



UNIFORM ACT RELATING TO GENERAL COMMERCIAL LAW



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UNIFORM ACT RELATING TO GENERAL COMMERCIAL LAW

The Council of Ministers of the Organisation for the Harmonization of Business Law in Africa (OHADA),

- Considering the Treaty on the Harmonization of Business Law in Africa, and in particular Articles 2, 5, 6, 7, 8, 9, 10, 11 and 12 thereof;
- Considering the report by the OHADA Permanent Secretariat and the observations of the States Parties;
- Considering the opinion of the Common Court of Justice and Arbitration dated 7 April 1997;

Having deliberated thereon, adopt by unanimous vote of the States Parties present and voting, the Uniform Act set out below.

PRELIMINARY CHAPTER SCOPE

ARTICLE 1

This Uniform Act shall apply to every Trader irrespective of whether he is a natural or corporate person and shall include all commercial companies of which a State or person governed by public law is a member. It shall also apply to an economic interest group, whose place of business or registered office is situated on the territory of a State which is a signatory to the Treaty for the Harmonization of Business Law in Africa (hereinafter referred to as “State party”).

Furthermore, every trader shall be subject to those laws applicable in the States Parties where his place of business or registered office is located provided the said laws are not contrary to the provisions of this Uniform Act.

Any natural or corporate person, as well as any economic interest group, which is either set up or which is in the process of being set up as at the date on which this Uniform Act enters into force shall harmonise the conditions under which they carry out their activity with this new legislation within a period of two years from the date of publication of this Uniform Act in the Official Gazette.

Upon the expiry of such period, any interested party may bring an action before the court of competent jurisdiction for an order for such regularisation to be carried out, where necessary, upon the payment of a periodic monetary penalty.

BOOK I STATUS OF A TRADER

CHAPTER I DEFINITION OF TRADER AND COMMERCIAL TRANSACTIONS

ARTICLE 2

Traders are persons whose usual occupation is to carry out commercial transactions.

ARTICLE 3

Commercial transactions shall include in particular:

- the purchase of movable or immovable property for resale;
banking, stock exchange, currency exchange, brokerage, insurance, and transit transactions;
contracts between Traders for business purposes;
- the industrial exploitation of mines, quarries and any natural resources
the rental of movable property;
- manufacturing, transportation and telecommunications transactions;
- transactions by middle men by such as commission agents, brokers and commercial agents,
as well as transactions by middle men relating to the purchase, subscription, sale or rental of
real property, business property, shares in any commercial or real estate company; and
- transactions carried out by commercial companies.

ARTICLE 4

A bill of exchange, a promissory note, and a warrant shall, by virtue of their form, also be considered as commercial transactions.

ARTICLE 5 With regards to Traders commercial transactions may be proved by any means.

CHAPTER II CAPACITY TO TRADE

ARTICLE 6

No person shall engage in trading unless he has the legal capacity to do so.

ARTICLE 7

A minor shall not have the status of Trader or engage commercial transactions unless he or she is emancipated.

The spouse of a Trader shall not have the status of Trader unless he or she carries out the transactions referred to under Articles 3 and 4 above as a regular occupation and separately from his or her spouse.



ARTICLE 8

No person shall engage in a commercial activity while subject to a particular status which is incompatible to that of a Trader.

There shall be no incompatibility unless provided for by Law

The burden of proving an incompatibility shall lie on the party who alleges it.

No commercial transaction carried out by a party lacking capacity shall be invalidated by such incapacity.

A third party may, where they so desire, rely on commercial transaction carried out by a party who lacks capacity, but such party shall not rely upon such transaction.

ARTICLE 9

The functions and occupations of the following shall be incompatible with trading:

civil servants, local governments staff and employees of State-owned enterprises;

cabinet officials, auxiliary officers of Justice: lawyers, bailiffs, official auctioneers, stockbroker, notaries public, court registrars, receivers and liquidators

certified public accountant and chartered accountant, auditor and contribution in-kind valuers
legal expert, ship broker.

in general, a person carrying out an occupation which is subject to regulations forbidding the carrying out of such activity concurrently with that of a commercial occupation.

ARTICLE 10

No person may carry out a commercial activity, whether directly or through an intermediary, if he has been the subject of:

- a permanent or temporary general prohibition imposed by a court of one of the State Parties, whether such prohibition is imposed as a principal or an accessory penalty;
- a prohibition imposed by a professional tribunal regulatory body in which case the prohibition shall apply only to the commercial activity concerned;
- a final sentence of imprisonment for a crime under common law or a sentence of not less than three months imprisonment for an offence against property interest or an offence of an economic or financial nature.

ARTICLE 11

A temporary ban of more than 5 years as well as a permanent ban may be lifted, at the request of the person under such ban, by the court that imposed the ban.

Such request shall be admissible only after the expiration of a period of 5 years from the date on which the ban was imposed.

A ban on a bankrupt shall end upon his or her discharge, under the conditions and forms provided for in the Uniform Act on the collective procedures for the wiping off of debts.

ARTICLE 12

Without prejudice to any other sanctions, transactions carried out by a person under a ban shall not be enforceable against third parties acting in good faith.

Good faith shall always be presumed.

Such transactions shall however be enforceable against the person under a ban.

CHAPTER III ACCOUNTING OBLIGATIONS OF THE TRADER

ARTICLE 13

Every trader, whether a corporate or natural person shall keep a Journal in which his daily commercial transactions shall be recorded.

He shall also keep a General Ledger, with a general summary balance, as well as an Inventory Book.

Such accounts books shall be kept in accordance with the provisions of the Uniform Act relating to the organisation and harmonisation of accounts of enterprises.

Every corporate person carrying out commercial activities shall also comply with the provisions of the Uniform Act relating to commercial companies and economic interest groups and the Uniform Act on the organisation and harmonisation of accounts of enterprises.

ARTICLE 14

The Journal and the Inventory Book must bear the registration number of the natural or corporate person concerned in the Trade and Personal Property Rights Register.

They shall be numbered and initialled by the President of the court of competent jurisdiction, or by the Judge empowered for such purposes.

The accounts books shall contain no blank spaces or alterations of any kind.

ARTICLE 15

The accounts books referred to under Article 13 above which have been regularly kept may be admitted in evidence by the judge in disputes between the traders.

ARTICLE 16

In the course of a dispute, the Judge may order, even at his own initiative, the production of accounts books to obtain therefrom any information necessary for the determination of a dispute.

ARTICLE 17

Every corporate person engaged in trading shall also draw up each year summary financial statements in accordance with the provisions of the Uniform Act relating to the organisation and harmonisation of accounts of enterprises, and to the Uniform Act relating to commercial companies and economic interest groups.

CHAPTER IV LIMITATION PERIODS

ARTICLE 18

An obligation which arises from trade between traders or between a trader and a non-trader will lapse after a period of five years in a case where such obligation is not subject to any shorter limitation period.

BOOK II COMMERCIAL REGISTRY

PART I COMMON PROVISIONS

CHAPTER I GENERAL PROVISIONS

ARTICLE 19

The purpose of the Trade and Personal Property Rights Register shall be:

1°) for the registration of

- a) natural persons who within the meaning of this Uniform Act have the status of trader;
- b) commercial companies and other corporate persons subject to registration, as well as branches of foreign companies operating on the territory of a State Party.

The Registry shall also have entries and information on changes in the status and legal capacity of natural and corporate persons that have occurred since their registration.

It shall also record documents which by the provisions of this Uniform Act and by those of the Uniform Act relating to commercial companies and economic interest groups must be filed.

2°) for registering entries relating to:

- a) the pledge of shares;
- b) the pledge of a business and the lien of the vendor of business;
- c) the pledge of professional equipment and motor vehicles;
- d) the pledge of stocks;
- e) the preferential rights of the Treasury, the Customs Department and of the Social Security Institutions;
- f) ownership reserve clauses; and
- g) leasehold contracts.

CHAPTER II ORGANISATION OF THE COMMERCIAL REGISTRY

ARTICLE 20

The Trade and Personal Property Rights Registry shall be kept by the Registry of the court of competent jurisdiction under the supervision of the President or a Judge delegated to that effect.

Information entered in each Trade and Personal Property Rights Registry shall be centralised in a National Register.

Information entered in each National Register shall be centralised in a Regional Register kept at the Common Court of Justice and Arbitration.

ARTICLE 21

The Accounts books kept at the Registry shall comprise:

- 1 °) a register for in-coming registrations which shall specify in chronological order the date and number of each admitted declaration, the full names or corporate name of the declarant, as well as the subject of the declaration;
- 2 °) a collection of individual files in alphabetical order comprising:
 - a) for natural persons: under the indication of their full names, date and place of birth, the nature of the activity in which they are engaged and the address of their principal place of business, as well as the addresses of the other places of business set up within and out of the jurisdiction of the court in which the registered office is located, all declarations, transactions and filed documents concerning them;
 - b) for commercial companies and other corporate persons subject to registration: under the indication of their corporate name, their legal form, the nature of the activity performed, the address of the registered office as well as that of the registered office of places of business set up within and out of the jurisdiction of the court, all declarations, transactions and documents concerning them.

ARTICLE 22

All declarations shall be drawn up in four copies on forms provided by the Registry.

The forms shall bear the signature of the declarant or of his authorised agent, who must also provide proof of his identity and possess a power of attorney signed by the declarant unless he is a Lawyer, Proxy, Bailiff Notary or *Syndic*.

The first copy shall be kept by the Registry.

The second shall be given to the declarant with reference to the date and description of the formality carried out.

The third and fourth copies shall be forwarded by the Registry to the National Register which shall then send one of them to the Regional Register.



ARTICLE 23

In accordance with the provisions of Article 20 above, a National Register shall be kept in each State Party and a Regional Register at the Common Court of Justice and Arbitration, each such register comprising an extract of each individual file in alphabetical order indicating:

- 1°) for natural persons: their full names, date and place of birth, nature of the activity in which they are engaged, address of their principal place of business, as well as the addresses of other places of business set up within and out of the jurisdiction of the court in which the registered office is located;
- 2°) for commercial companies and other corporate person subject to registration: their corporate name, legal form, nature of activity exercised, their share capital, address of the registered office and those of the other places of business set up within and out of the jurisdiction of the court in which the registered office is located.

ARTICLE 24

Furthermore, the following shall as a matter of course be mentioned in the Trade and Personal Property Rights Register:

- 1°) decisions taken in individual bankruptcy proceedings or in collective proceedings forced liquidation, receivership or the liquidation of assets;
- 2°) decisions pronouncing pecuniary sanctions against company executives;
- 3°) rehabilitation or amnesty orders lifting forfeitures or bans.

Communication of the information provided for under this article to the Registries of the courts within whose jurisdiction the secondary places of business are located shall be done by the court which took the decision or, failing this, by any interested party.

PART II REGISTRATION IN THE TRADE AND PERSONAL PROPERTY RIGHTS REGISTER

CHAPTER I REGISTRATION CONDITIONS

SECTION 1 REGISTRATION OF NATURAL PERSONS

ARTICLE 25

Every natural person having the status of a trader as provided for in this Uniform Act shall, within the first month of operation of his business, apply to the Registry of the competent court within whose jurisdiction the business is operated for registration in the Trade and Personal Property Rights Register.

The application for registration shall state:

- 1°) the full names and residence of the declarant;
- 2°) his date and place of birth;
- 3°) his nationality;
- 4°) where applicable, the name under which he carries on business as well as any trade mark, emblem, symbol or logo;
- 5°) the activity or activities carried out, and the form of operation;
- 6°) the date and place of marriage, the type of marriage settlement adopted, any provisions enforceable against third persons restricting the free disposal of a spouses property or the absence of any such provisions, any petitions regarding the separation of property;-
- 7°) the full names, date and place of birth, residence and nationality of the persons mandated by the declarant to sign on his behalf,
- 8°) the address of the principal place of business and, where applicable, the address of each of the other establishments or branches operating on the territory of the State party;
- 9°) where applicable, the nature and the place of operation of the former places of business specifying their registration numbers in the Trade and Personal Property Rights Register.
- 10°) the date operation of the principal establishment started, and where necessary, that of the others establishments.

ARTICLE 26

The declarant t shall be required to furnish the following documents in support of his declaration:

- 1°) a copy of his birth certificate or any official document in proof of his identity;
- 2°) copy of his marriage certificate, where necessary;
- 3°) an extract of his criminal record or, failing this, any other document in lieu thereof.
Where the declarant t is not a national of the State party in which he is requesting registration, he shall also furnish an extract of his criminal record from the authorities of his country of birth, and, failing this, any other document in lieu thereof;
- 4°) a residence permit;
- 5°) a copy of the title deed or lease of the principal establishment/enterprise, and, where the need arises, that of the other places of business;
- 6°) in the event of a purchase of a business or management lease, a copy of the deed of purchase or of the management lease;
- 7°) where the need arises, a prior authorisation to operate the business.

