

REPUBLIC OF SLOVENIA

MINISTRY OF JUSTICE

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Pursuant to the second indent of the first paragraph of Article 107 and the first paragraph of Article 91 of the Constitution of the Republic of Slovenia I hereby issue the following

**Order
on the Promulgation of the Obligations Code (the OZ)**

I hereby promulgate the Obligations Code (the OZ), which was adopted by the National Assembly of the Republic of Slovenia at its session of 3 October 2001.

No. 001-22-117/01
Ljubljana, 11 October 2001

Milan Kučan
President of the Republic of Slovenia

Obligations Code¹
(OZ)²

BOOK 1: GENERAL

Title I: Basic Principles

application of present Code

Article 1

(1) The present Code contains the basic principles and general rules for all obligational relationships.

(2) The provisions of the present Code shall apply to obligational relationships regulated by other acts of law regarding matters not regulated in such acts.

optional nature of legal provisions

Article 2

Participants may regulate their obligational relationships in a manner different to that set out in the present Code unless the contrary follows from an individual provision of the present code or from the meaning of an individual provision.

free regulation of obligational relationships

Article 3

Participants shall be free to regulate obligational relationships, but may not act in contravention of the Constitution, compulsory regulations or moral principles.

equality of participants in obligational relationships

Article 4

Participants in obligational relationships shall be equal.

principle of conscientiousness and fairness

Article 5

(1) When concluding obligational relationships and when exercising the rights and performing the obligations deriving from such relationships the participants must observe the principle of conscientiousness and fairness.

¹ Official Gazette of the RS, Nos. 83/2001 and 32/2004 - authentic interpretation of Article 195. Obligations Code is in Slovene: "Obligacijski zakonik".

² OZ is an official acronym of the Obligations Code in Slovene language.

(2) Participants in obligational relationships must act in accordance with good business custom in their transactions.

diligence

Article 6

(1) When performing their obligations participants in obligational relationships must act with the diligence required in legal transactions for the relevant type of obligational relationship (the diligence of a good businessperson or the diligence of a good manager).

(2) When performing their obligations from their professional activities participants in obligational relationships must act with high diligence, according to the rules and custom of the profession (the diligence of a good expert).

prohibition on abuse of rights

Article 7

(1) The rights deriving from obligational relationships shall be limited by the equal rights of others. It shall be necessary to exercise them in accordance with the basic principles of the present code and their purpose.

(2) When exercising their rights participants in an obligational relationship must refrain from action by which the performance of the obligations of other participants would be rendered more difficult.

(3) Any action by which the holder of a right acts with the sole or clear intention of harming another shall be deemed the sham exercise of the right.

principle of equal value of performance

Article 8

(1) When concluding bilateral contracts the participants shall proceed from the principle of equal value of mutual performance.

(2) The law shall set out the cases in which infringement of this principle shall have legal consequences.

duty to perform obligations

Article 9

(1) Participants in an obligational relationship shall be obliged to perform their obligations and shall be liable for the performance thereof.

(2) An obligation shall only expire with the wilful consent of the participants in the obligational relationship or pursuant to law.

prohibition on infliction of damage

Article 10

Each person shall be obliged to refrain from action by which damage could be inflicted on another.

amicable settlement of disputes

Article 11

Participants in an obligational relationship must endeavour to resolve disputes by coordination, mediation or any other amicable means.

business customs, usages and practice

Article 12

The business customs, usages and practice established between parties shall be taken into consideration in the assessment of the behaviour required and effects thereof in the obligational relationships of commercial entities.

commercial contracts

Article 13

(1) The provisions of the present code relating to contracts shall apply to all types of contract, unless expressly stipulated otherwise for commercial contracts.

(2) Commercial contracts are contracts concluded by commercial entities among themselves.

(3) Companies, other legal persons that perform lucrative activities and sole traders shall be deemed commercial entities in the sense of the present code.

(4) Other legal persons shall be deemed commercial entities in the sense of the present code when in accordance with regulations they are occasionally or during their primary activities involved in lucrative activities, if it is a matter of a contract in connection with such lucrative activities.

other legal transactions

Article 14

The sense of the provisions of the present Code relating to contracts shall also apply to other legal transactions.

