authority of the controller or register notary, its result shall be published and it shall be inscribed in the register;
3. If the stocks are redeemable in shares, it shall be adjusted in the title or in the accounts of recorded shares. If the amortization is total, it shall be annulled, replacing it by jouissance bonds or registrations in accounts with the same purpose.

Art. 224. Distribution of Dividends Payment of Interest

The distribution of dividends or the payment of interest to the stockholders are legal only if they are derived from net or liquid profits corresponding to a balance sheet of the fiscal year which is regularly arranged and approved.

Anticipated Dividends It shall be forbidden to distribute interest or dividends in advance or to distribute provisional dividends or interest or that resulting from special balance sheets, except in companies included in art. 299.

In all these cases the directors, members of the supervisory board and auditors are unlimitedly, jointly and severally liable for such payments and distributions.

Art. 225. Dividend Repetition

Dividends received in good faith shall not be repeatable.

Art. 226. Securities: Rules

Norms concerning securities shall be applied when they are not modified by this law.

4. BONDS

Art. 227. Characters Regulations

Corporations may issue jouissance and participation bonds. They shall be regulated by the bylaws in accordance with the norms of this title, under sanction of nullity.

**Art. 228. Jouissance Bonds**

Jouissance bonds shall be issued totally amortized in favor of the bearer of stocks. They give the right of participating in the profits, and, in the case of dissolution, in that produced by liquidation, after the reimbursement of the face value of stocks not amortized. They shall additionally enjoy the rights which the bylaws expressly recognize.

**Art. 229. Bonds of Participation**

Bonds of participation may be issued for benefits which are not contributed by capital. They only give the right of participating in the profits of the fiscal year.

**Art. 230. Bonds of Participation for the Personnel**

Bonds of participation may also be awarded to the personnel of the company. Profits corresponding to them shall be calculated as expenses.

They are nontransferable and they expire with the labor relations, whatever the cause may be.

**Art. 231. Due Date**

The participation shall be credited at the same time as the dividend.

**Art. 232. Modifications of the Issuing Conditions**

Modifications of the conditions of bonds requires the approval of the holders of the absolute majority of bonds of that respective kind, expressed in a meeting summoned by the company for that purpose. The summons shall be carried out by the procedures established in Art. 237. Approval for the modification referring to the number of bonds shall not be required of the case is that provided in Arts. 228 and 230.

**5. STOCKHOLDERS' MEETINGS**

**Art. 233. Jurisdiction**

The general meetings shall have exclusive jurisdiction for handling the cases included in Arts. 234 and 235.

**Place of General meeting** They must assemble in the headquarters or a place which corresponds to the jurisdiction of the company's domicile.

**Binding Value of Their Decisions Fulfillment** Their resolutions in accordance with the law and bylaws, are compulsory for all stockholders except in the case provided in Art. 245, and they must be fulfilled by the board of directors.

**Art. 234. Ordinary Meeting**

The following matters shall be considered and resolved at an ordinary meeting:

1. General balance sheet, earnings statement, distribution of profits, the minutes and report of the auditors and any other relative measures for the management of the company which they must resolve in accordance with the law and bylaws or that they submit it for the decision of the board of directors, supervisory board or the auditors;
2. Appointment and removal of directors and auditors and members of the supervisory board and establishment of their remuneration;
3. Liability of the directors and auditors and members of the supervisory board;
4. Capital increase according to Art. 188.

In order to consider items 1 and 2, it shall be summoned within 4 months of the closure of the fiscal year.

#### Art. 235. Extraordinary Meeting

The extraordinary meeting shall consider all the matters that are not in the jurisdiction of the ordinary meeting, the amendment of the bylaws and especially:

1. Increase of capital, except that which is provided by Art. 188. The issue date and the manner and conditions of payment may only be delegate by the board of directors;
2. Reduction and refunding of the capital;
3. Redemption, reimbursement and amortization of stocks;
4. Merger, transformation and dissolution of the company; nomination, removal and payment of the liquidators; spinoff; consideration of the accounts and other matters related to their management of the company liquidation, which must be the purpose of final approval;
5. Limitation or suspension of the preferential right in the subscription of new stocks in accordance with Art. 197;
6. Issue of debentures and their conversion into stocks;
7. Issue of bonds.

#### Art. 236. Summons: Opportunity Period

Extraordinary and ordinary meetings shall be summoned by the board of directors or the auditors in the cases provided by the law, or when any of them deem it necessary or when requested by stockholders which represent at least 5% of the capital stock, if the bylaws do not establish a smaller representation. In the latter case, the petition shall indicate the subject to be dealt with and the board of directors or the auditors shall summon the

general meeting so that it will be held in a maximum period of 10 days after receipt of the request.

If the board of directors or the auditors omit the summons, it may be made by the authority of the controller or judicially.

#### Art 237. Summons Form

General meetings shall be summoned by publication for 5 days, 10 days in advance, with a minimum not exceeding 30 days, in the journal of legal publications. Additionally, for the companies to which Art. 299 refers, in one of the papers of major general circulation in the Republic. Mentioned in the journal must be the nature of the general meeting, date, time and place to be held, agenda and special matters demanded by the bylaws for the general meeting of the shareholders.

**General Meeting on Second Summons** The general meeting on the second summons, due to the failure of the first, must be held within the following 30 days, and the publications shall be made for 3 days with a minimum of 8 days in advance. The bylaws may authorize both summons simultaneously, except for those companies which make a public offering of their stocks, in which case this authority is limited to the ordinary meeting.

In the case of simultaneous summons, if the general meeting was cited for its execution on the same day, it must be with an interval of no less than 1 hour of that time established for the first meeting.

**Unanimous Meeting** The general meeting may be executed without publication of the summons when the stockholders who represent the entire capital stock assemble, and the decisions are adopted unanimously by the stockholders with the right to vote.

#### Art. 238. Deposit of Stocks

In order to attend the general meetings, the stockholders must deposit with the company their stocks or a certificate of deposit or voucher of the accounts of notarized shares drawn up for that purpose by a bank, securities exchange or any other authorized institution, for their registration in the book of general meeting attendance, no less than 3 working days in advance of the date established. The company shall deliver the necessary receipts, which shall suffice for admission to the general meeting.

**Communication of Attendance** The holder of the nominative or recorded stocks whose register is kept by the same company, are excluded from the obligation of depositing their stocks or presenting certificates or vouchers, but they are recorded in the attendance book within the same term.

Attendance Book The stockholders or their representatives that assist in the general meeting shall sign the attendance book in which they shall leave evidence of their domiciles, identity documents and number of corresponding votes.

Certificates Stocks shall not be disposed of until after the general meeting has met, except in the case of cancellation of deposit. The person who, without being a stockholder, invokes the rights that concern a certificate or voucher that attributes such position, shall be liable for damages and losses caused to the issuing company, members and third parties; the indemnification in no case shall be less than the time of summons of the general meeting. Banks or other authorized institutions shall respond to the existence of stocks before the issuing companies, members or third parties, to the extent of the losses actually caused.

When the certificates of deposit or the vouchers of the accounts of recorded stocks do not specify their numeration or that of the titles, in the case of the latter, the authority of the controller may, by established petition of any stockholder, request from the depositor or institution in charge of keeping the register, the verification of the existence of stocks.

#### Art. 239. Acting by Mandate

Stockholders may be represented in the assemblies. The directors, auditors and members of the supervisory board, managers and the remaining employees of the company shall not be mandates.

The appointing of the mandate by a private document, with the signature certified by a judge, notary or bank, shall be sufficient unless otherwise provided by the bylaws.

#### Art. 240. Intervention of Directors, Auditors and Managers

The directors, auditors and general managers have the right and obligation of assisting in voice at all assemblies. They shall only have a vote as applies to them as stockholders, with the limitations established in this section.

Any clause to the contrary is null and void.

#### Art. 241. Disqualification of Voting

The directors, auditors, members of the supervisory board and general managers, shall not vote in decisions pertaining to the approval of their acts of management. They shall also not vote in the resolutions pertaining to their liability or removal with cause.

#### Art. 242. Presiding over Meetings



Meetings shall be presided over by the president of the board of directors or his deputy, unless otherwise provided by the bylaws; and in default, by the person appointed by the general meeting.

General meeting Judicially Summoned or by the Authority of the Controller When the general meeting is summoned by the court, or authority of the controller, it shall be presided by the official they appoint.

#### Art. 243. Ordinary Meeting Quorum

The constitution of the ordinary meeting on the first summons, requires the presence of the stockholders representing the majority of stocks with voting rights.

Second Summons On the second summons, the general meeting shall be considered to be constituted with any number of shares present.

Majority Resolutions in both cases shall be taken by an absolute majority of the votes present which can be issued in the respective decision, except when the bylaws demands a larger number.

#### Art. 244. Extraordinary Meeting Quorum

If the bylaws do not demand a higher quorum, the extraordinary meeting shall convene on the first summons with the presence of stockholders representing 60% of the stocks with voting rights.

Second Summons In the second summons, the attendance of stockholders representing 30% of the shares with voting rights shall be required, unless the bylaws establishes a quarter or lesser quorum.

Majority Resolutions in both cases shall be taken by the absolute majority of the votes present which can be issued in the respective decision, except when the bylaws demand a greater number.

Special Cases In the case of transformation, extension or renewal of a company, the resolutions shall be adopted by the favorable vote of the majority of the shares with voting rights, without applying the plurality of the vote, except in the companies making a public offering or quotation of their stocks; of the anticipated dissolution of the company; transfer of the domicile abroad; fundamental change of the purpose and total or partial reimbursement of capital, in as much as in the first and second summons. This disposition shall be applied in order to decide the spinoff or merger, except in the incorporating company which shall follow the regulations on capital increase.

#### Art. 245. Right of Separation

Stockholders discontent with the modifications included in the last paragraph of the previous article, except in the case of anticipated dissolution and in that of the shareholders of a company incorporated in merger or spinoff, may be separated from the company with the reimbursement of the value of their shares. They may also be separated in the measures of capital increase decided upon by the extraordinary meeting, which imply disbursement for the member, of voluntary withdrawal from public offering or quotation of the shares, and the continuation of the company under the provision of item 9 of Art. 94.

**Limitation of Public Offering** In companies which make a public offering of their stocks or who are authorized for their quotation, the stockholders shall not exercise the right of separation in cases of merger or spinoff, if the stocks which they must receive as their consequence were admitted to public offering or for quotation, according to the case. They may exercise their right if the registration under such systems was relinquished or rejected.

**Holders** Without prejudice to that which is provided by Art. 244 for the determination of majority, the right of separation may only be exercised by the stockholders present who voted against the decision, within 5 days, and by those absent who are stockholders at the time of the meeting, within 15 days of its closure. In the cases referred to by the previous paragraph, the term shall be counted from the time the company communicates the rejection or relinquishment by means of notices for 3 days in a legal publications paper and in one which has major circulation in the Republic.

**Expiration** The right of separation and the resulting stocks shall expire if the resolution which originates it is revoked by the general meeting within 60 days of expiration of the term for its execution by those absent; in this case, the withdrawn parties shall reacquire without further exercise of their rights, making those of patrimonial nature retroactive to the moment in which they gave notice of their separation.

**Fixing of Value** Stocks shall be reimbursed for the value resulting from the last balance sheet drawn up or which must be drawn up to fulfill legal rules or regulations. Their amount must be paid within a year of the closing of the general meeting which originated the separation, except in cases of voluntary retirement, desisting or rejection of the public offering or quotation or of the continuation of the company in that provided by item 9 of Art. 94, in which it must be paid within 60 days from the closure of the general meeting or from the publishing the abdication, rejection or approval of voluntary retirement.

The value of the debt shall be adjusted to the date of the payment.

Nullity Any disposition which excludes the right of separation or complicates the conditions of its exercise shall be null and void.

Art. 246. Agenda: Effects

Any decision concerning matters other than those included in the agenda shall be null except:

1. If the entire capital stock is represented and the decision is adopted unanimously by the stocks with voting rights;
2. The exceptions expressly authorized in this title;
3. The election of those in charge of subscribing the act.

Art. 247. Fourth Intermission

The general meeting may pass on the fourth intermission at once, with the purpose of continuing it within the following 30 days. Stockholders who fulfilled that which is provided in Art. 238, may only participate in the second general meeting. The minutes of each general meeting shall be drawn up.

Art. 248. Stockholders with Interest Other than the Company's

A stockholder or his representative who in a certain transaction, for his own account or another's, has an interest other than that of the company's, has the obligation of refraining from voting in the matters related to it.

If he should violate this disposition, he shall be liable for damages and losses caused, when, without his vote, the necessary majority for a valid decision, would not be attained.

Art. 249. Minutes: Content

The minutes drawn up in accordance with Art. 73, must summarize the declarations made in its deliberations, forms or voting, resulting in a complete expression of the decision.

Copies of the Minutes Any stockholder may request, at his expense, a signed copy of the minutes.

Art. 250. Special Assemblies

When the general meeting must adopt resolutions which affect the right of a certain type of share, the consent or ratification of the class shall be required, which shall be rendered in a special general meeting regulated by the norms of the ordinary meeting.

Art. 251. Objection to the Decision of the General Meeting – Certificate Holders

Any resolution of the general meeting adopted in violation of the law, bylaws or regulation may be objected by nullity by the stockholders who did not vote for the decision and by those persons absent who are stockholders on the date of the objected

decision. Stockholders voting favorably, may object to the decision if their vote is annulled by defect of consent.

Directors, auditors and members of the advisory board or the authority of the controller, may also object to the decision.

**Bringing the Suit** The suit shall be brought against the company before the court in its domicile within 3 months of the closure of the meeting.

#### Art. 252. Preventive Suspension of the Execution

By petition of the party, with sufficient guarantee of liability for the damages which could be caused to the company, the court may suspend the execution of the objected resolution if there should exist serious reasons and it does not cause prejudice to third parties.

#### Art. 253. Substantiation of Cause Accumulation of Stock

Besides the precautionary measure referred to by the previous article, judgment shall only follow the expiration of the item mentioned in Art. 251. When a plurality of stocks exist they shall be added together, in which the board of directors shall be obligated to show, in each file, the existence of the others.

**Representation** When a suit is intended by the majority of directors or of members of the supervisory board, the stockholders that voted in favor shall designate, by a majority, an ad hoc representative, in a meeting summoned for that purpose in accordance with Art. 250. If the majority is not reached, the representative shall be appointed from among them by the court.

#### Art. 254. Liability of Stockholders

The stockholders who voted in favor of the resolutions declared null and void, shall be unlimitedly, jointly and severally liable for their consequences, without prejudice to the liability which applies to the directors, auditors and members of the supervisory board.

**Revocation of the Impugned Agreement** A later meeting may revoke the impugned agreement. This resolution shall be effective from that time and the objection process shall not continue. The liability for the produced effects or their direct consequence shall still exist.

## 6. ADMINISTRATION AND REPRESENTATION

#### Art. 255. Board of Directors Compensation: Election

The administration is in charge of a board of directors composed of one or more directors appointed by the meeting of stockholders or the advisory board, as the case may be. In the corporations of Art. 299, it shall be composed of at least 3 directors.

If the meeting of stockholders is authorized to determine the number of directors, the by-laws shall specify a maximum and minimum number allowed.

#### Art. 256. Conditions

The director shall be reelectable and his nomination revocable only by the meeting, including the case mentioned in section (d) of Art. 281. The position of stockholders shall not be obligatory.

The bylaws shall establish the guarantee which he must render.

The bylaws may not cancel or restrict the revocability of that position.

**Domicile of the Directors** The absolute majority of the directors must have their real domicile in the Republic.

All the directors must constitute a special domicile in the Republic, where notifications shall validate that they effect them for the purpose of carrying out their functions, including those related to the liability suit.

#### Art. 257. Duration

The bylaws shall determine the term for which he is elected, which shall not exceed 3 fiscal years, except insofar as provided by section (d) of Art. 281. Notwithstanding, the director shall remain in his position until he has been replaced.

**Silence of the ByLaws** In the case of silence of the bylaws, it shall be understood that the term provided is the maximum authorized.

#### Art. 258. Replacement of the Directors

The bylaws may establish the election of substitutes for compensating the lack of directors whatever the cause may be. This provision shall be obligatory in the companies which dispense without receivership.

In the case of vacancy, the auditors shall appoint the replacement until the meeting of the next meeting, if the bylaws do not provide another kind of replacement.

#### Art. 259. Resignation of Directors

The board of directors must accept the director's resignation in the first meeting executed after his presentation as long as it shall not affect his regular performance and it is not fraudulent or without due notice, which shall then be included in the relevant minutes of

the meeting. If this is not done, the resigning party must continue his function until the next meeting has been announced.

Art. 260. Performance

The bylaws must regulate the constitution and performance of the board of directors. The quorum shall not be less than the absolute majority of its members.

Art. 261. Compensation

The bylaws may establish the compensation of the board of directors and the supervisory board; in its absence, the meeting or supervisory board, as the case may be, shall establish it.

The maximum amount of fees which, by any concept, the members of the board of directors and supervisory board, if such it the case, may receive including salaries and other compensations for the execution of technical administrative functions of permanent character, shall not exceed 25% of the profits.

The maximum amount of fees shall be limited to 5% when the dividends have not been distributed to the stockholders, and it shall be incremented proportionally to the distribution, until it reaches the limit when the entire profits are distributed. For the purposes of the application of this disposition, the reduction in the distribution of dividends resulting from the deduction of the fees of the board of directors and the supervisory board shall not be taken into account.

When the execution of special commissions or technical administrative functions on the part of one or more of the directors, facing the reduction or nonexistence of profits shall impose the need for exceeding the preestablished limits, the compensation in excess may only be effective if it were expressly agreed upon by the stockholders' meeting, by which effect it must be included in the matter as one of the items of the agenda.

Art. 262. Election by Category

When there exist different kinds of stocks, the bylaws may allow that each one of them shall elect one or more directors, for which purpose the election shall be regulated.

Removal The removal shall be made by the meeting of stockholders of that class, except in the cases of Arts. 264 and 276.

Art. 263. Election by Accumulation of Votes

Stockholders have the right of electing up to onethird of the vacancies of the board of directors by the system of vote accumulation.

The bylaws shall not revoke this right or regulate it in any manner that makes its execution more difficult; but excluded is that which is provided in Art. 262.

The board of directors shall not be partially or gradually renewed, if such impedes carrying out the accumulative vote.

Procedure The following shall be followed for its execution:

1. The stockholder or stockholders who wish to vote cumulatively must notify the company 3 working days in advance of the meeting of the meeting, individualizing the stocks with which the right shall be exercised and, if they are made out to the bearer, depositing the titles, certificates or vouchers from the bank or the authorized institution. After fulfilling these requirements, they shall be able to vote by accumulative vote;
2. The company must inform stockholders who so request, any information relative to notifications received. Without prejudice to it, the president of the meeting must inform the stockholders present that they shall be authorized for voting cumulatively, even if they have not drawn up the notification;
3. Before the voting, the number of votes corresponding to each stockholder shall be publicly and circumstantially announced;
4. Every stockholder voting cumulatively shall have a number of votes equal to the result of multiplying those votes that would normally correspond to him by the number of directors to be elected. He may distribute or accumulate them in a number of candidates which shall not exceed onethird of the vacancies to be filled;
5. The stockholders who vote for the ordinary or plural system and those voting cumulatively, shall compete in the election of onethird of the vacancies to be filled, applying the ordinary or plural voting system to the remaining twothirds. Stockholders who do not vote cumulatively shall do so for all of the vacancies to be covered, granting all of the votes that correspond to them to each one of the candidates in accordance with their voting shares;
6. No stockholder may vote dividing for that purpose his stocks part cumulatively and part in an ordinary or plural form;
7. All stockholders may vary the voting procedure or system before the emission of the vote, including those who notified their will of voting cumulatively and had fulfilled the requirements for that purpose;
8. The voting results shall be calculated per person. Those candidates voted on by the ordinary or plural system shall be considered elected only if they gather the absolute majority of votes present; and those candidates voted on cumulatively which obtain a

major number of votes, surpassing those obtained by the ordinary system, until completing onethird of the vacancies;

9. In the case of a tie between two or more candidates voted on by the same system, a new vote shall be called in which only those stockholders which chose that system shall participate. In the case of a tie between candidates voted on cumulatively, in the new election those stockholders who within the system had already obtained the election of their nominees shall not vote.

#### Art. 264. Prohibitions and Incompatibilities for Being Director

The following shall not be directors or managers:

1. Those persons who cannot carry on trade;
2. Those persons who are guilty of fraudulent bankruptcy until 10 years after their discharge, those who are in fortuitous bankruptcy or those in composition until 5 years after their discharge; directors or administrators of a company whose conduct is culpable or fraudulent until 10 years after their discharge;
3. Convicted persons who as a result of the conviction are unable to hold a public position; those convicted of robbery, theft, fraud, bribery, issuance of checks without funds and felonies against the public trust; those convicted of felonies committed in the constitution, functioning and liquidation of companies. In every case until 10 years after the sentence has been served;
4. The officials of public administration whose performance is related to the purpose of the company, until after 2 years of the end of his office.

#### Art. 265. Removal of the Disabled

The board of directors, or in its absence, the auditors, by their own initiative or by a petition established by a stockholder, must summon an ordinary meeting for the removal of the director or manager included in Art. 264, which shall be exercised within 40 days of its request. If the removal is denied, any stockholder, director or auditor may request it judicially.

#### Art. 266. Personal Character of the Position

The position of director is personal and shall not be delegated.

Directors may not vote by mail, but in the case of their absence, they may authorize another director to do it in their name, if quorum exists. The liability shall be of those directors present.

#### Art. 267. Board of Directors: Meetings: Summons

The board of directors shall meet at least once every 3 months, unless the bylaws demand a greater number of meetings, without prejudice to those which could be held by any



director's request. The summons shall be made, in this last case, by the president in order to meet within 5 days of receiving the request. In its absence, any of the directors may summon the meeting.

The summons must indicate the topics to be dealt with.

#### Art. 268. Company Representation

The representation of the company corresponds to the president of the board of directors. The bylaws may authorize the performance of one or more directors. In both cases, Art. 58 shall apply.

#### Art. 269. Board of Directors Executive Committee

The bylaws may organize an executive committee made up of the directors who are only in charge of the management of ordinary business. The board of directors shall watch over the action of that executive committee and shall exercise the additional legal and statutory attributions which apply.

Liability This organization shall not modify the obligations and liabilities of directors.

#### Art. 270. Managers

The board of directors may appoint general or special managers, whether they are directors or not, freely revocable, to which they may delegate the executive functions of the administration. They shall be liable before the company and third parties for carrying out their position to the same extent and form as the directors shall be. Their appointment shall not exclude the liability of directors.

#### Art. 271. Prohibition of Contracting with the Company

The director may execute with the company the contracts that are of the acting in which it operates as long as they adjust to the market conditions.

The contracts which do not meet the requirements of the preceding paragraph may only be executed with prior approval from the board of directors, or of the board of auditors, if a quorum should not exist. These operations must be announced to the meeting.

If the meeting should disapprove of the contracts executed, the directors or auditors, as the case may be, shall be jointly and severally liable for damages and losses caused to the company.

Contracts executed in violation of that which is provided in the second paragraph, and which were not ratified by the meeting, shall be null and void, without prejudice to the liability provided in the third paragraph.

Art. 272. Contrary Interest

If the director should have an interest other than that of the company's, he shall make it known to the board of directors and auditors and abstain from intervening in the advisement, under penalty of incurring the liability mentioned in Art. 59.

Art. 273. Competitive Activities

A director shall not participate, for his own account or for third parties, in activities which compete with the company, except by express authorization from the general meeting, under penalty of incurring the liability of Art. 69.

Art. 274. Bad Performance of the Position

Directors are unlimitedly, jointly and severally liable towards the company, stockholders and third parties for bad performance of their office, according to the criteria of Art. 59, as well as for violating the law, bylaws or regulations and for any other damage produced by fraud, abuse of authority or serious guilt.

Without prejudice to that provided in the previous paragraph, the imputation of liability shall be made attending to the individual action when they were assigned personal functions according to that established in the bylaws, regulation or decision of the general meeting. The decision of the general meeting and the appointment of persons that shall carry out certain functions must be recorded in the Public Commercial Register as a requirement for the application of that which is provided in this paragraph.

Exemption from Liability Exempted from liability shall be a director who participated in the advisement or resolution or who recognized it, if he leaves written evidence of his protest and notifies the auditor before his liability is reported to the board of directors, auditors, general meeting, competent authority or before judicial action is exercised.

Art. 275. Annulment of Liability

The liability of the company's directors and managers shall be annulled by approval of their management or by express resignation or transaction, or, if it is resolved by the general meeting, if that liability is not in violation of the law, bylaws or regulation and if it does not mediate opposition of at least 5% of capital stock. The extinction shall be inefficacious in case of coactive or compulsory liquidation.

Art. 276. Company Liability Action Condition, Purposes, Expenses

A company liability action against directors, shall be the right of the company after resolution of the shareholders' meeting. It may be adopted even if it was not included in the agenda if it was the direct consequence of the resolution of matters included in the general meeting. The resolution shall effectively remove the affected director or directors and shall obligate their replacement.

This action may also be exercised by the stockholders who made the opposition provided in Art. 275.

Art. 277. Liability Action: Stockholders Authority

If the action provided in the first paragraph of Art. 276 was not initiated within the term of 3 months, as from the date of the agreement, any stockholder may bring it, without prejudice to the liability resulting from not fulfilling the ordered measure.

Art. 278. Liability Action Bankruptcy

In the case of company bankruptcy, the liability action may be exercised by the representative of the creditors, and, in his absence, shall be exercised by the creditors individually.

Art. 279. Individual Liability Action

Stockholders and third parties shall always have the right to individual suits against the directors.

## 7. SUPERVISORY BOARDS

Art. 280. Regulations

The bylaws may organize a supervisory board, made up of from 3 to 15 stockholders appointed by the general meeting in accordance with Arts. 262 of 263, reelectable and freely revocable. When the bylaws provide for a supervisory board, Arts. 262 and 263 shall not apply in the election of directors if these must be elected by it.

Applicable Rules Arts. 234, section 2; 241; 257; first paragraph of 258; 259; 261; 264; 267; 269; 273; 279; 286 and 305 shall apply. Art. 60 shall also be applied. When these provisions make a reference to the director or board of directors, it shall be understood to mean advisor or advisory board.

Art. 281. Organization

The bylaws shall regulate the organization and performance of the advisory board.

Attributions and Duties The functions of the advisory board shall be:

(a) the controlling of the management of the board of directors. It may examine the company accounting, company assets, audit the cash register, either directly or by an appointed expert; obtain reports concerning contracts executed or in process of execution, even when they do not exceed the attributions of the board of directors. The board of directors shall, at least quarterly, present to the advisory board a written report concerning the management of the company;

(b) It shall summon an general meeting whenever it deems it necessary or whenever the stockholders request it in accordance with Art. 236;

(c) Without prejudice to the application of Art. 58, the bylaws may provide that certain classes of transactions or contracts shall not be executed without its approval. Should this be denied, the board of directors may submit it to the decision of the general meeting;

(d) The election of the members of the board of directors, when the bylaws establish it, without prejudice of its revocability by the general meeting. In this case, the compensation shall be established and the duration in that position may be extended to 5 years;

(e) Present to the general meeting the minutes of the board of directors and accounting statements submitted for their consideration;

(f) Appoint one or more commissions for investigating or examining matters or reports from the stockholders or for matching the execution of their decisions;

(g) The remaining functions and authorities attributed in this law to auditors.

Art. 282. Dissenting Advisors.

No less than one-third of dissenting advisors, may summon the general meeting of stockholders so that it recognizes and decides the matter that motivates their dissension.

Art. 283. Advisory Board May Prescind Board of Auditors

When the bylaws organize the advisory board, they may prescind the board of auditors provided in the Arts. 284 et seq. In such case, the board of auditors shall be replaced by an annual audit, contracted by the advisory board and their report of the accounting statements shall be submitted to the general meeting, without prejudice to the measures that the board may adopt.