Section 2

Registration of companies and other corporate persons

ARTICLE 27

The companies and other corporate persons referred to in the Uniform Act relating to commercial companies and economic interest groups shall, within a month of their formation, apply to the



Registry of the court within whose jurisdiction their registered office is located for registration in the Trade and Personal Property Rights Register.

The application shall state:

- 1°) the corporate name;
- 2°) where applicable, the business name, trade mark, emblem, symbol, acronym or logo;
- 3°) the activity or activities carried out;
- 4°) the form of the company or corporate person
- 5°) the amount of the share capital specifying the amount of any contributions in cash and the valuation of any contributions in kind;
- 6°) the address of the registered office and, if need be, that of the principal establishment and that of each of the other establishments;
- 7°) the duration of the company or corporate person as provided for in its Articles of Association;
- 8°) the full names and address of partners who have unlimited personal liability for the company's debts, specifying their date and place of birth, nationality, date and place of marriage, the kind of marriage settlement adopted and any provisions enforceable against third persons restricting the free disposal of property of the spouses or the absence of such provisions, as well as any petitions for the separation of property;
- 9°) the full names, date and place of birth and address of managers, directors or partners with general power to bind the company or corporate person;
- 10°) the full names, date and place of birth and address of the Auditors where their appointment is provided for by the Uniform Act relating to commercial companies and economic interest groups.

ARTICLE 28

The following supporting documents shall, under pain of rejection, be attached:

- 1°) two certified copies of the Articles of Association;
- 2°) two originals of the certificate of validity and conformity or of a notarised certificate confirming the subscription for and payment of the shares;
- 3°) two certified copies of the list of managers, directors or partners having an unlimited liability for the company's debts or with power to commit the company;
- 4°) two extracts of the criminal record of the persons referred to in paragraph (3) above. Where the declarant is not a national of the State Party in which he is applying for registration, he shall also provide an extract of his criminal record obtained from the authorities of his country of birth and, failing this, any other document in lieu thereof;
- 5°) where necessary, a prior authorisation to operate the business.

ARTICLE 29

Every natural or corporate person not subject to registration in the Trade and Personal Property Rights Register because of the location of his registered office shall, within a month of the setting

up of a branch or agency the territory of one of the States Parties, apply for the registration of such agency.

The application, which shall be filed at the Registry of the court within whose jurisdiction such branch or agency shall be established, shall state:

- 1°) the name of the branch or agency;
- 2°) if need be, its business name, acronym, trade mark or logo;
- 3°) the activity or activities carried out;
- 4°) the corporate name of the foreign company that owns the said branch or agency; its business name, acronym, trade mark or logo; the activity or activities carried out; the form of the company or corporate person; its nationality; the address of its registered office; where applicable, the full names and residence of the partners having an unlimited liability for the company's debts; and
- 5°) the full names, date and place of birth of the natural person resident on the territory of the State Party with power to represent and manage the branch.

Section 3

Common provisions for the registration of natural and Corporate persons

ARTICLE 30

Registration shall be personal, whether the trader is a natural or a corporate person.

No enterprise operated by a trader may be registered as principal enterprise in many registers or under many numbers in the same register.

Once the application is complete, the Registry shall assign the declarant a registration number and mention of this shall be made on the form given to him.

The Registry shall then forward a copy of the individual file and the other documents deposited by the applicant to the National Register.

ARTICLE 31

Where the trader transfers his business place or the registered office of his company to a location within the jurisdiction of another court, he shall apply for:

- such business or company to be struck off from the of the Trade and Personal Property Rights Register of the court within whose jurisdiction they were registered;
- a new registration in the Trade and Personal Property Rights Register of the court within whose jurisdiction his business or registered office has been transferred; such registration shall only be final after the verification provided for under paragraphs 4 and 5 below.

To this effect, individual traders carrying out business shall submit information and document in accordance with Articles 25 and 26 above; companies and other corporate persons subject to registration shall furnish the information and documents as provided for in Articles 27 and 29 above.

These formalities shall be complied with by the declarant within one month of the transfer.

The Registry responsible for the Trade and Personal Property Rights Register within whose

jurisdiction the trader has transferred his business or where the company has transferred its registered office shall, within one month of the new registration, ensure that the name of the business or company has been removed from the register by requiring that the declarant produce a certificate issued by the Registry of the place where the business or company was previously registered.

Where the declarant fails to act within time, the Registry shall as a matter of course effect the change at the expense of the declarant.

ARTICLE 32

Any registration, as well as any entry or indication in respect of any changes that have occurred since the date of their registration relating to the status and legal capacity of natural or corporate persons subject to registration, shall also, within a month of the entry of such formality, be published as a notice in a newspaper authorised to publish legal notices.

The notice shall contain:

- for natural persons:, the information provided for under Article 25 (1) to (6) above; and
- for corporate persons, the information provided for under Article 27 (1) to (9) above.

Section 4

Supplementary, secondary and amending entries

ARTICLE 33

Where the situation of a person subject to registration subsequently undergoes a change which requires that the information entered in the Trade and Personal Property Rights Register to be modified or supplemented, such person shall, within thirty days of such change, file an application for modification of the information or supplementary entry in respect of such change.

Any change concerning particularly the civil status the form of marriage settlement the legal capacity and activity of a natural person subject to registration, or particularly any change concerning the Articles of Association of a corporate person, shall be entered in the Trade and Personal Property Rights Register

Any application for a supplementary, secondary or modifying entry shall be signed by the person bound to declare the change or by an authorised agent who shall show proof of his identity and hold a special power of attorney, where he is not a Lawyer, Bailiff, Notary public, *Syndic* or other auxiliary officer of Justice empowered by law for that purpose.

ARTICLE 34

Any natural or corporate person subject to registration in the Trade and Personal Property Rights Register shall be bound, where he opens secondary commercial establishments or branches within the jurisdiction of other courts, to apply for secondary registration within one month from the beginning of operations.

Apart from a reference to the principal registration such application shall, state the required information:

- in the case of a natural person, by Article 25 (1) to (6) above ;
- in the case of a corporate person, by Article 27 (1) to (9) above.

ARTICLE 35

The application shall be filed in the Trade and Personal Property Rights Register of the court within whose jurisdiction the secondary business is located.

The Registry in charge of the Trade and Personal Property Rights Register shall, within one month of the secondary registration, forward a copy of the statement of secondary registration to the Registry in charge of the Register where the principal registration was made.

A registration number shall be assigned to every registration of secondary commercial establishment, notice of which shall be published, within one month of such registration, in a newspaper authorized to publish legal notices.

Section 5 Cancellation of Registration

ARTICLE 36

Any registered natural person shall, within one month from the date of cessation of his commercial activity, apply for the removal of his name from the Trade and Personal Property Rights Register

In the event of the death of a registered natural person, his successors shall, within a period of three months from the date of such death, apply for the cancellation of his name at the Registry or for its change where they themselves have to continue to operate the business.

Where the application for removal is not filed within the time-limit referred to in the two preceding paragraphs of this article, the Registry shall proceed to the cancellation following a decision of the competent court before which the matter is referred by the Registry or by any interested party.

Notice of every cancellation from the Register shall be published in the newspaper authorized to publish legal notices.

ARTICLE 37

The dissolution of a corporate person for any reason whatsoever shall be declared within a period of one month at the Registry of the competent court where the corporate person is registered for the purpose of having such dissolution recorded in the Trade and Personal Property Rights Register.

The same shall apply in the case of nullity of a company, with effect from the date on which the decision relating to the nullity is pronounced.

The liquidator shall request the corporate person's removal from the Register within one month of completion of the liquidation operations.

Where the request for removal is not made within the prescribed deadline, the Registry of the competent court before whom the matter is referred shall, of its own motion or at the request of any interested party, and upon the decision of said court, remove the company from the register.

Notice of every cancellation from the Register shall be published in the newspaper authorized to publish legal notices.

CHAPTER II EFFECTS OF REGISTRATION AND DISPUTES

Section 1 Effects of registration

ARTICLE 38

Any person registered in the Trade and Personal Property Rights Register shall be presumed, unless otherwise proven, to have the status of Trader within the meaning of this Uniform Act.

However, such presumption shall not apply in respect of economic interest groups.

The registration number and place of registration of every natural or corporate person shall be indicated on all invoices order forms, price list and any other commercial document as well as on all correspondences.

ARTICLE 39

Natural and corporate persons subject to registration in the Trade and Personal Property Rights Register who have not applied for registration within the prescribed deadline shall not claim the status of Trader until they are duly registered.

However, they shall not rely on their failure to register in the Trade and Personal Property Rights Register to avoid the liabilities and obligations inherent in such status.

ARTICLE 40

Persons subject to registration in the Trade and Personal Property Rights Register may not, in their commercial activities, rely on deeds and documents subject to registration as against third parties and public authorities who may however rely on them except where such deeds and documents have been published in the Register.

This provision shall not apply where the persons subject to registration proves that, at the time of the transaction, the third party and service involved had knowledge of the deeds and documents concerned.

Section 2 Disputes relating to registration

ARTICLE 41

The Registry in charge of the Trade and Personal Property Rights Register shall be responsible of ensuring that applications are complete and ascertaining the conformity of the information contained in the supporting documents attached there to.

Where the Registry notices inaccurate information or experiences difficulties in the accomplishment of its task, it shall refer the matter to the competent court.

Disputes between the declarant and the Registry may also be referred to the said court.

ARTICLE 42

Where a corporate or natural person who is a Trader fails to apply for registration within the prescribed time-limit, the competent court may, of its own motion or at the request of the Registry



in charge of the Trade and Personal Property Rights Register or, at the request of any other person order that such registration be done.

The competent court may, under the same condition, order any natural or corporate person registered in the Trade and Property Rights Register to either:

- have necessary information added or amendments made in the Register in the case of any incorrect or incomplete declaration; or
- be removed from the Register.

ARTICLE 43

Any person who is bound to comply with any of the formalities prescribed in this part and who fails to do so or who has been found to have fraudulently fulfilled a formality, shall be punished with the penalties provided by the national criminal law or, where applicable, by the special criminal law enacted by the State Parties pursuant to this Uniform Act.

PART III REGISTRATION OF PERSONAL SECURITIES

CHAPTER I CONDITIONS FOR THE REGISTRATION OF PERSONAL SECURITIES

Section 1 Pledge of shares

ARTICLE 44

Where the shares of a commercial company are pledged, the pledgee shall present the following to the Registry of the competent court within whose jurisdiction the company is registered:

- 1°) the original pledge agreement if it is a private contract, or a copy thereof if it was drawn up by a notary public or results from a court decision authorising the creditor to register the pledge;
- 2°) four copies of a registration form stating:
 - a) the full names, corporate name, share capital, address or registered office of the parties, as well as the registration number of the company whose shares have been pledged;
 - b) the nature and date of the filed pledge agreement(s);
 - c) the amount of money due on the last day preceding the registration of the pledge and, where applicable, the conditions on which the debt may be repayable;
 - d) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

Any modification by agreement or court order shall be the subject of an amendment in the Register under the same conditions and forms as provided for the initial entry.

ARTICLE 45

The Court Registrar shall ascertain the conformity of the form to the security deed presented.

He shall then enter it in the in coming register and, at the same time:

- 1°) refer to the entry in the individual file opened in the name of the company whose shares have been pledged;
- 2°) file the deeds and a copy of the declaration that was given to him in the file kept in the name of the corporate person whose shares have been pledged;
- 3°) give to the declarant the second copy of the declaration with mention of the date and the number of the registration.

The third and fourth copies of the declaration shall be forwarded to the National Register which shall then send one of them to the Regional Register.

Section 2

Pledge of business and registration of the Vendor's lien over the business

ARTICLE 46

Where the subject of a pledge is the business, the pledgee shall present to the Registry of the competent court within whose jurisdiction the natural or Corporate person who owns or operates the business is registered the following:

- 1°) the original copy of the security deed where it is a private contract or a copy thereof if it has been executed by a notarised deed or a court decision authorising the creditor to register the pledge;
- 2°) four copies of a registration form stating:
 - a) the full names, corporate name, Residence or registered office of the parties, as well as the registration number of the natural or corporate person who owns or operates the business in respect of which the registration is requested;
 - b) the nature and date of the filed pledge deed(s);
 - c) a description of the business which is subject of the pledge;
 - d) the amount of money due on the last day preceding the registration of the pledge and, where applicable, the conditions under which the debt shall be due payment;
 - e) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

ARTICLE 47

In the case of a sale of the business, the Vendor's lien may entered in the Trade and Personal Property Rights Register

To this effect the vendor shall provide:

- 1°) the original copy of the sales agreement where it was executed as a private document or, an authentic copy of the deed where the agreement was notarised,;

2°) four copies a registration form specifying:

- a) the full names, corporate name, residence or registered office of the parties, and, where necessary, the registration number of the natural person corporate person purchasing the business property;
- b) the nature and date of the documents filed;
- c) a description of the business to be pledged in order to facilitate its identification;
- d) the amount of money due on the last day preceding the registration of the preferential rights and, where applicable, the conditions under which the debt shall be due payment;
- e) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

ARTICLE 48

Where the pledge or the vendor's lien concerns patents, trade marks, and industrial drawings and designs, it shall, besides the registration of the creditor's security under the conditions stipulated in Articles 46 and 47 above, meet the specific provisions relating to industrial property.