Title II: Origin of Obligation

Section 1: Contracts

Subsection 1: Conclusion of Contract

I. Consensus of Intentions

when a contract is concluded

Article 15

A contract shall be deemed concluded when the contracting parties agree upon its essence.

misunderstanding

Article 16

If the parties are convinced that they agree but there has actually been a misunderstanding between them as to the nature of the contract or the basis or subject of an obligation the contract shall be deemed not to have been concluded.

mandatory conclusion and mandatory content of contract

Article 17

(1) If by law a person must conclude a contract a person with a legitimate interest may demand that such a contract be concluded without delay.

(2) The provisions of regulations by which the content of contracts is defined in part or in full shall be a constituent part of such contracts and shall supplement or replace contractual provisions that are not in accordance with them.

declaration of intention

Article 18

(1) The intention to conclude a contract may be declared through words, customary signs or any other action from which it can reliably be concluded that the intention exists.

(2) The declaration of intention must be free and genuine.

permission and approval

Article 19

(1) If the consent of a third party is required for the conclusion of a contract such may be given prior to conclusion as a permission or after conclusion as an approval, unless stipulated otherwise by law.

(2) The permission or approval must be given in the form prescribed for the contract for which it is being given.

negotiations

Article 20

(1) Negotiations prior to the conclusion of a contract shall not be binding and may be terminated by either of the parties whenever the party so desires.

(2) Nevertheless a party that has negotiated without the intent of concluding a contract shall be liable for any damage inflicted on the other party.

(3) A party that negotiated with the intent of concluding a contract but abandons the intent without justifiable grounds thus inflicting damage on the other party shall also be liable for such damage.

(4) If the parties otherwise fail to reach agreement the parties shall each bear their own costs for the preparations for concluding the contract, and shall bear the joint costs in equal parts.

time and place contract concluded

Article 21

(1) A contract is concluded when the offeror receives a declaration from the other party (the addressee) that the offer has been accepted.

(2) The contract shall be deemed to have been concluded at the place where the offeror had its head office or his/her place of residence at the moment the offer was made.

offer

Article 22

(1) An offer is a proposal made to a specific person for the conclusion of a contract that contains all the essence of the contract, such that through the acceptance thereof a contract could be concluded.

(2) If after reaching agreement on the essence of the contract the contracting parties defer any accessory points, the contract shall be deemed to have been concluded, while if the contracting parties fail to reach agreement themselves on the accessory points they shall be regulated by the court, which in so doing shall take into consideration the previous negotiations, the practice established between the parties, and custom.

(3) A proposal addressed to an indeterminate number of persons that contains the essence of a contract shall be deemed an invitation to submit offers unless it follows otherwise from the circumstances.

display of goods

Article 23

The display of goods labelled with a price shall be deemed an offer, unless it follows otherwise from the circumstances or from custom.

catalogues and advertisements

Article 24

(1) Catalogues, price lists, tariffs and other notices that are sent and advertisements in the press, on flyers, on the radio, on television or elsewhere shall not be deemed offers for the conclusion of a contract, but merely invitations to make an offer under the conditions published.

(2) However any sender of such invitations that does not accept an offer without justifiable grounds shall be liable for any damage incurred by the offeror.

effect of offer

Article 25

(1) The offeror shall be bound by an offer, unless the offeror excluded the obligation to adhere to the offer or if such an exclusion follows from the circumstances of the transaction.

(2) The offeror may only withdraw an offer if the addressee receives the withdrawal before receiving the offer or at the same time as receiving the offer.

time until which offer is binding

Article 26

(1) An offer in which the deadline by which it must be accepted is stipulated shall be binding for the offeror until such deadline passes.

(2) A period for acceptance set by the offeror in a telegram or letter shall begin on the day indicated in the letter, or if there is no date indicated in the letter from the date on the envelope or from the day the telegram was delivered to the post office. A period for acceptance set by the offeror by telephone, telex or any other direct means of communication shall begin at the moment the addressee receives the offer.

(3) An offer given to a person in absentia in which a deadline for acceptance is not stipulated shall be binding for the offeror for the time usually required for the offer to reach such person so it may be studied and decided upon, and for the response to reach the offeror.

(4) A verbal offer in which no deadline for acceptance is stipulated shall be deemed to have been rejected if it is not accepted immediately, unless it follows from the circumstances that the addressee has some time to consider the offer.

(5) If the deadline stipulated for acceptance has not yet passed the offer shall cease to be valid when the offeror receives a declaration on the rejection thereof.

form of offer

Article 27

(1) An offer for the conclusion of a contract for which a special form is required by law shall be binding for the offeror only if submitted in such form.