## 8. PRIVATE CONTROL

Art. 284. Appointment of Auditors

One or more auditors shall be appointed by the shareholders' meeting. An equal number of deputy auditors shall also be elected.

When the company is included in Art. 299 except section 2 the board of auditors must have an odd number of members.

Each share shall give the right, in all cases, to one vote for the election and removal of the auditors without prejudice to the application of Art. 288.

Any other clause is null and void.

Prescinding The companies not included in any of the provisions to which Art. 299 refers, may prescind the board of auditors when it has been provided by the bylaws. In such a case the members shall possess the right of the controller awarded by Art. 55. When, due to capital increase, the amount indicated by the general meeting should be exceeded, the general meeting that resolved it must appoint the auditor without the necessary reform of the bylaws.

#### Art. 285. Requirements

In order to be an auditor, one must be:

1. A lawyer or public accountant, with a qualified title, or a civil partnership with several liability constituted exclusively by these professionals;
2. Have a real domicile in the state.

#### Art. 286. Incompetence and Incompatibilities

The following shall not be auditors:

1. Those persons found incompetent for being directors, in accordance with Art. 264;
2. The directors, managers and employees of the same company or a controlling or controlled company;
3. Spouses, relatives in straight lineal consanguinity, or collateral relatives up to and including the fourth degree, and those related to spouses of the directors and general managers.

#### Art. 287. Term

The bylaws shall determine the term for which they shall be elected for that position, which shall not exceed 3 fiscal years; notwithstanding, they shall remain in that position until they have been replaced. They may be reelected.

Revocability Their appointment shall be revocable only by a stockholders' general meeting, which may be provided without any cause as long as there is no objection from 5% of the capital stock.

Any clause other than those provided by this article shall be null and void.

#### Art. 288. Election by Classes

If there should exist different classes of shares, the bylaws may authorize to each one of them the corresponding election of one or more auditors and an equal number of alternates and they shall regulate the election.

The removal shall be decided by the stockholders' general meeting from that class, except in the case of articles 286 and 296.

**Art. 289. Election by Accumulative Vote**

Stockholders may exercise the right recognized by Art. 263 in the conditions established.

**Art. 290. Board of Auditors Auditing Committee**

When the board of auditors is plural, it shall act as a corporate body and shall be called "auditing committee". The bylaws shall regulate its constitution and function. It shall keep a minutes book. A dissenting auditor shall have the right, attributions and duties of Art. 294.

**Art. 291. Vacancy: Replacement**

In the case of a temporary or final vacancy, or the taking place of grounds for disability of that position, the auditor shall be replaced by the corresponding alternate.

If the performance of the alternate is not possible, the board of directors shall immediately summon a general meeting or of the class, with the purpose of making appointments until the period is over.

Having produced a cause of encumbrance during the performance of his position, an auditor must immediately cease his activities and inform the board of directors within the term of 10 days.

**Art. 292. Compensation**

The function of an auditor shall be remunerative. If the compensation was not established by the bylaws, it shall be done by the general meeting.

**Art. 293. Position not to be delegated**

The position of auditor is personal and may not be delegated.

**Art. 294. Attributions and Duties**

The following are attributions and duties of the auditor, without prejudice to the others determined by the law and included in the bylaws.

1. Control of the administration of the company, for the purpose of examining the books and documents whenever he thinks it to be necessary, and at least once every 3 months;
2. Verify in the same manner and time period the availability and securities, as well as their obligations and their fulfillment; in the same manner he may request the arrangement of verifying balance sheets;

3. Assist with voice, but without vote, the meetings of the board of directors, executive committee and assemblies, to which he must be called to all of them;
4. Control the constitution and performance of the directors' guarantee and obtain all the necessary methods for correcting any irregularity;
5. Present to the ordinary general meeting a written and established report on the economic and financial situation of the company, passing judgment on the minutes, inventory, balance sheet and earnings statement;
6. Provide for the stockholders who do not represent no less than 2% of the capital, at any moment, that they may request it, information on the matters that are competent to him;
7. Summon an extraordinary general meeting, whenever he deems it necessary and ordinary or extraordinary meetings, whenever the board of directors forget;
8. Make sure that all the items he considers important are included in the agenda;
9. Make sure that company agencies fulfill the law, bylaws, regulations and general meeting decisions;
10. Control the liquidation of the company;
11. Investigate the reports formulated in writing by the stockholders representing no less than 2% of the capital, mentioning them in a verbal report to the general meeting and comment on the corresponding consideration and propositions. Immediately summons the general meeting so that they can resolve the matter, when the investigated situation does not receive adequate treatment from the board of directors and they think it is necessary to act with urgency.

#### Art. 295. Extension of His Functions to Previous Fiscal Years

The rights of the information and investigative administration of the auditor include the previous economical fiscal years to his election.

#### Art. 296. Liability

Auditors are unlimitedly, jointly and severally liable for non-performance of the obligations imposed by the law, bylaws and regulations. Their liability shall be made effective by a general meeting decision. A general meeting decision which declares the liability shall impart the removal of the auditor.

#### Art. 297. Solidarity

Auditors shall also be jointly and severally liable with the directors for acts or omissions when the damage would not have been produced if they would have cited in accordance with that established by law, the bylaws, regulations or general meeting decisions.

#### Art. 298. Application of Other Rules

That which is provided in Arts. 271 to 279 shall also apply to auditors.

## 9. STATE CONTROL

### Art. 299. Permanent State Control

Corporations, besides control of constitution, are subject to the audit of the authority of the controller of their domicile, during their functioning, dissolution and liquidation, in any of the following cases:

1. If they make a public bid of their stocks or debentures;
2. If they have capital stock of more than 21,000,000,000 Australs, which said amount may be updated by the executive power each time it is deemed necessary;
3. If they are of mixed economy or are found included in section VI;
4. If they carry out operations of capitalization, savings or in any manner require money or securities from the public with the promise of future payments or benefits;
5. If they operate concessions or public services;
6. It is the case of a controlling company or a company controlled by another subject to control, in accordance with one of the previous items.

### Art. 300. Limited State Control

Control by the controller of corporations not included in Art. 299, shall be limited to the constitutive contract; its reform and variation of capital; for the purposes of Arts. 53 and 167.

### Art. 301. Limited State Control: Extension

The controller may exercise auditing functions in the corporations not included in Art. 299, in any of the following cases:

1. When the stockholders representing 10% of the subscribed capital request it or any auditor requests it. In this case, it shall be limited to facts established by the presentation;
2. Whenever he considers it necessary, according to an established resolution; in protection of the public interest.

### Art. 302. Sanction

The authority of control, in case of violation of the law, bylaws or regulations, may apply sanctions of:

1. Warning;
2. Warning with publication;



### 3. Fines to the company, its directors and auditors.

These latter fines may not be greater than 6,000 Argentine pesos in conjunction and by infraction and they shall be graduated according to the seriousness of the infraction and the capital of the company. When they apply to directors and auditors, the company may not take charge of them.

The executive power shall be authorized by the Department of Justice to semiannually set the amounts of the fines, on the variation base registered in the price index, at wholesale, general level, established by the National Institution of Statistics and Census.

#### Art. 303. Authorization of the Controller to Request Certain Measures

The controller is authorized to request the court of the domicile of the competent company in commercial matters concerning:

1. The suspension of the resolutions of their organs if they are contrary to the law, bylaws or regulations;
2. The intervention of their administration in the cases of the preceding item, when it has publicly offered its stocks or bonds, or carries out operations of capitalization, savings or in any manner requires money or securities from the public with a future promise of payments or benefits, and in the case of item 2 of Art. 301.

The intervention shall have the purpose of remedying the causes which motivated it and, if it is not possible, its dissolution and liquidation;

3. The dissolution and liquidation in the cases to which items 3, 4, 6, 8 and 9 of Art. 94 refers and the liquidation in the case of item 2 if the same article.

#### Art. 304. Special Control

The control provided in this law is without prejudice to the laws especially established.

#### Art. 305. Liability of Directors and Auditors for Concealment

Directors and auditors shall be unlimitedly, jointly and severally liable in the case that they should have knowledge of any of the circumstances provided in Art. 299 and do not communicate it to the controlling authority.

In the case that they evade or try to evade the controlling authority, those guilty shall be liable for the sanctions determined by item 3 of Art. 302.

#### Art. 306. Resources

The resolutions of the controlling authority are appealable before the competent appellate courts in commercial matters.

Art. 307. Term for Appeal

The appeal shall be presented before the controlling authority within 5 days of the notification of the resolution. It shall be substantiated in accordance with Art. 169.

The appeal against warning sanctions with publications and fines shall be available with a suspended effect.

SECTION VI. CORPORATION WITH A MAJORITY OF STATE PARTICIPATION

Art. 308. Characterization Requirements

Included in this section shall be corporations constituted when the national state, provincial states, municipalities, the state organisms legally authorized for that purpose or the corporations subject to this system, are individual or joint owners of shares representing at least 51% of capital stock, if there are enough people to attend ordinary and extraordinary assemblies.

Art. 309. Incorporation after Constitution

Also included in the system of this section shall be the corporations meeting, after the constitution of the contract, the requirements mentioned in the preceding article, as long as a general meeting summoned only for that purpose determines it and it does not come between the express opposition of any stockholder.

Art. 310. Incompatibilities

The prohibitions and incompatibilities established in Art. 264, except item 4, apply.

When the right of Art. 311 is exercised by a minority, notaries of the public administration shall not be directors, auditors or members of the supervisory board for private capital.

Art. 311. Compensation

That which is provided in Art. 261 and in the following shall not be applied to the compensation of the board of directors and supervisory board.

Directors and Auditors for the Minority The bylaws may provide the appointment by the minority of one or more directors and one or more auditors. When the shares of private capital reach 20% of capital stock they shall have proportional representation in the board of directors and they shall elect at least one of the auditors. Art. 263 shall not apply.

Art. 312. Modifications to the System

Modifications to the system of a corporation which are established in this section shall not apply when the conditions provided in Art. 308 are altered.

Art. 313. Majority Situation Loss

When the contract of constitution of these companies express the purpose of maintaining the prevalence of the national state, provincial states, or the other institutions mentioned in Art. 308, any sale of stocks that causes the loss of a majority situation must be authorized by the law.

The bylaws shall contain the necessary rules for preventing a new issue which would alter that majority.

Art. 314. Liquidation

This company shall not be declared bankrupt. the liquidation shall be fulfilled by the administrative authority appointed by the state.

SECTION VII. COMPANY LIMITED BY SHARES

Art. 315. Characterization of a Limited Partner: Representation

The active partner or partners shall be liable for company obligations as the partners of a general partnership are; the limited partner or partners limit their liability to the capital they subscribe. Only the contributions of limited partners shall be represented by shares.

Art. 316. Applicable Rules

They shall be subject to the rules of the corporation unless otherwise provided by this section.

Art. 317. Trade Name

The trade name shall be completed with the words "sociedad en comandite por acciones", its abbreviation of the initials S.C.A.. The omission of this indication shall make the administrator unlimitedly, jointly and severally liable in conjunction with the company for his acts concerned with those conditions.

If it acts under a firm name, Art. 126 shall apply.

Art. 318. Administration

The administration may be impersonal, and it shall be exercised by the active partner or a third party, who shall remain in that position for the term established in the bylaws, without the limitations of Art. 257.

Art. 319. Removal of the Administrative Member

The removal of the administrator shall be ruled by Art. 129, but the limited partner may judicially request it, with just cause when he represents no less than 5% of the capital.

A general partner who is removed from the administration, shall have the right of withdrawing from the company or of becoming a limited partner.

Art. 320. Inability of the Administration

When the administration cannot function, it shall be reorganized in the term of 3 months.

**Provisional Administration** The auditor shall appoint a provisional administrator for that period for the fulfillment of the ordinary acts of administration, who shall act with third parties in the clarification of his position. On these conditions, the provisional administration shall not assume the liability of the active partner.

**Art. 321. General meeting: Shares**

The general meeting shall be made up of the members of both categories. The interest shares of the active partners shall be considered to be divided into fractions of the same nature as the shares for the purposes of the quorum and the vote. Any quantity less than that shall not be calculated for any of those purposes.

**Art. 322. Prohibitions to the Administrator Members**

The administrator member shall have voice but not vote, and any clause contrary to the following shall be null and void:

1. Election and removal of the auditor;
2. Approval of the management of the administrators and auditors, or the advisement on their liability;
3. The removal provided in Art. 319.

**Art. 323. Transfer of Company Shares of the Active Partner**

Transfer of the company shares of the active partner requires the agreement of the general meeting according to Art. 244.

**Art. 324. Supplemental Rules**

Supplementary and without prejudice to that which is provided in Arts. 315 and 316, the rules of section II shall apply.

**SECTION VIII. BONDS**

**Art. 325. Companies that May Issue Bonds**

Corporations, including those of section VI and those limited by shares may, if their bylaws authorize it, contract loans, in a public or private manner, by means of the issue of bonds.

**Art. 326. Classes Convertibility**

The bonds shall be issued with a floating guarantee, common guarantee, or with a special guarantee.

An issue whose privilege is not limited to certain real estate, shall be considered to be made with a floating guarantee.

Foreign Currency Bonds may be converted into stocks, in accordance with the issue plan and then issued in foreign currency.

Art. 327. Floating Guarantee

The issue of bonds with a floating guarantee shall affect, at the time of its payment, all the rights, personal property or real estate, present or future or a part of them, from the issuing company, and it also grants the privileges that apply to securities, mortgage or antichresis, according to the case.

It shall not be subject to the provisions of form that are established by real rights. The guarantee shall be constituted by the statement inserted in the issuing contract and the fulfillment of the procedure and inscription of this law.

Art. 328. Floating Guarantee Liquidity

The floating guarantee shall be demandable if the company:

1. Does not pay the interests or amortizations of the loan in the arranged terms;
2. Loses one-fourth or more of the assets which existed on the day of the issue of the bond contract;
3. Incurs in voluntary, forced or bankruptcy dissolution;
4. Discontinues the management of its business.

Art. 329. Effects of the Administration

The company shall maintain the disposition and administration of its assets as if they had no lien, as long as one of the cases of the previous article does not occur.

This authority may be excluded or limited with respect to certain assets in the issue contract. In this case, the limitations or exclusion must be inscribed in the corresponding register.

Art. 330. Provisions for the Assets

The company that has constituted a floating guarantee, shall not sell or transfer any or all of its assets if, by doing so, it disables the continuation of the management of its business. It must not merge or spinoff with another company without the authorization of the general meeting of bondholders.

Art. 331. Issue of Other Bonds

After bonds have been issued with floating guarantees, other bonds that have priority or which must be paid *pari passu* with the first, shall not be issued without the consent of the general meeting of bondholders.

Art. 332. Bonds with Common Guarantee

Bonds with a common guarantee shall collect their credits *pari passu* with general creditors, without prejudice to the other provisions of this section.

Art. 333. Bonds with Special Guarantee

The issue of bonds with a special guarantee affects, at the time of their payment, certain assets of the company which are susceptible to being mortgaged.

The special guarantee must be specified in the document of issuance with all the requirements demanded for the mortgage constitution, and it shall take account of it in the corresponding register. All the provisions referring to the mortgage shall apply, with exception that this guarantee may be constituted for the term of 40 years. The registration which shall be made in the pertinent register shall be effective for an equal term.

Art. 334. Convertible Bonds

When the bonds are converted to stocks:

1. The stockholders, whatever their class or category may be, shall be given preference for their subscription in proportion to the shares which they possess, with right of accretion;
2. If the issue was made under par, the conversion may not be executed in detriment to the integrity of the capital stock;
3. Pending the conversion, it is prohibited: to amortize or reduce the capital, increase it by incorporation of reserves or profits, distribute the reserves or modify the bylaws as far as the distribution of profits go.

Art. 335. Titles of the Same Value

The titles of bonds must be of equal value and they may represent more than one obligation.

Form They may be made out to the bearer or nominative; in this case, they may be endorsable or not. The transfer of nominative titles and the transfer of the real rights encumbering them must be communicated to the company in writing and recorded in the register book which the debtor company must keep. It shall be effective against the company and third parties from the date of its notification. In the case of endorsable titles, the last endorser shall be notified.

Art. 336. Content

The titles must contain the following:

1. The trade name and domicile of the company and the information regarding its inscription in the Public Commercial Register;

2. The number of the series and order of each title and its face value;
3. The amount of the issue;
4. The nature of the guarantee, and if they shall be convertible to stocks;
5. The name of the fiduciary institution or institutions;
6. The date of the document of issuance and of its registration in the Public Commercial Register;
7. The stipulated interest, the due date and place of payment, and the form and date of its amortization.

Coupons They may have stamped coupons for the payment of the interest or the execution of other rights entailed. The coupons shall be made out to the bearer.

#### Art. 337. Issue in Series

The issue may be divided into series. The rights shall be equal within each series.

New series may not be issued as long as the previous ones are not totally subscribed.

Any bondholder may request the nullity of the issue made against that which is provided in this article.

The provisions relative to the systems of stocks shall be applied in a subsidiary manner as long as they are not incompatible with their nature.

#### Art. 338. Contract of Trust

The company that decides it will issue bonds, must execute a trust with a bank which shall take charge of the following:

1. Management of the subscriptions;
2. Control of the subscription payins and their deposit, whenever it applies;
3. The necessary representation for future bondholders;
4. The joint protection of its rights and interests during the term of the loan until it is totally cancelled, in accordance with the provisions of this section.

#### Art. 339. Form and Content of the Trust Contract

The contract, which shall be granted by a public document, shall be inscribed in the Public Commercial Register and shall contain:

1. The trade name and domicile of the issuing company and the information regarding its inscription in the Public Commercial Register;
2. The amount of subscribed or paid in capital to the date of the contract;
3. The amount of the issue, nature of the guarantee, type of interest, place of payment and any additional conditions of the loan, as well as the rights and obligations of the subscribers;
4. The designation of the trustee bank, its acceptance and declaration:
  - (a) of having examined the accounting statements of the last 2 financial years; the privileged debts which the company recognizes; of the amount of bonds issued in advance, their characteristics and fulfilled amortizations;
  - (b) of taking charge of the carrying out of the public subscription, in its case, the form provided by Art. 172 et. seq.;
5. The remuneration of the trustee, which the issuing company shall take charge of.

When recovering to public subscription, the contract shall be submitted to the central authority in accordance with that which is provided in Art. 168.

#### Art. 340. Public Subscription: Prospectus

In the cases where the loan is offered for public subscription, the company shall draw up a prospectus which must contain:

1. The specifications of Art. 336 and the inscription of the trust contract in the Public Commercial register;
2. The company's activity and its evolution;
3. The names of the directors and auditors;
4. The results of the last 2 fiscal years, if it is not a newer company, and the transcription of a special balance sheet at the date of the authorization of the issue.

Liability The directors, auditors and trustees shall be jointly and severally liable for the accuracy of the information contained in the prospectus.

#### Art. 341. Trustees: Capacity



The demand that the trustee be a banking institution shall only apply for the issue and subscription period. Subsequently, the bondholders' general meeting may appoint any person not affected by the prohibitions of the following article.

Art. 342. Incompetence and Incompatibilities

Neither directors, members of the supervisory board, auditors or employees of the issuing company nor those who can be directors, members of the supervisory board or auditors of corporations, shall be trustees.

Neither shall stockholders possessing onetwentieth or more of shares of capital stock be trustees.

Art. 343. Issue for Consolidation of Liabilities

When the issue is made in order to consolidate company debts, the trustee shall authorize the delivery of the certificates after the verification of the fulfillment of the transaction.

Art. 344. Authority of the Trustee as a Representative

The trustee shall have, as equal representation of the bondholders, all the authority and duties of the general agents and the special ones mentioned in section 1 and 3 of Article 1881 of the Civil Code.

Art. 345. Authority of the Trustee with Respect to the Debtor Company

In the cases regarding bonds with common or floating guarantees, the trustees shall always have the following authority:

1. To examine the documentation and accounting of the debtor company;
2. To assist at the meetings of the board of directors and assemblies with voice but not vote;
3. To request the suspension of the board of directors:
  - (a) When the interest or amortizations of the loan have not been paid after 30 days of the agreed term have expired;
  - (b) When the debtor company has lost one-fourth of its assets existing at the date of the issue contract;
  - (c) In the event of forced dissolution or bankruptcy of the company.

If the case regards issued bonds with special guarantees, the authority of the trustee shall be limited to execute the guarantee in case of the delay of the payment of interest or amortizations.

Art. 346. Suspension of the Board of Directors

In the cases of section 3 of the previous article, the court, by petition of the trustee and without other proceedings, may provide the suspension of the board of directors and appoint the trustee or trustees as its replacement, who shall receive the administration and company assets in inventory.

Art. 347. Administration or Liquidation of the Debtor Company by the Trustee

The trustee may continue the management of the business of the debtor company without judicial intervention and with the broadest authority of administration, including that of transferring personal property and real estate, or carrying out the liquidation of the company in accordance with what is resolved by the bondholders' general meeting which shall be summoned for that purpose.

Art. 348. Bonds with Floating Guarantee: Trustee's Authority in the Case of Liquidation

If the bonds were issued with floating guarantees, after the liquidation has been resolved the trustee shall proceed to realize the assets constituting the guarantee, and distribute their proceeds among the bondholders, after the preferred credits have been paid.

After the debts for capital and interests have been satisfied, the residuary of the goods must be handed in to the company in debt, and in the absence of having someone to receive them, the court shall appoint the person to receive them by petition from the trustee.

Authority in Case of Assuming the Administration If the continuation of the business is resolved, the available funds shall be destined to the payment of the pending credits and the interest and amortizations of the bonds. After the services of the bonds have been regularized, the administration shall be restored to whomever it belongs.

Art. 349. Bonds with Common Guarantee: Authority of the Trustee in the Case of Liquidation

If the bonds were issued with a common guarantee and there should exist other creditors after the liquidation has been resolved, the trustee shall judicially proceed with the formal bankruptcy proceeding, in accordance with that which is provided by the law of bankruptcy.

He shall be the necessary auditor and liquidator, and may act by means of an a power of attorney.

Once the action is filed, the liquidation may not be resolved unless a final decision has been handed down; meanwhile, the trustee must be limited to acts of conservation and ordinary administration of the assets of the debtor company.

Art. 350. Nullity Suit

The suspended board of directors may bring suit in the term of 10 days from the date of notification, in order to prove the inaccuracy of the alleged basis by the trustee.

Art. 351. Company Bankruptcy

If the company that issued bonds with floating or common guarantees should be declared bankrupt, the trustee shall be the assisting liquidator necessary for that purpose.

Art. 352. Expiration of the Term by Dissolution of the Debtor

In all the cases where the dissolution of the company in debt, occurs before the expiration of the terms agreed upon for the payment of bonds, they shall be demandable from the date of resolving the dissolution and they shall have the right to immediate reimbursement and payment of expired interests.

Art. 353. Removal of the Trustee

The trustee may be removed without cause by a resolution from the general meeting of bond holders. He may also be judicially removed, by just cause, by petition from a bondholder.

Art. 354. Rules for the Functioning of the General meeting and its Resolution

The general meeting of bondholders shall be presided over by a trustee and shall be regulated as far as its constitution, functioning and majorities by the rules of the ordinary general meeting of the corporation.

Competence It shall be the duty of the general meeting, to remove, accept resignation, appoint trustee and any additional matters that entail it in accordance with that provided in this section.

Summons It shall be summoned by the control authority or in its absence by the court at the request of one of the trustees or a member of holders representing at least 5% of the bonds in debt.

Modifications of the Issue The general meeting may accept modifications on the conditions of the loan, with the majority demanded by an extraordinary general meeting in the corporation.

The fundamental conditions of the issue shall not be altered unless there is a unanimous decision otherwise.

Art. 355. Binding Value of the Deliberations

The resolution from the general meeting of bondholders shall be compulsory for those absent or dissenting.

Objection Any bondholder or trustee may object the agreements that are not taken in accordance with the law or bylaws, applying that which is provided in Arts. 251 to 254.

Competence The competent court from the domicile of the company shall recognize the objection.

Art. 356. Capital Reduction

A company that issues the bonds may only reduce the capital stock in proportion to the reimbursed bonds, except in cases of forced reduction.

Art. 357. Prohibition

The issuing company shall not receive its own bonds as a guarantee.

Art. 358. Liability of the Directors

The directors of the company shall be unlimitedly, jointly and severally liable for losses to bondholders for the violation of the provisions of this section.

Art. 359. Liability of the Trustees

The trustee shall not contract personal liability, except fraud or grave guilt in the performance of his functions.

Art. 360. Issue Abroad

Companies constituted abroad issuing bonds with floating guarantees on assets situated in the Republic, shall proceed to record them in the pertinent registers, before their issue, the contract or transaction that follows the issue of bonds or from the resulting amount of bonds to be issued, as well as the guarantees granted. Otherwise, these shall not be effective in the Republic.

All the bonds issued with guarantees by a company constituted abroad which do not limit themselves to certain assets susceptible to mortgage, shall be considered as an issue with a floating guarantee. If the guarantee was special, the inscription shall be made in the register where the asset is located.

The registration referred to by this article shall be made by request from the company, trustee or any holder of bonds.

The companies that have fulfilled the preceding provisions shall not be subject to that which is established in Art. 7 of law 11,719.

## SECTION IX. JOINT VENTURES OR COMPANIES IN PARTICIPATION

Art. 361. Characterization

Its purpose is the carrying out of one or more determined and transitory operations to be fulfilled by means of common contributions, in the personal name of the managing partner. It shall not be held liable for rights and shall lack a trade name; shall not be submitted to requirement of form and shall not be recorded in the Public Commercial Register. Its evidence shall be established by the rules of proof of contracts.

**Art. 362. Third Parties: Rights and Obligations**

Third parties shall acquire rights and assume obligations only with respect to the managing member. His liability shall be limited. If more than one manager acts, they shall be jointly and severally liable.

**Members who are not Managers** The member who does not act with third parties shall not be able to bring suit against them.

**Art. 363. Knowledge of the Existence of Members**

When the managing member recognizes the names of the members with his counsel, they shall remain unlimitedly, jointly and severally obligated towards third parties.

**Art. 364. Controller of the Administration**

If the contract does not determine the controller of the administration by the members, the rules established for limited partners shall apply.

**Rendering of Accounts** In any case, the member has the right to the rendering of accounts of the management.

**Art. 365. Contribution to Losses**

The losses affecting the member who is not a manager shall not surpass the value of its contribution.

**Art. 366. Supplemental Rules**

This company shall function and it shall be dissolved, in the absence of special provisions, by the rules of the general partnership, insofar as they do not contradict this section.

**Liquidation** The liquidation shall be made by the manager member who must render an account of his results to the members who are not managers.

**CHAPTER III. CONTRACT OF BUSINESS COLLABORATION**

**SECTION I. COLLABORATING GROUPS**

**Art. 367. Characterization.**

Companies constituted in the Republic and individual contractors domiciled in the Republic may, by means of an association contract, establish a common organization with the purpose of facilitating or developing determined phases of business activity of

its members or of perfecting or implementing the result of such activities. They shall not constitute companies or be subject to rights. The contracts, rights and obligations connected with their activity shall be regulated by that which is provided in Arts. 371 to 373. Companies constituted abroad may make up groups after fulfilling that which is provided in the third paragraph of Art. 118.

#### Art. 368. Purpose

The association, on that account, shall not pursue a profitmaking purpose. The economic advantages that generate its activity must rely directly on the patrimony of the associated or syndicated companies.

The association shall not exercise directive functions concerning the activity of its members.

#### Art. 369. Form and Content of the Contract

The contract shall be granted by a public or private document, and it shall be registered applying that which is provided by Arts. 4 and 5. A copy, with the information of its corresponding registration shall be forwarded by the Public Commercial Register to the National Directorate of Defense of Competition.