ARTICLE 49

The Court Registrar shall ascertain conformity of the form to the pledge presented.

He shall then enter it in the in coming register and, at the same time:

- 1°) make mention of the entry in the individual file opened in the name of the natural or corporate person against whom the pledge is registered;
- 2°) file the deed and a copy of the declaration that was given to him in the file kept in the name of the natural or corporate person against whom the pledge is registered, stating the date and number of the registration;
- 3°) give the second copy of the declaration as endorsed by the Registry stating the date and number of the registration, to the declarant.

The third and fourth copies of the declaration shall be forwarded to the National Card Index which shall then send one of them to the Regional Card Index.

ARTICLE 50

Any modification by agreement or by court order of the pledge or preferential right shall be entered as an amendment in the Register under the same conditions and in the same form as provided for the initial entry.

Any application for Court order to cancel the sale of business may be the subject matter of an injunction order which shall be entered in the Trade and Personal Property Rights Register in accordance with the provisions provided for that purpose by the Uniform Act on Securities.

Section 3 Pledge of professional equipment and motor vehicles

ARTICLE 51

Where the subject of a pledge is professional equipment belonging to a natural or corporate person subject to registration in the Trade and Personal Property Rights Register, the pledgee shall present to the Registry of the competent court within whose jurisdiction the purchaser is registered:

- 1°) the original copy of the security deed if it is a private contract, or a copy if it is a notarised deed or a court decision authorising the creditor to register the pledge;
- 2°) four copies of a registration form stating:
 - a) the full names, corporate name, residence or registered office of the parties, as well as the registration number of the purchaser against whom the pledge is registered;
 - b) the nature and date of the filed pledge agreement(s);
 - c) a description of the property to be pledged to facilitate its identification and location, and an indication, where necessary, that the property is likely to be moved;
 - d) the amount of the money due on the last day preceding the registration of the pledge and, where applicable, the conditions under which the debt shall be due payment;
 - e) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

ARTICLE 52

For vehicles subject to a certificate of entry into service or to an administrative registration the Vendor shall present the following to the Registry of the competent court within whose jurisdiction the purchaser is registered:

- 1°) the pledge agreement where it is a private contract or a copy where it is a court decision authorising the creditor to register the pledge;
- 2°) four copies of the registration form stating:
 - a) the full names, corporate name, address or registered office of the parties, as well as the registration number of the owner against whom the pledge is registered;
 - b) the nature and date of the filed pledge agreement(s);
 - c) a description of the property pledged in order to facilitate its identification;
 - d) the amount of money due on the last day preceding the registration of the pledge and, where applicable, the conditions under which the debt shall be due payment;
 - e) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

ARTICLE 53

After ascertaining that the form conforms to the pledge agreement presented, the Registry shall register the security under the conditions stipulated in Article 49 above.

Any modification by agreement or court order of the pledge shall be entered as an amendment in the Register under the same conditions and in the form stipulated for the original entry.

Section 4 **Pledge of stocks**

ARTICLE 54

Where the pledge concerns stocks, the pledgor shall file the following at the Registry of the court having jurisdiction where the pledgor who owns the stocks is registered:

- 1°) the original of the pledge agreement if it is a private contract, or a copy where it is a notarized deed or a court decision authorising the creditor to register the pledge;
- 2°) four copies of a registration form stating:
 - a) the full names, corporate name, residence or registered office of the parties, as well as the registration number of the natural or corporate person who owns the pledged stocks against whom the pledge is registered;
 - b) the nature and date of the filed pledge agreement(s);
 - c) a description of the stocks pledged in order to facilitate their identification;
 - d) the amount of money due on the last day preceding the registration of the pledge and, where applicable, the conditions under which the debt shall be due payment;
 - e) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

ARTICLE 55

After ascertaining that the form conforms to the pledge agreement filed, the-Registry shall register the pledge as stipulated in Article 49 above.

The form delivered to the declarant after registration shall bear clearly the indication "pledge of stocks" and the date of issue thereof which shall correspond to the date of entry in the Register.

Any modification by agreement or court order of the pledge agreement shall be entered as an amendment in the Register under the conditions and in the forms stipulated for the original entry.

Section 5 **Preferential rights of the Treasury, the Customs Department and of the Social Security Institutions**

ARTICLE 56

Where registration concerns the preferential rights of the Treasury the competent Public Accounting Officer shall present the following to the Registry of the competent court within whose jurisdiction the debtor is registered:

- 1°) the original copy of the written instrument in proof of the debt, or the court ruling authorising the Treasury to register the preferential rights;
- 2°) four copies of a registration form specifying:

- a) the full names, corporate name, residence or registered office of the debtor, as well as his registration number;
- b) the nature and date of the debt;
- c) the amount of money due on the last day preceding the registration of the preferential right and, where applicable, the conditions under which the debt shall due payment;
- d) the Treasury's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.



After ascertaining that the form is in conformity with the written document referred to above, the Registry shall proceed with the registration in accordance with the conditions stipulated in Article 49 above.

Any modification by agreement or court order of the preferential right shall be entered as an amendment in the Register under the same conditions and in the form stipulated in the initial entry.

ARTICLE 57

Where registration concerns the preferential rights of the Customs Department the latter shall present the following to the Registry of the competent court within whose jurisdiction the debtor is registered:

- 1°) the original of the written instrument in proof of the debt, or the court decision authorising the Customs Department to register the preferential right;
- 2°) four copies of a registration form stating:
 - a) the full names, corporate name, residence or registered office of the debtor against whom the entry is made, as well as his registration number;
 - b) the nature and date of the debt;
 - c) the amount of money due on the last day preceding the registration of the preferential right and, where applicable, the conditions under which the debt shall be due payment;
 - d) the Customs Department's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

After ascertaining that the form is in conformity with the documents referred to above, the Registry shall registry in accordance with the conditions stipulated in Article 49 above.

Any modification by agreement or court order of the preferential right shall be entered as an amendment in the Register under the conditions and in the forms stipulated for the original entry.

ARTICLE 58

Where registration concerns the preferential right of a social security institution the latter shall present the following to the Registry of the competent court within whose jurisdiction the debtor is registered:

- 1°) the original copy of the written instrument in proof of the debt authorising the social security institution to register the preferential rights, or the court order authorising the social security institution to register the preferential claim;

- 2°) four copies of a registration form specifying:
- a) the full names, corporate name, residence or registered office of the debtor against whom the preferential rights is registered, as well as his registration number;
 - b) the nature and date of the debt;
 - c) the amount of money due on the last day preceding the registration of the preferential rights and, where applicable, the conditions under which the debt shall be due payment;
 - d) the social security institution's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

After ascertaining that the form is in conformity with the document referred to above the Registry shall proceed with the registration in accordance with Article 49 above.

Any modification by agreement or court order of the preferential right shall be entered as an amendment in the Register under the conditions and in the forms stipulated for the original entry.

Section 6

Registration of the Ownership Reserve Clause

ARTICLE 59

A Vendor of goods who has an agreement or order form accepted by the purchaser bearing an ownership reserve clause may have such clause registered in Trade and Personal Property Rights Register.

To that effect, he must file the following at the Registry of the competent court within whose jurisdiction the purchaser of the goods is registered:

- 1°) a certified copy of the agreement which sets out the clause providing for retention of title;
- 2°) four copies of a registration form stating:
 - a) the full names, corporate name, residence or registered office of the parties, as well as the registration number of the natural or corporate person who purchased the goods which are the subject of the ownership reserve clause providing for retention of title;
 - b) the nature and date of the filed agreement(s);
 - c) a description of the goods which are the subject of the ownership reserve clause providing for retention of title in order to facilitate their identification;
 - d) the amount of money due on the last day preceding the registration of the clause and, where applicable, the conditions under which the debt shall be due payment;
 - e) the address of service, within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept, of the creditor benefitting from the said clause providing for retention of title.

ARTICLE 60

After ascertaining that the form is in conformity with the document referred to above the Registry shall proceed with the registration in accordance with the conditions stipulated in Article 49 above.



The Registry shall give the applicant a copy of the form bearing clearly the statement “clause providing for retention of title” as well as the number and date of the entry.

Any modification by agreement or court order of the clause shall be entered as an amending entry in the Register under the conditions and in the forms stipulated for the original entry.

Section 7

Registration of leasehold contracts

ARTICLE 61

Where a leasehold contract has been signed, the lessor may file the following at the Registry of the competent court within whose jurisdiction the natural or corporate person acting as the lessee is registered:

- 1) the original copy of the leasehold contract where it is a private contract, or a copy where it is a notarised deed;
- 2) four copies of a registration form stating:
 - a) the full names, corporate name, residence or registered office of the lessee, as well as his registration number;
 - b) the nature and date of the filed document(s);
 - c) a description of the property which is the subject of the leasehold contract in order to facilitate its identification;
 - d) the amount of money due on the last day preceding the registration of the agreement and, where applicable, the conditions under which the debt shall be due payment;
 - e) the lessor’s address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

ARTICLE 62

After ascertaining that the form conforms to the document filed, the Registry shall register the leasehold contract as stipulated in Article 49 above.

The form given to the declarant after registration shall clearly bear the statement “leasehold contract” and the date it is issued which shall correspond to the date of entry in the Trade and personal Property Rights Register Any modification by agreement or court order of the leasehold contract shall be entered as an amendment in the Register under the same conditions and in the same forms stipulated for the initial entry.

CHAPTER II

EFFECTS OF REGISTRATION AND DISPUTES RELATING TO THE REGISTRATION

ARTICLE 63

Any regular registration in the Trade and Personal Property Rights Register shall be binding on the parties and third parties as from the date of registration:

- 1°) for a period of five years for the registration of a pledge of shares, business, professional equipment and motor vehicles, the vendor's lien or a leasehold contract;
- 2°) for a period of three years for the registration of general preferential rights of the-Treasury, the Customs Department and social security institutions;
- 3°) for a period of one year for the registration of the pledge of stock or an ownership reserved clause.

At the end of any such periods, and save in the case of renewal thereof by the declarant under the conditions stipulated in Article 62 above, the registration shall expire and shall as a matter of course be cancelled in the Register.

ARTICLE 64

The conditions for the renewal of a registration shall be the same as those for the original registration.

After verifying that the forms submitted at the Registry are in accordance with the documents filed, the Registry shall renew the registration.

A validly renewed registration shall be binding on the parties and third persons as from the date of filing of the application for renewal, in accordance with the conditions stipulated in Article 63 above.

The Registry shall give the applicant a copy of the form which shall clearly bear the statement "renewal of registration".

ARTICLE 65

A natural or corporate person against whom one or more entries mentioned in Chapter I of this part are made may, at any time, bring an action before the competent court for the cancellation, modification or limitation of the effects of the entry.

In any case, the competent court may, even before deciding on the merits of the dispute, totally or partially cancel the entry, where the declarant gives good and proper reasons therefor.

ARTICLE 66

Applications for total or partial cancellation of the entry may also be made by filing a deed showing consent of the creditor or of his successors.

Whoever applies for the cancellation of an entry shall file four copies of a form containing the following information:

- 1°) the full names, corporate name, residence or registered office, as well as the registration number of the natural or corporate person against whom the entry was made or, in the case of-an entry concerning shares, the registration number of the company whose shares are subject of the entry;
- 2°) the nature and date of the filed documents;
- 3°) the declarant's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.



The cancellation shall be entered by the Registry in the Register after ascertaining that the form conforms to the documents presented.

Two copies of the form shall be forwarded to the National Card Index who shall then send one of them to the Regional Card Index.

A certificate of cancellation shall be issued to any person who applies for it.

ARTICLE 67

The Registry shall have the responsibility of insuring that applications for entry, renewal of entry or cancellation of personal securities are complete and that the information contained in them is in conformity with the documents tendered in support thereof.

Where the Registry notices any inaccurate information or has difficulties in the accomplishment of its task, it shall refer the matter to the President of the competent court.

ARTICLE 68

Any registration of personal security made by fraud or containing inaccurate information given in bad faith, shall be punished with penalties provided for by the national criminal law

When pronouncing the sentence, the competent court may order that the inaccurate information be corrected under conditions to be determined by the court.

BOOK III COMMERCIAL LEASES AND THE BUSINESS

PART I COMMERCIAL LEASES

PRELIMINARY CHAPTER SCOPE

ARTICLE 69

The provisions of this Part shall be applicable, in towns of more than five thousand inhabitants to all leases concerning immovable property of the following categories:

- 1°) premises or buildings used for commercial, industrial, handicraft or professional purposes;
- 2°) undeveloped land on which buildings have been constructed for industrial, commercial, handicraft or professional use, either before or after conclusion of the lease, where such buildings are built or used with the consent or knowledge of the owner.

ARTICLE 70

The provisions of this Part shall also apply to industrial or commercial corporate persons governed by public law and to public corporations irrespective of whether they are lessors or lessees.