(2) This shall also apply to the acceptance of the offer.

acceptance of offer

Article 28

(1) An offer is accepted when the offeror receives a declaration by the addressee that the latter accepts the offer.

(2) An offer shall also be deemed to have been accepted if the addressee sends material, pays the price or does anything else that on the basis of the offer, the practice established between the parties, or custom can be deemed to be a declaration of acceptance. The acceptance shall take effect at the moment it is actually made, if it was made within the period the offer was still binding.

(3) Acceptance of an offer may be withdrawn if the offeror receives the declaration of withdrawal before receiving the declaration of acceptance or at the same time as receiving the declaration of acceptance.

acceptance of offer with suggested alteration

Article 29

(1) If the response to an offer expresses acceptance but at the same time suggests that something therein be altered or supplemented, the addressee shall be deemed to have rejected the offer and to have made a different offer to the former offeror.

(2) A response to an offer that expresses acceptance but contains additions or alterations that do not essentially change the offer shall entail acceptance, unless the offeror immediately objects. If the offeror fails to act thus the contract shall be concluded in accordance with the content of the offer with the alterations stated in the declaration of acceptance.

(3) Additions and alterations that relate to the price of, payment for, quality or quantity of goods, the place and time of supply, the extent of one party's obligations in comparison with the other or the resolution of disputes shall be deemed to essentially change an offer.

addressee's silence

Article 30

(1) The addressee's remaining silent shall not be construed acceptance of the offer.

(2) Any provision in an offer whereby the silence of the addressee or any other omission thereby (e.g. if the addressee fails to reject the offer in the period stipulated or if the sent material for which the offer was made is not returned in the time specified) will apply as acceptance of the offer shall be without effect.

(3) However if in respect of specific goods the addressee is in a constant commercial link with the offeror an offer relating to such goods shall be deemed to have been accepted if it is not rejected immediately or within the period stipulated.

(4) Those that propose to another person that they perform specific transactions according to the latter's orders and those among whose activities the performance of such orders belongs must perform an order received, if it is not immediately rejected.

(5) If the addressee in the case specified in the previous paragraph did not reject the offer or order the contract shall be deemed to have been concluded when the offer or order was received.

delayed acceptance and delayed delivery of declaration of acceptance

Article 31

(1) An offer accepted with a delay shall be deemed a new offer by the addressee, unless the offeror immediately notifies the former that the contract is concluded according to the first offer.

(2) If it is clear from the document that contains the delayed acceptance that it was sent in circumstances such that the offeror would have received it on time had it been transferred ordinarily the contract shall be deemed to have been concluded, unless the offeror immediately notifies the addressee that the offer is not felt to be binding owing to the delay.

death or incapacity of one party

Article 32

An offer shall not lose effect if the death or incapacity of one party occurs before it is accepted, unless the contrary follows from the parties' intentions, custom or the nature of the transaction.

precontract

Article 33

(1) A precontract is a contract by which an obligation to subsequently conclude a different, main contract is accepted.

(2) Regulations on the form of the main contract shall also apply to precontracts if the prescribed form is a condition for the validity of the contract.

(3) A precontract shall be binding if it contains the essence of the main contract.

(4) At the request of the party concerned the court shall instruct the other party, if the latter does not wish to conclude the main contract, to do so by a deadline stipulated by the court.

(5) The conclusion of the main contract may be demanded within six months of the passing of the deadline set for the conclusion thereof, or within six months of the day it was to have been concluded according to the nature of the transaction and the circumstances if such a deadline was not stipulated.

(6) A precontract shall not be binding if since it was concluded the circumstances have altered such that it would not have been concluded had the circumstances been such at the time.

II. Subject

required form of subject of obligation

Article 34

(1) A contractual obligation may be such that someone provides, does, omits or endures something.

(2) It must be possible, permissible and specific or specifiable.

nullity of contract owing to subject

Article 35

A contract shall be null and void if the subject of the obligation is impossible, impermissible, unspecific or unspecifiable.

subsequent possibility

Article 36

A contract concluded with a suspensive condition or deadline shall be valid if the subject of the obligation, having initially been impossible, becomes possible before the condition is realised or before the deadline passes.

when subject of obligation is impermissible

Article 37

The subject of an obligation shall be deemed impermissible if it contravenes the constitution, compulsory regulations or moral principles.

when subject is specifiable

Article 38

(1) The subject of an obligation shall be deemed specifiable if the contract contains information with which it is possible to specify the subject, or if the parties have left it to a third person to specify the subject.