The contract must contain:

1. The purpose of the association;
2. Its duration, which shall not exceed 10 years. It may be extended before its expiration by a unanimous decision of the participants. In case of omitting the duration, the contract shall be understood to last 10 years;
3. The trade name, which shall be formed with a fantasy name completed with the word "agrupacion";
4. The name, firm name or trade name, the domicile and information of the registration of the contract or bylaws or the matriculation and itemization, if such is the case, of each one of the participants. In the case of companies, the relation of the resolution of the company agency that approved the contracting of the association, as well as its date and number of document;
5. The constitution of a special domicile for all the purposes which derive from the association contract, among the parties as with respect to third parties;
6. The obligations assumed by the participants, the contributions owed to the common operating fund and the means of financing the common activities;

7. The participation which each participant shall have in the common activities and in the results;

8. Means, attributions and powers which shall be established for directing the organization and common activity, administrating the operative fund, individually or collectively representing the participants and controlling its activity only for the purpose of unifying the fulfillment of the assumed obligation;

9. The provisions for separation and exclusion;

10. The admission conditions for new participants;

11. The sanctions for not fulfilling the obligations;

12. The rules for the arrangement of the general balance sheet, which the administrators shall keep for that purpose with the formalities established by the Commercial Code, the financial books in the name of the association which require the nature and import of the common activity.

#### Art. 370. Resolutions

The resolutions relative to the carrying out of the purpose of the association shall be adopted by the majority of the participants, unless the contract provides otherwise.

Its objection shall only be established by the violation of legal or contractual provisions and it must be demanded before the court of the established domicile within 30 days of notification of the association decision by means of a suit brought against each one of the members of the association.

The meetings or conferences with the participants must be called each time an administrator or any of the members of the association require it.

A modification of the contract shall not be introduced without the unanimous consent of the participants.

#### Art. 371. Management and Administration

The management and administration must under the decision of one or more legal entities designated in the contract or after by resolutions of the participants, applying Art. 221 of the Commercial Code.

If there were several administrators and nothing has been said in the contract, they act indistinctly.

#### Art. 372. Common Operating Fund

The contributions of the participants and the assets with which they acquire with them shall constitute the common operating fund of the association. During the term established for its duration, this patrimony shall be maintained on which private creditors of the participants may not claim their rights.

#### Art. 373. Liability Towards Third Parties

The participants shall be unlimitedly, jointly and severally liable towards third parties for the obligations the representatives assume in the name of the association. A suit against them shall be expedited only after having unsuccessfully summoned the administrator of the association; the person against whom compliance with the obligation shall be requested may use his defenses and exceptions which would have corresponded to the association.

For the obligations which the representatives have assumed on the account of a participant, making it known at the time of being obligated, the participant shall be jointly and severally liable with the common operative fund.

#### Art. 374. General Balance Sheet of the Results

The general balance sheet of the association must be submitted for the decision of the participants within 90 days of the closure of each annual fiscal year.

The profits or losses or, the income and expenses of the participants derived from their activity, may be imputed to the fiscal years in which they were produced or in those where the accounts of the association were approved.

#### Art. 375. Causes of Dissolution

The association contract shall be dissolved:

1. By the decision of the participants;
2. By the expiration of the term for which it was constituted or by obtaining the purpose for which it was formed or by the impossibility of it taking place;
3. By reducing the number of participants to one;
4. By disability, dissolution or bankruptcy of a participant, unless the contract anticipates it or if the other participants unanimously decide its continuation;
5. By firm decision of a competent authority that considers the association to be liable in for the destructive practice of competition;
6. By specific causes provided in the contract.



Art. 376. Exclusion.

Without prejudice to what is established in the contract, any participant may be excluded by a unanimous decision, when he habitually violates his obligations or agitates the functioning of the association.

## SECTION II. TRANSITORY CONSOLIDATION OF COMPANIES

Art. 377. Characterization

Companies constituted in the republic and individual enterprises domiciled in it may, by means of a contract of transitory consolidation, meet for the development or execution of a job, service or to furnish material, within or outside of the territory of the Republic. They may develop or execute the works and complementary services additional to the principal purpose.

Companies constituted abroad may participate in such agreements after fulfilling the requirements of the third paragraph of Art. 118.

They shall not constitute companies or be subject to rights. The contracts, rights and obligations connected to its activity shall be regulated by that which is provided in Art. 379.

Art. 378. Signature and Content of the Contract

The contract shall be granted by a public or private document, which must contain:

1. Its purpose, with concrete determination of its activities and means of its being carried out;
2. The duration, which shall be equal to that of the job, services or furnishings which constitute the purpose;
3. The trade names, which shall be one or more of all of the members, followed by the expression "union transitoria de empresas";
4. The firm name or trade name, its domicile and the registration information of the contract or bylaws or of the matriculation or itemization, in the case of companies, the relation of the resolution of the company agency that approved the execution of the transitory consolidation, as well as its date and the number of the document;
5. The constitution of a special domicile for all the purposes derived from the transitory consolidation contract, among the parties with respect to third parties;
6. The obligations assumed, the contributions owed to the common operating fund and the means of financing or favoring the common activities, as the case may be;
7. The name and domicile of the representative;

8. The proportion or method of determining the participation of the companies in the distribution of the results or, as the case may be, the income or expenses of the consolidation;
9. The provisions for the separation and exclusion of the members and the grounds for the dissolution of the contract;
10. The conditions for the admission of new members;
11. The sanction for not fulfilling the obligations;
12. The rules for the drawing up of general balance sheets, which the administrators shall keep for that purpose, with the formalities established by the Commercial Code, the financial books in the name of the consolidation which shall require the nature and import of the common activity.

#### Art. 379. Representation

The representative shall have sufficient power of each and every one of the members to exercise the right and contract the obligations which shall help to develop or execute the work, service or supply. This designation shall not be revocable without cause, except by a unanimous decision of the participating company with just cause, the revocation may be decided by the vote of the absolute majority.

#### Art. 380. Inscription.

The contract and the designation of the representative must be recorded in the Public Commercial Register, where Arts. 4 and 5 shall apply.

#### Art. 381. Liability.

If otherwise provided by the contract, the solidarity of the companies for acts and operations that must be executed or developed shall not be presumed, as well as the obligations contracted before third parties.

#### Art. 382. Agreements

The agreements that must be adopted shall always be made by a unanimous decision, unless otherwise agreed.

#### Art. 383. Bankruptcy or Disability

The bankruptcy of any of the participants or the disability or death of an individual entrepreneur shall not produce the liquidation of the contract of transitory consolidation which shall continue for the remaining members if they agree upon the form of taking charge of the fulfillment of the work with the principal.

### CHAPTER IV. TRANSITORY PROVISIONS

#### Art. 384. Incorporation into the Commercial Code

The provisions of this law shall be incorporated into the Commercial Code.

#### Art. 385. Repealed Provisions

Arts. 41 and 282 to 449 of the Commercial Code are repealed; Laws 3528, 4157, 5125, 6788, 8875, 11,645, art. 200 of Law 11,719; Law 17,318; Decree 852 of October 14, 1955; Decree 5567/56; Decree 3329/63; arts. 7 and 8 of Law 19,060 and other legal provisions which are opposed to that which is established in this law are repealed.

#### Art. 386. Effective Date

This law shall commence to govern 180 days from its publication; notwithstanding, companies that are formed prior thereto may be adjusted to its provisions.

**Application of Operation of Law** The rules of this law are applicable as a matter of law to companies regularly constituted on its effective date, without the amendment of the contracts and by-laws or the registration and publicity disposed by this law being required. The rules that expressly subordinate its application to that which is provided in the contract are excepted from that which was previously established, in which case the respective contractual provisions shall govern.

As from July 1, 1973, the public commercial registers shall not allow any amendment of contracts or by-laws of companies constituted before the effective date of this law, if they contain stipulations that are contrary to the rules of this Law.

**Rules of Application** Without prejudice to that which is provided in the preceding paragraphs:

- a) Arts. 62 to 65 shall be applied to the fiscal years beginning as from the effective date of this Law;
- b) Arts. 66 to 71 and 261 shall be applied to the fiscal years closing as from the effective date of this law;
- c) Arts. 251 to 254 shall be applied to meetings that are held as from the effective date of this Law;
- d) For companies constituted on the effective date of this law, arts. 255, 264, 284, 285 and 286 shall govern the number, qualities and incompatibilities of the directors and auditors, as from the first ordinary meeting that is held after that date;
- e) Arts. 325 to 360 shall be applied to bonds that are issued as from the effective date of this Law;
- f) Meetings of partners and shareholder meetings that take place as from the effective date of this Law shall be adjusted to the rules thereof;
- g) Companies that, on the effective date of this law, are found in the situation provided by art. 369, second paragraph of the Commercial Code, may by decision of the general

meeting reduce the capital in terms of art. 206, provided that on such date the dissolution had not been recorded in the Public Commercial Register;

h) Corporations and companies limited by shares that form part of companies that are not stock companies, must dispose of their shares or interest stocks in a period of 10 years as from the effective date of this law; otherwise they shall remain subject to the system of companies not regularly constituted;

i) Companies constituted abroad that on the effective date of this law normally carry out acts included in their company purpose in the country, must be adapted to that which is provided in arts. 118 to 120 within the period of 6 months as from said date;

j) Subscribers of capital of corporations constituted on the effective date of this law, whose contribution pledge is in actual cash, must pay in up to 25% of their subscription in the period of 6 months as from that date;

k) Stock companies constituted on the effective date of this law, whose authorized capital is greater than their subscribed capital, may issue the difference, subject to the provisions of this law, in the period of one year as from said date. When that period has expired, the capital shall be limited to the sum actually issued, on which the increase provided in art. 188 shall be calculated.

l) Stocks issued on the effective date of this law must be subscribed or exchanged, subject to the provisions of art. 211, within the period of 3 years as from said date;

m) Directors of corporations constituted on the effective date of this law, that have delivered shares of the same entity in guarantee of good fulfillment of their functions, must substitute said guarantee by another equivalent to the par value of the certificates given in surety;

n) In stock companies, unless there exists a contrary provision in the by-laws, it shall be presumed that in the case provided in art. 216, first paragraph, last item, the patrimonial preference prevails over the voting privilege, and that the auditing committee of the companies included in art. 299 shall be composed of 3 auditors;

o) Until the laws provided in art. 371 (now 388) are handed down, regulations of the registers mentioned in this law shall not govern that which is provided in arts. 8 and 9. Without prejudice thereto, stock companies must remit the corresponding documentation to the administrative authority of control in accordance with the provisions that govern the functioning of said authority.

Tax Exemption The acts and documents necessary for fulfilling that which is provided in this article shall be exempt from any kind of taxes, rates and duties.

Art. 387. Limited by Shares: Correction

Companies limited by shares constituted without individualization of the limited partners may correct the defect in the term of 6 months from the effective date of this law, by a public deed confirming its constitution that must be authorized by all the actual partners and recorded on the Public Commercial Register. The confirmation shall not affect the rights of third parties.

Art. 388. Registers: System

The registers mentioned in this law shall be governed by the rules that are established through regulations.

Art. 389. Application

The provisions of this law shall be applied to mixed economy companies insofar as they are not contrary to those of Decree Law 15,349/46. They shall also be applied to cooperative societies insofar as they are not contrary to their nature, in accordance with art. 11 of Law 11,388.

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TITLE IV MERCANTILE CONTRACT OF SALE

Art. 450. (Commercial Code)

A mercantile contract of sale is a contract by which one person, whether owner or possessor of the subject matter of the agreement or not, binds himself to deliver it to or cause another person to acquire it in ownership, who on his part binds himself to pay the agreed price, and who purchases it in order to resell it to lease the use thereof.

Art. 451. (Commercial Code)

A sale of chattels is alone considered mercantile, when it is in order to resell them by wholesale or retail (whether in the same form as that in which they were bought or in a different form) or to lease their use, including bullion, State bonds, shares in companies and commercially negotiable securities.

Art. 452. (Commercial Code)

The following are not considered mercantile:

1. Purchases of real (immovable) property and chattels accessory thereto. Nevertheless, purchases of things to commerce, to prepare or facilitate the same, although they be accessory to real property, are commercial;
2. Purchases of things intended for the consumption of the buyer, or of the person on whose order the acquisition is made;
3. Sales made by farmers and land owners of the produce of their harvests and herds;
4. Those made by the owners and any other class of persons, or produce and goods which they receive by way of rent, gift, salary, emolument or any other title whether by way of reward or gratuity;

5. The resale made by any person of the remains of the stores which he has acquired for his private consumption.

Nevertheless, if the quantity which he sells is greater than that which he has consumed, it is presumed that he acted in the purchase with the intention of selling, and the purchase and sale are reputed mercantile.

Art. 453. (Commercial Code)

The sale of another person's property is valid. The seller is bound to deliver it, or, in default, to pay damages, provided that the buyer was not aware that the property was another's.

If the buyer knew, at the time of making the contract, that the thing was another's, the sale was void.

A promise to sell the property of another shall be valid. The seller shall be bound to acquire and deliver it to the buyer, on pain of damages.

Art. 454. (Commercial Code)

Uncertain offers contained in a prospectus or circular do not bind the person who has made them.

Art. 455. (Commercial Code)

In all purchases of goods which are not in sight, and cannot be classed by any fixed quality known to commerce, it is presumed that the buyer reserves the right of examining them and of freely rescinding the contract, if the goods do not suit him. He shall have the same power, if the trial of the contracted goods is reserved by an express condition.

Thus, in both cases, if the buyer delays the act of examining or trial more than 3 days after being required by the vendor, the act shall be considered as void.

Art. 456. (Commercial Code)

When a sale is made by sample, or by a quality known in commercial usage, the buyer cannot refuse the receipt of the contracted goods, provided that they are in conformity with the sample, or the quality stated in the contract.

In case of refusal to receive them for want of this conformity, the goods shall be examined by experts, who, considering the terms of the contract and comparing the goods with the samples, if they were in sight at making the contract, shall declare if the goods are receivable or not.

In the former case the sale shall be held to be consummated, the goods remaining to the account of the buyer; and in the second case, the contract shall be rescinded, without prejudice to the indemnity to which the buyer may be entitled under special agreements which he may have made with the seller.

Art. 457. (Commercial Code)

In the sale of things which are not in sight, and which are to be sent to the buyer by the seller, a condition subsequent is always understood in case the thing is not of the agreed quality.

Art. 458. (Commercial Code)

When the thing sold is delivered, and the contractual instrument has not fixed the price, it is understood that the parties have submitted themselves to the price current on the day and in the place of delivery. In default of agreement, when there has been a variation in price on the same day and at the same place, the middle price shall prevail.

Art. 459. (Commercial Code)

The price of a sale may be left to the judgment of a third party. If he cannot or will not fix it, the contract shall be void, saving an agreement to the contrary.

Art. 460. (Commercial Code)

When there is no stipulation to the contrary, the expenses of delivery of the thing sold up to placing it, weight and measured, in the control of the buyer, are borne by the seller.

The expenses of its receipt, as well as those of carriage or transport, are borne by the buyer.

Art. 461. (Commercial Code)

In the absence of an express stipulation, the delivery of the thing sold must be made in the place where the thing is at the time of the sale, and may be effected by the fact of actual symbolic delivery, or by transfer of the documents of title or by the method in commercial use in the place where it has to be effected.

Art. 462. (Commercial Code)

In all cases in which the buyer, to whom goods have to be sent, does not bargain for a fixed place or for a certain person who is to receive them in his name, dispatch to his address involves effective delivery of the goods sold.

There is an exception in the case in which the unpaid seller, sends the goods to his consignee, for complete delivery only on receipt of the price or security.

Art. 463. (Commercial Code)

The following are considered symbolic delivery, saving proof to the contrary in cases of mistake, fraud or deceit:

1. Delivery of the keys of the warehouse, shop or chest in which the merchandise or thing sold;
2. The fact of the buyer placing his mark on the goods bought in the presence of the seller or with his consent;
3. The delivery or receipt of the invoice without immediate objection by the buyer;
4. The clause "for account", placed in the bill of lading, not being objected to by the buyer within 24 hours, or by the second post;
5. The declaration or entry in the book or office of the public counting houses in favor of the buying by consent of both parties.

Art. 464. (Commercial Code)

When the contracting parties have not bargained for a time for the delivery of the goods sold and payment of their price, the seller shall be bound to hold the thing sold at the disposal of the buyer within 24 hours after the contract.

The buyer shall enjoy the space of 10 days for payment of the price of the goods; but cannot demand delivery without giving the seller the price at the time of delivery.

Art. 465. (Commercial Code)

From the time that the seller places the thing at the disposal of the buyer, and the latter declares himself satisfied with its quality, there is an obligation to pay the price in cash or at the time stipulated, and the seller is constituted depository of the goods sold and is bound to preserve them, under the laws relating to deposit.

Art. 466. (Commercial Code)

As long as the goods are sold under the control of the seller, although it be by way of deposit, he has a right over them prior to any other creditor of the buyer, in the manner established in Art. 1500, No. 2, for the amount of the price and late charges.

Art. 467. (Commercial Code)

When the seller has not delivered the sold goods within the agreed time, or within that enacted by Art. 464, that which is provided in Art. 216, without prejudice to the faculty of the buyer to demand authorization to purchase a like quantity in the place thereof, charging them to the seller.

Nevertheless, when the failure to deliver the goods proceeds from their having perished, or from their having deteriorated through unforeseen accident, without fault of the seller, all liability on his part ceases, and the contract is rescinded in law on the return of the price to the buyer.



Art. 468. (Commercial Code)

A buyer who has bargained for a quantity of goods, in one contract but at various prices and without specifying the parts or lots which are to be delivered at various times, cannot be obliged to receive one portion with a promise to deliver the rest later.

Nevertheless, if he spontaneously agrees to receive on part, the sale is irrevocable and consummated as regards the goods which he has received, even when the seller fails to deliver the rest, saving, as regards the latter, the option accorded by the preceding article.

Art. 469. (Commercial Code)

When two or more things are sold at a single price, one of which cannot be sold, to the knowledge of the buyer, the sale is wholly void; but if he was ignorant thereof, he may apply for a rescission of the contract, with damages, or for performance as regards the salable part, deducting from the price the amount which is fixed by valuation for that which is not salable.

Art. 470. (Commercial Code)

If the buyer returns the thing bought, and the seller accepts it, or if it is redelivered against the will of the latter and he does not make a judicial deposit thereof on account of the owner, with notice of the deposit to the buyer, it is presumed that he has consented to the rescission of the contract.

Art. 471. (Commercial Code)

A seller who, after completion of a sale, alienates, consumes or damages the thing sold, shall be bound to give the buyer an equivalent in substance, quality, and quantity, or in default, the value of the article sold as decided by arbitrators, considering the use which the buyer intended to make thereof, and the profit which it might bring him, deducting the price of the sale, if the buyer has not yet paid it.

Art. 472. (Commercial Code)

When goods are delivered in bales or under covers which prevent their examination, the buyer may make a claim founded on any deficiency of quantity or defect of quality within the 3 days following the delivery; proving in the first case, that the ends of the pieces are intact, and in the second, that the defects cannot have happened through accident, nor have fraudulently caused while in his control.

The seller can always demand that a complete examination be made at the time of delivery, as to the quality and quantity of the goods which the buyer receives, and in this case there shall be no subsequent claim after they are delivered.

Art. 473. (Commercial Code)

Results of internal defects of a thing bought, which could not be perceived by the examination which was made at the time of the delivery, shall be borne by the seller

during a term which shall be fixed at the discretion of the tribunals, but shall never exceed 6 months following the day of the delivery.

After this term has expired, the seller is free from all liability in that respect.

Art. 474. (Commercial Code)

No seller can refuse a buyer an invoice of the goods which he has sold and delivered with a receipt at the foot for the price, or for that part thereof which has been paid.

If there is no statement in the invoice of the time for payment, it is presumed that the sale was for cash.

The said invoice, if not disputed by the buyer within the 10 days following the delivery and receipt, are presumed to be correct accounts.

If the term for the payment of the price is greater than 30 days, the provisions of Chapter XV of Part X of Book 2 are applicable.(Added by Decree No. 6601/63).

Art. 475. (Commercial Code)

Amounts which are usually paid on sales as handsel or earnest money are always understood to be on account of the price and as a sign of the ratification of the contract, without either party being able to withdraw except by forfeiting the earnest money.

When the seller and buyer agree that by forfeiting the earnest money or sum paid in advance, it shall be lawful to withdraw and not perform the contract, they must so express it by a special provision in the contract.

Art. 476. (Commercial Code)

The defects in the things sold and differences in qualities, shall always be decided by the arbitration of experts, if there is no stipulation to the contrary.

Art. 477. (Commercial Code)

A person who for 3 years and in good faith has been in possession of a chattel which has been stolen or lost, acquired ownership by prescription, whether the true owner has been absent or present.

## TITLE V. GUARANTEES AND LETTERS OF CREDIT

### CHAPTER 1. GUARANTEES

Art. 478. (Commercial Code)

For a guarantee to be considered mercantile, it is sufficient that it is intended to insure the performance of a commercial act or contract, although the guarantor is not a merchant.

Art. 479. (Commercial Code)

When a guarantor who has been accepted by the creditor, either judicially or extrajudicially, becomes insolvent, the latter shall not be entitled to demand another, if the guarantor has only been given by virtue of an agreement in which the creditor has demanded the actual person for the guarantee.

Art. 480. (Commercial Code)

One or more guarantors are jointly and severally liable with the principal debtor, and cannot claim the benefit of division of liability nor that the principal debtor should first be sued, which are never allowed in commercial matters.

They can only claim that the creditor should prove that he has judicially demanded the debt from the debtor.

Art. 481. (Commercial Code)

If the guarantor is sued in an executive action before the principal debtor, he may offer the latter's property for the arrest, if it is free; but if there is already an arrest on it or it is insufficient, the execution shall run against the guarantor's own property, until effective payment of the creditor.

Art. 482. (Commercial Code)

A guarantor, even before he has paid, can demand his release:

1. When he is sued at law for the payment of the debt;
2. When the debtor begins to waste his property or becomes judicially insolvent;
3. When debt becomes due by the expiration of the time agreed upon;
4. When 5 years have passed since the execution of the guarantee, if it was made for an indefinite time.

Art. 483. (Commercial Code)

If a guarantor obtains a reward for having made the guarantee, he cannot apply for the application of the provision of paragraph 4 of the preceding article.

## CHAPTER 2. LETTER OF CREDIT

Art. 484. (Commercial Code)

Letters of credit must be made for a fixed amount as the maximum of that which can be paid to the bearer. Those which contain no fixed amount shall be considered as mere letters of recommendation.

Art. 485. (Commercial Code)

Letters of credit cannot be to "order", but they must only refer to a certain person. On making use of them, the bearer is bound to prove his identity if the payer does not know him.

Art. 486. (Commercial Code)

The issuer of a letter of credit is bound to the correspondent on whom it is drawn, for the amount which he has paid in virtue thereof, not exceeding that fixed in the same letter, and for interest calculated from the payment.

Art. 487. (Commercial Code)

Letters of credit cannot in any case be protested, nor does the bearer acquire thereby any right of action against the issuer, although they are not honored, save an action for reimbursement in case of payment.

Art. 488. (Commercial Code)

The issuer of a letter of credit who has not received funds from the taker can avoid the same without incurring any liability by issuing a counterorder to the correspondent who should pay it.

Nevertheless, if it is proved that he has acted without cause and fraudulently, he shall be liable for the consequent damages.

Art. 489. (Commercial Code)

The bearer of a letter of credit must without delay reimburse the issuer the amount which he has received in virtue thereof, as well as the interest which has been paid, if he did not leave the same in his control beforehand.

If he does not do this, the issuer may demand payment of the amount and of the interest and the exchange current in the place where the payment was made on the place where reimbursement is made.

Art. 490. (Commercial Code)

When the taker of a letter of credit has not made use thereof within the time agreed with the issuer, or in absence of agreement, in that which, having regard to the circumstances, the Tribunal of Commerce considers sufficient, he must return it to the issuer, when requested thereto, or give security for the amount thereof until the correspondent who should pay it has been advised of its revocation.

Art. 491. (Commercial Code)

Difficulties which arise over the meaning of letters of credit or of recommendation, and the obligations which a letter imposes, shall always be decided by arbitrators.

## TITLE VI. INSURANCE

### Arts. 429-557. (Commercial Code)

Repealed by Law 17,418 on Insurance Contracts. The Insurance Contracts Law was incorporated into the text of the Commercial Code in accordance with Article 163.

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## INSURANCE LAW (LAW 17,418)

### TITLE I. THE INSURANCE CONTRACT

#### Chapter I. General Provisions

#### Section I. Concept and Execution

##### Art. 1. Definition.

An insurance contract is effective when the insurer is obligated through a premium or contribution to compensate damage or to comply with the conventional performance if a foreseen event occurs.

##### Art. 2. Object.

An insurance contract may cover all kinds of risks if an insurable interest exists, except those expressly prohibited by the law.

##### Art. 3. Non-existence of a risk.

An insurance contract is null and void if at the time of its execution the damage or loss had already been produced or the possibility of its being produced had disappeared.

If a period preceding its execution is included, the contract is null only if at the time of its conclusion the insurer knows the impossibility of the damage or loss having occurred or the insured knows that it had already occurred.

##### Art. 4. Nature.

An insurance contract is by consensus; the reciprocal rights and obligations of the insurer and the insured commences from the time the agreement is made, even before the policy is issued.

Offer. The offer of an insurance contract, whatever its form, shall not obligate the insurer nor the insured. The offer may be subject to prior knowledge of the general conditions.

Offer of extension. The proposal to extend the contract shall be considered accepted by the insurer if he does not refuse it within 15 days from its receipt. This provision shall not be applied to personal insurance.

#### Section II. Suppression of Information

##### Art. 5. Suppression. Concept.

Every false declaration or suppression of circumstances known by the insured, even if made in good faith, which in the judgment of experts would have prevented the contract, or altered its conditions, if the insurer had been informed of the true condition of the risk, shall make the contract void.

Period of challenge. The insurer must challenge the contract within 3 months from becoming informed of the suppression of circumstances or the false declaration.

##### Art. 6. Deceit.

When a non-fraudulent suppression of circumstances is alleged in the period mentioned in art. 5, the insurer, upon his exclusive judgment, may annul the contract by restoring the premium received with a deduction of the expenses, or readjust it to the true state of the risk with the concurrence of the insured. In life insurance, the readjustment may be imposed on the insurer when the nullity was prejudicial against the insured, if the contract is readjustable in the judgment of experts and the contract shall be executed in accordance with the commercial practice of the insurer.

If the contract includes several persons or interests, art. 45 shall be applied.

Art. 7. Readjustment of life insurance after a loss.

In life insurance, when the insured was in good faith and suppression is alleged within the period mentioned in art. 5, after the loss occurred, the amount due shall be reduced if the contract is readjustable in accordance with art. 6.

Art. 8. Fraud or bad faith.

If the suppression is fraudulent or in bad faith, the insurer has a right to the premiums from periods elapsed and from the period in which suppression or false declaration was invoked.

Art. 9. Loss in the period of challenge.

In all cases, if the loss occurs during the period of challenge, the insurer shall not owe any performance, except the redemption value of life insurance.

Art. 10. Execution through representation.

When the contract is executed with a representative of the insured, the knowledge and the conduct of the represented and representative shall be taken into account in judging suppression of circumstances, unless the representative acted in executing the contract simultaneously in representation of the insured and the insurer.

Execution of a contract on behalf of another. The same principles shall be applied with respect to a third party insured and the payee where the contract is executed on behalf of another.

### Section III. Policy

Art. 11. Proof of the contract.

The insurance contract can only be evidenced in writing; nevertheless, all the other means of evidence shall be admitted, if there is a source of written evidence.

Policy. The insurer shall deliver a policy to the payee duly signed with clear and easily legible wording. The policy must contain the names and addresses of the parties; the interest or the person insured; the risks assumed; the moment from which they shall be assumed and the period; the premium or contribution; the sum insured; and the general conditions of the contract. Particular conditions may be included in the policy. When the insurance is contracted simultaneously with several insurers a single policy may be issued.