CHAPTER I CONCLUSION AND DURATION OF LEASE

ARTICLE 71

A commercial lease shall be said to exist whether written or not between the owner of immovable property or a part thereof falling within the scope of Article 69 of this Act and any natural or corporate person allowing the latter to carry out any commercial, industrial, or professional activity on the premises with the consent of the owner.

ARTICLE 72

The parties shall freely determine the duration of the lease.

A commercial lease may be concluded for a fixed or unfixed duration.

Where the lease is unwritten or of any unspecified duration it shall be deemed to have been concluded for an unfixed duration.

CHAPTER II OBLIGATIONS OF THE LESSOR

ARTICLE 73

The lessor shall be bound to hand over the premises in good condition.

The lessor shall be presumed to have fulfilled this obligation:

- where the lease is verbal; or
- where the lessee signed the lease without making any express provisions concerning the condition of the premises.

ARTICLE 74

Major repairs that have become necessary and urgent on the leased premises shall be carried out by the lessor at his own expense.

The lessee shall bear the inconveniences of the repairs.

Major repairs shall in particular include the repairs of major walls, vaults, beams, roofs, supporting walls, enclosing walls, septic tanks and drainage tanks.

The amount of the rent shall in such a case be reduced in proportion to the use and the time the lessee was deprived of the use of the premises.

If the urgent repairs are of such a nature that they make it impossible to enjoy the premises, the lessee may request the legal termination of the lease or its suspension during the repair works.

ARTICLE 75

If the lessor refuses to carry out the major repairs which are his responsibility, the lessee may bring an action before the competent court to authorise him to have such repairs carried out by a competent professional and then charge the cost of the repairs to the account of the lessor.

In such case, the competent court shall determine the cost of the repairs and the manner in which they shall be reimbursed.

ARTICLE 76

The lessor may not, of his own free will, change the state of the premises leased or restrict the use thereof.

ARTICLE 77

The lessor, his assigns or agents shall undertake not to interfere with the lessee's quiet enjoyment of the property.

ARTICLE 78

The sale of the premises shall not terminate lease.

Where there is a transfer of ownership of the immovable property in which the leased premises are located, the buyer shall of right assume the obligations of the lessor and shall continue the execution of the lease.

ARTICLE 79

The death of either party shall not terminate the lease.

In case of the death of the lessee, who is a natural person, the lease shall be continued with the surviving spouse or direct ascendants or descendants of the lessee, at their request, through an extrajudicial act within a period of three months following the said death. Where there are several requests, the lessor shall refer the matter to the competent court to designate a successor to take over the lease. Where no request is made within the period of three-month, the lease shall as of right be terminated.

CHAPTER III OBLIGATIONS OF THE LESSEE

ARTICLE 80

The lessee shall pay the rent on the terms agreed upon to the lessor or his representative designated in the lease.

ARTICLE 81

The lessee shall undertake to keep the premises given out on lease as a responsible tenant and in accordance with the intended use provided for in the lease, or in the absence of any written agreement, according to the expected use dictated by the circumstances.

Where the lessee uses the premises for any purpose other than that stated in the lease, and the lessor suffers damage as a result thereof, the lessor may apply to the competent court to terminate the lease.

The same shall apply where the lessee carries out a related or additional activity to that specified in the lease.

ARTICLE 82

The lessee shall be responsible for maintenance repairs.

He shall be answerable for any damage or losses due to lack of maintenance during the lease.

ARTICLE 83

A lessee who, for any reason other than the one provided for in Article 94 below, remains on the premises after the expiry of the lease against the wish/will of the lessor shall pay an occupancy allowance equal to the amount of the rent fixed during the duration of the lease, without prejudice to the eventual payment of damages

CHAPTER IV RENT

ARTICLE 84

The parties shall freely fix the amount of the rent, subject to any applicable laws and regulations.

The rent shall be reviewed under the conditions provided for by the parties or, failing this, at the expiry of each three year period.

ARTICLE 85

In the absence of a written agreement between the parties as to the new amount of rent, the more diligent party shall refer the matter to the competent court.

The competent court shall take particular account of the following in fixing the new amount of rent:

- the location of the premises;
- the surface area of the premises;
- the state of repairs of the premises,
- the commercial rent currently charged in the neighbourhood for similar premises.

CHAPTER V ASSIGNMENT OF LEASED PROPERTY - SUBLEASE

ARTICLE 86

Any assignment of the leased property shall be notified to the lessor by an extrajudicial act, or by any other means in writing, specifying:

- the full identity of the assignee;
- his address;
- where applicable, his registration number in the Trade and Personal Property Rights Register.

ARTICLE 87

The assignment shall not be binding on the lessor if he is not notified under the conditions stipulated in Article 86 above.



ARTICLE 88

The lessor shall have a period of one month following such notification to contest, where necessary, the assignment and to bring the matter before the competent court within such time limit, giving good and proper reasons for objecting to such assignment.

Any breach by the lessee of the obligations of the lease, especially the non-payment of rent, shall constitute a good and proper reason for objecting to the assignment.

The obligations of the lease shall be binding on the assignor during the entire period of the proceedings.

ARTICLE 89

Unless otherwise stipulated in the lease, any total or partial sub lease shall be forbidden.

Where the sublease is authorised, the lessor shall be notified of the same in any written form.

In the absence of such written notification, the sub-lease shall not be binding on him.

ARTICLE 90

Where the rent payable under any total or partial sub-lease is higher than the rent payable under the main lease, the lessor shall have the right to ask for a corresponding increase in the rent payable under the main lease; failing an agreement between the parties, the amount of such increase shall be fixed by the competent court taking into consideration the information referred to in Article 85 above.

CHAPTER VI CONDITIONS AND FORMS OF RENEWAL

ARTICLE 91

The right to renew a lease for a specified or an unspecified duration shall be vested in a lessee who can establish that he has carried out the activity provided for in the lease during a minimum period of two years in accordance with the conditions stipulated in the lease.

ARTICLE 92

In the case of a fixed term lease, the lessee who has a right to renew the lease, by virtue of Article 91 above, may request such renewal by an extrajudicial act not later than three months before the date of expiry of the lease.

The right to renewal of the lease shall be forfeited where the lessee fails to make his request within the time limit stated above.

A lessor who fails to make known his response to the request for renewal at least one month before the expiry of the lease shall be deemed to have given his consent to the renewal of the lease.

ARTICLE 93

In the case of a lease for an unspecified duration, any party wishing to terminate it shall give at least a six months' notice of such intention through an extrajudicial act. A lessee who has a right

to renew the lease by virtue of the provisions of Article 91 above may object to such notice before the expiry of the six months by notifying the lessor through any extrajudicial act.

Where no objection is raised within such time- limit a lease of an unspecified duration shall cease on the date fixed by the notice of termination.

ARTICLE 94

The lessor may object to the right to renew a lease of specified or unspecified duration by paying the tenant an eviction indemnity.

Where there is no agreement on the amount of the indemnity to be paid, it shall be fixed by the competent court taking into consideration in particular the turnover and investments made by the lessee and the geographical location of the premises.

ARTICLE 95

The lessor may object to the right to renew a lease for a specified or an unspecified duration without having to pay an eviction indemnity in the following cases:

1°) where he shows good and proper cause for such objection;

Such cause shall either be the failure by the lessee to perform a substantial obligation under the lease or the fact that the business of the lessee is no longer in operation.

Such cause may not be invoked unless the state of affairs continued to exist or started again more than two months after a formal notice by the lessor through an extrajudicial act for such facts to cease.

2°) where he intends to demolish and to rebuild the structures in which the premises rented are located.

In this case, the lessor shall show proof of the nature and description of the planned works.

The lessee shall have the right to stay on the premises until the commencement of the demolition works and shall have a preferential right to be granted a new lease in the reconstructed building.

Where the rebuilt premises are for a purpose different from that of the premises under the lease or where the lessee is not offered a lease on the new premises, the lessor shall have to pay the lessee the eviction indemnity provided for in Article 94 above.

ARTICLE 96

Furthermore, the lessor may, without having to pay any eviction indemnity, refuse to renew the lease relating to the portion of property used as a dwelling house attached to the main premises where he intends to live in it himself or to have his spouse, or ascendants, or descendants or those of his spouse live in it.

He shall not be allowed to take back this portion where the lessee establishes that taking back the said portion seriously affects his use and enjoyment of the lease in respect of the main premises or where the main premises and the said portion form an indivisible whole.

ARTICLE 97

Where a renewal is expressly or impliedly accepted by the parties, and unless otherwise agreed between them, the duration of the new lease shall be three years.

The new lease shall take effect from the date of expiry of the previous lease where such lease is for a specified duration, or from the date specified in the notice of termination where the previous



lease is for an unspecified duration.

ARTICLE 98

The sub-lessee may request the principal lessee to renew his lease depending on the rights granted to the lessee by the lessor. Such rights shall be subject to the provisions of Articles 91 to 94 and 95 (1) of this Uniform Act.

The lessor shall be notified of the renewal of the sub-lease under the same conditions as the sub-lease he had initially authorised.

ARTICLE 99

A lessee with no right to renew for whatever reason may nevertheless be reimbursed for the cost of constructions and improvements carried out on the premises with the authorisation of the lessor.

Where there is no agreement between the parties, the lessee may bring an action before the competent court as soon as the lease for a specified duration expires, or as soon as the notice to quit is given with respect to a lease for an unspecified duration.

ARTICLE 100

Disputes arising from the implementation of the provisions of Part I of this Book shall be brought, on the application of the more diligent party before the competent court within whose jurisdiction the leased premises are located.

CHAPTER VII LEGAL TERMINATION OF LEASE

ARTICLE 101

The lessee shall be bound to pay the rents and to comply with the clauses and conditions of the lease.

Where the lessee fails to pay the rents or to comply with a clause in the lease, the lessor, after serving him through an extrajudicial act with a formal notice to comply with the clauses and conditions of the lease, may bring an action before the competent court for the termination of the lease and the eviction of the lessee and all the occupants under his authority.

Such notice shall reproduce, under penalty of being declared null and void the provisions of this article and inform the lessee that where he fails to pay or comply with the clauses and conditions of the lease within a period of one month, the action for termination of the lease shall be pursued.

A lessor who intends to pursue an action for termination of a lease in respect of premises from which a business is operated shall give notice of the action to the registered creditors.

The judgment declaring the termination of the lease shall only be pronounced after a period of one month following notification of the action to the registered creditors.

**CHAPTER VIII
PROVISIONS RELATING TO MATTERS OF PUBLIC POLICY**

ARTICLE 102

The provisions of Articles 69, 70, 71, 75, 78, 79, 85, 91, 92, 93, 94, 95, 98 and 101 of this Uniform Act relate to matters of public policy.

**PART II
THE BUSINESS**

**CHAPTER I
DEFINITION OF BUSINESS**

ARTICLE 103

Business is made up of all the things which enable a trader to attract and maintain customers. It shall comprise the different movable, tangible and intangible elements.

ARTICLE 104

The business shall necessarily comprise the goodwill and trade sign or trade name. Such elements are referred to under the term business.

ARTICLE 105

Provided that they are specifically referred to by name, the business may also comprise the following elements:

- fittings,
- fixtures,
- equipment,
- furniture,
- goods in stock,
- the right to a lease,
- operational licences,
 - patents, trade marks, drawings and designs and any other intellectual property rights necessary for the operation of the business.

**CHAPTER II
METHODS OF BUSINESS MANAGEMENT**

ARTICLE 106

A business may be run directly or within the framework of a management lease scheme.



Direct operation may be carried on by a trader or a commercial company.

A management lease shall be an agreement whereby a natural or corporate person who owns a business gives it out on lease to a manager who may be a natural or corporate person who runs the business at his own risk.

ARTICLE 107

The manager of a management lease scheme shall have the status of trader and shall be subject to all the obligations arising from such status.

He shall comply with the regulations on registration in the Trade and Personal Property Rights Register. Any management lease scheme shall also be published within fifteen days following its date of signature in the form of an extract in a newspaper authorized to publish legal notices.

Where the owner of the business is a trader, he shall be bound to have his registration in the Trade and Personal Property Rights Register modified to show that his business is under a management lease scheme.

The expiry of the term of the management lease scheme or its early termination shall give rise to the same publicity obligations.

ARTICLE 108

The manager of a management lease scheme shall be bound to indicate at the top of his order forms, invoices and other documents which have a financial or commercial character, his status as manager under lease as well as his registration number in the Trade and Personal Property Rights Register.

Any breach of this provision shall be punished by the relevant provisions of the national criminal law.

ARTICLE 109

Any natural or corporate person who grants a management lease shall:

- have had the status of trader for two years or performed for an equivalent duration the duties of manager or commercial or technical manager of a company;
- have run the leased business as trader for a period of at least one year.

However, persons prohibited or deprived of the right to carry on a commercial activity may not grant a management lease.

ARTICLE 110

The time limits provided for in the preceding article may be cancelled or reduced by the competent court, especially where the person concerned proves that he was unable to run his business personally or through his agents.