(2) If such third person does not wish to or cannot specify the subject of the obligation the contract shall be null and void.

III. Basis

permissible basis

Article 39

(1) Each contractual obligation must have a permissible basis (grounds).

(2) The basis shall be deemed impermissible if it contravenes the constitution, compulsory regulations or moral principles.

(3) It shall be presumed that an obligation has a basis, even if such is not expressed.

(4) If there is no basis or the basis is impermissible the contract shall be null and void.

motives for concluding contract

Article 40

- (1) The motives out of which a contract is concluded shall not affect its validity.
- (2) If an impermissible motive had a significant effect on the decision by one of the contracting parties to conclude the contract and the other contracting party knew or should have known of such the contract shall be null and void.
- (3) A gratuitous contract shall also be null and void when the contracting party did not know that an impermissible motive had a significant effect on the decision by the other contracting party.

IV. Capacity

contract by person without capacity to contract

Article 41

- (1) A contracting party must have the capacity to contract required for the conclusion of the contract for the contract to be valid.
- (2) Without the permission of their personal representative persons with limited capacity to contract may only conclude those contracts the law permits them to conclude.
- (3) Other contracts by such persons shall be challengeable if concluded without the permission of the personal representative but may remain valid if subsequently approved by such.

right of fellow contracting party of person with incapacity to contract

Article 42

- (1) A fellow contracting party of a person with incapacity to contract that did not know of the latter's incapacity to contract may withdraw from a contract concluded therewith without the permission of the latter's personal representative.
- (2) A fellow contracting party of a person with incapacity to contract that did know of the latter's incapacity to contract but was misled into believing the latter's personal representative had given permission shall have the same right.
- (3) This right shall expire thirty days after the fellow contracting party learns of the other party's incapacity to contract or learns that the latter's personal representative has not given permission, or before if the personal representative approves the contract before this deadline passes.

call on personal representative to pronounce

Article 43

- (1) A fellow contracting party of a person with incapacity to contract that has concluded a contract with the latter without the permission of the latter's personal representative may request the personal representative to pronounce whether the contract is approved thereby.
- (2) If the personal representative fails to pronounce the contract to be approved thereby within thirty days of such a request the approval shall be deemed not to have been given.

if contracting party acquires capacity to contract after conclusion of contract

Article 44

A person with capacity to contract may request the annulment of a contract concluded thereby without the necessary permission during a time of limited capacity to contract, but only if such person files a suit within three months of acquiring full capacity to contract.

V. Defective Intention

threat

Article 45

(1) If via an impermissible threat a contracting party or a third person causes justifiable fear on the part of the other party such that the latter concluded the contract for this reason the other party may request the annulment of the contract.

(2) A fear shall be deemed justifiable if it appears from the circumstances that there is a serious threat of danger to the life or to the physical or other well-being of the contracting party or anyone else.

significant mistake

Article 46

(1) A mistake shall be deemed significant if it relates to the essential characteristics of the subject, to a person with whom a contract is being concluded if it is being concluded in respect of such person, or to circumstances that according to the custom in the transaction or according to the intention of the parties are deemed to be decisive, as otherwise the mistaken party would not have concluded the contract with such content.

(2) The mistaken party may request the annulment of the contract for reason of a significant mistake, unless in concluding the contract the party failed to act with the diligence required in the transaction.

(3) If a contract is annulled for reason of a mistake the party that acted in good faith shall have the right to demand reimbursement for damage incurred for this reason, irrespective of whether the mistaken party was culpable for the mistake.

(4) The mistaken party may not make reference to the mistake if the other party is prepared to perform the contract as if there had been no mistake.

mistake in motive for gratuitous contract

Article 47

For a gratuitous contract a mistake in the motive that was decisive in the acceptance of the obligation shall also be deemed a significant mistake.

indirect declaration

Article 48

A mistake by the person according to whom the party declared its intention shall be deemed equivalent to a mistake in the party's own declaration of intention.

deceit

Article 49

(1) If one party causes the other party to be mistaken or keeps the other party mistaken for the purpose of leading the latter to conclude a contract, the other party may request the annulment of the contract even when the mistake is not significant.

(2) A party that was deceived in concluding the contract shall have the right to demand the reimbursement of any damage that occurs.