Art. 12. Differences between offers and policies.

When the text of the policy differs from the content of the offer, the difference shall be considered approved by the payee if he does not contest within one month of receiving the policy.

This acceptance shall be presumed only when the insurer advised the payee of this right by a clause inserted in a conspicuous manner on the obverse of the policy.

The challenge shall not affect the efficacy of the remaining provisions of the contract, without prejudice to the right of the payee to rescind the contract at that moment.

Art. 13. Policies to the order and to the bearer.

System. The transference of policies to the order or to the bearer shall involve transferring the rights against the insurer; nevertheless, the same defenses as might be made valid against the insured concerning the insurance contract may be made against the holder, except failure to pay the premium, if it does not result from the policy.

Release of the insured (insurer). The insurer shall be released if he fulfills his performances with respect to the endorsee or the bearer of the policy.

Theft, loss or destruction of the policy. In case of theft, loss or destruction of a policy to the order or to the bearer, its replacement may be granted with the furnishing of a sufficient guarantee.

Personal insurance. In personal insurance the policy must be nominative.

Art. 14. Duplicate of declarations and policy.

The insured has a right, through payment of the corresponding expenses, to have a copy of the declarations that he drew up for the execution of the contract and a non-negotiable copy of the policy, delivered to him.

Section IV. Reports and Declarations

Art. 15. Compliance.

The reports and declarations imposed by this law or by the contract, shall be considered fulfilled if they were issued within the term established. The parties shall be considered in delay by the mere expiration of the period.

Knowledge of the insurer. The insurer may not invoke disadvantageous consequences of the omission or tardiness of a declaration, report or notification, if at the time in which it should have been carried out he had knowledge of the circumstances to which they referred.

Section V. Competence and Domicile

Art. 16. Competence.

The establishment of a special domicile shall be prohibited. The extension of the jurisdiction within the country is admissible.

Domicile. The domicile in which the parties must make the reports and declarations provided in the law or in the contract is the last declared address.

#### Section VI. Period

##### Art. 17. Period of insurance.

It shall be presumed that the period of insurance is 1 year unless the premium is calculated for a different time due to the nature of the risk.

##### Art. 18. Commencement and end of coverage.

The liability of the insurer commences at 12 noon on the day on which coverage shall begin and ends at 12 noon of the last day of the period established, unless there exists an agreement to the contrary.

Rescission clauses. Notwithstanding the period stipulated and with exception of life insurance, it may be agreed that either of the parties shall have a right to rescind the contract without express cause. If the insurer exercises the faculty of rescinding, he must give a notice no less than 15 days in advance and refund the proportional premium for the period not expired. If the insured chooses to rescind the contract, the insurer shall have a right to the premium drawn for the time elapsed, in accordance with the short term rates.

##### Art. 19. Tacit extension.

The tacit extension provided in the contract is only effective for the maximum term of one insurance period, except in the case of floating insurance.

For an indefinite period. When the contract is executed for an indefinite period, either of the parties may rescind it in accordance with art. 18. The withdrawal of this right of rescission is legal for a certain period which shall not exceed 5 years. The provisions of this paragraph shall not be applied to life insurance.

##### Art. 20. Liquidation and transfer of portfolio: rescission.

The voluntary liquidation of the insuring enterprise and the transfer of the portfolio approved by the authority of a controller, shall not authorize the rescission of the contract.

#### Section VII. On Behalf of Another

##### Art. 21. Validity.

Except as provided for life insurance, the contract may be made on behalf of another, with or without designation of the third party insured. In case of doubt, it shall be presumed that it has been executed on one's own behalf.

In the case of insurance on behalf of oneself or on behalf of another, the provisions of this section shall be applied when another interest is insured, when it is contracted on behalf of whoever corresponds or it remains indefinite in another manner.



Art. 22. Obligation of the Insurer.

Insurance on behalf of another shall obligate the insurer, even when the third party insured invokes the contract after the loss occurred.

Rights of the Payee

Art. 23. Rights; payee.

When he is in possession of the policy, the payee may have the rights resulting from the contract in his own name.

He may likewise collect the indemnity, but the insurer shall have the right to demand that the payee previously authorize the consent of the insured, unless the payee demonstrates that he contracted by mandate thereof or because of a legal obligation.

Rights of the Insured

Art. 24. Rights: insured.

The rights that shall derive from the contract shall correspond to the insured, if he possesses the policy. In its absence, he may not have those rights nor make them valid judicially without the consent of the payee.

Art. 25. Retention of the policy by the payee.

The payee is not obligated to deliver the policy to the insured, to the auditor, or to the liquidator of the composition or bankruptcy thereof before he has been paid insofar as corresponds to him by reason of the contract. The amount due or paid by the insurer may be collected, with preference to the insured or his creditors.

Art. 26. Suppression of circumstances and knowledge of the insured.

For the application of art. 10, if at the time of the agreement it was not known to the insurer that the contracting party had acted on behalf of a third party, it may not be alleged that the contract was executed without knowledge of the insured.

Section VIII. Premiums

Art. 27. Obligation to pay.

The payee is obligated to pay the premium.

In insurance on behalf of another, the insurer shall have a right to demand the payment of the premium by the insured, if the payee has become insolvent.

Compensation. The insurer has a right to offset his credits against the payee by reason of the contract, with the indemnity due to the insured or the performance due to the beneficiary.

Art. 28. Payment by a third party.

Unless there is opposition from the insured, the insurer may not refuse the payment of the premium offered by a third party, with the limitation of art. 134.

Art. 29. Place of payment.

The premium shall be paid in the domicile of the insurer or in the place agreed upon by the parties.

The place of payment shall be deemed changed by a different practice established without the payee's default, nevertheless, the insurer may render it ineffective, communicating to the payee that subsequent payments should be made in the place that was agreed.

Art. 30. Requirement of the premium.

The premium is due after the execution of the contract but is only required against delivery of the policy, unless a provisional certificate or instrument of coverage has been issued.

In case of doubt, the subsequent premiums must be paid at the commencement of each insurance period.

Tacit credit. The delivery of the policy without the receipt of the premium shall presume the concession of credit for its payment.

Art. 31. Delay in the payment of the premium. Effects.

If payment of the first premium of the single premium is not effected in a timely manner, the insurer shall not be liable for a loss occurring before payment is made.

In the case of the third paragraph of art. 30, in the absence of an agreement between the parties, the insurer may rescind the contract with a period of report of one month. The rescission shall not be effective if the premium is paid before the expiration of the period of report.

The insurer shall not be liable for a loss occurring during the period of report, as from 2 days after notifying its option to rescind.

Art. 32. Right of the insurer.

When rescission takes place through delay in the payment of the premium, the insurer shall have a right to the collection of the single premium or to the premium of the current period.

Art. 33. Payment of a premium readjusted by suppression of circumstances.

In cases of suppression of circumstances in which this law prescribes readjustment, the difference shall be paid within the month of its notification to the insured.

Art. 34. Readjustment by decrease of risk.

When the insured has erroneously reported a risk to be more serious than it really is, he shall have a right to a premium correction for periods prior to the report of the error in accordance with the rate applicable at the time of the execution of the contract.

When the risk has decreased, the insured shall have a right to the readjustment of the premium for prior periods in accordance with the rate applicable at the time of the report of the decrease.

Art. 35. Readjustment of the premium due to aggravation of the risk.

When there exists aggravation of a risk and the insurer chooses not to rescind the contract or if rescission would be improper, the premium shall be readjusted in accordance with the new condition of the risk as from the report thereof, in accordance with the rate applicable at that time.

Section IX. Lapse

Art. 36. Conventional lapse.

When the effect of non-fulfillment of a duty or obligation imposed on the insured has not been determined by this law, the parties may come to an agreement on the lapse of the rights of the insured, if the non-fulfillment arose from his fault or negligence, in accordance with the following system:

a) Duties and obligations prior to a loss. If the duty or obligation should have been fulfilled before the loss, the insurer must allege lapse within the month of learning of the non-fulfillment.

When the loss occurs before the insurer alleges the lapse, the insurer will only owe the indemnity if the non-fulfillment did not influence the occurrence of the loss or the extension of the obligation of the insurer;

b) Duties and obligations after a loss. If the duty or obligation should have been executed after a loss, the insurer shall be released by the non-fulfillment if it influenced the extension of the obligation assumed.

Effects on the premium. In case of lapse the insurer shall have a right to the premium for the period in progression at the time in which he learned of the non-fulfillment of the obligation or duty.

Section X. Aggravation of the Risk

Art. 37. Aggravation of the risk. Concept and rescission.

Any aggravation of a risk assumed that, if it had existed at the time of the execution of the contract, in the judgment of experts would have impeded the contract or modified its conditions, is special cause for the rescission thereof.

Art. 38. Report.

The payee must report to the insurer aggravations caused by an act of his before they are produced; and those due to an act of another, immediately after learning of them.

Art. 39. Effects: Provocation of the payee.

When the aggravation is due to an act of the payee, the coverage shall be suspended. The insurer, in the term of 7 days, must notify its decision to rescind the contract.

Art. 40. Effects: of an act other than by the payee.

When the aggravation results from an act other than by the payee or if the latter must permit it or provoke it due to reasons other than his own will, the insurer must notify him of the decision to rescind within the term of 1 month with an advance notice of 7 days.

Art. 39 shall be applied if the risk had not been assumed in accordance with the business practices of the insurer.

Effects in case of loss. If the payee omits reporting the aggravation, the insurer shall not be obligated to perform if the loss is produced while the aggravation of the risk exists, unless:

- a) the payee has omitted or delayed the report without fault or negligence;
- b) the insurer knew of the aggravation at the time in which he should have been given the report thereof.

Art. 41. Effects of the rescission.

The rescission of the contract shall give a right to the insurer:

- a) if the aggravation of the risk was communicated in a timely manner, to receive the premium in proportion to the time elapsed;
- b) if the aggravation of the risk was not communicated in time, to receive the premium for the current insurance period.

Art. 42. Extinction of the right to rescind.

The right to rescind shall be extinguished if it is not exercised in the periods provided or if the aggravation has disappeared.

Art. 43. Excused aggravation.

The provisions on aggravation of a risk shall not be applied in the cases in which it was provoked in order to prevent loss or attenuate its consequences or due to a generally accepted humane act.

Art. 44. Aggravation between the offer and the acceptance.

The provisions of this section are also applicable to an aggravation produced between the presentation and the acceptance of the offer of insurance that was not known by the insurer at the time of its acceptance.

Art. 45. Plurality of interests or persons.

When the contract includes a plurality of interests or persons and the aggravation only affects part of them, the insurer may rescind the entire contract if it had not been executed under the same conditions with respect to the interests or persons not affected.

If the insurer exercises his right to rescind the contract with respect to a portion of the interests, the payee may rescind the remainder with application of art. 41, in regard to the premium.

The same rule is applicable when the insurer is released for this cause.

## Section XI. Report of a Loss

### Art. 46. Report.

The payee or holder of rights, as the case may be, shall communicate the occurrence of a loss to the insurer within 3 days of knowing of it. The insurer may not allege tardiness or omission if salvage operations or proof of loss or damage intervenes within the same period.

Information. Additionally, the insured is obligated to supply to the insurer, at his request, the information necessary to verify the loss or the extension of the service with which he is charged and to permit him the investigations necessary for that purpose.

Documents. Prohibited requirements. The insurer may require instrumental evidence insofar as is reasonable that the insured shall supply. It is not valid to agree upon a limitation of the means of evidence, nor to subject the performance of the insurer to a recognition, transaction or sentence handed down on the authority of a case tried, without prejudice to the application of the legal provisions on prejudicial questions.

Faculty of the insurer. The insurer may examine the administrative or judicial procedures motivated by or related to the investigation of the loss, or which are partly established in a civil suit and partly in a criminal case.

### Art. 47. Delay. Penalty.

The insured shall lose the right to be indemnified in the case of non-fulfillment of the duty provided in paragraph 1 of article 46, unless he proves a fortuitous event, force majeure or the impossibility of acting without fault or negligence.

### Art. 48. Malicious non-fulfillment of art. 46, paragraph 2.

The insured shall lose the right to be indemnified if he maliciously fails to fulfill the duties provided in paragraph 2 of article 46, or fraudulently exaggerates the damages or employs false evidence to prove the damages.

## Section XII. Expiration of the Obligation of the Insurer

### Art. 49. Time of the payment.

In property damage insurance, the credit of the insured shall be paid within 15 days from the time the amount of the indemnity is established or from the acceptance of the indemnity offered, once the period of art. 56 has expired.

In personal insurance the payment shall be made within 15 days of notification of the loss, or of receipt of the complementary information mentioned in art. 46, paragraphs 2 and 3, if applicable.

Art. 50. Delay.

An agreement that exempts the insurer from the liability due to his delay shall be null and void.

Art. 51. Payment on account.

When the insurer estimates the damage and recognizes the right of the insured or of the holder of the right, the latter may claim a payment on account if the procedure for establishing the performance cannot be terminated within one month following the notification of the loss. The payment on account shall not be less than one-half of the performance recognized or offered by the insurer.

Suspension of the term. When the delay is due to omission of the insured, the term shall be suspended until the latter complies with the duties imposed by the law or the contract.

Personal accident insurance. In personal accident insurance, if due to temporary incapacity the payment of an annuity was agreed, the insured shall have a right to a payment on account after one month has elapsed.

Delay of the insurer. The insurer becomes liable for delay by the mere expiration of the periods.

Section XIII. Rescission by Partial Loss

Art. 52. Time.

When the loss causes only partial damage, both parties may unilaterally rescind the contract up to the moment of the payment of the indemnity.

By the insurer. If the insurer chooses to rescind, his liability shall cease 15 days after having notified his decision to the insured, and he shall refund the premium for the time of the current period not elapsed in proportion to the remainder of the sum insured.

By the insured. If the insured chooses the rescission, the insurer shall keep the right to the premium for the current period, and refund any premiums received for future periods.

No rescission. Effects. When the contract is not rescinded the insurer shall only be liable in the future for the remainder of the insured sum, unless there exists a stipulation to the contrary.

Section XIV. Intervention of Auxiliaries in the Execution of the Contract

Art. 53. Auxiliaries: faculties.

An insurance producer or agent, whatever his relationship with the insurer, authorized thereby for mediation, shall only be empowered for the following in respect to the transactions in which they intervene:

a) to receive offers to execute and modify insurance contracts;

b) to deliver the instruments issued by the insurer, referring to contracts or their extensions;

c) to accept payment of the premium if he possesses a receipt of the insurer. The signature may be a facsimile.

Art. 54. Assigned agent. Assigned zone.

When the insurer appoints a representative or agent with faculties to act in his name, the rules of mandate shall be applied. The faculty to execute insurance contracts shall also authorize the agreement of amendments or extensions, to receive notifications and to draw up declarations of rescission, unless an express limitation exists. If the insurance representative or agent is appointed for a certain district or zone, his faculties shall be limited to negotiations or juridical acts that refer to insurance contracts with respect of things found in the district or zone, or with persons who have their usual residence therein.

Art. 55. Equivalent knowledge.

In the cases of the preceding article, the knowledge of the representative or agent is equivalent to that of the insurer with reference to insurance that the representative or agent is authorized to execute.

Section XV. Determination of the Indemnity. Expert Judgment.

Art. 56. Recognition of the right. Period. Silence.

The insurer must decide upon the right of the insured within 30 days from the receipt of the complementary information provided in paragraphs 2 and 3 of article 46. Omission of pronouncing the decision shall imply acceptance.

Art. 57. Arbitrational judgment. Expert judgment.

Arbitrational clauses included in the policy are null and void. The valuation of the damage may be submitted to the judgment of experts.

Section XVI. Prescription

Art. 58. Term.

Suits based on the insurance contract shall prescribe in the period of one year, computed from the time the corresponding obligation was exigible.

Premiums paid in installments. When the premium must be paid in installments, the prescription period for its collection shall be computed as from the expiration of the last installment. In the case of the last paragraph of art. 30, it shall be computed as from the time the insurer orders the payment.

Interruption. Procedural acts established by the law or the contract for the settlement of the damage shall interrupt the prescription period for the collection of the premium and for the collection of the indemnity.

Beneficiary. In life insurance, the prescription period for the beneficiary shall be computed as from the knowledge of the existence of the benefit, but in no case shall exceed 3 years as from the loss.

Art. 59. Abbreviation.

The prescription period may not be abbreviated. Neither shall it be valid to establish a period for filing a judicial suit.

## Chapter II. Property Damage Insurance

### Section I. General Provisions

Art. 60. Object.

Any risk if a legal economic interest in a loss not occurring exists, may be the object of property damage insurance.

Art. 61. Obligation of the insurer.

The insurer is obligated to indemnify the property damage caused by the loss, in accordance with the contract, without including the interrupted profits, unless the latter has been expressly agreed upon.

Measure. He shall be liable only up to the amount of the sum insured, unless the law or the contract disposes otherwise.

Art. 62. Insured sum: reduction.

If the insured sum significantly exceeds the actual value of the insured interest, the insurer or the payee may require its reduction.

Nullity. The contract shall be null and void if its was executed with the intention of unduly enriching the insured with the surplus. If upon the execution of the contract the insurer does not know of that intention, he shall have a right to receive the premium for the insurance period during which he acquired that knowledge.

Art. 63. Appraised value.

The value of the property to which the insurance refers may be established at a determined amount that shall expressly be indicated as a valuation.

The estimate shall be the value of the property at the time of the loss, unless the insurer proves that it significantly exceeds this value.

Art. 64. Unity or joint ownership of property.

If the contract includes a unity or joint ownership of property, it shall include the assets that shall be incorporated subsequently to this unity or joint ownership of property.

Art. 65. Over-insured.

If at the time of the loss the insured value exceeds the insurable value, the insurer shall only be obligated to indemnify the loss actually sustained; nevertheless, he shall have a right to receive the entire premium.



Under-insured. If the insured value is less than the insurable value, the insurer shall only indemnify the damage in the proportion that results from both values, unless there is an agreement to the contrary.

Art. 66. Inherent defect.

The insurer shall not indemnify damages or losses produced by an inherent defect of the asset, unless there is an agreement to the contrary.

If the defect had aggravated the damage, the insurer shall indemnify without including the damage caused by the defect, unless there is an agreement to the contrary.

## Section II. Plurality of Insurance

Art. 67. Notification.

Anyone who insures the same interest and the same risk with more than one insurer, shall notify each of the insurers without delay of the other contracts executed, indicating the insurer and the sum insured, under penalty of lapse, unless there is an agreement to the contrary.

Liability of each insurer. In case of loss, when special stipulations do not exist in the contract or between the insurers, it shall be understood that each insurer shall contribute proportionally to the amount of his contract, up to the amount of the indemnity due. The settlement of the damages shall be made considering the contracts in force at the time of the loss. An insurer that pays a sum greater than that which is proportionally his duty, shall have a right to a suit against the insured and against the other insurers in order to make the corresponding readjustment.

Subsidiary insurance. It may be stipulated that one or more insurers are liable only on a subsidiary basis or when the damage exceeds a determined sum.

Art. 68. Nullity.

The insured may not seek an indemnity exceeding the amount of the damage sustained from the joint insurers. If plural insurance is executed with the intention of an undue enrichment, contracts executed with that intention shall be null and void; without prejudice to the right of the insurers to receive the premium due in the period during which that intention was known, if they ignored it at the time of the execution.

Art. 69. Executed in ignorance.

If the insured executes the contract without knowing of the existence of another prior contract, he may request the rescission of the most recent or the reduction of the insured sum to the amount not covered by the first contract with a proportional decrease of the premium. The petition must be made immediately upon learning of it and prior to a loss.

Contracts executed simultaneously. If the insurance contracts are executed simultaneously, only a pro-rated reduction of the insured sums may be requested.

### Section III. Provoking a Loss

#### Art. 70. Provoking a loss.

The insurer shall be released if the payee or the beneficiary provokes the loss fraudulently or through serious fault. Acts carried out to prevent the loss or attenuate its consequences, or for a generally accepted humane purpose shall be excluded.

#### Art. 71. War, riot or tumult.

The insurer shall not cover the damages caused by acts of civil or international war or by riot or popular tumult, unless there is an agreement to the contrary.

### Section IV. Salvage and Verification of the Damages

#### Art. 72. Obligation of salvage.

The insured is obligated to provide that which is necessary, to the extent of the possibilities, to avoid or decrease the damage and to observe the instructions of the insurer. If more than one insurer exists and they issue contradictory instructions, the insured shall act in accordance with the instructions that appear most reasonable in the circumstances of the case.

**Violation.** If the insured violates this obligation fraudulently or through serious fault, the insurer shall be released from his obligation to indemnify to the extent that the damage would have been less without that violation.

#### Art. 73. Reimbursement, expenses, salvage.

The insurer is obligated to reimburse the insured the expenses which are not manifestly erroneous which were realized in compliance with the duties of art. 72, even when they were unfruitful or exceed the insured sum.

**Reimbursement under-insured.** In the case of under-insured he shall be reimbursed in the proportion indicated in art. 65, paragraph 2.

**Instructions of the insurer.** If the expenses are realized in accordance with instructions of the insurer, the latter must provide the entire payment and advance the funds if required.

#### Art. 74. Abandonment.

The insured may not abandon the property affected by the loss, unless there is an agreement to the contrary.

#### Art. 75. Verification of the damages.

The insured may be represented in the procedures for verifying the loss and settling the damage; any agreement to the contrary is null and void. The expenses of that representation shall be paid by the insured.

#### Art. 76. Expenses of the verification and settlement.

The necessary expenses to verify the loss and settle the compensable damage shall be charged to the insurer insofar as they have not been caused by inexact indications of the insured. The reimbursement of the remuneration of the personnel employed by the

insured shall be excluded. It may be agreed that the insured pay the expenses for the performance of his expert and participate in those of the third party.

Art. 77. Change in damaged items.

The insured may not, without the consent of the insurer, introduce changes in the items damaged which would make it more difficult to establish the cause of the damage thereof, unless it is done to decrease the damage or in the public interest.

Delay of the insurer. The insurer may only invoke this provision when he proceeds without delays to the determination of the causes of the loss and to the valuation of the damages.

Malicious violation. Malicious violation of this duty shall release the insurer.

Art. 78. Expert determination. Challenge. Judicial valuation.

When the amount of the damages is determined by experts in accordance with that which was agreed by the parties, the expert opinion is annulable if it is evidently apart from the true estate of the items or from the agreed procedure. If the expert opinion is annulled, the damages shall be judicially valued, in accordance with an expert opinion issued in accordance with procedural law.

Judicial valuation. The judicial valuation shall replace the conventional expert valuation if the experts cannot be dispatched or not dispatched in time.

Art. 79. Effects on prior causes of lapse.

The participation of the insurer in the expert procedure of the valuation of the damages of art. 57, shall involve his waiver of invoking the causes of release known previously that are incompatible with that participation.

Section V. Subrogation

Art. 80. Subrogation.

The rights corresponding to the insured against a third party, by reason of the loss, shall be transferred to the insurer up to the amount of the indemnity guaranteed. The insured is liable for any act that prejudices this right of the insurer.

Exceptions. The insurer may not make the subrogation valid in prejudice of the insured.

Personal insurance. Subrogation is inapplicable in personal insurance.

Section VI. Disappearance of the Interest or Change of Title

Art. 81. Disappearance prior to the effective date.

When the insured interest does not exist at the time of commencement of the effectiveness of the contracted coverage, the payee shall be released from his obligation to pay the premium; but the insurer has a right to reimbursement of the expenses, plus an additional amount which may not exceed 5% of the premium.

Disappearance during the effective period. If the insured interest disappears after the commencement of the coverage, the insurer shall have a right to receive the premium, in accordance with the rules of art. 41.

Art. 82. Change of title of the interest.

The change of title of the insured interest must be notified to the insurer, who may rescind the contract in the period of 20 days, with a notice of 15 days, unless there exists a contrary agreement.

Rescission by the acquirer. The acquirer may rescind in the term of 15 days, without observing any advance notice.

Liability for the premium. The seller owes the premium corresponding to the period in course on the date of the notification. The purchaser is a co-debtor jointly and severally up to the time in which he notifies his wish to rescind.

Rescission by the insurer. If the insurer chooses to rescind, he shall refund the premium of the current period in proportion to the time not elapsed and the entire premium corresponding to future periods.

Period to notify. The notification of the change of title provided in the first paragraph shall be made in the term of 7 days, if the policy does not provide otherwise. Omission thereof shall release the insurer if a loss occurs after 15 days from the expiration of that period.

Art. 83. Forced sale. Hereditary succession.

Art. 82 shall be applied to forced sales, computing the periods as from the approval of the auction. It shall not be applied to hereditary transfer, in which case the heirs and legatees shall succeed to the contract.

Section VII. Mortgage - Pledge

Art. 84. Mortgage. Pledge.

In order to exercise the privileges recognized by arts. 3110 of the Civil Code and 3 of Law 12,962, a creditor shall notify the insurer of the existence of a pledge or mortgage, and the insurer, if the insurance deals with reparations, shall not pay the indemnity without prior notice to the creditor, in order that the latter might draw up his opposition within 7 days.

Once the opposition has been drawn up and in the absence of an agreement of the parties, the insurer shall judicially consign the sum due. The court shall resolve the article through immediate procedure.

Section VIII. Fire Insurance

Art. 85. Compensable damage.

An insurer shall indemnify damage caused to assets by the direct or indirect action of a fire, by measures taken to extinguish it, those of demolition, evacuation or other similar.

The indemnity also must cover the insured goods which were lost during the fire.

Art. 86. Earthquake, explosion or lightning.

The insurer shall not be liable for the damage if the fire or the explosion is caused by an earthquake.

The damages caused by explosion or lightning shall be on the same level as those from fire.

Art. 87 Amounts or compensation.

The amount of the compensation due by the insurer shall be determined:

- a) for buildings, by their value at the time of the loss, unless reconstruction was agreed;
- b) for merchandise produced by the same insured, in accordance with the cost of manufacture; for other merchandise, by the selling price at the time of the loss;
- c) for animals, by the value which they had at the time of the loss; for raw materials, crops and other natural products, in accordance with the average prices thereof on the day of the loss;
- d) for household furniture and home equipment and supplies and other objects of use, tools and machines, for their value at the time of the loss. Nevertheless, it may be agreed that indemnity shall be given in accordance with their replacement value.

Art. 88. Expected profit.

When compensation for stoppage of profits is included in fire insurance, its value may not be the subject of a prior agreement.

When emergency damage with respect to the same property is insured with one insurer and another insurer insures the stoppage of profits or another special interest exposed to the same risk, the insured must be notified of the different contracts without delay.

Art. 89. Guarantee of reconstruction.

When the reconstruction or replacement of the damaged property has been agreed, the insurer has a right to require that the indemnity be actually used for that purpose and to require sufficient guarantees. In these conditions the mortgage creditor or pledgor may not challenge the payment, unless the debtor delays in the payment of his credit.

Section IX. Agricultural Insurance

Art. 90. General principle.

In insurance of damages to agricultural operations the indemnity may be limited to those that the insured suffers at a determined stage or moment of the operation, such as the seeding, harvest or other similar, with respect to all or some of the products, and may refer to any risk that may damage them.

## Hail

### Art. 91. General principle.

The insurer shall be liable for damages caused exclusively by hail to the insured fruits and products, even when other meteorological phenomena concurred therewith.

### Art. 92. Calculation of the indemnity.

In order to valuate the damage the value that the fruits and products would have had held at the time of the harvest if there had been no loss shall be calculated, as well as the use to which they may be applied and the value that they hold after the damage. The insurer shall pay the difference as compensation.

### Art. 93. Report of loss.

Report of the loss shall be remitted to the insurer in the term of 3 days, if the parties have not agreed upon a longer period.

### Art. 94. Postponement of the settlement.

Either of the parties may request postponement of the settlement of the damage until the time of the harvest, unless there exists a contrary agreement.