ARTICLE 111

The conditions laid down in Article 109 above shall not be applicable to:

- the State;

- local governments;
- Public corporations;
- legally incapable persons, with regard to the business they owned prior to the onset of their incapacity;
- the heirs or legatees of a deceased trader regarding the business run by the latter;
- management lease schemes signed by a court appointed officer in the course of a receivership proceeding responsible in whatever capacity for the running of a business, provided that they have been so authorised by the competent court and that they have been published in the newspaper authorized to publish legal notices.

ARTICLE 112

The debts of the owner of the business under a management lease scheme shall be declared due payment forthwith by the competent court where it deems that such management lease scheme jeopardizes their chances of recovery.

Under pain of foreclosure the action for payment shall be instituted by any interested party within three months following the date of publication of the management lease scheme as provided for in Article 115 of this Uniform Act.

ARTICLE 113

Up to the date of publication of the management lease scheme, the owner of the business shall be jointly and severally liable for the debts incurred by the business.

ARTICLE 114

All the debts contracted by the manager of the management lease scheme shall be due payment forthwith upon the expiry of the scheme or upon its termination before the fixed period.

CHAPTER III TRANSFER OF BUSINESS

ARTICLE 115

Any transfer of a business shall comply with the general rules which apply to sales subject to the provisions below and to any of the specific provisions which apply to the carrying on of certain commercial activities.

ARTICLE 116

The transfer of business shall necessarily concern the business as defined by Article 104 of this Uniform Act.

It may also concern other elements of business as referred to in Article 105 above, provided that they are expressly named in the transfer agreement.

The provisions of the preceding paragraphs shall not stop the transfer of separate elements of the business.

ARTICLE 117

The sale of the business shall be made either by a private agreement or by a notarised deed.

The provisions of this chapter shall apply to any document recording a transfer of a business

even where such transfer is made subject to conditions, including the case of contribution of business to the capital of a company.

ARTICLE 118

Any document recording the transfer of the business shall set out:

- 1°) for natural persons, the complete civil status of the vendor and the purchaser, the full name, corporate name, legal form, address of the registered office, and the trade objectives of the vendor and the purchaser in the case of corporate persons.
- 2°) their registration number in the Trade and Personal Property Rights Register;
- 3°) where applicable, the origin of the property belonging to the previous vendor;
- 4°) the statement of preferential rights, pledges and entries burdening the business;
- 5°) the turnover for each of the past three years of operation or, where it has not been operated for over three years, since the acquisition of the business;
- 6°) results obtained during the same period;
- 7°) the lease, its date and duration, the name and address of the lessor and where applicable, of the vendor;
- 8°) the agreed price;
- 9°) the situation and the elements of the business sold;
- 10°) the name and address of the bank designated escrow agent where the sale is made by a private contract.

ARTICLE 119

The omission or inaccuracy of any of the above information may lead to the nullity of the sale where the purchaser so requests and where he proves that such omission or inaccuracy has substantially affected the composition of the transferred business and where he has suffered loss as result thereof.

Such request shall be made within one year with effect from the date of the transfer agreement.

ARTICLE 120

Any document recording the sale of business shall be filed in two certified true copies by the vendor and purchaser in the Trade and Personal Property Rights Register;

It shall be the duty of the vendor and purchaser, as far as each of them is concerned, to ensure that any corresponding amendment is made in the Register.

ARTICLE 121

Any document recording the sale of business shall, within a period of fifteen clear days from the date the document was signed, be published as soon as possible by the purchaser in the form of a notice in a newspaper authorized to publish legal notices at the place where the vendor has his registration in the Trade and personal Property Rights Register.-

ARTICLE 122

The vendor of business shall place the business sold at the disposal of the purchaser on the date stipulated in the transfer agreement.

However, where provision has been made for the price to be paid in cash, the vendor shall only be required to do so, except otherwise agreed by the parties, when payment has been made in full.

ARTICLE 123

The seller of a business shall refrain from any act tending to disturb the purchaser's running of the business.

The combination in restraint of trade shall be valid only where it is limited, either in time or in space; one of such restrictions is enough to make the agreement valid.

A seller shall guarantee the purchaser the peaceful possession and quiet enjoyment of the business sold, and shall in particular guarantee him against any rights which other persons may claim over the business sold.

ARTICLE 124

Where the purchaser is dispossessed of any part of the business or where he discovers charges or encumbrances that were not declared in the transfer agreement, or again, where the business has hidden defects, he may request the cancellation of the sale, only where the reduction in the value of the business which he suffers is of such a magnitude that he would not have bought the business if he had had knowledge thereof.

ARTICLE 125

The purchaser shall have the obligation to pay the price of the business on the day and at the place fixed in the sales agreement to the Notary or in a bank designated by the mutual agreement of the parties to the agreement.

The Notary or the bank so designated shall keep the funds as escrow agent for a period of thirty days which shall run from the day of publication of the sale in a newspaper authorized to publish legal notices.

Where at the end of this period, no objection has been notified to the escrow agent, he shall put the sale price at the disposal of the vendor.

Where one or more objections have been notified to the escrow agent within the said period, the sale price shall be made available to the vendor only on proof that the objections have been withdrawn.

ARTICLE 126

Any secret agreement or agreement whose aim is to conceal part of the sale price of a business shall be null and void.

ARTICLE 127

Any creditor of a vendor who lodges an objection shall give notice of the said objection by an extrajudicial act:

- 1°) to the Notary or the bank designated as escrow agent;
- 2°) to the purchaser, at his address as mentioned in the sale agreement;



3°) to the Registry of the court keeping the Trade and Personal Property Rights Register in which the vendor is registered; it shall be the responsibility of the Registry to enter the objection in the Trade and personal Property Rights Register.

The filed objection shall state the amount and origin of the debt and contain an address of service within the jurisdiction of the court where the Trade and personal Property Rights Register is kept.

Under pain of his objection being declared null and void the person filing the objection shall comply with formalities imposed on him by this article.

ARTICLE 128

The objection shall have the effect of a protective measure.

The person filing the objection shall bring an action before the competent court to have his debt recorded and to have it paid.

ARTICLE 129

The vendor shall file an action before the competent court to have the objections cancelled and to receive the available funds.

The vendor may also have the objection withdrawn by amicable settlement; in that case the person who made the objection shall give notice of the withdrawal in the form provided for that purpose in Article 125 above.

ARTICLE 130

Any objection that is not settled out of court or which shall not have been subject to the action referred to in Article 128 above within a period of one month following notification of the objection to the bank acting as escrow agent shall be set aside by the competent court to which the matter is referred by the vendor.

ARTICLE 131

Any creditor who has had a preferential right or a pledge entered in the Register or who has duly lodged an objection may, within a period of one month following the publication of the sale in a newspaper authorized to publish legal notices, make a bid which exceeds by one-sixth the amount of the purchase price of the business indicated in the transfer agreement.

Where the business is the subject of a compulsory sale, the secured creditors and persons who have lodged objections shall enjoy the same right to make a bid in excess of the purchase price ; this right shall be claimed within the same time limit following the auction.

In all circumstances, the highest bidder shall, within the same time limit, deposit at the Registry of the competent court the amount of the price increased by one-sixth.

ARTICLE 132

The terms of reference of sale shall reproduce in full the deed that gave rise to the higher bid and shall also indicate at the instance of the Registry the pledges previously entered in the register and the objections duly notified following the publication after the voluntary sale of the business, or while higher bids were being made.

No new objection may be allowed while higher bids are being made.

ARTICLE 133

The sale shall be conducted in open court in the form of an auction after the publicity formalities provided for such matters have been complied with.

ARTICLE 134

Where the price is not paid in cash, the vendor shall have a lien over the business sold.

For that purpose, he shall have his right entered in the Register in the form stipulated in this Uniform Act.

ARTICLE 135

Where the vendor is not paid, he may also institute proceedings for the cancellation of the sale in accordance with the provisions of the common law.

ARTICLE 136

A vendor who intends to institute an action for cancellation shall give notice of such action through an extrajudicial act or by any means in writing to the creditors registered in the Trade and Personal Property Rights Register at the registered address of service of each of them.

He shall also ensure that his action for cancellation is preceded by application for an injunction order in accordance with the provisions provided for that purpose in the Uniform Act on securities.

The rescission shall be pronounced only by the competent court where the vendor of the business is registered.

Any agreement for an amicable cancellation of the sale of business shall not be binding on creditors registered at the initiative of the purchaser.

**BOOK IV
COMMERCIAL INTERMEDIARIES**

**PART I
COMMON PROVISIONS**

**CHAPTER I
DEFINITION AND SCOPE**

ARTICLE 137

A commercial intermediary shall be a person who has the power to act or who intends to act, on a regular basis and as an occupation, on behalf of another person, called the principal, for the purpose of concluding with a third party a contract of sale of a commercial nature.

ARTICLE 138

A commercial intermediary shall be a trader and shall fulfil the conditions provided for in Articles 6 to 12 of this Uniform Act.



The conditions of access to any of the professions of commercial intermediary shall, in addition be supplemented by conditions specific to each category of commercial intermediary referred to in this Book.

A commercial intermediary shall be a natural or a corporate person.

ARTICLE 139

The provisions of this Book shall govern not only the conclusion of contracts by the commercial intermediary but also any act done by the commercial intermediary with a view to concluding contracts or relating to the performance of the said contracts.

These provisions shall apply to the relationship between the principal, the commercial intermediary and the third party.

They shall apply whether the intermediary acts in his own name, as in the case of a commission agent or broker, or in the name of the principal, as in the case of a commercial agent.

ARTICLE 140

The provisions of this Book shall apply even where the businesses of the principal or of the third party are based in States other than those that are signatories to this Uniform Act as long as:

- a) the commercial intermediary is registered in the Trade and Personal Property Rights Register of one of the State Parties; or
- b) the commercial intermediary acts in the territory of one of the State Parties; or
- c) rules of Private International Law lead to the implementation of this Uniform Act.

ARTICLE 141

The provisions of this Book shall not apply;

- a) to the agency resulting from a legal or judicial authorisation to act on behalf of persons who lack legal capacity;
- b) to the agency by any person selling by auction, by authority of the administration or by order of the court;
- c) to legal agency in Family Law, Matrimonial Law and Law of Succession.

ARTICLE 142

The manager, director or partner of a company, an association or any other corporate person with or without a legal personality, shall not be considered as the intermediary of such association or person in so far as, in the performance of his duties, he acts in accordance with powers conferred by operation of law or by the legal instruments of such association or person.

CHAPTER II
ESTABLISHMENT AND SCOPE OF THE POWERS OF THE
INTERMEDIARY

ARTICLE 143

Subject to the specific provisions of this Book, rules of agency shall apply to the relationship between the intermediary, the principal and the third party.

ARTICLE 144

The mandate of an intermediary shall be written or oral.

It shall not be subject to any formalities.

In the absence of a written document, it may be proved by any means, including the testimony of a witness.

ARTICLE 145

The principal and the intermediary on the one hand, and the intermediary and the third party involved on the other hand, shall be bound by the customs and usages which they knew or should have known, and which, in trade are widely known and generally followed by parties involved in matters of agency of the same nature in the commercial sector under consideration.

They shall also be bound by the practices established between them.

ARTICLE 146

In the absence of any specific provision in a contract, the scope of the authority of the intermediary shall be determined by the type of business it relates to.

The authority shall include in particular the power to carry out legal acts required for its performance.

However, the intermediary shall not, without a special power of attorney, institute legal proceedings, enter into a compromise and settlements agreement, accept arbitration, subscribe to the exchange of commitments, transfer or encumber any real property, or make any donation.

ARTICLE 147

A commercial intermediary who has received specific instructions may not deviate from them except where it is established that circumstances did not permit him to seek the authorisation of the principal when it can be shown that the principal would have given that authorisation had he been informed of the situation.

CHAPTER III
LEGAL EFFECTS OF ACTS CARRIED OUT BY THE COMMERCIAL
INTERMEDIARY

ARTICLE 148

Where the intermediary acts on behalf of the principal within the scope of his authority and third parties knew or should have known of his status as an intermediary, his acts shall directly bind



the principal to the third party unless it results from circumstances of the case, particularly by reference to a commission or brokerage contract, that the intermediary only intended to bind himself.

ARTICLE 149

Where an intermediary acts on behalf of a principal within the scope of his authority, his acts shall only bind the intermediary and the third party where:

- the third party did not know or was not supposed to know the status of the intermediary; or
- where circumstances of the case, with particular reference to a commission contract, show that the intermediary only intended to bind himself.

ARTICLE 150

The liability of the intermediary shall generally be subject to the rules governing agency.

The intermediary shall thus be answerable to the principal for the good and faithful performance of his mandate as agent.

He shall be bound to personally perform it except where, forced by circumstances not to perform it himself, he gets authority to delegate his powers to a third party, or where the customs and usages allow for such substitution of powers.

ARTICLE 151

When a commercial intermediary acts without authority or beyond the scope of his authority, his acts shall bind neither the principal nor the third party.