### Art. 95. Changes in the affected products.

The insured may only make those changes on the fruits and products affected by the damage which cannot be postponed in accordance with norms of adequate operation before the determination of the extent of the damage without the consent of the insurer.

### Art. 96. Change of title of the interest.

In case of disposal of the real property on which the damaged fruits and products are found, the insurer may rescind the contract only after the expiration of the current period, during which he learned of the disposal.

The provision shall be applied also in the cases of lease and of juridical transactions by which a third party acquires the right to the insured fruits and products.

## Frost

### Art. 97. Frost. System.

Arts. 90 to 96 shall be applied to insurance for damages caused by frost.

## Section X. Insurance on Animals

### Art. 98. General principle.

Any risk that affects the life or health of any species of animals may be insured.

## Death Insurance

### Art. 99. Indemnity.

In death insurance on animals, the insurer shall indemnify the damage caused by death of the animal or animals insured, or by their total and permanent incapacity, if so agreed.

Art. 100. Damages not included.

The insurance shall not include the following damages, unless there exists an agreement to the contrary:

- a) Those derived from epidemics or sicknesses for which the insured has a right to indemnity by public resources, even if the right had been lost in consequence of a violation of norms on sanitary policy;
- b) Those caused by fire, lightning, explosion, flood or earthquake;
- c) Those occurring during or on the occasion of transport, loading or unloading.

Art. 101. Subrogation.

In the application of art. 80, the insurer shall be subrogated in the rights of the insured for redhibitory defects resulting in compensation.

Art. 102. Right of inspection.

The insurer shall have a right to inspect and examine the insured animals at any time at his own cost.

Art. 103. Report of loss.

The insured shall report to the insurer the death of the animal and any sickness or accident that it shall suffer within 24 hours, even when such is not a covered risk.

Art. 104. Veterinary assistance.

When the insured animal is sick or suffers an accident, the insured shall immediately get a veterinary or a skillful person, where no veterinary exists.

Art. 105. Maltreatment or serious neglect of the animal.

The insured shall lose the right to be indemnified if he maltreats or seriously neglects the animal, fraudulently or through serious fault, especially if he does not call for veterinary assistance (art. 104) in case of sickness or accident, unless his conduct has not influenced the production of the loss or the extent of the performance of the insurer.

Art. 106. Sacrifice of the animal.

The insured may not sacrifice the animal without the consent of the insurer, except when:

- a) it is disposed by the authority;
- b) in accordance with the circumstances it was so urgent that the insurer could not be notified. This urgency shall be established by a report of a veterinary, or in default thereof, of two skillful practitioners.

If the insured does not permit the sacrifice ordered by the insurer, he shall lose the right to indemnification of major damage caused by such refusal.

Art. 107. Indemnity. Calculation.

The indemnity shall be determined by the value of the animal established in the policy.

Art. 108. Death or incapacity after expiration.

The insurer shall be liable for the death or incapacity of the animal occurring up to one month after the contractual relationship was extinguished, when it was caused by a sickness or wound produced during the effective period of the insurance. The insured must pay the premium proportional to the rate.

Rescission in case of contagious sickness. The insurer shall not have a right to rescind the contract when any of the insured animals has been affected by a covered contagious disease.

## Section XI. Civil Liability Insurance

Art. 109. Scope.

The insurer shall be obligated to maintain an indemnity to the insured due to a third party by reason of the liability provided in the contract, as a consequence of an act occurring during the period covered.

Art. 110. Costs: Civil cause.

The guarantee of the insurer shall include:

a) Payment of judicial and extrajudicial expenses and costs to resist the claim of the third party. When the insurer deposits the sum insured in payment and the amount of the expenses and costs accrued up to that time, relinquishing the exclusive direction of the case to the insured, the insurer shall be released from the expenses and costs which subsequently accrue;

b) Costs: penal cause. The payment of costs of defense in the penal process when the insurer assumes that defense.

Art. 111. Payment of expenses.

The payment of the expenses and costs must be made to the extent they are necessary.

Proportional rule. If the insured must support a portion of the damage, the insurer shall reimburse the expenses and costs in the same proportion.

Instructions or orders of the insured. If they are accrued in a civil case maintained by a manifestly unjustified decision of the insurer, the latter must pay them entirely.

Refusal. The provisions of art. 110 and of this article shall be applied even when the claim of the third party is refused.

Art. 112. Penalties.

The indemnity due by the insurer shall not include penalties applied by the judicial or administrative authority.



Art. 113. Liability of managerial personnel.

Liability insurance for the exercise of industry or trade, shall include the liability of the persons with managerial functions.

Art. 114. Fraud or serious fault.

The insured shall not have a right to be indemnified when he fraudulently or through serious fault provoked the act from which his liability arises.

Art. 115. Report.

The insured must report an act from which his possible liability might arise in the term of 3 days from the day on which it happened, if he knows of it or should have known thereof; or from the claim of the third party, if he did not know of it previously. He shall give immediate notice to the insurer when the third party makes his right judicially valid.

Art. 116. Fulfillment of the sentence.

The insurer shall fulfill the judicial sentence in the portion to which he is liable in the terms of the procedure.

Recognition of liability. Transaction. The insured may not recognize his liability or execute a transaction without permission of the insurer. When those acts are executed through the intervention of the insurer, the latter shall deliver the funds which correspond in accordance with the contract, in a term used for the diligent fulfillment of obligations assumed.

Judicial recognition of acts. The insurer shall not be released when the insured, under judicial interrogation, admits acts from which his liability derives.

Art. 117. Controller of procedures.

The insurer may examine the administrative or judicial procedures motivated or related to the investigation of the loss and which are partly established in a civil and partly in a criminal case.

Art. 118. Privilege of the injured party.

The credit of the injured party shall have privilege on the insured sum and its accessories, with preference over the insured and any creditor thereof, even in case of bankruptcy or civil composition.

Citation of the insurer. The injured party may summon the insurer in guarantee until the case is received to prove. In such case the claim must be filed before the court of the place in which the act took place or that in which the insurer has his domicile.

Judgment. The decision handed down shall be a judgment in respect to the insurer and shall be executable against him to the extent of the insurance. In this judgment or the execution of the decision, the insurer may not challenge the defenses arising from the loss.

Also the insured may summon the insurer in guarantee within the same period and with identical effects.

Art. 119. Plurality of injured parties.

If a plurality of injured parties exist, the indemnity owed by the insurer shall be distributed on a pro-rated basis. When two or more suits are filed, the different processes shall be accumulated in order to be resolved by the court that is prepared therefor.

Art. 120. Collective insurance.

In the case of collective insurance of persons and the contracting party takes the payment of the premium as his exclusive duty, it may be agreed that the insurance shall cover his civil liability with respect to the members of the group in the first place and that the balance shall correspond to the designated beneficiary.

Section XII. Transport Insurance

Art. 121. Subsidiary application of maritime insurance.

Insurance on land transport risks shall be governed by the provisions of this law and subordinately by those relative to maritime insurance. Insurance on risks of transport by rivers and inland waters shall be governed by the provisions relative to maritime insurance with the modifications established in the following articles.

Field of application. The insurer may assume any risk to which transport vehicles, merchandise or the liability of the transporter are exposed.

Art. 122. Change of route and abnormal fulfillment.

The insurer shall not be liable for damages if, without necessity, the trip had been taken through extraordinary routes or roads or in a manner which is not common.

Art. 123. Insurance by time or by trip.

The insurance may be contracted by time or by trip. In both cases the insurer shall indemnify damage produced after the period of guarantee if a loss covered by the insurance occurred during the extension of the trip or of the transport.

Art. 124. Abandonment.

In the case of land transport vehicles, abandonment shall only be possible if total effective loss exists. The abandonment shall be made in the period of 30 days of the occurrence of the loss. For means of river and inland water transport, the rules of maritime insurance shall be applied.

Art. 125. Amplitude of the liability of the transporter.

When the insurance refers to the liability of the transporter with respect to passengers, carriers, consignees, or third parties, the liability for the acts of their employees or other persons for which they are liable shall be understood as included.

Art. 126. Calculation of the indemnity. Merchandise.

In the case of merchandise, unless there exists an agreement to the contrary, the indemnity shall be calculated on its destination price, at the time in which it should have been regularly delivered. The profit expected shall be included only if an express measure is agreed.

Method of transport. In the case of a land transport vehicle, the indemnity shall be calculated on its value at the time of the loss. This rule shall not be applied to river or inland water transport methods.

Art. 127. Inherent defect, etc.

The insurer shall not be liable for the damage due to the intrinsic nature of the merchandise, an inherent defect, bad conditions, shrinkage, leakage or deficient packaging.

Notwithstanding, the insurer shall be liable to the extent that the deterioration of the merchandise arises from delay or other direct consequences of a covered loss.

Fault or negligence of the carrier or consignee. The parties may agree that the insurer is not liable for the damages caused by simple fault or negligence of the carrier or consignee.

### Chapter III. Personal Insurance

#### Section I. Life Insurance

Art. 128. Insurable life.

The insurance may be placed on the life of the contracting party or on a third party.

Minors over 18 years of age. Minors over 18 years of age shall have the capacity to contract insurance on their own life only if they designate their ascendants, descendants, spouses or siblings who are dependent thereon as beneficiaries.

Consent of the third party. Interdicted parties and minors of 14 years of age. If death is to be covered, the written consent of the third party or of his legal representative, if he is incapacitated, shall be required. Death insurance of interdicted parties and of minors of 14 years of age is prohibited.

Art. 129. Knowledge and conduct of the third party.

In life insurance of a third party, the knowledge and the conduct of the contracting party and the third party shall be taken into account.

Art. 130. Incontestability.

After 3 years have elapsed from the execution of the contract, the insurer may not invoke suppression of circumstances, except when such suppression was fraudulent.

Art. 131. Inexact report of age.

The inexact report of the age shall authorize the rescission by the insurer only when the true age exceeds the limits established in his commercial practice to assume the risk.

Older age. When the actual age is older than reported, the insured capital shall be reduced in accordance therewith and with the amount of premium paid.

Younger age. When actual age is younger than reported, the insurer shall compensate the mathematical reserve constituted with the surplus of premium paid and readjust the future premiums.

Art. 132. Aggravation of the risk.

Only the aggravation of the risk that is due to reasons specifically provided in the contract must be reported.

Art. 133. Change of profession.

Changes of profession or activity of the insured shall authorize rescission of the contract when they aggravate the risk such that the insurer would not have concluded the contract if the insured had been thus engaged at the execution thereof.

If at the time of the execution of the contract the insurer would have concluded it for a higher premium, if such change had existed at that time, the insured sum shall be reduced in proportion to the premium paid.

Art. 134. Rescission.

The insured may rescind the contract without any limitation after the first insurance period. The contract shall be considered rescinded if the premium is not paid in the terms agreed.

Payment by third party. A third party beneficiary, designated for consideration, shall be permitted to pay the premium.

Art. 135. Suicide.

The voluntary suicide of a person whose life is insured shall release the insurer, unless the contract has been in force uninterruptedly for 3 years.

Art. 136. Death of the third party by the contracting party.

In life insurance of a third party, the insurer shall be released if the death was deliberately provoked by an illegal act of the contracting party.

Death of the insured by the beneficiary. A beneficiary who deliberately provokes the death of the insured with an illegal act shall lose all right.

Art. 137. Criminal enterprise. The death penalty.

The insurer shall be released if the person whose life was insured dies in a criminal enterprise or by legitimate application of the death penalty.

Art. 138. Paid policy.

After 3 years have elapsed from the execution of the contract and the insured is up to date in the payment of the premiums, he may at any time demand that the following be inserted in the policy, in accordance with the technical plans approved by the authority of a controller:

a) Paid insurance. The conversion of the insurance into a paid up sum at a reduced amount or for a shorter period.

b) Redemption. The rescission of the contract with the payment of a determined sum.

Art. 139. Conversion.

When in the case of the preceding article the insured interrupts the payment of the premiums without manifesting an option between the solutions consigned within one month of receipt of a questionnaire from the insurer, the contract shall be converted automatically into paid up insurance for a reduced sum.

Art. 140. Rescission and release of the insurer.

When the insurer is released for any reason after the elapse of 3 years, that which is provided in art. 9 shall be applied.

Art. 141. Loan.

When an insured is up to date in the payment of the premiums, he shall have a right to a loan after the elapse of 3 years from the execution of the contract; its amount shall result from the policy. It shall be calculated in accordance with the reserve corresponding to the contract, in accordance with the technical plans of the insurer approved by the authority of a controller.

Automatic loan. It may be agreed that the loan be accorded automatically for the payment of the premiums not paid on time.

Art. 142. Rehabilitation.

Notwithstanding the reduction provided in arts. 138 and 139, the insured may, at any time, restore the contract to its original terms with the payment of the premiums corresponding to the period in which the reduction was effective, along with interest at the rate approved by the authority of a controller in accordance with the technical nature of the plan and under the conditions that he shall determine.

In Benefit of a Third Party

Art. 143. In benefit of a third party.

It may be agreed that the capital or revenue to be paid in case of death shall be paid to a third party survivor, determined or determinable at the moment of the event.

Acquisition of proper right. The third party shall acquire a proper right at the time of the event. When his designation is for consideration, a prior time may be established.

Except in the case in which the designation is for consideration, the contracting party may freely revoke it even when it was made in the contract.

Art. 144. Collation or reduction of premiums.

The legitimate heirs of the insured shall have a right to the collation or reduction for the amount of the premiums paid.

Art. 145. Designation without establishment of a share.

If several persons are designated without indication of a proportional share for each, it shall be understood that the benefit is to be shared equally.

Designation of children. When children are designated it shall be understood that those who have been conceived and the survivors at the time of the occurrence of the event are provided.

Designation of heirs. When heirs are designated, it shall be understood as those who shall succeed the contracting party by law, if he has not authorized a will; if he has authorized a will, the heirs instituted therein shall be considered designated. If no proportional share is established, the benefit shall be distributed in accordance with the hereditary portions.

No designation or expiration thereof. When the contracting party does not designate a beneficiary or for any reason the designation has become inefficacious or without effect, it shall be understood that the heirs are designated.

Art. 146. Form of the designation.

The designation of a beneficiary shall be made in writing without determined formality, even when the policy indicates or demands a special form. It is valid even if the insurer is notified after the event.

Art. 147. Bankruptcy or civil composition of the insured.

Bankruptcy or civil composition of the insured shall not affect the insurance contract. The creditors may only make their actions valid on the credit for redemption exercised by the bankrupt or insolvent party or on the capital which he must receive if the event provided for happens.

Art. 148. Field of application.

The provisions of this chapter shall be applied to the insurance contract in case of death, survival, mixed or others related with human life insofar as they are compatible by their nature.

Section II. Personal Accident Insurance

Art. 149. Application of provisions on life insurance.

In personal accident insurance arts. 132, 133 and 143 to 147, inclusive, referring to life insurance, shall be applied.

Art. 150. Reduction of the consequences.

The insured insofar as possible, must impede or reduce the consequences of loss and observe the instructions of the insurer in the respect, insofar as shall be reasonable.

Art. 151. Expert opinion.

When the loss or its consequences must be established by experts, their report is not obligatory if it is evidently apart from the actual situation of fact or from the agreed procedure. If the expert opinion is annulled, the verification of such extremes shall be made judicially.

Art. 152. Fraud or serious fault of the insured or beneficiary.

The insurer shall be released if the insured or the beneficiary provoke the accident fraudulently or through serious fault or the accident is sustained in a criminal enterprise.

Section III. Collective Insurance

Art. 153. Third party beneficiary.

In the case of contracting collective insurance on life or personal accidents in the exclusive interest of the members of the group, they or their beneficiaries shall have a proper right against the insurer when the event provided for occurs.

Art. 154. Commencement of the contingent right.

The contract shall establish the conditions of incorporation into the insured group that shall be produced when the conditions are fulfilled.

Prior medical examination. If a prior medical examination is demanded, the incorporation shall be subject to that report. This shall be effected by the insurer within 15 days of the respective notification.

Art. 155. Loss of the contingent right by separation.

Those who permanently leave the insured group shall be excluded from the insurance from that moment, unless there exists a contrary agreement.

Art. 156. Exclusion of the payee as beneficiary.

The contracting party of the collective insurance may be a beneficiary thereof, if he is a member of the group, as well as for the accidents that he personally suffers, without prejudice to that which is provided by art. 120.

The contracting party may also be beneficiary when he has a legal economic interest in respect to the life or health of the members of the group, to the extent of the concrete loss.

Chapter IV. Final Provisions

Art. 157. Maritime and aeronautical insurance.

The provisions of this article shall be applied to maritime insurance and air navigation insurance, insofar as this is not provided by specific laws and is not repugnant to their nature.

Extension. The provisions of this article shall also be applied to the obligatory life insurance of State employees and to the insurance of spectators and personnel of athletic shows, except the provisions that are contradictory to special laws or to their nature.

Mutual insurance shall be governed by the provisions of this title except the rules that are contrary to its nature.

Art. 158. Obligatory rules.

In addition to the rules that by their words or nature are totally or partially unchangeable, arts. 5, 8, 9, 34 and 38 may not be varied by agreement of the parties, and arts. 6, 7, 12, 15, 18 (second paragraph), 19, 29, 36, 37, 46, 49, 51, 52, 82, 108, 110, 114, 116, 130, 132, 135 and 140 may only be modified in favor of the insured.

When the provisions of the policies depart from repealable legal norms, they may not make up part of the general conditions. The cases in which the law provides deviation through an agreement to the contrary are not included.

## TITLE II. REINSURANCE

Art. 159. Concept.

The insurer may, in turn, insure the risks assumed, but be the sole obligated party with respect to the payee of the insurance.

Insurance of reinsurance. Contracts of retrocession or others by which a reinsurer insures, in turn, the risks assumed, shall be governed by the provisions of this title.

Art. 160. Action of the insured. Privilege of insured parties.

The insured shall not be able to bring action against the reinsurer. In case of voluntary or forced liquidation of the insurer, the insured parties together shall have special privilege on the credit balance issuing from the account of the insurer with the reinsurer.

Art. 161. Offsetting of accounts.

In case of voluntary or forced liquidation of the insurer or of the reinsurer, the debits and the reciprocal credits that exist relative to reinsurance contracts shall be offset as a matter of law.

Credit to be computed. The compensation shall be made effective, taking into account for the calculation of the credit or debit the date of rescission of the insurance and reinsurance, the obligation of refunding the premium in proportion to the time not fulfilled and that of returning the deposit of guarantee constituted in the hands of the insurer.

Art. 162. Legal System.

The contract of reinsurance shall be governed by the provisions of this title and those agreed upon by the parties.

## TITLE III. FINAL AND TRANSITORY PROVISIONS



Art. 163. Incorporation of Law into Commercial Code.

This law shall be incorporated into the Commercial Code and shall govern as from 6 months from its promulgation.

As from the same date arts. 492 to 557 and arts. 1251 to 1260 of the Commercial Code and law 3942 shall be repealed. In the first official edition it shall replace them with arts. 1 to 162 of this law.

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## TITLE VII LOANS, THEIR YIELD, AND INTEREST

Art. 558. (Commercial Code)

A loan is subject to the mercantile laws, when the thing lent can be considered as of a criminal nature, or designed for commercial use, and when the contract is made between merchants, or when the debtor at least has that character.

Art. 559. (Commercial Code)

If no stipulation is made regarding the time and place of repayment, it must take place as soon as it is demanded by the lender at the address of the debtor, provided 10 days have elapsed after making the contract.

Art. 560. (Commercial Code)

In those cases in which the law does not expressly cause interest to run, and when there is no bargain for interest in the contract, delay in fulfilling the obligation causes interest to run from the day of the demand, although the demand may exceed the amount of the debt, and although the creditor does not prove any loss or damage, and the obligee believes in good faith that he is not a debtor.

Art. 561. (Commercial Code)

On debts which are not settled, interest runs from the date of the judicial demand, on the amount of the debt as ultimately ascertained.

Art. 562. (Commercial Code)

If loans are in kind, in order to compute the yields, their value must be regulated by the prices of the species of things lent, on the due day in the place where the return should be made.

Art. 563. (Commercial Code)

The yield on loans between merchants shall always be agreed in money, even when the loan consists of goods or commercial effects.

The yields shall be paid in the same money as the capital or principal sum.

Art. 564. (Commercial Code)

Interest payable on the ground of delay must be calculated on the value of the thing lent, at the time and place at which the thing is to be returned. If the time and place have not

been fixed, payment must be made on the amount at the time and place at which the loan was made.

Art. 565. (Commercial Code)

Where there is a bargain for interest without any statement as to the rate or of the time from which it is to run, there is a presumption that the parties have subjected themselves to the rate obtained by the public banks and only for the time which may transpire after the expiration period has commenced.

A debtor upon whom suit is brought and who litigates without valid reason, shall be condemned to pay interest up to two and a half times that which the public banks are collecting, the courts duly adjusting the increase of the rate in the decision attending to the greater or lesser malice with which the debtor has litigated.

Whenever local interest or current interest is spoken of in the law or in an agreement, the interest which the National Bank obtains is meant.

Art. 566. (Commercial Code)

A debtor who has voluntarily paid interest not bargained for, cannot reclaim it, or allocate it to capital.

Art. 567. (Commercial Code)

A receipt for interest due later, given without condition or reserve, raises a presumption of payment of the earlier.

Art. 568. (Commercial Code)

An agreement made for payment of interest during a fixed time in order that the debtor may enjoy the thing lent, in consigned to be extended, if the term has expired, during the time that the return of the principal is delayed, when there is no stipulation to the contrary.

Art. 569. (Commercial Code)

Interest due may produce interest, by action at law, or special agreement. In the case of an action it is necessary that the interest should be due for at least a year.

Likewise, the net balance due in respect of concluded transactions at the end of each year, produces interest.

Art. 570. (Commercial Code)

When an action at law for principal and interest has been filed, the interest which is accruing cannot be capitalized so as to augment the capital which produces interest.

Art. 571. (Commercial Code)

The provisions of this Title shall be observed without prejudice to the special enactment with regard to current accounts.

## TITLE VIII DEPOSIT

### Art. 572. (Commercial Code)

Only that deposit is considered commercial which is made with a merchant, or on account of a merchant, and which has for object or arises from an act of commerce.

### Art. 573. (Commercial Code)

For keeping the thing deposited, the depository can demand a commission, as stipulated in the contract, or determined by the custom of the place.

If no commission has been agreed upon, and none is established by the custom of the place, it shall be determined by arbitration. A gratuitous deposit is not considered a commercial contract.

### Art. 574. (Commercial Code)

A deposit is made and accepted in the same terms as a mandate or commission, and the reciprocal; obligations of the depositor and depository are the same as are prescribed for principals and agents or factors in the Title "Agency, Commissions or Consignments".

### Art. 575. (Commercial Code)

The depository of a sum of money cannot make use of it. If he does he is responsible for all loses which may happen to the sum deposited; although they arise from a fortuitous circumstance, and he must pay current interest to the depositor.

### Art. 576. (Commercial Code)

If the deposit is established with an expression of the class of currency which shall be delivered to the depository, increases or decreases in their nominal value shall be credited or debited to or from the account of the depositor.

### Art. 577. (Commercial Code)

If the deposit consists of documents of credit which carry interest, the depository shall be responsible for the collection thereof and all other steps necessary for the preservation of their validity and legal effects, on pain of damages.

### Art. 578. (Commercial Code)

The depository from whom the thing has been carried off by force, money or some other equivalent being left in its place, is bound to deliver to the depositor that which he has received in exchange.

### Art. 579. (Commercial Code)

Deposits made in public banks are subject to the provisions of the laws, the constitution or regulations of their foundation; but so far as a matter is not specifically determined therein, the provisions of this Title shall apply.

## TITLE IX. PLEDGE

Art. 580. (Commercial Code)

A contract of commercial pledge is that by which a debtor or a third person, on his behalf, delivers a movable asset to his creditor, as security and guaranty of a commercial transaction.

Art. 581. (Commercial Code)

The lack of a written document constituting the pledge cannot be pleaded by a debtor if the pledge has been delivered, but it can by his creditors.

Art. 582. (Commercial Code)

A pledge confers on the creditor the right to take payment out of the thing pledged in priority and preference to the other creditors, as enacted in this Code.

Art. 583. (Commercial Code)

Movable property, merchandise and other goods, securities of the public debt, shares in companies and undertakings, and generally any kind of documents of credit which are commercially negotiable, may be pledged.

Art. 584. (Commercial Code)

Delivery may be real or symbolic, as prescribed for delivery of a thing sold.

When the pledge consists of securities for debt, shares of companies, or documents of credit, simple delivery of the document of title is effectual without the necessity of notification to the debtor.

Art. 585. (Commercial Code)

In default of payment on the due date, and when no special mode of sale has been agreed, the creditor may proceed to the sale by auction of the items held in pledge, after duly advertising the same 10 days in advance.

If the pledge consists of securities of public debt, shares in companies or commercial documents negotiable on the exchanges or public markets, the sale may be made by means of a broker, at the price quoted on the day following the due date.

Art. 586. (Commercial Code)

When instruments passing by endorsement are pledged, the fact that they are given as security must be expressed.

Nevertheless, although the endorsement is made in a form which transfers the right of ownership, the endorser may prove that he has only transferred the debt in pledge or as security.

Art. 587. (Commercial Code)

A creditor who has received documents of credit in pledge, is understood to be subrogated to the debtor for performing all acts which may be necessary to preserve the validity of the debt and the rights of his debtor, to whom he shall be liable for any omission which there may be with reference thereto.

A pledge creditor is likewise empowered to recover the principal and interest of the security or document of credit which has been given him in pledge, without the necessity for general and special powers from the debtor.

Art. 588. (Commercial Code)

A pledgee who in any manner alienates or negotiates the pledge without observing the form enacted in Art. 585, shall incur the penalties of the crime of fraud, without prejudice to the pledgor's right to indemnity for the damage.

## TITLE X THE CONTRACT, AND BILLS OF EXCHANGE

Important Note: Decree Law 5965/63 on Bills of Exchange takes precedence over the provisions of this Title.

### CHAPTER 1. THE CONTRACT

Art. 589. (Commercial Code)

A contract of exchange is an agreement by which one person binds himself, for value promised or delivered to cause a third party to pay a certain sum to the other contractor or some other person, by delivering him a written order.

Art. 590. (Commercial Code)

The contract or exchange does not require any special form. It is completed by the delivery of the written order or bill of exchange, and may be proved by all the means of proof admissible in the commercial matters.

Art. 591. (Commercial Code)

If there is not an agreement to the contrary, the drawer may deliver to the taker a bill of exchange, with one or more duplicates, signed by the drawer himself or a third person, endorsed or without endorsement.

Art. 592. (Commercial Code)

Drawers cannot refuse to issue to the takers of the bills second or third copies (or as many as they require) of the same tenor as the first, whenever they demand them before the maturity of the bills. All copies, including the second and onwards, shall contain a statement that they will not be considered valid, except in default or payment on the first or other bills previously issued.

Art. 593. (Commercial Code)

Each copy is valid as the original. Payment made on one of them renders the others valid.

Art. 594. (Commercial Code)

Both a drawer who does not clearly distinguish the different copies of a bill of exchange, the taker who endorses them to different persons and the drawee who accepts divers copies, are liable to the bearer for all damages, saving the right of recourse against any other person.

Art. 595. (Commercial Code)

In default of duplicate copies of the bills issued by the same drawer, any holder of a bill can give the taker a copy of the original, which shall of necessity include all the endorsements which the original contains with a statement that it is issued for want of a second copy of the bill.

Art. 596. (Commercial Code)

The drawer is bound, at the election of the taker, to draw the bill payable to the taker himself and to his order indicated by the taker, and to the order of that person.

Art. 597. (Commercial Code)

If the taker becomes bankrupt or if his resources are known to be diminished before the delivery of the bill of exchange, the drawer is not bound to deliver it, except on payment or sufficient security, even when the amount has been merely promised.