However, when the behaviour of the principal leads the third party to reasonably believe and in good faith that the commercial intermediary has the authority to act on his behalf, the principal shall not rely on the fact, with regard to the third party, that he did not give the commercial intermediary such authority.

ARTICLE 152

A transaction carried out by a commercial intermediary acting without authority, or beyond the scope of his authority, may be ratified by the principal.

Once it is ratified, such a transaction shall have the same effects as if it had been carried out under authority.

ARTICLE 153

A commercial intermediary who acts without authority or beyond the scope of his authority shall, in the absence of ratification, be bound to compensate the third party so that the latter is put back in the position in which he would have been if the commercial intermediary had acted with authority and within the scope of such authority.

The commercial intermediary shall, however, incur no liability where the third party knew or should have known that the intermediary had no authority or was acting beyond the scope of his authority.

ARTICLE 154

The principal shall reimburse the commercial intermediary, in terms of principal and interest, any advances paid and costs incurred by the latter in the normal performance of the mandate, and shall release him from obligations entered into.

ARTICLE 155

The commercial intermediary shall be bound to give to the principal, at any time at the latter's request, an account of his management.

He shall pay interest on any late payments and shall also compensate for any damages resulting from the non-fulfilment or poor fulfilment of the mandate unless he proves that he is not responsible for the damages.

CHAPTER IV TERMINATION OF THE AUTHORITY OF THE COMMERCIAL INTERMEDIARY

ARTICLE 156

The authority of a commercial intermediary shall be terminated:

- upon an agreement between the principal and the commercial intermediary;
- upon the full performance of the transaction or transactions for which the authority was given;
- upon revocation at the initiative of the principal, or upon renunciation by the commercial intermediary.

However, a principal who without good cause revokes the mandate given to the commercial intermediary shall compensate him for any damage suffered.

A commercial intermediary who without good cause renounces the performance of his mandate shall compensate the principal for any damage suffered.

ARTICLE 157

The mandate of the commercial intermediary shall also cease upon his death, incapacity, or upon the institution of receivership and bankruptcy proceedings irrespective of whether these events concern the principal or the commercial intermediary.

ARTICLE 158

The termination of the authority given to the commercial intermediary shall have no effect on a third party unless the latter knew or should have had knowledge of the termination.

ARTICLE 159

Notwithstanding the termination of the authority, the commercial intermediary shall still be empowered to accomplish, on behalf of the principal or beneficiaries of the principal, any necessary and urgent acts of a nature to avoid any damage.

PART II THE COMMISSION AGENT

ARTICLE 160

In matters of sale and purchase, the commission agent shall be a person who undertakes in his own name to carry out, but on behalf of a principal, the sale or purchase of goods for a commission.

ARTICLE 161

The commission agent shall be bound to carry out transactions covered by the commission contract in accordance with the instructions of the principal.

Where the commission contract contains specific instructions, the commission agent shall strictly comply with them except, where need be, he takes the initiative to have contract terminated on the ground that such instructions are against the nature of the contract or the customs and usages of the commercial sector.

Where instructions are only indicative, the commission agent shall act as if his own interests were at stake while following as closely as possible the instructions received.

Where instructions are optional, or where specific instructions are not given, the commission agent shall to the best of his ability serve the interests of the principal, and the respect of the customs and usages.

ARTICLE 162

The commission agent shall act honestly on behalf of the principal. In particular, he shall not buy on his own account goods entrusted to him to sell or sell his own goods to the principal.

ARTICLE 163

The commission agent shall give the principal any useful information on the transaction covered by the commission, inform him of his dealings and give him a faithful account once the transaction covered by the commission has been performed.

ARTICLE 164

The principal shall be bound to pay the commission agent a remuneration or commission which shall be due once the agency agreement is performed, whether or not the transaction is profitable.

ARTICLE 165

The principal shall reimburse the commission agent the normal costs and expenses incurred and presented by the latter, provided that they were necessary or simply useful for the transaction and are backed by supporting documents.

ARTICLE 166

Every commission agent shall have a possessory lien on the goods which he holds for all debts owed to him by the principal.



ARTICLE 167

Where goods forwarded for sale on commission are in an obviously defective condition, the commission agent shall safeguard the rights of action against the carrier, have a report of the damage established, take necessary measures to preserve the damaged goods and inform the principal promptly.

Failing this, he shall be liable for the damage caused by his negligence.

Where there is cause to fear that goods forwarded under a commission for sale will deteriorate rapidly and where the principal's interest so requires, the commission agent shall be bound to have them sold.

ARTICLE 168

The commission agent who sells goods below the minimum price fixed by the principal shall be bound to pay the net balance to the latter unless he proves that by selling the goods he spared the principal from suffering loss and that circumstances did not allow him to seek his instructions.

Where he is at fault, he shall, in addition, make up for all loss caused by non-compliance with the contract.

The commission agent who buys at a lower price or who sells above the price indicated by the principal shall not be entitled to keep the net balance.

ARTICLE 169

The commission agent shall be deemed to be acting at his own risk where he grants a credit or an advance to a third party without the consent of the principal.

ARTICLE 170

The commission agent shall not be liable for payment or performance of other obligations of persons with whom he dealt with except where he has undertaken to do so or where such is the trading practice in the place where he runs his business.

The commission agent who stands as guarantor for the person he deals with shall be entitled to an additional commission called a *del credere* commission.

ARTICLE 171

The commission agent shall lose all rights to a commission where he is found to have acted in bad faith towards the principal, especially where he has indicated to the principal a price higher than the purchase price or lower than the selling price.

Furthermore, in these two cases, the principal shall have the right to consider the commission agent himself as the purchaser or seller.

ARTICLE 172

The forwarding commission agent or the agent responsible for transportation who, for remuneration and in his own name, undertakes to send or forward goods on behalf of his principal, shall be considered as a commission agent but shall be no less subject to the provisions governing the contracts for the carriage of goods.



ARTICLE 173

The forwarding commission agent or agent responsible for transportation shall, inter alia, be liable for the arrival of the goods within the agreed time limit and for any damages and missing goods, except where this results from the act of a third party or an act of God.

ARTICLE 174

The customs clearing agent shall be bound to pay, on behalf of his client duties, taxes or fines charged by customs services.

The customs clearing agent who has paid, for a third party, duties, taxes or fines charged by customs services shall be subrogated to the rights of the customs services.

ARTICLE 175

The customs clearing agent shall be accountable to his principal for any error in the customs declaration or in the implementation of customs tariffs, and for any loss which may arise from delay in the payment of duties, taxes or fines.

He shall be liable to the Customs and Treasury Authorities for customs operations carried out by him.

PART III THE BROKER

ARTICLE 176

A broker shall be an agent whose habitual occupation is to bring parties together in order to facilitate the successful conclusion of agreements, deals or transactions between such parties.

ARTICLE 177

A broker shall be bound to remain independent of the parties and shall limit his activities by bringing together parties who wish to enter into contracts and by taking all the necessary steps to facilitate an agreement between them.

Unless the parties so agree he shall not intervene personally in any transaction.

ARTICLE 178

A broker shall:

- do all that is necessary to permit the conclusion of a contract;
- give the parties all relevant information to enable them to make their deals with full knowledge of the facts.

The broker shall be liable for any damage resulting from his misrepresentation where he knowingly presents a party as having abilities and qualities he does not have in order to get the other party to enter into a contract.

ARTICLE 179

A broker shall not carry out commercial transactions on his own account, either directly or indirectly, or under the name of somebody else or through the intermediary of a third party.

ARTICLE 180

The broker's remuneration shall consist of a percentage of the amount of the transaction.

Where the vendor alone is the principal, the purchaser may not bear, even partially, the commission which shall be deducted from the normal price received by the vendor.

Where the purchaser alone is the principal, he shall be responsible for the commission in addition to the price paid to the vendor.

ARTICLE 181

The broker shall be entitled to his remuneration as soon as the information he gave or the negotiation he carried out results in the successful conclusion of a contract.

Where the contract is concluded on a suspensive condition, the remuneration of the broker shall only be paid after the condition has been fulfilled.

Where it is agreed that the broker's expenses shall be reimbursed, reimbursement thereof shall be due to him even if the contract has not been concluded.

ARTICLE 182

Remuneration that is not agreed upon by the parties shall be paid on the basis of the existing tariff. Where no tariff exists, remuneration shall be fixed in accordance with the established customs and usages.

In the absence of established customs and usages, the broker shall be entitled to a remuneration which takes into account all the components which relate to the transaction.

ARTICLE 183

The broker shall not be entitled to remuneration or to the reimbursement of his expenses where he has acted in the interest of the third party in disregard of his commitments towards his principal or, where the contracting third party paid him remuneration, without the knowledge of the principal.

PART IV THE COMMERCIAL AGENT

ARTICLE 184

A commercial agent shall be an authorised agent who by virtue of the independence of his profession, shall be charged in a permanent manner to negotiate and eventually conclude contracts of sale, purchase, or lease or service contract in the name and on behalf of producers, manufacturers, traders or other commercial agents, without being bound to them by a contract of employment.



ARTICLE 185

Any contract between a commercial agent and his principal shall be concluded in the common interest of the parties.

The relationship between the commercial agent and the principal shall be governed by an obligation of honesty and a reciprocal duty of disclosure of information.

The commercial agent shall execute his mandate with diligence; the principal shall take all necessary steps to facilitate the execution of the agency agreement.

ARTICLE 186

Unless otherwise provided for by a written agreement, the commercial agent may agree without authorisation to act as agent for other principals.

He shall not be a representative of an enterprise which competes in the same business with one of his principals without the agreement of the latter.

ARTICLE 187

The commercial agent shall not, even after the termination of the contract of agency, use or disclose information given to him in confidence by the principal or which came to his knowledge in his capacity as agent by virtue of the contract.

Where a combination in restraint of trade has been reached between the commercial agent and his principal, the commercial agent shall be entitled to a special indemnity at the end of the combination.

ARTICLE 188

Every element of remuneration that varies with the number or value of transactions shall constitute a commission.

Where no provision is made in the contract, the commercial agent shall be entitled to a commission in accordance with established customs and usages in the sector of activity covered by his agency agreement.

Where there are no established customs and usages the commercial agent shall be entitled to a remuneration which takes into account all the elements which relate to the transaction.

ARTICLE 189

An agent who has been granted exclusive rights in a given geographical sector or over a specific group of clients shall be entitled to a commission for any transaction carried out during the validity of the agency contract.

ARTICLE 190

The commercial agent shall be entitled to a commission for any commercial transaction concluded after the termination of the agency contract where such transaction is mainly due to his activity during the validity of the agency contract and was carried out within a reasonable period of time following the termination of the contract.

ARTICLE 191

Unless circumstances make it equitable to share the commission between two or more commercial agents, the commercial agent shall not be entitled to a commission where it is payable:

- to an agent who preceded him in respect of a commercial transaction carried out before his agency contract entered into force;
- to an agent who succeeds him in respect of a commercial transaction carried out after the termination of his agency agreement.

ARTICLE 192

The commission shall be due as soon as the principal has carried out the transaction or should have carried it out by virtue of the agreement concluded with the third party, or as soon as the third party has carried out the transaction.

The commission shall be paid no later than on the last day of the month following the quarter during which it was earned, unless otherwise agreed by the parties.

ARTICLE 193

The right to a commission shall be lost only where it is established that the contract between the third party and the principal shall not be performed and where such non-performance is not due to circumstances that can be attributed to the principal.

ARTICLE 194

Except where there is agreement or custom to the contrary, the commercial agent shall not be entitled to the reimbursement of costs and expenses resulting from the normal performance of his activity but only of costs and expenses incurred by virtue of special instructions of the principal.

The reimbursement of costs and expenses shall be due payment in such a case, even where the transaction was not concluded.

ARTICLE 195

An agency agreement entered into for a specified duration shall end at the expiry of such specified period without any formality to terminate it.

A contract for a specified duration which continues to be performed by both parties after its expiry shall be deemed to have been transformed into a contract for an unspecified duration.

ARTICLE 196

Where a contract is for an unspecified duration, either party may terminate it on prior notice to the other party.

The period of notice shall be one month for the first year of the contract, two months where the contract has entered a second year and three months where it has entered a third year and in that manner in respect of the subsequent years.

Where there is no agreement to the contrary, the end of the period of notice shall coincide with the end of a calendar month.

Where a contract for a specified duration becomes a contract for an unspecified duration, the period of notice shall be calculated from the beginning of contractual relations between the parties.

The parties may not agree to shorten the periods of notice.

Where they agree to lengthen the periods of notice, the said periods must be identical for both the principal and the agent.

These provisions shall not apply where the contract is terminated due to the gross misconduct of one of the parties or due to an act of God.

ARTICLE 197

Where relationship between the principal and the commercial agent comes to an end, the commercial agent shall be entitled to compensatory damages, without prejudice to the possible award of other damages.

The commercial agent shall lose the right to compensation if he fails to notify the principal, by an extra judicial act within a period of one year from the date of termination of the contract that he intends to claim his rights.

The beneficiaries of the commercial agent shall also be entitled to compensatory damages where the termination of the contract is due to the death of the agent.

ARTICLE 198

The compensatory damages provided for in the preceding article shall not be due:

1. where the termination of the contract results from the gross misconduct of the commercial agent; or
2. where the termination of the contract has been initiated by the agent, unless such termination is justified by circumstances attributable to the principal or is due to the age, disability or illness of the commercial agent or, more generally, to circumstances beyond the agent's control as a result of which the continuation of his activity can no longer be reasonably expected; or
3. when, by an agreement with the principal, the commercial agent assigns to a third party the rights and obligations which he holds by virtue of the agency contract.

ARTICLE 199

The compensatory damages shall, as least, be equal to:

- one month of commission for the first year the contract was completely performed;
- two months of commission for the second year the contract was completely performed;
- three months of commission as from the third year the contract was completely performed.

The compensatory damages shall be freely agreed upon by the commercial agent and his principal for the period after the third year the contract shall be completely performed.

The monthly payment to be considered for the calculation of the damages shall be the average amount for the last twelve months of performance of the contract of agency.

These provisions shall not apply where the contract is terminated due to gross misconduct on

the part of one of the parties or due to an act of God.

ARTICLE 200

Any clause or agreement derogating from the provisions of Articles 196 to 199 above to the detriment of the commercial agent shall be disregarded.

ARTICLE 201

Each party shall be bound at the end of the contract to return anything given to him during the contract by either the other party or by any third party on behalf of the other party; this shall be without prejudice to either party's possessory right.

**BOOK V
COMMERCIAL SALES**

**PART I
SCOPE AND GENERAL PROVISIONS**

**CHAPTER I
SCOPE**

ARTICLE 202

The provisions of this Book shall apply to contracts of sale of goods between traders irrespective of whether they are natural or corporate persons.

ARTICLE 203 X

The provisions of this Book shall not govern:

1. Sales to consumers that is, to any person who is acting for purposes which are outside the scope of his occupation;
2. sales upon distraint, sales by order of the court and sales by auction;
3. sales of securities, stock, money or currency and the assignment of debts.

ARTICLE 204

The provisions of this Book shall not apply to contracts in which the major part of the obligation of the party that supplies the goods consists in the supply of labour or other services.

ARTICLE 205

Apart from the provisions of this Book, the commercial sale shall be subject to common law rules.

CHAPTER II GENERAL PROVISIONS

ARTICLE 206

In matters of commercial sales, the will and behaviour of one party must be interpreted in accordance with his intention where the other party knew or could not ignore such intention.

The will and behaviour of one party shall be interpreted in accordance with the meaning the reasonable man having the same status as the other party, and placed in the same situation, will give them.

In order to determine one party's intention or that of the reasonable man, it shall be necessary to take into account factual circumstances, particularly negotiations which might have taken place between the parties, any customs and usages established between them, and even customs and usages in force in the profession concerned.

ARTICLE 207

The parties shall be bound by any customs and usages they have agreed upon and by the customs and usages established in their commercial relations.

Where there is no agreement to the contrary, the parties shall be deemed, in the commercial sales contract, to have tacitly accepted the customs and usages they are aware of or ought to have been aware of, and which, in trade, are widely known and generally accepted by parties to contracts of the same type in the commercial sector concerned.

ARTICLE 208

The commercial sales contract shall be written or oral and shall not be subject to any condition with respect to form.

In the absence of a written document, it shall be proved by any means, including the testimony of a witness.

ARTICLE 209

Within the context of this Book, the word "written" shall mean any communication using a written medium including telegram, telex or telefax.

PART II CREATION OF A SALES CONTRACT

ARTICLE 210

An offer addressed to one or more specific persons shall constitute a valid offer where it is sufficiently detailed and indicative of the intention of the offeror to be bound where the offer is accepted.

The offer shall be sufficiently detailed where it describes the goods and expressly or implicitly fixes their quantity and price or provides the information necessary to determine them.

ARTICLE 211

An offer shall become effective when it reaches the offeree.

An offer may be revoked where the revocation reaches the offeree before the latter communicates his acceptance.

However, an offer cannot be revoked where it is specified that it is irrevocable or where a given time limit is set for its acceptance.

An offer, even where it is irrevocable, shall end when the offeror receives its rejection.

ARTICLE 212

A statement or any other conduct of the offeree which indicates that he accepts the offer shall amount to acceptance.

Silence or inaction shall not alone amount to acceptance.

ARTICLE 213

The acceptance of an offer shall take effect from the time when the offeror receives notice of acceptance.

The acceptance shall not take effect where the offeror does not receive the notice of acceptance within the time limit stipulated by him or, where this is not stipulated, within a reasonable time limit considering the circumstances of the transaction and the method of communication used by the offeror.

An oral offer shall be accepted forthwith unless from the circumstances the contrary is implied.

ARTICLE 214

An answer which tends to indicate acceptance of an offer but which contains additional or different elements which do not substantially alter the terms of the offer shall amount to acceptance.

An answer which tends to indicate acceptance of an offer but which contains additions, restrictions or other amendments shall be considered as a rejection of the offer and shall amount to a counter-offer.

ARTICLE 215

The time limit for acceptance set by the offeror in a telegram or a letter shall begin to run from the day the offer is sent, as evidenced by the stamp of the Postal Services.

The time limit for acceptance set by the offeror by telephone, telex, telefax or any other method of instantaneous communication shall begin to run from the time the offeree receives the offer.

ARTICLE 216

Acceptance may be withdrawn where the offeror receives the withdrawal notice before the acceptance becomes effective.

ARTICLE 217

In accordance with the provisions of this Book, the contract shall be concluded the moment the

ARTICLE 218

Each party intended to accept when it was made, by intention it shall be considered as having means to the intended recipient himself, to his principal place of business or to his postal address.

PART III OBLIGATIONS OF THE PARTIES

CHAPTER I OBLIGATIONS OF THE VENDOR

ARTICLE 219

The vendor shall be bound, under the conditions provided for in the contract and in this Book, to deliver the goods and to hand over, where need be, documents relating to them, to ascertain that they are in conformity with the order and to give a guarantee.

Section 1 Delivery

ARTICLE 220

Where the vendor is not bound to deliver the goods at a specific place, his delivery obligations shall consist of:

- a) handing over the goods to a carrier for delivery to the purchaser, where the contract of sale provides for such transportation;
- b) in respect of all other cases, making the goods available to the purchaser at the place where he has his principal place of business or at the place where they are stored or at the place where the vendor

ARTICLE 221

Where the vendor is bound to ensure the transportation of goods, he shall enter into a contract to that effect and ensure that the goods are transported to the place agreed upon with the purchaser by appropriate means of transport and according to the customs and usages of the trade.

Where the vendor is not bound to take out a transport insurance policy himself, he shall, at the purchaser's request, provide him with all available information necessary for the conclusion of such an insurance contract.

ARTICLE 222

The vendor shall deliver the goods:

- a) on the date which is fixed in the contract or which may be determined by reference to the contract;

- b) at any time during the period specified in the contract or which may be determined by reference to the contract;
- c) in all other cases, within a reasonable period from the time the contract is concluded.

ARTICLE 223

Where the vendor is bound to hand over documents relating to the goods, he shall do so at the time, place and in the form provided for in the contract.

Section 2 Conformity

ARTICLE 224

The vendor shall deliver the goods according to the quantity, quality, specification, and packaging as provided for in the contract.

Unless otherwise agreed by the parties, the goods shall only be considered to conform to the contract where:

1. they are merchantable, that is to say, they are fit for the purpose goods of that nature are generally used;
2. they can properly serve any special purpose which was brought to the knowledge of the vendor at the time of the contract;
3. their characteristics conform to any sample or model which was given to the purchaser by the vendor;
4. they are packaged according to the usual method of packaging goods of the same nature or, if there is no such usual method, in a manner to ensure their conservation and protection.

ARTICLE 225

In accordance with the contract and these provisions, the vendor shall be liable for any defect which exists at the time risk is transferred to the purchaser, even where such defect only appears subsequently.

ARTICLE 226

In case of early delivery, the vendor shall have the right until the fixed delivery date either to deliver a part or a missing quantity or new goods in replacement of goods that do not conform to the contract, or to cure any defects, provided that the exercise of such right causes neither loss nor expense to the purchaser.

ARTICLE 227

The purchaser shall inspect the goods or have them inspected as early as possible depending on the circumstances.

Where the contract includes transportation of the goods, the inspection exercise shall be delayed until the goods reach their destination.

Where the goods are diverted or redirected by the purchaser without him having a reasonable opportunity to inspect them and where, at the time of the contract, the vendor knew or ought to have known of the possibility of such diversion or redirection, the inspection shall be delayed until the goods reach their new destination.



ARTICLE 228

The purchaser shall be deprived of the right to claim redress in respect of a defect where he fails to report it to the vendor, indicating the nature of the defect, within a reasonable period from the time he noticed it or ought to have noticed it.

ARTICLE 229

In any case, the purchaser shall be deprived of the right to claim redress in respect of a defect where he does not notify it to the vendor within a year from the date on which the goods were effectively delivered to him unless such time limit is incompatible with the duration of a contractual guarantee.

Section 3 Guarantee

ARTICLE 230

The vendor shall guarantee that the goods are delivered free from any third party right or claim unless the purchaser agrees to take the goods in that condition.

ARTICLE 231

The vendor shall be liable for the guarantee where a hidden defect in the goods sold reduces their use to the extent that the purchaser would not have bought them or would have bought them at a lower price had he been aware of it.

The guarantee shall be invoked by a purchaser against a vendor and by a sub-purchaser against a manufacturer or an intermediary vendor, for the guarantee covering a hidden defect affecting the goods sold from the time they were manufactured.

ARTICLE 232

The interpretation of any clause limiting the guarantee shall be restrictive.

The vendor who invokes a clause limiting the guarantee shall prove that the purchaser knew and accepted the existence of such clause when the sale was concluded.

CHAPTER II OBLIGATIONS OF THE PURCHASER

ARTICLE 233

The purchaser shall be bound, under the conditions provided for in the contract and in accordance with the provisions of this Part, to pay the price and take delivery of the goods.

Section 1 Payment of price

ARTICLE 234

The obligation to pay the price shall include an obligation to take all steps and accomplish all the formalities aimed at facilitating the payment of the price provided for by the contract or by the laws and regulations in force.

ARTICLE 235

The sale shall not be validly concluded without the price of the goods having been fixed in the contract of sale unless the parties referred to the price generally charged at the time of conclusion of the contract in the commercial sector under consideration in respect of the same goods sold under similar circumstances.

ARTICLE 236

Where the price is fixed on the basis of the weight of the goods, the net weight shall be used to determine the price in case of any doubt.

ARTICLE 237

Unless the purchaser is bound to pay the price in another specific place, he shall pay the vendor:

- at the latter's place of business; or
- where the payment shall be made on delivery of goods or handing over of documents, at the place agreed upon for such delivery or handing over.

ARTICLE 238

Where the purchaser is not bound to pay the price at some other time fixed by the contract, he must pay it when the vendor makes available to him either the goods or the documents representing the goods.

The vendor shall make delivery of the goods or handing over of the documents conditional upon payment of the purchase price.

Where the contract includes transportation of the goods, the vendor may forward them on condition that the goods or the documents representing the goods are only handed over to the purchaser on payment of the purchase price.

However, the parties may expressly provide in the contract that the purchaser shall only be bound to pay the purchase price once he has had the opportunity to inspect the goods.

ARTICLE 239

The purchaser shall pay the price on the date fixed in the contract or resulting from the contract without the vendor having to ask for it or to accomplish any other formality.

Section 2 Taking delivery

ARTICLE 240

The obligation to take delivery shall consist in the purchaser:

- taking any action which may reasonably be expected of him to enable the vendor make the delivery; and
- collecting the goods.

ARTICLE 241

Where a purchaser is late in taking delivery of the goods or does not pay the purchase price where payment of the price and delivery should be simultaneously, the vendor shall, where the goods are in his possession or under his control, take reasonable measures, having regard to the circumstances, to ensure their safety.



He shall be entitled to keep the goods until the purchaser pays the agreed price and reimburses the expenses incurred in preserving them.

ARTICLE 242

Where the purchaser has received the goods and intends to refuse them, he shall take reasonable steps, having regards to the circumstances, to ensure their safe preservation.

He shall be entitled to keep them until the vendor reimburses the expenses he incurred to ensure their safe preservation.

ARTICLE 243

The party who is bound to take steps to ensure the safe-keeping of the goods may store them in the warehouse of a third party at the expense of the other party provided the cost thereof is not unreasonable.

ARTICLE 244

The party responsible for the preservation of the goods may sell them by all appropriate means where the other party delays in taking possession of them, or in paying the purchase price, or in paying the costs related to their preservation; notice of such intention to sell shall be given to the other party.

The party who sells the goods shall have the right to deduct from the proceeds of the sale an amount equal to the costs of preservation.

He shall be responsible to the other party for the balance.