If the drawer becomes bankrupt or his resources are known to be diminished, before the value of the bill has been paid, the taker may pay the amount into Court. In order that the drawer may withdraw the deposit, he must prove the payment of the bill or give sufficient security that it will be paid at maturity.

## CHAPTER 2. BILLS OF EXCHANGE

Art. 598. (Commercial Code)

A bill of exchange is a written order, in the forms enacted by this Code, by which one person charges another with the payment of a sum of money. A bill of exchange can have an origin and cause different from a contract of exchange.

Art. 599. (Commercial Code)

The essential requisites of a bill of exchange are:

1. The words "bill of exchange" and/or "to order";
2. A definite sum to be paid unconditionally;
3. The name of the party on whom the order is drawn;
4. The date of the payment, unless it is to be considered a sight draft;
5. Place of payment;
6. The name of the person to whom the payment is to be made;

7. Definition of the place and date in which the bill is drawn;

8. The signature of the drawer of his name or that of his commercial house, or that of the person who signs for him with adequate power for that purpose.

Art. 600. (Commercial Code)

Bills need not be to order to be transferable by endorsement. If it is drawn "not to order", it can only be transferred in the manner and with the effect of an ordinary assignment of credit.

Art. 601. (Commercial Code)

Bills of exchange which have fictitious names of person or places, will only be valid as simple promissory notes by the drawer in favor of the taker.

Nevertheless, persons who are parties to the bills, and had knowledge of the fictitious character of the person or place, may not plead that defect against the third persons who had not been advised thereof.

Art. 602. (Commercial Code)

The statement of value received is not indispensable for the regularity of a bill. Its absence will not have any effect with respect to a third person, and its expression will only serve to determine the obligation between the drawer and taker, proof to the contrary being always understood as reserved.

Art. 603. (Commercial Code)

The phrases "value in account" and "value understood" make the taker of the bill liable for the value of it in favor of the drawer, so that he may set it off or demand it as and when agreed.

These phrases raise in favor of the drawer the presumption of not having received the value, until the taker has settled his accounts with the drawer. This presumption cannot be set up against third persons, and can be displaced by contrary evidence.

Art. 604. (Commercial Code)

A bill can be drawn:

1. To the order of the drawee;
2. On the drawee;
3. On a person to make payment at the address of a third person;
4. In the name of the drawer, by order and for account of a third person, and so expressed on the bill (per procuration).

The liability of the drawer to the taker and endorsers is always the same; but he is not liable to the drawee for the provision of funds, and the holder does not acquire any right against third person in favor of whose account it is drawn.

Nevertheless, in the case of bills thus drawn, if the drawer and acceptor become bankrupt, the taker has a right against the third person for whose account the payment ought to have been made, if it appears from the same bill, or a written order, that the drawer had acted as his agent.

Art. 605. (Commercial Code)

Neither the drawer nor the taker of a bill or exchange is entitled to demand after the delivery thereof that an alteration be made in the amount, place of payment, description of the drawee, or any other particular. Only by consent of both parties can any of these alternations take place.

Art. 606. (Commercial Code)

A bill of exchange may be payable in the same place where it has been signed or at the address of a third person.

If no place is stated, it is understood to be payable in the place where it has been signed.

Art. 607. (Commercial Code)

A drawer may draw a bill of exchange against the commercial house of which he forms part, or against a partnership in which he has an interest.

Art. 608. (Commercial Code)

All persons who sign bills of exchange by procuration, as drawers, acceptors or endorsers, must be authorized thereto, with special power so expressed from the person in representation of whom they act. Takers and holders of the bills are entitled to demand production of the power from the person who signs.

### CHAPTER 3. THE MATURITY OF BILLS OF EXCHANGE

Art. 609. (Commercial Code)

Bill of exchange can be drawn: at sight on demand, at certain days or months after sight, at certain days or months after date, or at a fixed or otherwise determined day.

If no time for payment is stated in the bill, it is understood to be payable at sight.

Art. 610. (Commercial Code)

Payment of a bill at sight may be demanded at the time of its presentation, and can only be postponed for 24 hours by agreement with the holder.

Art. 611. (Commercial Code)



The time for bills drawn at certain days or months after sight shall be reckoned from the day immediately following that of acceptance or protest for want of acceptance.

The time of those drawn at days or months after date shall be reckoned from the day immediately following that if its date.

Art. 612. (Commercial Code)

Bills drawn at a fixed or otherwise determined days, must be paid on that marked for their maturity.

Art. 613. (Commercial Code)

Days, months and years for reckoning the terms of bills of exchange are reckoned in conformity with the provisions of the Civil Code.

The times are continuous and are reckoned from date to date. If the due date is a public holiday, the bill is reputed due on the day immediately preceding.

Art. 614. (Commercial Code)

All bills payable at a future day must be paid on the due date before the setting of the sun, without any time of grace or courtesy being demandable.

Art. 615. (Commercial Code)

If there is a discrepancy between the amount expressed in figures at the beginning of a bill and that written out in the body thereof, the latter shall always be considered the true amount.

If the sum is expressed several times in letters and several times in numbers, the lesser amount must be paid.

#### CHAPTER 4. OBLIGATIONS OF THE DRAWER

Art. 616. (Commercial Code)

The drawer of a bill within the territory of the state guarantees not only the payment of the amount of the bill, but also its acceptance, although the latter is not obligatory by the laws of the country where it is to take place.

Art. 617. (Commercial Code)

The drawer is bound to provide sufficient funds at the maturity of the bill in the control of the person against whom it is drawn, on paid of being liable for the amount of the bill and the resulting damages, although it has not been protested in regular time and form.

Art. 618. (Commercial Code)

If the bill has been drawn by procuration, the provision of funds at the proper time shall be borne by the principal, under the penalty mentioned in the preceding article; saving always and in all cases, the direct liability of the drawer to the holder of the bill.

Art. 619. (Commercial Code)

Provisions of funds shall be considered to be duly made when, at the maturity of the bill, the person on whom it is drawn is debtor to the drawer or the principal for whom it is drawn by procuration in an amount at least equal to the amount of the bill, or when either of the two had credit opened by the drawee sufficient for the payment of the bill.

Art. 620. (Commercial Code)

Expenses caused by nonacceptance or nonpayment of a bill, shall be borne by the drawer or his principal, saving his right to claim against the drawee, if it is proved that he had provided funds in proper time.

In this case, the drawer can claim an indemnity for the consequent expenses and damages from the person who failed to accept or pay.

Art. 621. (Commercial Code)

The drawee is liable for the discharge of his bill to all persons who successively acquire it and endorse it, including the last holder.

The liability of the drawer ceases, nevertheless, when the holder of the bill has not presented it or has neglected to protest it in due time and form, provided that he has made provision of funds for its payment at the maturity of the bill, in the control of the drawee, and that the latter was in the enjoyment of credit.

Art. 622. (Commercial Code)

When funds are provided in the control of the drawee, and the bill is not accepted, whether it is protested or not, the holder may require the drawer to assign his rights of action against the drawee, up to the sum equal to the amount of the bill, and delivery, at the cost of the holder, of the documents proving the rights of the drawer, in order to enforce them as it may please him.

Art. 623. (Commercial Code)

If a taker receives a bill of exchange to his order to collect it on account of the drawer or a third party, that mandate includes the power of transferring the ownership of the bill of exchange by endorsement.

## CHAPTER 5. ENDORSEMENTS

Art. 624. (Commercial Code)

An endorsement by which the ownership of a bill of exchange passes, is a true assignment, subject as to its forms and effects to the provisions of the present Chapter.

Bill of exchange payable to order are only transferable, as such, by endorsement made on the bill itself by the taker or some other holder.

Prior endorsees are liable of the due discharge of the bill to all the subsequent endorsees including the holder.

Art. 625. (Commercial Code)

The endorser considered in relation to the persons to whom the ownership of the bill of exchange passes, is a true drawer.

Art. 626. (Commercial Code)

The endorsement may be:

1. Blank;
2. To bearer; or
3. Special.

Art. 627. (Commercial Code)

When the endorser confines himself to signing his name or that of the name of the partnership to which he belongs, it is presumed that he endorses to the order of the holder, and that endorsement contains an acknowledgment of value received.

Art. 628. (Commercial Code)

Repealed.

Art. 629. (Commercial Code)

A forged endorsement does not transfer the ownership of a bill of exchange, and it vitiates all the subsequent endorsements, except the right of action of the holder against his endorsee, that of the latter against his immediate endorsee, and so successively until arriving at the person who issued the forged endorsement. The endorsements preceding the forged endorsement retain all their legal effects.

Art. 630. (Commercial Code)

The right to endorse a bill signed or endorsed in favor of an unmarried woman, who subsequently contracts matrimony, belongs to her husband.

Art. 631. (Commercial Code)

Those who succeed to the right of an insolvent holder and the executors or legal representatives of a deceased creditor have authority to endorse.

Art. 632. (Commercial Code)

If a bill is payable to a commercial house composed of several partners, the endorsement of one of the partners, whose name appears in the partnership name or who has the right of using the signature, is considered as the act of the partnership.

Art. 633. (Commercial Code)

Predating an endorsement is forbidden. The falsifier is liable for damages, without prejudice to the penalty which he incurs for the crime of falsity.

Art. 634. (Commercial Code)

A bill of exchange cannot be endorsed for a part of its amount without extinguishing the other part.

Art. 635. (Commercial Code)

Bills of exchange which are overdue are not endorsable. Their ownership is transferable as enacted by the Civil Code for "assignment of Nonendorsable Debts".

#### CHAPTER 6. DRAWEES AND ACCEPTANCE

Art. 636. (Commercial Code)

A merchant who by writing authorizes another to draw against him, is bound to accept and pay, and subjects himself to all liabilities and indemnities as if he were the true drawer.

Nevertheless, a promise to accept a bill if it be drawn, without express (written) authority for the drawing, only gives a right of action for indemnity in damages against the promisor who refuses to accept or pay.

Art. 637. (Commercial Code)

A written or oral promise to accept a bill, is equivalent to acceptance in favor only of the person to whom the promise was made.

Art. 638. (Commercial Code)

The drawee of a bill of exchange due in the future, whatever be the form in which is therein expressed, is bound to accept or refuse acceptance on the same day as the holder of the bill presents it for that purpose.

Art. 639. (Commercial Code)

Acceptance must be made in writing on the bill itself. The simple signature of the drawee, placed on the bill, presumes acceptance.

Acceptance in any other form, by notarial or private letters or documents, only involve an obligation in favor of him for whom it is done which cannot be transferred by regular negotiation of the bill of exchange.

The drawee cannot erase or retract his acceptance after it is signed.

In cases of forged acceptance, the holder has recourse against the drawer and endorsers.

Art. 640. (Commercial Code)

If a bill is drawn at one or more days after sight, the acceptor shall express thereon the date of the acceptance. If he refuses to do so, the bill shall be protested, and the time for maturity shall run from the date of the protest.

Art. 641. (Commercial Code)

The acceptance of a bill payable in a different place from the residence of the acceptor, shall define clearly the address where the payment is to be made.

Art. 642. (Commercial Code)

Transfer of the ownership of a bill of exchange to the acceptor or drawee extinguishes all the obligations arising from the bill, except in the case of Art. 649.

Art. 643. (Commercial Code)

Bills cannot be accepted conditionally; but the acceptance may well be limited to an amount less than the bill contains, in which case it may be protested for the amount which is omitted from the acceptance.

The holder may reject an acceptance which alters the conditions of the bill, whether in amount, maturity, place or form or payment.

Art. 644. (Commercial Code)

The acceptor cannot retain the bill under his control on any pretext whatever. If it passes to his hands by consent of the holder and he allows the day of presentation to expire without returning it, he is liable for its payment as if he had accepted it.

Art. 645. (Commercial Code)

The drawee must not accept the bill even when provided with funds, if he knows that the drawer has become bankrupt.

If he accepts it, he is not entitled to retain the funds of the drawer, and must pay it as if it were his own obligation, saving his right of action on an equality with the other creditors, as if he were the holder of the bill.

Art. 646. (Commercial Code)

If notice of the bankruptcy of the drawer arrives after the acceptance of the bill, the acceptor is entitled to retain the funds provided.

Art. 647. (Commercial Code)

Acceptance of a bill binds the acceptor to pay it at maturity, without the defense of nonprovision of funds by the drawer being able to relieve him from paying, nor is "restitutio" admitted nor any other remedy, against an acceptance in due form.

Acceptance is only invalid when it is proved that the bill is forged.

Art. 648. (Commercial Code)

In case of the death of the drawee, the bill must be presented for its acceptance or payment to the legal administrator of the inheritance.

Art. 649. (Commercial Code)

An acceptor who was not provided with funds has a right of action to claim the payment which he has made from the drawer.

Acceptance does not cause a presumption of provision of funds.

Art. 650. (Commercial Code)

If acceptance of a bill of exchange is refused, it shall be protested for want of acceptance.

Art. 651. (Commercial Code)

By virtue of the protest for want of acceptance, the holder is entitled to demand from the drawer or any of the endorsers, that they give security for the payment of the amount of the bill, or that in default of giving this security, they deposit its amount or that they pay it with the expenses of protest and reexchange, less discount at the current rate of interest up to the maturity of the bill.

#### CHAPTER 7. RIGHTS AND DUTIES OF THE HOLDER

Art. 652. (Commercial Code)

The holder of a bill of exchange at sight, or at certain days or months after sight, is bound to send a copy for acceptance on the first opportunity which offers, which may never exceed the next 2 working days to the place of residence of the drawee or acceptor, on pain of being liable to all the previous endorsers.

The provisions of Arts. 621 and 622 shall apply to the right which the holder of a prejudiced bill may retain against the drawer.

Art. 653. (Commercial Code)

The provision in the preceding article does not exonerate the drawee from the obligation of accepting the bill on presentation, in those cases in which he ought to accept it.

Art. 654. (Commercial Code)

Bills drawn at certain days or months from date must be presented for acceptance within the times contained therein, under the penalty enacted in Art. 652.

When the bill is sent off in sufficient time to arrive in ordinary course before maturity at the place where it ought to be paid, and it does not arrive until after maturity, through

hindrance caused by vis major or unforeseen accident, the holder preserves all his rights, provided that he presents the bill on the day following its arrival and protests it for want of acceptance or payment.

Art. 655. (Commercial Code)

The bearer of a bill is bound to present it to the drawee for acceptance within 2 working days. If acceptance or payment is refused, the holder must make the proper protest as enacted in the chapter "Protest".

If there are more than one drawee, and their names are joined together by the conjunction "y" (and), the holder is bound to request all to accept and pay, and to protest if any one refuses. If the names are separated by the conjunction "o" (or), the first shall be considered as drawee, and the others in his default or absence. The holder must request all successively for want of acceptance or payment of for absence of the preceding acceptors, and make the proper protests.

Art. 656. (Commercial Code)

In bills which have indications made by the drawer or endorsers for recourse for demanding their acceptance or payment in default of acceptance or payment by the drawee, the holder must after protest request acceptance or payment by the individuals contained in the indications, resorting in the first place to the person indicated by the drawer, and afterwards to those indicated by the endorsers, following the order of the endorsements.

The omission of this step makes the bearer liable for all the expenses of protests and reexchange, and disables him, until it is proved that he has taken it, from making use of his right of recourse against the person who made the indication.

Art. 657. (Commercial Code)

In bills which are remitted from one place to another after the proper time for presentment and protest, their prejudice affects the remitters, and the endorsements are considered as mere authorities for collection.

Art. 658. (Commercial Code)

A person who takes on his own account a bill which there is not time to present for payment on its due date, or to request acceptance thereof within the stated times, must require of the endorser, in order to preserve his right against him, a special bond to answer for the payment of the bill, although it is presented and protested out of time.

Art. 659. (Commercial Code)

A bill must be presented to the drawee or acceptor at his house of residence or at his office, or at the special address which has been indicated.

If neither the address nor the office is known, this circumstance shall be mentioned in the protest, and subsequent proceedings shall follow as enacted in Arts. 715 and 716.

Art. 660. (Commercial Code)

A holder who consents to a conditional acceptance without protesting the bill, takes upon himself all the risks thereof.

If the acceptance is unconditional, but restricted as to the amount, the holder must accept partial payment and protest for the remainder. If he accepts one part and protests the remainder, the holder shall retain the bill in his control, noting on it the amount collected and giving a separate receipt.

Art. 661. (Commercial Code)

If the holder of a bill, whether it has been accepted or not, is bound to demand payment on a due date, and in default of payment to make the proper protest. Protest in default of acceptance does not exempt the holder of the bill from protesting it afresh for default or payment.

Payment must be demanded and protest made in the place where the bill should be collected.

Art. 663. (Commercial Code)

The holder of a protested bill is bound to give notice to the person from whom he received it, to the drawer, and to the holder's own guarantor by sending him a certified copy of the protest within 4 days after protest, on paid of the extinction of all rights of action which he may have against the drawer and endorsers.

Art. 664. (Commercial Code)

All the endorsers are bound to cause the protest received to be notified, in the same time as is stated in the preceding article, to their respective endorsers and guarantors on pain of being liable for the damages resulting from their omission.

Proof of the notification may be made by a certificate by the administration of posts and telegraphs of the date on which the notice was sent.

Art. 665. (Commercial Code)

When the protest is for want of acceptance, the holder has only a right of action against the drawer and endorsers and any other guarantors of the bill. If the protest is for want of payment, after acceptance of the bill, the holder can also sue the acceptor and guarantors, if any.

Art. 666. (Commercial Code)



The holder who does not cause a bill to be protested for want of acceptance or payment in the regular time and form, loses all right of action against the endorsers and retains only that against the acceptor.

Art. 667. (Commercial Code)

The holder of a bill of exchange duly protested for want of acceptance or payment, who neglects to sue for payment within a year, reckoned from the date of the protest, in the case of an inland bill, drawn and payable within the territory of the Republic, or within 2 years, if it was drawn or negotiated outside the same, shall lose all his rights against the endorsers.

Art. 668. (Commercial Code)

A mere holder of a bill, although it has no endorsement, and no other legal

title whatever is entitled to demand its payment, with the expenses of the protest and reexchange, from the drawer, acceptor, endorsers and guarantors who are all jointly and severally liable for the due discharge of the bill.

Art. 670. (Commercial Code)

If on liquidation of the property of a debtor, who is defendant to an executive action for payment of a bill, the holder has only been able to recover part of his debt, he may bring actions successively against the others for the balance, until he has been wholly repaid.

Art. 671. (Commercial Code)

If the debtor against whom he proceeds for the repayment of a bill becomes bankrupt, the holder may bring his action against the other persons liable. If all becomes bankrupt, he has the right to receive from each estate the dividend which corresponds to the whole of his debt until he is wholly paid.

Art. 672. (Commercial Code)

The invalidity of a bill, prejudices by want of presentation, protest or notification in the times enacted, shall not take effect as regards the drawer or endorsers, who, after the said times have expired, have covered the amount of the bill in their accounts with the debtor or with securities or goods belonging to him.

Art. 673. (Commercial Code)

Bills of exchange give rise to an executive action to demand payment, deposit or security for their amount from the drawer, acceptors and endorsers, as the case may be.

Art. 674. (Commercial Code)

The holder of local bills, which are imperfect, through having only one signature, can bring an executive action, of which the preceding article speaks, against the acceptor.

Art. 675. (Commercial Code)

(Amended by Law 9689) The execution of bills of exchange shall be accomplished at sight of the bill and protests.

Art. 676. (Commercial Code)

The following defenses only will be admitted against an executive action on bills of exchange: falsity, payment, setoff by a debt which is due and owing, prescription or subsequent invalidity of the bill, extension of time or grant of partial reduction concealed by the plaintiff, proved by a notarial instrument or private document, judicially verified.

Any other defense, of whatever nature it be, shall not prevent the progress of the executive action.

Art. 677. (Commercial Code)

The amount in respect of which a creditor grants a discharge in whole or part to the debtor, who is sued for the payment or recovery of payment on a bill of exchange, is understood to be discharged to the same extent in favor of the other persons responsible for the due discharge of the bill.

This provisions does not apply to the case of a compulsory discharge. In spite of an agreement made with one of the insolvent debtors, the creditor preserves his right of action against the solvent joint debtors for the whole amount of the bill.

Art. 678. (Commercial Code)

The Judges cannot grant any extension of time for the fulfillment of obligations contracted by bills of exchange, without the consent of the creditor.

## CHAPTER 8. AVAL (GUARANTY)

Art. 679. (Commercial Code)

"Aval" is written undertaking given by a third person to guarantee the payment of a bill of exchange at maturity.

The aval is a separate obligation, independent of that which the endorser and acceptor contract.

Art. 680. (Commercial Code)

The guarantor must sign his name on the face of the bill and may at his option add the words, "por aval". The guarantor must also indicate the party on whose behalf the aval is given, or, if not, it is presumed to be granted on behalf of the drawer.

Art. 681. (Commercial Code)

A person who has signed an aval can, as against the holder of the bill, file all the defenses which are available for any of the principal debtors who he has guaranteed, after having paid the bill.

Art. 682. (Commercial Code)

A person who gives an aval is liable and severally for the payment of the bill in the same way as the drawer and endorsers. In addition, the guarantor is liable even if the bill is declared void for any reason other than formal defect.

Art. 683. (Commercial Code)

In the case of protest in default of payment, the holder must bring his action against the signatory of the aval within the time enacted in Art. 663, on pain of losing his action against the person who gave the aval.

Art. 684. (Commercial Code)

Repealed by Law 11,357.

#### CHAPTER 9. PAYMENT

Art. 685. (Commercial Code)

If the bill is payable in money which is not current in the commerce of the Republic, the amount of the bill may be converted into current money, at the exchange of the due date in the place of payment, at the option of the drawer. The rate of exchange may be stipulated on the bill or a specific foreign currency may be stipulated.

Art. 686. (Commercial Code)

A drawee, who pays on discounts a bill before maturity, is liable for its amount, if he has not paid the right person.

If the payer becomes bankrupt, the payment made in advance after the day on which, according to the declaration of the tribunal, cessation of payment in fact took place, is void, and the holder of the bill shall restore to the common estate then amount which he received from the bankrupt, on the bill being returned to him so that he may make use of his rights.

Art. 687. (Commercial Code)

The holder of a bill is not bound in any case to receive its amount before maturity.

Art. 688. (Commercial Code)

Payment of a bill of exchange made in virtue of a second, third, fourth, etc. copy is valid, when the second, third, fourth, etc. expresses that payment may be made, when payment has not been made in virtue of any of the others.

Art. 689. (Commercial Code)

A person who pays a bill of exchange in virtue of a second, third, fourth, etc. copy without recovering the copy which contains his acceptance, must pay the bearer of the accepted copy, saving his recourse against the person whom he has wrongly paid.

Art. 690. (Commercial Code)

The signatory of a bill is bound to pay its amount although it has been fraudulently transferred by some intermediary, if the bearer has received it in good faith in course of his habitual transactions, from a person who had the power of transferring it.

Art. 691. (Commercial Code)

Payment made to the bearer of a due bill is presumed to be void, provided that it has not been preceded by an arrest on the amount thereof, in virtue of an order of a competent authority.

Art. 692. (Commercial Code)

An arrest on the amount of a bill can only be decreed in case of loss or theft of the bill or the bankruptcy of the holder.

Art. 693. (Commercial Code)

Whenever the payer of a bill is requested by a well known person to retain its amount, for one of the reasons enacted in the preceding article, payment must be delayed for the rest of the day of its presentment, and if during that time a formal arrest is not notified to him, he shall proceed to pay it.

Art. 694. (Commercial Code)

The holder of a bill who applies for its payment is bound, if the payer requires it, to prove his identity by means of documents or persons who guarantee it.

Art. 695. (Commercial Code)

Payments made by the drawee on account of the amount of the bill, are noted on the same bill and to that extent reduce the liability of the drawer or endorser.

## CHAPTER 10. ACCEPTANCE AND PAYMENT FOR HONOR

Art. 696. (Commercial Code)

If a bill of exchange is protested for want of acceptance or payment, any third person may be allowed to accept or pay the bill for account of honor of the drawer or any person bound to pay it, even when he is not authorized thereto.

The drawer himself, or any other person, bound to the due discharge of the bill, can offer to accept it make the payment.

Art. 697. (Commercial Code)

Acceptance or payment for honor shall be written in continuation of the protest, under the signature of the intervening payer and the notary, with a statement of the name of the person for whose honor he intervenes.

Art. 698. (Commercial Code)

An acceptor of a bill for honor is liable for its payment, as if he had drawn the bill on himself, and must give notice for its acceptance within 24 hours or by the second post.

Art. 699. (Commercial Code)

A bill of exchange accepted for honor after protest, can be accepted also by another person in the name of another one of those who are bound to the due discharge of the bill.

Art. 700. (Commercial Code)

Acceptance for honor does not prevent the holder of the bill from claiming security for the due discharge thereof from the drawer or the endorsers.

The holder is not bound to agree to the acceptance for honor, but he is bound by payment made for honor. In both cases, the proper protests must be made.

Art. 701. (Commercial Code)

The holder of a bill, even after an acceptance for honor, must permit the acceptance which the drawee may wish to make, but he is not bound to exonerate the acceptor for honor from the obligation which he has contracted.

Art. 702. (Commercial Code)

If a person who has refused to accept the bills, thereby giving occasion to protest for want of acceptance, offers to pay at maturity, the payment shall be permitted with preference to the acceptor for honor and to any other who may desire to pay for honor; but he shall also be bound to pay all damages and expenses occasioned by his failure to accept.

Art. 703. (Commercial Code)

If several persons apply to pay a bill for honor, the payer for the honor of the drawee or drawer shall be preferred, and if all propose to pay for the honor of the endorsers, the payer for the honor of the earliest endorser shall be admitted.

Art. 704. (Commercial Code)

The payer of a bill for honor, on making the proper protest, is subrogated to all the rights and obligations of the holder. If he pays for the honor of the drawee he has recourse against him only. He shall have recourse against the drawer, if the drawer was not provided with funds, but in no case against the endorsers.

When payment is made on account of or for honor of the signature of the drawer, the latter alone is liable for the amount paid, whether he has made provision of funds or not, and all the endorsers are free.

If he pays on account of an endorser, he has the same recourse against the drawer, and also against the endorser for whose honor he intervened, and against those who precede him in the order of the endorsements, but not against the subsequent endorsers, who are and remain exonerated from their liability.

In general, payment for honor on account of the drawee or drawer exonerates the subsequent endorsers.

Art. 705. (Commercial Code)

A drawee who, after having refused to accept a bill, pays for the honor of the signature of the drawer, or one of the endorsers, is considered as an outside intervening agent, and the provisions of the preceding article apply to him.

Art. 706. (Commercial Code)

A person who intervenes in payment of a prejudiced bill, has no better right of action than would be competent to the holder against the drawer who has not made timely provision of funds.

## CHAPTER 11. BILLS OF EXCHANGE STRAYED OR LOST

Art. 707. (Commercial Code)

A person who has been the holder of a bill of exchange lost or strayed before the acceptance or after protest for want thereof, is entitled to claim payment of the drawer by an ordinary action on providing the ownership of the bill and giving sufficient security.

If the loss has occurred after acceptance, the acceptor shall be bound to pay the amount of the bill into Court for account of the owner. The holder may not apply for payment of this deposit without giving sufficient security for the safety of the acceptor.

Art. 708. (Commercial Code)

An acceptor of a bill from whom payment is claimed in respect of a different copy than that of his acceptance, is not bound to pay it, unless the holder gives sufficient security for the amount of the bill. If he refuses payment in spite of the security, the bill may be protested for want of payment.

Art. 709. (Commercial Code)

The security given in the cases of the two preceding articles can only be released on production of the lost bill, or on completion of prescription.

Art. 710. (Commercial Code)

The owner of the lost bill or his agent must immediately give notice to the drawer and the last endorser, and cause the drawee to be judicially notified not to accept, or if he has accepted, not to pay without requiring security or deposit.