CHAPTER III
PENALTIES FOR THE BREACH OF CONTRACTUAL OBLIGATIONS

Section 1
General Provisions

ARTICLE 245

A party may bring an action before the competent court for authorisation to defer the performance of his obligations where it appears, after a contract has been entered into, that the other party will not perform a fundamental part of his obligation due to:

- 1) a serious shortfall in his capacity to execute the contract; or
- 2) his insolvency; or
- 3) the manner in which he is preparing to execute or is executing the contract.

ARTICLE 246

Where, before the date the contract shall be executed, it is clear that one of the parties will be in breach of a fundamental part of his obligation, the other party may bring an action before the competent court to terminate of the contract.

ARTICLE 247

Where, for contracts which involve successive deliveries, the failure by one of the parties to meet an obligation relating to a delivery constitutes a fundamental breach of the contract, the other party may bring an action before the competent court to terminate the contract.

He may at the same time claim for the goods already delivered or for future deliveries where, by virtue of their connexity, such deliveries may not be used for the purposes intended by the parties at the time the contract was entered into.

ARTICLE 248

A breach of a contract of sale by one of the parties shall be deemed fundamental when it causes damage to the other party to the extent of substantially depriving him of what the party was entitled to expect from the contract except where such breach was due to an act of a third party or to an act of God.

Section 2

Penalties for breach by the vendor

ARTICLE 249

Where the vendor fails to perform any of his obligations under the contract of sale, the purchaser shall be entitled to:

- exercise the rights provided for in this section;
- claim damages.

ARTICLE 250

The purchaser may demand that the vendor perform specifically all his obligations.

Where the goods do not conform with the contract, the purchaser may demand that the vendor replace them where the defect constitutes a fundamental breach of the contract and where the demand for the replacement is made at the time the defect is denounced, or within a reasonable period following such denunciation.

Where the goods do not conform with contract, the purchaser may require that the vendor cure the defect. The demand to cure the defect shall be made at the time the defect is denounced, or within a reasonable period following such denunciation.

ARTICLE 251

The purchaser may grant the vendor another time-limit of a reasonable duration to perform his obligations.

The purchaser may not, before the expiry of such time limit, invoke any of the measures available to him where there is a breach of the contract unless he has received notification from the vendor of the latter's unwillingness to perform his obligations within the time limit so granted.

However, the purchaser shall not on that account lose the right to claim damages for the vendor's delay in performing his obligations.

ARTICLE 252

The vendor may, even after the date of delivery, cure at his expense any default in his obligations.

However, the purchaser shall retain the right to claim damages.

ARTICLE 253

Where the vendor asks to know whether the purchaser will accept the performance of his obligations within a certain time limit and where the purchaser fails to reply within a reasonable period of time, the vendor may perform his obligations within the time limit specified in his request.



The purchaser may not, before the expiry of the said time limit, invoke any measure which is incompatible with the performance of the vendor's obligations.

ARTICLE 254

The purchaser shall apply to the competent court to cancel the contract:

- where failure by the vendor to comply with any of his obligations or these provisions constitutes a fundamental breach of the contract; or
- where the vendor again fails to deliver the goods within the additional time limit granted to him.

However, where the vendor has delivered the goods, the purchaser's right to consider the contract terminated shall be forfeited where he fails to terminate it within reasonable time:

- in case of a late delivery, from the time when he knew that the delivery had been made;
- in case of a breach other than the late delivery.

ARTICLE 255

Where the vendor delivers only part of the goods or where only part of the goods delivered comply with the contract, the provisions of Articles 251 to 254 shall apply regarding the part that has not been delivered or that does not comply with the contract.

The contract may only be terminated in its entirety where its partial performance or the non conformity of the goods delivered with the contract constitutes a fundamental breach of the contract.

Section 3

Penalties for breach by the purchaser

ARTICLE 256

Where the purchaser fails to fulfil any of his obligations under the contract of sale, the vendor shall be entitled to :

- exercise the rights provided for in this section;
- claim damages.

ARTICLE 257

The seller may grant the vendor another time-limit of a reasonable duration to perform his obligations.

The vendor may not, before the expiry of such time limit, invoke any of the measures available to him where there is a breach of the contract unless he has received notification from the purchaser of the latter's unwillingness to perform his obligations within the time limit so granted.

However, the vendor shall not on that account lose the right to claim damages for the purchaser's delay in performing his obligations.

ARTICLE 258

The purchaser may, even after the date of delivery, cure at his expense any default in his obligations, provided that such cure shall not be unreasonably delayed and shall not cause the vendor either unreasonable inconvenience or uncertainty as to the payment of the purchase price.

However, the vendor shall retain the right to claim damages for any loss suffered.

Where the vendor asks to know whether the purchaser will accept the performance of his obligations within a certain time limit and where the purchaser fails to reply within a reasonable period of time, the vendor may perform his obligations within the time limit specified in his request.

The vendor may not, before the expiry of such time limit, invoke any measure which is incompatible with the performance of the purchaser's obligations.

ARTICLE 259

The seller shall petition the competent court to cancel the contract:

- 1) where failure by the purchaser to comply with any of his obligations or these provisions constitutes a fundamental breach of the contract; or
- 2) in the case of failure to deliver, where the purchaser does not take delivery of the goods within the additional time limit proposed by the seller.

ARTICLE 260

Where the goods fail to comply with the contract and whether or not the purchase price has already been paid, the purchaser may reduce the price in proportion to the difference between the effective value of the goods at the time of delivery and the value the goods would have had at such time if they had complied with the contract.

ARTICLE 261

Where the vendor delivers only part of the goods or where only part of the goods delivered comply with the contract, the provisions of Articles 258 to 260 above shall apply regarding the part that has not been delivered or that does not comply with the contract.

The purchaser shall not declare the contract terminated in its entirety unless its partial performance or the non conformity of the goods delivered with the contract constitutes a fundamental breach of the contract.

ARTICLE 262

Where the vendor delivers the goods before the date fixed, the purchaser has the option to either accept or to refuse to take delivery.

Where the vendor delivers a quantity higher than the one provided for in the contract, the purchaser may take or refuse to take delivery of the excess quantity.

Where the purchaser takes delivery of the excess or any part thereof, he shall pay for what he takes at the contract price.

Section 4 Interest and Damages

ARTICLE 263

Where a party fails to pay the contract price or any other sum owed, the other party shall have a right to interest on such sum, calculated on the basis of the legal interest rate applicable in commercial transactions, without prejudice to any damages that he may be entitled to claim for the loss suffered by him.

Interest shall accrue from the date of dispatch of the formal notice addressed to the other party by registered letter with acknowledgement of receipt or by any other means in writing.



ARTICLE 264

Damages for a breach of the contract by a party shall be equal to the loss suffered or to the profit lost by the other party.

ARTICLE 265

Where the contract is cancelled and the purchaser has made a purchase to replace the goods or the vendor has resold the goods, the party who claims damages shall obtain the difference between the contract price and the price paid by the purchaser or the resale price, as the case may be, as well as any other damages to which he may be entitled.

ARTICLE 266

The party relying on a fundamental breach of the contract shall take all reasonable steps, having regard to the circumstances, to minimise loss, including any loss of profit resulting from such breach.

Where he fails to do so, the party in default may ask for a reduction in damages equal to the amount of the loss which could have been avoided.

Section 5 Exemption from liability

ARTICLE 267

A party shall not be liable for failure to comply with any of his obligations where he proves that such failure was due to circumstances beyond his control such as the act of a third party or an act of God.

ARTICLE 268

A party shall not be exempt from his liability where his failure to comply is due to an act of a third party mandated by him to perform all or part of the contract.

Section 6 Effects of termination of contract

ARTICLE 269

The termination of a contract shall release both parties from their obligations save in respect of any damages that may be due. The termination of the contract shall not have any effect on the provisions of the contract which relate to the settlement of disputes or to the rights and obligations of the parties in the event of termination.

ARTICLE 270

The party who has performed the contract in whole or in part shall claim from the other party restitution of what he has supplied or paid in performance of the contract.

ARTICLE 271

The purchaser shall not be allowed to terminate the contract or demand delivery of goods in replacement where he cannot return the goods to be replaced in the state in which he received them.

This provision shall not apply where inability to return the goods or to return them in a state almost identical to the one in which the purchaser received them is not due to an act or omission on his part.

ARTICLE 272

The purchaser who has lost the right to declare the contract terminated or to demand that the vendor deliver goods in replacement of those he had received by virtue of the preceding article, shall retain the right to rely on all the other remedies to which he is entitled under the contract.

ARTICLE 273

Where the vendor is bound to refund the purchase price, he shall also pay interest on the amount thereof as from the due day for payment.

Where the purchaser shall return the goods in whole or in part, he shall also pay the vendor the equivalent of any profit which he has earned from the goods or from a part of the goods.

**Section 7
Limitation Periods**

ARTICLE 274

The limitation period in respect of commercial sales shall be two years.

Such period shall run from the date on which the action may be instituted.

ARTICLE 275

An action arising from a breach of contract may be instituted from the date on which such breach occurred.

An action founded on a failure of the goods sold to comply with the contract may be instituted from the date on which the defect is discovered, or ought reasonably to have been discovered by the purchaser, or date when the offer to have the goods replaced was refused by the purchaser.

An action based on a fraudulent misrepresentation made before the contract of sale was entered into or at the time it was entered into, or resulting from subsequent fraudulent acts may be instituted from the date on which the fact was or ought reasonably to have been discovered.

ARTICLE 276

Where the seller has given a contractual guarantee, the period of limitation for the actions referred to in Article 275 above shall begin to run from the date of expiry of the contractual guarantee.

ARTICLE 277

The period of limitation shall stop running when the creditor does any act which, under the law applicable in the court before which the matter is brought, is considered as an interruption of the computation of time.

ARTICLE 278

Where the parties have agreed to submit their dispute to arbitration, the period of limitation shall stop running from the date on which one of the parties institutes the arbitration proceedings.

ARTICLE 279

In relation to limitation periods, a counterclaim shall be considered as having been instituted on the same date as the action relating to the right to which it is opposed, provided that both the principal action and the counterclaim result from the same contract.

ARTICLE 280

Proceedings instituted against a debtor shall stop the running of the time limit with regard to a co-debtor who is jointly and severally liable, where the creditor informs the latter in writing of the institution of such proceedings before the expiry of the period of limitation.

Where proceedings are instituted by a sub-purchaser against the purchaser, the period of limitation shall stop running regarding the purchaser's action against the vendor where the purchaser has informed the vendor in writing before the expiry of the said period of the institution of such proceedings.

ARTICLE 281

Any agreement contrary to the provisions of Articles 275 to 280 above shall be disregarded.

ARTICLE 282

The expiry of the period of limitation shall not be taken into consideration in any proceedings unless it is invoked by the party concerned.

PART IV EFFECTS OF THE CONTRACT

CHAPTER I TRANSFER OF TITLE

ARTICLE 283

Unless otherwise agreed between the parties, the transfer of ownership shall take place from the moment the purchaser takes delivery of the goods sold.

ARTICLE 284

The parties may freely agree to postpone the transfer of ownership to the day of the full payment of the contract price.

Any ownership reserve clause providing for the retention of title shall have no effect between the parties unless the purchaser had knowledge of it from the contract of sale, the order form, or the delivery note no later than on the day such contract, order or note was made.

An ownership reserve clause providing for retention of title shall not be binding on third parties, subject to it being valid, unless it is duly registered in the Trade and Personal Property Rights Register, in accordance with the provisions of Book II of this Uniform Act.

CHAPTER II TRANSFER OF RISK

ARTICLE 285

The transfer of ownership shall entail the transfer of risk.

However, the loss or deterioration of goods which occurs after the transfer of risk to the purchaser shall not relieve him of his obligation to pay the purchase price, except where such loss or deterioration is due to an act of the vendor.

ARTICLE 286

Where the contract of sale involves the carriage of goods, risk shall be transferred to the purchaser as soon as the goods are handed over to the first carrier.

The fact that the vendor is authorised to keep the documents representing the goods shall not affect the transfer of risk.

ARTICLE 287

In the case of goods sold in the course of transportation, risk shall be transferred to the purchaser from the moment the contract is entered into.

Nevertheless, where at the time the contract of sale the vendor had knowledge or should have had knowledge of the fact that the goods had perished or had deteriorated and has not informed the purchaser of that fact, the loss or deterioration shall be borne by the vendor.

ARTICLE 288

Where the sale concerns goods that have not yet been identified, the goods shall not be considered as having been placed at the disposal of the purchaser unless they have been clearly identified for the purposes of the contract.

The transfer of risk shall only take place after such identification.

BOOK VI FINAL PROVISION

ARTICLE 289

Having deliberated, the Council of Ministers of the States Parties voting in accordance with the provisions of the Treaty of 17 October 1993 relating to the Organisation for the Harmonisation of Business Law in Africa, hereby adopts unanimously this Uniform Act.

This Uniform Act shall be published in the Official Gazette of OHADA and of the States Parties. It shall enter into force on 1 January 1998.

Done at Cotonou on 17 April 1997