Art. 711. (Commercial Code)

The claim for the copy to be substituted for the lost bill must be made by the last holder against his assignor and so successively by endorser against his endorser up the drawer.

No one may refuse to lend his name or his good offices for the issue of a new copy, on payment by the loser of the bill of the expenses which are caused in obtaining it.

## CHAPTER 12. PROTESTS

Art. 712. (Commercial Code)

Protests of bills of exchange, whether for want of acceptance or of payment, must be made before a notary public and two inhabitants of the place as witnesses, the latter not being inmates of the same house or subordinates of the notary.

Art. 713. (Commercial Code)

Every bill which is to be protested for want of acceptance or payment, must be taken to the notary promptly.

Art. 714. (Commercial Code)

Bills which are not presented for payment on their due date, and are not protested for want of payment within the time fixed by the preceding article, are prejudiced bills and all rights of action against the drawer and endorsers is lost except in the following cases:

With respect to the drawer, if he has not made provision of funds in favor of the acceptor, or if having made them he has become bankrupt before maturity.

With respect to the endorsers, when the acceptor, drawer and previous endorsers have become bankrupt before the maturity of the bill.

With respect to both drawer and endorsers, in the case and previous endorsers have become bankrupt before the maturity of the bill.

With respect to both drawer and endorsers, in the case provided for by Art. 672, and also when the laws of the country where the bill should be paid place a direct or indirect obstacle to the protest.

Art. 715. (Commercial Code)

The formalities of the protest must be addressed personally to the drawee. If he is not found at his address, they shall be addressed to his subordinates, and, in default, to his wife or children who are of age, a copy of the same protest being left at the time with the person to whom the formalities are addressed.

If he has neither subordinates, wife or children who are of age, the formalities shall be addressed to the local municipal authority as the following article prescribes.

Art. 716. (Commercial Code)

The legal address for making the formalities of the protest shall be:

1. That which is defined in the bill;
2. In default of that definition, that which the payer has at the time;
3. In default of both, his last known address.

If the address of the payer is not ascertained in any of the said three ways, the formalities of the protest shall be addressed and the copy thereof delivered to the president or the secretary of the local municipality and in default, to the judicial authority of the locality.

Art. 717. (Commercial Code)

The document of protest must contain the following essentials:

1. A literal copy of the bill, acceptance, endorsements, aval and indications thereon, in the same order and form as they appear on the bill;
2. The statement of the request made to the drawee and other proper persons, to accept or pay or give the reason for not accepting or paying, and the answer given or an attestation that none was given;
3. The citation of the person to whom the protest is addressed to sign the document, and the reasons for which he refused to do so;
4. A warning of liability for expenses and damages against all persons bound to the due discharge of the bill;
5. The signature of the protester, or a statement that he did not know how or was not able to sign;
6. Declaration of the hour, day, month and year on which the protest was made.

Art. 718. (Commercial Code)

The notary shall give to the interested parties who ask for it, a certified copy of the protest, returning them the original protested bill with the corresponding annotation, and shall be liable for the damage resulting from any irregularity in the protest, independently of the penalties enacted by this Law.

Art. 719. (Commercial Code)

After the completion of the protest as against the direct drawee of the bill, application shall at once be made to the referees in case of need and the answers given by them shall appear on the protest, and the acceptance or payment, if any.

Art. 720. (Commercial Code)

If payment is made by the referee in case of need, he shall only have a right of action against the person who made the indication, and not against any of the others bound to the due discharge of the bill.

Art. 721. (Commercial Code)

The holder of a bill is not bound to make a protest as against the referee in case of need; but if he omits it, the endorser who made the indication and his assignees may refuse



payment, as long as the holder does not proceed against the person indicated, provided that they prove that, from the date of the protest against the principal debtor, that person had and continued to have funds belonging to the endorser for payment of the bill and the expenses of the protest against the acceptor.

Art. 722. (Commercial Code)

All the formalities in the protest of a bill shall be written out successively and in the order in which they are fulfilled, in a single document of which the notary shall give a copy as above enacted.

Art. 723. (Commercial Code)

No act or document can take the place of the omission or want of protest so as to preserve the rights of action by the holder against the person liable for the due discharge of the bill, except in the cases provided for by Art. 710.

Art. 724. (Commercial Code)

The bearer is not excused from protesting the bill for want of acceptance or payment, either by the death or bankruptcy of the drawee.

Art. 725. (Commercial Code)

A bill may be protested for want of payment before maturity, if the drawee becomes bankrupt, and henceforward the holder has his right expedited against those who are liable to the due discharge of the bill.

The drawer and endorsers, in case of demand, may postpone payment until the due date, on giving the security enacted in Art. 651.

### CHAPTER 13. REEXCHANGE AND CROSS BILLS

Art. 726. (Commercial Code)

The holder of a duly protested bill of exchange may pay himself in one of the following ways:

1. By drawing a new bill or cross bill of the place where the original ought to be paid, on the drawer or one of the endorsers, for the principal, interest, reexchange and legal expenses; so that, after deducting the expenses and interest, he may receive in the place where payment ought to be made, exactly the same as he would have received if the bill had been paid;
2. By remitting the bill, accompanied by the certified copy of the protest, to the place in which it was drawn or endorsed in order that it may there be paid by the drawer or endorser, with the same amount defined thereon, reduced to currency at the exchange of the day on which payment is made, and in the absence thereof, at the last exchange which has been effectuated, with interest from the day on which the money was given for the bill until the day of repayment, and legal costs and expenses.

Art. 727. (Commercial Code)

An endorser who has paid a protested bill is entitled to be repaid by the drawer or any one of the preceding endorsers in the same was as he has made payment, as enacted in the preceding article.

Art. 728. (Commercial Code)

If the drawer or one of the endorsers, when negotiating the bill, has be declaration written on the bill itself, restricted the places in which it can be negotiated, he shall only be liable for the difference in exchange, commission and brokerage of cross bills or remitted bills in the places included in the declaration.

Art. 729. (Commercial Code)

The cross bill or bill or reexchange shall be accompanied:

1. By the original protested bill and an attested copy of the protest;
2. By an account of the cross bill which makes mention of the name of the person on whom the cross bill is drawn, of the reexchange at which it has been negotiated, of the amount of the bill, interest and expenses.

If the cross bill is drawn against an endorser, it must also be accompanied by a document which proves the rate or exchange between the place where the bill was payable and the place in which it was drawn, or that in which repayment is made.

Reexchange cannot be claimed if the account of the cross bill is not accompanied by the said documents.

Art. 730. (Commercial Code)

The reexchange must be made in conformity with the rate current between the place where the bill is drawn and the place in which the cross bill is to be paid.

This conformity, in the different cases of the preceding article, must be made to appear in the actual account of the cross bill, on the certificate of 2 brokers, or where there are no brokers, of 2 merchants.

Art. 731. (Commercial Code)

Reexchanges cannot be made cumulative, but each endorser, and likewise the drawer, shall pay one only.

With regard to the drawer reexchange shall be regulated by the rate of exchange between the place of drawing and that of payment; and with regard to the endorsers, by that which rules between the place where repayment is made and that where the endorsement was made.

Art. 732. (Commercial Code)

When there is no rate of exchange between different places, reexchange shall be regulated by the rate of the exchange between the nearest place and the place where the cross bill is paid, and shall be proved in the stated way.

Art. 733. (Commercial Code)

Cross bills must be drawn on the first opportunity which offers after the protest, but the time stated in Art. 652 shall never be exceeded.

Art. 734. (Commercial Code)

Cross bills or bills or reexchange are only negotiable when drawn on the same place on which the original bills were drawn or negotiated.

#### CHAPTER 14. GENERAL PROVISIONS

Art. 735. (Commercial Code)

A bill of exchange constitutes a distinct and personal obligation with relation to each of those who sign it. All the endorsers are guarantors for the repayment of the whole sum, not only to the holder, but to the subsequent endorsers; and none can free themselves with regard to the others, without paying the whole of the debt, nor can they demand that the holder should previously sue the codebtors who are nearest in the order of the endorsement.

Art. 736. (Commercial Code)

All who draw or give orders for drawing or accept bills of exchange, or sign an aval, although they are not merchants, are joint and several guarantors of the bills, and are bound to their payment, with interest and reexchange (if any), and all legal costs and expenses, with right of recourse from the last endorser up to the drawer, provided that the bill has been presented and duly posted.

The defense of his own mistake or that of fraud or duress of the original contracting parties cannot be filed against the holder of the bill.

Art. 737. (Commercial Code)

Interest on a bill protested for want of payment becomes due from the date of the protest, and interest on the costs from the day on which they are incurred.

Art. 738. (Commercial Code)

Disputes at law referring to the essential requisites of bills of exchange, their presentation, acceptance, payment, protest and notification, shall be decided according to the commercial laws and customs of the place where those acts are performed.

Nevertheless, if the statements made in a foreign bill of exchange are sufficient according to the laws of the Republic, the circumstances that they are defective according to foreign laws cannot give rise to defenses against endorsements afterwards added in the Republic.

#### TITLE XI. (Commercial Code)

##### CHAPTER 1. NOTES OF HANDS, PROMISSORY NOTES AND NOTES TO ORDER

Important Note: Decree Law 5965/63 on Bills of Exchange takes precedence over this Chapter.

#### Art. 739. (Commercial Code)

A note of hand, promissory note, or note to order is a written promise by which one person binds himself to pay a fixed sum of money for the same.

The essential requisites of a promissory note are:

1. An unconditional obligation to pay a certain sum of money at a fixed date and place;
2. The words, "to the order of";
3. Name of payee;
4. Designation of the place and date of issuance;
5. Signature of the maker.

#### Art. 740. (Commercial Code)

The obligations of an acceptor of a bill of exchange apply to a maker of a promissory note.

#### Art. 741. (Commercial Code)

Everything enacted in the preceding Title with regard to bills of exchange, shall equally serve for notes of hand and promissory notes and other documents commercially negotiable so far as applicable.

##### CHAPTER 2. OTHER COMMERCIAL DOCUMENTS TO "BEARER"

#### Art. 742. (Commercial Code)

Documents to bearer shall be transferable by simple delivery and the bearer may exercise the rights which would belong to him if they had been drawn to his name as an individual.

#### Art. 743. (Commercial Code)

Securities of the public debt, issued by the nation, provinces or municipalities, shall be subject as regards their organic effects to the laws of their creation, and to the provisions of this Title, so far as the said special laws do not enact.

Art. 744. (Commercial Code)

Securities issued on account of and by order of public authorities, private associations or undertakings, must be drawn up, numbered and printed in accordance with the laws, decrees, ordinances and constitutions which authorize them.

The obligations and conditions of payment fixed by the issuers, shall be clearly expressed on the documents, on the back whereof shall be transcribed that part of the legal texts, decrees, ordinances or regulations which created them.

The omission of these particulars obliges the issuers to pay the damage and interest which they cause.

Art. 745. (Commercial Code)

The said securities must also contain an enumeration of and the actual essential statements which the laws, decrees, ordinances and regulations have provided for guaranteeing the rights of the holders.

If any of these particulars be wanting, the issuers shall incur the liabilities enacted in the preceding article.

### CHAPTER 3. THEFT, LOSS OR MUTILATION OF SECURITIES AND COUPONS

Art. 746. (Commercial Code)

Holders of bearer securities are bound to observe all necessary precautions for their preservation, and shall suffer the consequences of loss, theft, abuse or trust, and partial or total destruction, if nonobservance of this provision is proved.

Art. 747. (Commercial Code)

Every owner of securities, who has been dispossessed by theft, abuse of trust, fraud, loss or mutilation, shall have the rights and obligations declared in the following articles.

Art. 748. (Commercial Code)

If the amount of the securities is less than \$1,000 of national currency, or in the case of coupons, if their amount does not exceed the same sum, the owner, however, dispossessed, shall present a writing to the public office or to the issuing undertaking, giving information of the fact and giving all necessary details for identifying the securities. The fact shall also be communicated to all the exchanges and markets of the Republic, which shall cause it to be published in the local newspaper and publications for one month.

Art. 749. (Commercial Code)

The announcement which shall be made to the interested person at the actual time of its presentation, defeats the usual effects of the security or coupon in favor of the new holder, if any.

Art. 750. (Commercial Code)

The issuer shall immediately proceed to verify the ownership of the securities or coupons, as alleged by the informer, and if it is proved, a notice shall be published in 2 local newspapers, provisionally declaring the said securities to be void; and a provisional certificate shall be given to the person interested, which after 2 years shall be changed for a definitive security, the certificate of which shall produce the same legal and commercial effects as the original security, if during the said term a third person has not presented himself in opposition thereto. If the principal of the securities is already payable, it shall be deposited in court until the expiration of the term fixed or until a judicial decision, if any.

Art. 751. (Commercial Code)

In case of opposition by a third party, the following rules, laid down for matters of larger amount, shall apply.

Art. 752. (Commercial Code)

If the securities or coupons have greater value than that fixed by Art. 748, the interested party shall resort to a public notary and shall draw up a document which shall contain:

1. the name, nature, nominal amount, numbers and series of the securities, if they have all those requisites, or those which they do contain;
2. The manner in which he acquired the securities, and, if possible, the date or time of the acquisition;
3. The time when he received the last dividend or interest;
4. The manner in which dispossession took place;
5. The fixing of a legal address, if the claimant has not one well known.

Art. 753. (Commercial Code)

Within 24 hours of signing the document, it shall be notified to the Public Office or the proper issuing undertaking, and a certified copy thereof shall be given to the interested party on demand.

Art. 754. (Commercial Code)

This notification suspends the effects of the security or coupon in favor of the new holder, in accordance with the provisions of the following articles, and the issuer shall publish a notice for one month in 2 local newspapers, with an extract from the information, and shall give corresponding notice to the exchanges and markets, for due publication thereof in conformity with Art. 748.

Art. 755. (Commercial Code)

Henceforward, the dividends or interests due and not paid, and those which may become due in future, shall be deposited in the proper public bank, at the times fixed for their payment.

At the end of two years without a new holder of the securities or coupons having presented himself, the interested person shall claim from the issuer payment of the deposited dividends and interests and of those which may become due on future and the principal itself, if payable at the time.

Art. 756. (Commercial Code)

The issuer shall make the payments and require sufficient security which shall become void at the end of 2 years if an opponent has not appeared during that time.

Art. 757. (Commercial Code)

If during the 4 years given by the preceding articles, the new possessor of the securities or coupons does not appear, it shall be presumed that these do not exist, and no claim shall be admitted in opposition to the rights of their original owner, and the issuer must grant duplicate securities, and publish notices declaring that the first ones have become void. The duplicates shall have all the legal and commercial effects which belonged to the former.

Art. 758. (Commercial Code)

The issuers who have made the payments in accordance with the provisions of this Title, are exonerated from all liability with regard to any third possessor who may appear. If the payments have been made to the prejudice of the said third possessor, he may bring a personal action against the person who claimed the character of lawful owner of the documents, and against the security given, if any.

Art. 759. (Commercial Code)

If a third person in possession shall present himself within the spaces of 2 or 4 years, enacted by Arts. 750 and 757, the issuer shall immediately give notice in writing to the claimant, suspending the effects of Arts. 748 and 753 if they are not already completed, or otherwise retaining the given security, if any, until the competent tribunal decides the point.

Art. 760. (Commercial Code)

The securities or coupons lost or stolen shall not be negotiable after the publication of the notices referred to by Arts. 748 and 754.

Art. 761. (Commercial Code)

Every negotiation subsequent to the last day of the publication, when made in the place where the notice was published, or if made in any other national place, then after 15 days reckoned from the last day of the publication, shall be void, saving the rights of the buyer against the seller and against the broker or auctioneer who has taken part, for reimbursement, losses and interest.

The buyer may also attack the right claimed by the original owner, in the presence of the issuer.

Art. 762. (Commercial Code)

All expenses originating in the measures ordered by this Title, shall be borne by the person interested in the preservation of his rights; and in cases of disputes of law, shall be borne as the laws of procedure provide.

Art. 763. (Commercial Code)

In all cases in which the destruction of the security is fully provided in the presence of the issuers, they are bound to issue duplicates, and to publish notices.

Art. 764. (Commercial Code)

Loss of possession of a bank note from any cause, does not warrant a demand for another in its place. A note partially destroyed shall be changed in accordance with the laws and bylaws of the bank of issue.

Art. 765. (Commercial Code)

An owner can claim his security from a third person, if a possessor in bad faith, within the terms of 2 and 4 years respectively as fixed by Arts. 750 and 757.

#### CHAPTER 4. GENERAL PROVISIONS

Art. 766. (Commercial Code)

In cases of falsification, the banks, public offices and private lending houses must publish notices to warn the public, with all the necessary facts, and shall proceed with regard to the effects of the criminal act in accordance with the provisions of the Penal Code, and the laws, decrees, ordinances or regulations affected by the falsification.

Art. 767. (Commercial Code)

In all questions concerning bank notes, the general rules of this Code shall apply, provided that they do not conflict with the special laws on the subject. In case of conflict between the two regulations, the special laws shall apply.

Art. 768. (Commercial Code)

The enactments in the Title on bills of exchange shall apply to bearer documents, so far as the express legislation in this Title does not extend.

Art. 769. (Commercial Code)

Interest due on dividends, interest and capital which it is necessary to deposit, in accordance with the provisions of this Title, shall run in favor of the true owner of the disputed rights.

Art. 770. (Commercial Code)



When banks effect transactions with securities, within the legislation of this Title, they shall be subject to the provisions thereof.

## TITLE XII. CURRENT ACCOUNT

### CHAPTER 1. MERCANTILE CURRENT ACCOUNT

#### Art. 771. (Commercial Code)

A current account is a bilateral and reciprocal contract by which one of the parties remits to the other, or receives from him in ownership, sums of money or other valuables without applying the same to any specific purposes, and without the obligation to hold to order a corresponding sum or valuable, but with the obligation to credit the remitter with his remittance, settle them at the agreed times, set them off in one operation up to the amount of the debit and to pay the balance.

#### Art. 772. (Commercial Code)

Accounts which do not combine all the conditions set out in the preceding article, are simple accounts or business accounts, and are not subject to the provisions of this Title.

#### Art. 773. (Commercial Code)

All transactions between merchants, whether they have an address in the same place or not, or between a merchant and one who is not, and all valuables with transferable ownership, may be matter for an account current.

#### Art. 774. (Commercial Code)

None of the interested parties is considered debtor or creditor, until the closing of the current account.

#### Art. 775. (Commercial Code)

The inclusion in a current account of valuables previously due by one of the contracting parties to the other, produces novation. The same effect is produced in respect of every debt from one to the other, of whatever title or time it be, if the debt passes to the current account.

To prevent novation, a special reservation must be made by the interested parties or one of them.

In the absence of an express reservation, the inclusion of a valuable in a current account is presumed to be done unreservedly.

#### Art. 776. (Commercial Code)

Values remitted and received on current account are not to be appropriated as partial payment of the items comprised therein, nor are they payable during the currency of the account.

#### Art. 777. (Commercial Code)

It is of the nature of a current account:

1. That the valuables and goods remitted should be transferred to the ownership of the receiver;
2. That the credit granted by the remittance of goods, valuables or documents negotiable in commerce should be payable at maturity;
3. That mercantile setoff between debit and credit should be compulsory;
4. That all the items of debit and credit should carry legal interest, or that which the parties have stipulated;
5. That the final balance should be payable from the moment of the acceptance, unless sums due on a contingency have been received, which equal or exceed the amount of the balance, or which the interested persons have agreed to pass to a new account.

Art. 778. (Commercial Code)

The existence of a current account does not exclude the rights to commission and repayment of expenses for the business to which it refers.

Art. 779. (Commercial Code)

So long as the condition of clause 2 of Art. 777 is not performed, the transaction is considered provisional, until the valuables have entered the safe, unless there is an express agreement to the contrary.

If the remitter is declared bankrupt before the realization of the valuables remitted for the current account, he who receives them may cancel the credit which he has opened, and credit the valuables which have entered the safe, and the lawful expenses, including that of protest, which he may have been obliged to incur, closing the current account, so as to establish the juridical relations of debtor and creditor.

Art. 780. (Commercial Code)

The sums or valuables earmarked for a specific purpose, or which are to be held to the order of the remitter, are foreign to the current account, and as such are not liable to the purely mercantile setoff.

Art. 781. (Commercial Code)

Arrests or rights of retention over the valuables entered in the current account, only take effect with respect to the balance shown at the settling of the current account, in favor of the debtor against whom they were issued.

Art. 782. (Commercial Code)

A current account is closed:

1. By consent of the parties;
2. By the ending of the time fixed;
3. By death, interdiction for legal capacity, insanity, bankruptcy or other legal event which deprives any one of the contracting parties of the free management of his property.

Art. 783. (Commercial Code)

A current account terminates finally, when it is not to be followed by any business transaction, and partially, in the contrary case.

Art. 784. (Commercial Code)

The final closing of the current account fixes definitely the condition of the juridical relations of the parties, produces absolutely the independently of the settling of the account, a setoff of the whole amount of the debit and credit up to the amount at which they balance, and determines the relation of the creditor and debtor.

Art. 785. (Commercial Code)

The final or partial balance shall be considered as a principal sum producing interest.

Art. 786. (Commercial Code)

The balance may be guaranteed by mortgage, security or pledge, according to the agreement of the parties.

Art. 787. (Commercial Code)

The eventual creditor on a current account may draw on the debtor for the balance, and if the latter does not accept the draft, he has a right of executive action to claim payment, save where the preceding article applies.

Art. 788. (Commercial Code)

The parties may capitalize interest at intervals of not less than 3 months, fix the time for partial balances, the rate of interest and the commission, and agree all other accessory terms which are not prohibited by the law.

Art. 789. (Commercial Code)

The existence of a contract of current may be proved by any of the means of evidence allowed by this Code.

Art. 790. (Commercial Code)

An action for taking account and payment of the balance, admitted in or out of Court, or for the rectification of an account for errors of calculation, omissions, extraneous items or items wrongly entered to debit or credit, or duplication or entries, is subject to a prescription of 5 years.

The same prescription applies to the interest on the balance, whether payable by the year or shorter periods.

## CHAPTER 2. BANKING CURRENT ACCOUNT

### Art. 791. (Commercial Code)

There are two kinds of banking current account: on an opened credit, when the bank makes advances of money or with the provision of funds, when the client has funds deposited therein.

### Art. 792. (Commercial Code)

A banking current account can be closed when the bank or the client demands it, on giving 10 days notice in advance, subject to any agreement to the contrary.

### Art. 793. (Commercial Code)

Within 8 days after the termination of each quarter or the agreed period for settlement, the banks must send to their clients their accounts current, asking for their written assent, and this or the objection, if any, must be presented within 5 days.

If the client does not answer within this time, the accounts shall be held to be admitted in the form presented, and their balances, debit or credit, shall be final as on the date of the account.

Vouchers of balances owed on current bank accounts, authorized with the joint signatures of the manager and accountant of the bank, shall be considered certificates ready for execution, the procedural laws for executive suits of the place where suit shall be filed being followed for their collection. (Paragraph added by Decree Law 15,354/46)

Rubrics directly or indirectly generated by the drawing of checks shall be debited in a current banking account. Debits corresponding to other legal relations between the client and the drawee shall be authorized when an express formalized convention exists in the cases and with the precautions that the Central Bank of the Argentine Republic previously authorized. (Paragraph added by Law 24,452 of 1995)

### Art. 794. (Commercial Code)

Every person who has a current account at a bank must receive a passbook, in which shall be entered by the bank the sums deposited and the date, and the amounts of the drafts or withdrawals and their dates.

### Art. 795. (Commercial Code)

In a banking current account interest shall be capitalized every 3 months, saving an express stipulation to the contrary.

### Art. 796. (Commercial Code)

The parties shall fix the rate of interest, commission and all other conditions which determine the juridical relations between the client and the bank.

Art. 797. (Commercial Code)

Every bank is bound to post its current accounts day by day, so as to fix the situation with regard to the client.

### TITLE XIII. CHECKS

Articles 798 to 833 and 836 to 843 were revoked from October 1, 1963 by Decree Law No. 4776/63, whose provisions are incorporated into the Code itself. A new Law on Checks was promulgated on February 22, 1995 and published in Boletín Oficial of March 2, 1995 (Law 24,452), repealing and replacing Decree Law No. 4776/63. the new Law is presented herein.

### LAW ON CHECKS (LAW NO. 24,452 of 1995)

Preliminary Chapter. Classes of Checks

Art. 1. (Checks Law)

There are two classes of checks:

I. Common checks.

II. Deferred payment checks.

### CHAPTER I. The Common Check

Art. 2. (Checks Law)

A common check must contain:

1. the denomination "check" inserted in its text, in the language employed in its working;
2. An ordinal number printed on the body of the check;
3. Indication of the place and date of issue;
4. Name and address of the bank on which the check is drawn;
5. A simple order to pay a specified sum of money, expressed in letters and figures, indicating the currency. When the quantity written in letters differs from that expressed in figures, that written in letters shall count;
6. Signature of the drawer. Electronic systems or systems of reproduction may only be used when expressly authorized by the Central Bank of the Argentine Republic.

A certificate presented for collection that lacks any of the preceding specifications is not valid as a check, except in the case when the place of issue is omitted, in which case it shall be presumed that the domicile of the drawer is the place of issue.

A check which is refused for formal reasons shall generate a fine chargeable to the drawer, which shall be deposited in the manner provided by article 62, equivalent to 2% of its value. The applicable authority shall dispose the close of the current account on

which such checks were drawn, when they exceed the number determined by the regulation or when the fine is not paid. The fine shall be reduced by 50% when the drawer accredits authentically before the drawee that he paid the check within the seven working banking days from having been notified of the rejection or when the check had been paid by the drawee by means of a second presentation by the holder.

Art. 3. (Checks Law)

The domicile of the drawee against which the check shall be drawn shall determine the applicable law.

The domicile the drawer had recorded before the drawee may be considered a special domicile for all legal purposes derived from the check.

Art. 4. (Checks Law)

A check must be issued on a form furnished by the drawee. On the form must be printed the number of the check and that of the current account, the domicile of payment, the name of the account holder and the domicile that the latter has recorded with the drawee, tax or labor identification or identity, in accordance with the regulation of the Central Bank of the Argentine Republic.

When the check book is not withdrawn personally by the account holder, the drawee shall not pay the checks presented until after obtaining the conformity of the holder on the receipt of the check book.

Art. 5. (Checks Law)

In case of loss or robbery of unused checks, of checks created by not issued or of the special order form for requesting them, the holder of the current account must advise the drawee immediately. He shall proceed in the same manner when he is aware that a check issued by him has been altered. The notice may also be given by an account holder who has been dispossessed.

This notice received in writing shall impede the payment of the check, under the liability of the holder of the current account or of the dispossessed account holder. The drawee must inform the Central Bank of the Argentine Republic of written notices by the drawer in the terms that the regulation shall establish. If the limit established is reached, the current account shall proceed to be closed.

Art. 6. (Checks Law)

A check may be issued:

1. In the name of a specified person;
2. In the name of a specified person with the clause "not to the order of";
3. To bearer. A check without an indication of a beneficiary shall be valid as a check to the bearer.

Art. 7. (Checks Law)

A check may be issued to the order of the drawer. It cannot be drawn on the same drawer, except when dealing with checks drawn between different establishments of the same drawer.

A check may be drawn for the account of a third party, under the conditions that the regulation shall establish.

Art. 8. (Checks Law)

If an incomplete check at the time of its issue had been completed in a manner contrary to the agreements that determined it, non-observance of those agreements cannot be opposed to the bearer, unless the latter had acquired it in bad faith or acquired it by means of grave culpability.

Art. 9. (Checks Law)

Every stipulation of interest included in a check shall be deemed nonexistent.

Art. 10. (Checks Law)

If a check carries the signatures of persons incapable of making themselves liable by check, forged signatures, or of imaginary persons, or which for any other reasons cannot render liable the persons who signed it, or in whose name the check was signed, the liability of the other signers is not, due to this, less valid.

A person who puts his signature on a check as representative of a person for which he does not have the power to act shall be liable interchangeably as if he had signed his own name; and if paid, he shall have the same rights as the supposed represented party would have had. The same solution shall be applied when the represented party had exceeded its powers.

Art. 11. (Checks Law)

The drawer guarantees the payment. Every clause freeing him of this guarantee shall be deemed nonexistent.

## CHAPTER II. TRANSFERS

Art. 12. (Checks Law)

A check payable to a specified person is transferable by endorsement.

The endorsement may also be made in favor of the drawer or of any other party liable. The said persons may again endorse the check.

A check payable to a specified person with the clause "not to order" or other equivalent, is not transferable except in the manner and with the effects of an assignment of credits.

The check to bearer is transferable by simple delivery.

Art. 13. (Checks Law)

Endorsement must be simple and unconditional. Any condition to which it is subject shall be considered as non-existent.

Art. 14. (Checks Law)

The endorsement must be written on the back of the check or on a page attached thereto. It must be signed by the endorser and must contain the specifications that the Central Bank of the Argentine Republic establishes.

The endorsement may not designate the beneficiary.

An endorsement that does not contain the specifications that the regulation establishes shall not prejudice the title.

Art. 15. (Checks Law)

Endorsement shall transfer all the rights resulting from the check. If the endorsement was made in blank, the bearer may:

1. Fill in the blank with his name or with the name of another person;
2. Endorse the check again in blank or to another person;
3. Deliver the check to a third party without either filling in the blank or endorsing it.

Art. 16. (Checks Law)

The endorser is guaranteed payment, unless there exists a clause to the contrary.

A new endorsement may be prohibited, and in this case the persons to whom the check was subsequently endorsed shall not be liable.

Art. 17. (Checks Law)

The holder of an endorsable check shall be considered as a legitimate bearer if he justifies his right through an uninterrupted series of endorsements, even when the last endorsement was in blank. Endorsements that are struck out shall be considered, in this respect, as not written. If a blank endorsement should be followed by another endorsement, it shall be considered that the signatory of this latter acquired the check by the blank endorsement.

If the date is not indicated, it shall be presumed that the position of the endorsements indicate the order in which they were made.

Art. 18. (Checks Law)

An endorsement that is made on a check to the bearer shall make the endorser liable in the terms of the provisions governing recourse, but shall not change the system of circulation of the title.



Art. 19. (Checks Law)

When a person has been dispossessed of a check through any cause, the bearer in whose hands the check arrives, in the case of a bearer check, or in case of an endorsable check in respect of which the bearer justifies his right in the manner indicated in article 17, shall not be compelled to give up possession except when it is acquired through bad faith or if on acquiring it a grave fault is committed.

Art. 20. (Checks Law)

Persons sued by virtue of a check may not oppose the bearer with exceptions founded on personal relations with the drawer or with previous bearers, unless the bearer, upon acquiring the check, had worked knowingly in detriment of the debtor.

Art. 21. (Checks Law)

When the endorsement contains the mention "value upon collection", "in proxy" or any other that implies a mandate, the bearer may exercise all the rights that derive from the check, but may not endorse it without title of power of attorney.

The liable parties may not, in this case, invoke against the bearer without the exceptions opposable to the endorser.

The mandate contained in an endorsement in proxy shall not be extinguished by the death of the principal or his ensuing incapacity.

Art. 22. (Checks Law)

Endorsement after presentation for collection and rejection of the check by the drawee shall produce only the effects of an assignment of credits.

It shall be presumed that an undated endorsement has been made prior to the presentation or the expiration of the term for the presentation.

### CHAPTER III. PRESENTATION AND PAYMENT

Art. 23. (Checks Law)

A common check is always payable on sight. Any statement to the contrary shall be deemed nonexistent.

A common check presented for payment before the date indicated as day of issue shall be payable on the day of presentation.

A common check drawn with a post-dated date is not opposable upon composition, bankruptcy or succession of the drawer; in case of ensuing incapacity of the drawer it is invalid.

Art. 24. (Checks Law)

A check cannot be accepted. All mention of acceptance shall be deemed nonexistent.

Art. 25. (Checks Law)

The term for presentation of a check in the Argentine Republic is 30 days counting from the date of issue. The term of presentation of a check drawn abroad and payable in the Republic is 60 days counting from the date of issue.

If the term expires on a non-working non-banking day, the check may be presented on the first working banking day following its maturity.

Art. 26. (Checks Law)

When the presentation of a check, within the terms enacted in the preceding article, is prevented by an unavoidable circumstance (legal prescription of any State or other case of force majeure), the terms of presentation shall be extended.

The holder and the endorsers must give the notice prescribed in article 39.

Once a case of force majeure has ceased the bearer must, without delay, present the check for payment. Circumstances purely personal to the bearer or to the person to whom the presentation of the check was entrusted, shall not be deemed cases of force majeure.

Art. 27. (Checks Law)

If the force majeure continues for more than 30 days from the fulfillment of the terms established in article 25, a suit for return may be filed without necessity of presentation.

Art. 28. (Checks Law)

If the check is deposited for collection, the date of the deposit shall be considered as the date of presentation.

Art. 29. (Checks Law)

Revocation of a check has no effect until after the expiration of the term for its presentation.

If there is no revocation, the drawee may pay it after the expiration of the term, provided there has not elapsed another term equal to the original one.

Art. 30. (Checks Law)

Neither the death of the drawer nor his subsequent incapacity, taking place after the issue, alters the effects of the check., except as provided in article 23.

Art. 31. (Checks Law)

The drawee may demand on paying a check that it be delivered cancelled by the bearer.

The bearer may not refuse a partial payment.

In the case of a partial payment, the drawee may demand that mention be made of such payment on the check, and a receipt given.

The check will retain validity in respect of the unpaid balance.

Art. 32. (Checks Law)

The drawee that pays an endorsable check is obligated to verify the regularity of the series of endorsements, but not the authenticity of the signature of the endorsers, except the last.

A check to bearer shall be payable to the holder who presents its for collection.

Art. 33. (Checks Law)

A check must be drawn in the currency of payment that corresponds to the current account against which it was drawn.

Art. 34. (Checks Law)

A drawee that pays the check shall be validly liberated, unless it has proceeded fraudulently or with grave fault. It shall refuse to pay it only in the cases established in this law or in its regulation.

Art. 35 (Checks Law)

The drawee shall be liable for the consequences of payment of a check, in the following cases:

1. When the signature of the drawer is obviously forged.
2. When the document does not meet the essential requirements specified in article 2.
3. When the check has not been issued on one of the forms delivered to the drawer in accordance with that which is provided in article 4.

Art. 36. (Checks Law)

The holder of the current account shall be liable for losses:

1. When the signature had been forged in any of the forms delivered in accordance with that which is provided in article 4 and the forgery was not visibly obvious.
2. When he had not complied with the obligations imposed by article 5.

The forgery shall be deemed obvious when it is visible at first sight bearing in mind the rapidity and prudence imposed by normal banking activities in the comparison of the signature at the time of payment with that registered in the bank.

Art. 37. (Checks Law)

When the conditions indicated in the two preceding articles are not present, Judges may apportion the responsibility between the bank, the drawer, and the bearer who is the payee, as applicable, in accordance with the circumstances and the degree of blame incurred by each one of them.

## CHAPTER IV. REMEDIES ON LACK OF PAYMENT

### Art. 38. (Checks Law)

When the check is presented in the periods established in article 25, the drawee must always receive it. If it refuses to pay a check, the refusal must be mentioned on the same document, with express mention of the reason for it, the date and time of presentation, and the address of the drawer registered in the bank.

The voucher of refusal must be signed by an authorized person. The same statement must be made when the check is returned by a clearing house.

The statement made by the drawee bank shall have the same effect as a legal protest. The action which the bearer may commence against the drawer, endorsers and guarantors shall be expedited thereby.

If the drawee bank refuses to place the voucher of refusal or uses an unauthorized form, it may be held for the losses that are occasioned.

Failure of presentation of the check or its late presentation shall impair the action taken.

### Art. 39. (Checks Law)

The bearer must give notice of the failure of payment to his endorser and to the drawer within the two working banking days immediately following the notification of the refusal of the check.

Each endorser must, within the two working banking days immediately after the receipt of the notice, give notice in turn to his endorser, indicating the names and addresses of those who have given the preceding notices, and thus successively until delivery to the drawer.

When in accordance with that which is provided in the preceding paragraph, notice is given to a signatory of the check, the same notice must be given to his guarantor within the same periods.

The notice may be given in any manner but whoever does so must prove that he sent it within the stipulated term.

Failure to give notice shall not produce the expiration of actions emerging from the check but whoever does not give notice shall be liable for the losses resulting from his negligence, provided that the compensation may not exceed the amount of the check.

### Art. 40. (Checks Law)

All the persons who sign a check are jointly and severally liable to the bearer.

The bearer has a right to file suit against all those persons, individually or collectively, without being subject to observe the order in which they are obligated.

The same right belongs to whoever has paid the check.

An action filed against one of the liable parties shall not prevent an action against the others, even after that which has been pursued in the first place.

He may also file the suits referred to in articles 61 and 62 of Decree Law 5965/63.

Art. 41. (Checks Law)

The bearer may claim from the party against whom he takes action:

1. The amount of the check not paid;
2. Interest at the bank rate current in the place of payment, as from the day the check was presented for payment;
3. The expenses incurred by the notices which he has had to give and any other expense arising from the collection of the check.

Art. 42. (Checks Law)

He who reimburses a check may claim from its guarantors:

1. The whole sum paid;
2. Interest on the said sum at the bank rate current in the place of payment, as from the day of reimbursement;
3. The expenses incurred.

Art. 43. (Checks Law)

Every party liable against whom action is taken or is subject to action, may demand against payment, the delivery of the check with a statement of its rejection by the bank and a cancelled account.

Every endorser who had reimbursed the check may strike out his endorsement and those of subsequent endorsers and, as the case may be, those of their respective guarantors.

## CHAPTER V. CROSSED CHECKS

Art. 44. (Checks Law)

The drawer or bearer of a check may cross it with the effects indicated in the following article.

The crossing is effected by means of two parallel bars placed on the reverse of the check. It may be general or special.

The crossing is special if between the bars the name of an entity authorized to render the check service is written, otherwise the crossing is general. A general crossing may be

transformed into a special one; but the special crossing cannot be transformed into a general one.

The crossing out of a crossing or of the name specified between the bars shall be deemed nonexistent.

Art. 45. (Checks Law)

A check with a general crossing can only be paid by the drawee to one of its clients or to an entity authorized to render check service.

A check with a special crossing can only be paid by the drawee to whoever is specified between the bars.

The entity designated in the crossing may indicate another entity authorized to render check service to receive the payment.

A check with several special crossings can only be paid by the drawee in the case where there are two crossings involved, of which one is for payment by a clearing house.

The drawee who does not comply with the preceding provisions shall be liable for the damages caused up to the amount of the check.

#### CHAPTER VI. CHECKS TO BE CREDITED ON ACCOUNT

Art. 46. (Checks Law)

The drawer, as also the bearer of a check, may prohibit its payment in money, mentioning on the reverse transversely "to be credited on account".

In this case the drawee can only liquidate the check by means of any entry in the books. Liquidation thus effected is equivalent to payment. The crossing out of the statement indicated shall be deemed nonexistent.

A drawee not complying with the preceding provisions shall be liable for damages up to the amount of the check.

#### CHAPTER VII. CHECKS SPECIALLY ALLOCATED

Art. 47. (Checks Law)

The drawer, as also the bearer of a check may allocate it to the payment of a specified debt, manifesting on the back or in an addition and under his signature, a concrete and precise indication of the allocation.

The clause shall have effect exclusively between the person who inserts it and the immediately subsequent bearer; but shall not give rise to liability on the part of the drawee owing to noncompliance with the allocation. Only the destination of the allocation may endorse the check and in this case the title shall maintain its negotiability.

A strike out of the allocation shall be deemed non-existent.

## CHAPTER VIII. CERTIFIED CHECKS

### Art. 48. (Checks Law)

The drawee may certify a check at the request of the drawer or of any bearer, debiting from the account from which it is drawn the sum necessary for its payment.

The amount so debited shall be reserved for delivery to whomever it belongs and all the contingencies that arise from the person or solvency of the drawer, whether from his death, incapacity, bankruptcy or judicial attachment after the certification, shall not affect the provision of certified funds, nor the right of the holder of the check, nor the correlative obligation of the drawee to pay it when it is presented.

The certification may not be partial nor be given on a bearer check. The adding to a check of the words "seen", "good", and other analogous words by the drawee shall signify certification.

The certification has the effect of establishing the existence of funds or impeding their withdrawal by the drawer during the term for which it was certified.

### Art. 49. (Checks Law)

The certification may be made for a conventional period which must not exceed 5 working banking days. If at its expiration the check has not been collected the drawee shall credit in the account of the drawer the sum previously debited.

The certified check, once the term has expired, retains all the effects proper to a check.

## CHAPTER IX. CHECKS WITH THE CLAUSE "NON-NEGOTIABLE"

### Art. 50. (Checks Law)

The drawer, as well as the bearer of a check, may insert the expression "non-negotiable" on the reverse. These words signify that whoever receives the check does not have, nor may transfer, more rights thereon than those held by whoever delivered it.

## CHAPTER X. AVAL

### Art. 51. (Checks Law)

The payment of a check may be totally or partially guaranteed by an aval.

This guarantee may be authorized by a third party or by any signatory of the check.

### Art. 52. (Checks Law)

The aval may be drawn on the check itself or on a separate document. It may be expressed by means of the words "by aval" or by any other equivalent expression, duly being signed by the guarantor. It must contain the name, domicile, tax or labor identification, identity, in accordance with the regulation of the Central Bank of the Argentine Republic.

The aval must indicate for which of the liable parties it is authorized. In default of such indication it shall be considered authorized for the drawer.

Art. 53. (Checks Law)

The guarantor shall remain obligated in the same terms as the person for whom he has authorized the aval. His obligation is valid even when the obligation that was guaranteed is null and void for any reason that is not a defect of form.

A guarantor who pays the check shall acquire rights against the person granted the aval and against the parties liable to the latter.

CHAPTER XI. DEFERRED PAYMENT CHECK

Art. 54. (Checks Law)

A deferred payment check is a payment order drawn at days sight, counted from its presentation for registration in an authorized entity, against the same entity or another in which the drawer must hold sufficient funds deposited to his order on the date of maturity in a current account or authorization to draw in overdraft, within the limits of registration that the drawee authorizes.

Without prejudice to the liabilities incurred by the common law, under no circumstances shall the drawee be responsible if the check is not paid upon its maturity. Neither the registration of the check, nor the determination of limits of registration shall produce liability.

The drawee may guarantee the deferred payment check.

The deferred payment check must contain the following essential items in a similar form, even though distinguishable, to the common check:

1. The denomination "Deferred Payment Check" clearly inserted in the text of the document.
2. An ordinal number printed on the body of the check;
3. Indication of the place and date of issue;
4. The period, no less than 30 days and no more than 360 days, in which it shall be paid after its presentation to registration to an authorized entity, which shall follow the printed expression: "Payable in \_\_\_\_\_ days from its presentation to an authorized entity".
5. Name and address of the bank on which the check is drawn;
6. The person in whose favor it is to be paid, or to the bearer.
7. The determined sum of money, expressed in numbers and in letters, that is ordered to be paid by item 4 of this article.



8. The name of the drawer, domicile, tax or labor identification or identity, in accordance with the regulation of the Central Bank of the Argentine Republic.

9. Signature of the drawer. Electronic systems or systems of reproduction may only be used when expressly authorized by the Central Bank of the Argentine Republic.

Art. 55. (Check Law)

For the cases in which the checks presented to registration have formal defects, the Central Bank of the Argentine Republic may establish a system of preventive retention in order that the drawee, before rejecting it, shall notify the drawer to correct its defects.

The drawee, in this case, may not delay the registration of the check for more than 7 working banking days.

If the period of deferment consigned in the check is less than or greater than those indicated in item 4 of article 54, it shall be considered that the date of maturity shall be 30 or 360 days, as the case may be, which both the drawee as well as the depositary shall make known to the legitimate depositing holder.

Art. 56. (Check Law)

A deferred payment check is freely transferable by endorsement with only the signature of the endorser. The date of presentation for its registration of the check shall establish the beginning of the period of deferment. Failure to stamp the date or difficulty in reading it shall be made up for by the deposit ticket that shall have the characteristics established by the authority of application.

Art. 57. (Check Law)

A deferred payment check may be presented directly to the drawee for its registration. If the check was deposited in an entity different from the drawee, the depositary shall remit the deferred payment check to the drawee for its registration and return, granting the respective voucher, assuming the promise of paying it on the day of maturity if available funds or authorization to overdraw on the respective account exist. If any impediment to its registration exists, this must be made known to the depositary within the terms fixed for the clearing, the registration being refused.

Refusal of registration shall produce the effects of legal protest. The action which the holder may commence against the drawer, endorsers and guarantors shall be expedited thereby. Article 39 shall be applied.

Refusal of the registration shall be communicated to the Central Bank of the Argentine Republic by the drawee, and the drawer shall be penalized with the fine provided in article 62.

The Central Bank of the Argentine Republic may authorize or establish systems of registration and payment by means of electronic communication or exposition which

shall replace the remittance of the certificate; establishing the conditions of adherence and security precautions and functioning.

Art. 58. (Checks Law)

A registered check shall be deposited in the drawee entity. The credits that are thus registered to a depositor may be transferred in ownership or in guarantee by simple notification to the depositary entity, or drawn for its registration. The entities shall issue transmissible certificates in accordance with the regulation of the Central Bank of the Argentine Republic.

The provisions that govern the common check shall be applicable to the deferred payment check, except those that are opposed to that which is provided in this chapter.

Art. 59. (Checks Law)

The authorized entities shall deliver to their clients that so request, in addition to the check books indicated in article 4, others clearly differentiable from the former with deferred payment checks. The authorized entities shall inform their clients of the conditions under which deferred payment checks may be utilized on their current account.

The drawee may refuse the registration of a check when the drawer does not adjust to those conditions.

Art. 60. (Checks Law)

The closing of a current account of deferred payment checks shall impede the registration of new checks. The drawee must receive the deposits that were effected for attending to the checks which have been registered previously.

The execution for any reason of a deferred payment check presented for registration may proceed in the jurisdiction corresponding to the depositary entity or drawee, without distinction of priority.

## CHAPTER XII. COMMON PROVISIONS

Art. 61. (Checks Law)

Judicial suits of a bearer against the drawer, endorsers or guarantors shall prescribe in the year counted from the expiration of the period for the presentation. In the case of deferred payment checks, the period shall be counted from the date of the refusal by the drawee, whether for the registration or the payment.

Judicial suits of various parties liable for the payment of a check, among themselves, shall prescribe in the year counted from the day on which the liable party had reimbursed the amount of the check or from the day on which it had been notified of the judicial demand for the collection of the check.

Art. 62. (Checks Law)

In case of refusal of the check due to failure to provide funds or authorization to overdraw from the account or due to formal defects, the drawee shall communicate it to the Central Bank of the Argentine Republic, to the drawer and to the holder with an indication of the date and number of the communication, all in accordance with that which is indicated in the regulation. The holder shall be informed of the date and number of the communication.

Without prejudice to the liabilities incurred by way of the common law, if the drawee omits the communication it shall be liable for the payment of the amount of the check jointly and severally with the drawer, up to a maximum equivalent to \$5,000.

The drawer of a check refused due to lack of funds or without authorization to overdraw from his account shall be penalized with a fine equivalent to 4% of the value of the check, with a minimum of \$100 and a maximum of \$50,000. The drawee is obligated to debit the amount of the fine from the account of the drawer. If not paid within 30 days of the rejection, the current account shall be closed and disqualification shall be occasioned.

The fine shall be reduced by 50% if the drawer cancels the check that caused the fine within 30 days from the rejection, which circumstance shall be communicated to the Central Bank of the Argentine Republic.

The deposit of the fines in the account of the Central Bank of the Argentine Republic must be made within the month following the month in which the rejection was produced.

#### Art. 63. (Checks Law)

When opposition to the payment of the check is mediated because of a criminal report on the drawer or holder, the drawee entity must retain the check and remit it to the court intervening in the case. The drawee entity shall deliver a certificate to whoever had presented the check for collection which shall enable him to file civil suits in accordance with that which is established in the regulation.

#### Art. 64 (Checks Law)

Drawers and holders of a current account may file an appeal before the Appeals chamber with commercial competence corresponding to the jurisdiction of the appellant, against the resolutions imposing penalties derived from the application of this law and its regulation.

The appeal must be filed within five days from notification of the resolution which is the object of the appeal, and the Code of Civil and Commercial Procedure shall be of application in the others of the intervening jurisdiction.

The appeal against the fines shall have a suspensive effect and against the remaining penalties only a devolutive effect.

### CHAPTER XIII. COMPLEMENTARY PROVISIONS

Art. 65. (Checks Law)

If this Law is silent on a situation, the provisions relative to bills of exchange and promissory notes shall be applied insofar as pertinent.

Art. 66. (Checks Law)

The Central Bank of the Argentine Republic, as authority of application of this Law:

1. Shall regulate the conditions and requirements of opening, functioning and closing of the accounts on which common and deferred payment checks may be drawn, and the certificates to which article 58 alludes;
2. Shall extend the periods established in article 25, if reasons of force majeure make it necessary for the normal negotiation and payment of checks;
3. Shall regulate the forms of checks and decide on all conducive to the furnishing of an efficient check service, including the documental or electronic form of the registration, rejection and solution of check problems which are merely formal;
4. Shall authorize accounts in foreign currency with checking service;
5. May, temporarily, establish a maximum amount for checks drawn to the bearer and limit the number of endorsements of the common check.

The regulatory standards of this law that are handed down by the Central Bank of the Argentine Republic must be published in the Boletín Oficial.

Art. 67 (Checks Law)

Law 21,526 concerning Financial Entities shall determine against whom common checks can be drawn.

#### CHAPTER XIV. CLEARING HOUSES

This Chapter was changed from Chapter XII to Chapter XIV unofficially by the editors to continue the numeration properly. Law 24,452 of 1995 (Checks Law) did not provide for this Chapter of the Commercial Code.

Art. 834. (Commercial Code)

Banks may clear their checks, as they may agree, in accordance with the preceding provisions, and for this purpose they are authorized to form clearing houses in the towns of the Republic.

Art. 835. (Commercial Code)

Clearing houses cannot perform their functions without authorization and the previous approbation of their constitution by the National Executive Power.

Arts. 836-843. (Commercial Code)

Repealed by Decree Law 4776/63 on Checks (see above).

#### TITLE XIV. DISCHARGE BY PRESCRIPTION

Art. 844. (Commercial Code)

Mercantile prescription is subject to the rules enacted for prescription in the Civil Code, in everything which is not opposed to the provisions of the following articles.

Art. 845. (Commercial Code)

All the terms which are fixed for the commencement of any action, or to perform any other act, are definite and cannot be extended, and run against all classes of persons without distinction, saving the right of action which belongs to a person legally incapable against his necessary representative, and saving the provision in Art. 3980 of the Civil Code.

Art. 846. (Commercial Code)

Ordinary prescription in a commercial matter takes effect in 10 years, with no distinction between present and absent persons, whenever this Code or special laws do not enact a shorter prescription.

Art. 847. (Commercial Code)

The following are prescribed by the expiration of 4 years:

1. Debts proved by accepted accounts of sale, settled or presumed to be settled in conformity with the provisions of Arts. 73 and 474. The time for the prescription shall run from the presentation of the particular account, and in cause of doubt, it shall be presumed to have been presented on the day of its date;
2. Interest on capital loaned, and all that ought to be paid per annum or for shorter periods. The time for the prescription shall run from the date of the loan being repayable;
3. An action for nullity or rescission of a juridical commercial act, provided that a shorter prescription is not provided by this Code or by special laws.

Art. 848. (Commercial Code)

The following are prescribed by the expiration of 3 years:

1. Actions derived from a contract of partnership and from partnership transactions, provided that the advertisements ordered in the Title referring thereto have been published in regular form. The time for the prescription shall run from the maturity of the obligation or from the day of the publication of the instrument of dissolution of the partnership or from the declaration of liquidation, if the obligation is not due. The term with respect to the obligations derived from the liquidation of a partnership, shall run from the date of passing the final balance sheet of the liquidators;
2. Actions arising from any document susceptible of endorsement or to bearer, not being a banknote, and excepting the respecting certain documents.

The term for the prescription shall run from the maturity of the obligation. But whenever 4 years shall have transpired, reckoned respectively from the day of granting the document, from its endorsement or signing by the obligee as acceptor or guarantor, the prescription shall be completed.

The prescription is understood to be without prejudice to the invalidity of such actions in cases defined by the law.

If the debt arising from a document susceptible of endorsement or to order, has been acknowledged by a separate document, with the intention to create a novation, the provision in the first clause of this number shall not apply.

Acts, which interrupt prescription as regards one of the coobligees of a document, shall not operate with regard to the others.

Art. 849. (Commercial Code)

An action to claim payment for merchandise sold on credit, without a written document, is prescribed in 2 years.

Art. 850. (Commercial Code)

Actions arising from bottomry bonds or mortgage of a vessel shall also be prescribed by 2 years, reckoned from the maturity of the obligation.

Art. 851. (Commercial Code)

Actions by brokers for payment of brokerage are likewise prescribed by 2 years, reckoned from the date on which the transaction is concluded.

The action for nullity of the composition in bankruptcies shall be prescribed in the same time. The time shall commence to run from the day on which the fraud was discovered.

Art. 852. (Commercial Code)

Actions for indemnity for damages caused by collision of vessels are prescribed by one year, reckoned from the day of protest or claim defined in the article relating thereto; and actions for contribution to general average by one year reckoned from the day of the complete discharge of the vessel.

Art. 853. (Commercial Code)

Actions which arise from a contract of affreightment are prescribed by the lapse of one year, reckoned from the termination of voyage; and those which arise from the contract of agreement with mariners are prescribed by the lapse of one year, from the expiration of the time agreed on from the end of the last voyage, if the contract has been extended.

In maritime insurance, the time runs from the completion of the insured voyage, and in term insurance, from the day on which the insurance expired. In case of presumption of loss of a vessel for want of news, the year commences at the end of the time fixed for

presumption of loss. The other times enacted for abandonment in "Maritime Insurance" are always excepted.

In other insurance time runs from the moment when the event happens from which the action arises.

Art. 854. (Commercial Code)

The following are also prescribed by one year:

1. Actions which arise from supplying provisions, wood, fuel and other things necessary for repair and equipment of a vessel on a voyage, or labor done with the same objects;
2. Actions which arise from supplies to seamen and other members of the crew by order of the master.

The time runs from the date of the supplies or the completion of the labor, if not time has been fixed. In the latter case, the prescription shall be suspended during the agreed term.

If the supplies or labor are continued for several days, the year shall be reckoned from the last day.

Art. 855. (Commercial Code)

Actions against a carrier, arising from a contract of carriage of persons or products for which a lesser prescription period is not established in this Code, shall prescribe:

1. In one year, in transits carried out within the interior of the Republic;
2. In two years, in transits to any other place.

In case of partial or total loss, prescription shall begin to run from the day of delivery of the cargo, or from that on which it ought to be delivered according to the conditions of its carriage, and in case of damage or delay, from the date of the delivery of the things carried.

In the case of transport of passengers, the prescription period shall run from the day on which the voyage ended or should have ended.

Any agreement by the parties that reduces these prescription terms shall be null and void.

### BOOK III. RIGHTS AND OBLIGATIONS RESULTING FROM NAVIGATION

Arts. 856 to 890. (Commercial Code)

Repealed by Law 20,094 on Navigation.

BOOK IV. BANKRUPTCY

Law 19,551 replaced the provisions of Book IV of the Commercial Code. These provisions are not reprinted herein.

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