(3) Deceit enacted by a third person shall only affect a contract if the other contracting party knew or should have known thereof when the contract was concluded.

(4) A gratuitous contract may also be annulled if the deceit was enacted by a third person, irrespective of whether the other contracting party knew or should have known thereof when the contract was concluded.

sham contract

Article 50

(1) A sham contract shall have no effect between the contracting parties.

(2) If a sham contract conceals any other contract the latter shall be valid if the conditions for its legal validity are fulfilled.

(3) It shall not be possible to apply the sham nature of a contract in respect of a third person acting in good faith.

VI. Form of Contract

formlessness of contract

Article 51

(1) No particular form shall be required for the conclusion of a contract, unless stipulated otherwise by law.

(2) A legal requirement that a contract must be concluded in a specific form shall also apply to all subsequent amendments thereof or additions thereto.

(3) However, subsequent verbal additions to accessory points about which the formal contract makes no mention shall be valid if not in contravention of the purpose for which the form was prescribed.

(4) Subsequent verbal agreements to reduce or alleviate the obligation of either of the parties shall also be valid if the special form is prescribed solely in the interest of the contracting parties.

form of contract on transfer of real estate

Article 52

A contract pursuant to which the title to real estate is transferred or through which another material right is established on real estate must be concluded in written form.

rescission of formal contracts by agreement

Article 53

It shall be possible to rescind formal contracts through an informal agreement, unless otherwise envisaged by law for the specific case or unless the purpose owing to which a form is prescribed for the conclusion of the contract requires the same form for the rescission of the contract.

agreed form

Article 54

(1) The contracting parties may agree that a specific form should be a condition for the validity of their contract.

(2) It shall also be possible to rescind, supplement or otherwise alter a contract for which a specific form was agreed through an informal agreement.

(3) If the contracting parties agreed upon a specific form solely in order to ensure there was proof of the conclusion or content of the contract or to achieve anything else, the contract shall be concluded when consensus on its content is reached, while at the same time the obligation on the part of the contracting parties to give the contract its agreed form shall arise.

sanction if contract does not have necessary form

Article 55

(1) A contract not concluded in the prescribed form shall be null and void, unless it follows otherwise from the purpose of the regulations by which the form is specified.

(2) A contract not concluded in the agreed form shall be null and void if the parties agreed that the special form would be a condition for the validity thereof.

doubts over completeness of document

Article 56

(1) If a contract is concluded in a special form either pursuant to law or at the will of the parties only that which is expressed in such form shall apply.

(2) However, simultaneous verbal agreements on accessory points about which nothing is mentioned in the formal contract shall be valid if not in contravention of the content thereof or in contravention of the purpose for which the form is prescribed.

(3) Subsequent simultaneous verbal agreements to reduce or alleviate the obligation of either or both of the parties shall also be valid if the special form is prescribed solely in the interest of the contracting parties.

composition of document

Article 57

(1) If for the conclusion of a contract it is necessary to formulate a document the contract shall be deemed concluded when the document is signed by all those that are bound by it.

(2) Any method or form of communication that retains the official wording intact and allows the origin of the wording to be checked using generally accepted means shall have the same effects as a document.

(3) A contracting party who is illiterate shall make a handwritten symbol on the document, which shall be certified by two witnesses or an authority responsible for certification.

(4) The two parties signing a single document or each party signing the version of the document intended for the other party shall suffice for the conclusion of a bilateral contract.

if contract deficient in form was performed

Article 58

A contract for which the written form is required shall be valid even if not concluded in this form if the contracting parties fully or partly perform the obligations arising therefrom, unless it clearly follows otherwise from the purpose for which the form was prescribed.

VII. Conditions

conditions and effect thereof

Article 59

(1) A contract shall be deemed to have been concluded under a condition if its initiation or termination is dependent on an uncertain factor.

(2) If a contract is concluded under a suspensive condition and the condition is fulfilled the contract shall take effect from the moment of conclusion, unless it follows otherwise from law, the nature of the transaction or the parties' intention.

(3) If a contract is concluded under a dissolving condition the contract shall cease to be valid if the condition is fulfilled.

(4) A condition shall be deemed to have been fulfilled if in contravention of the principle of conscientiousness and fairness the party upon whom the burden was defined prevents it from being realised, and shall be deemed not to have been fulfilled if in contravention of the principle

of conscientiousness and fairness the party for whom the benefit was defined causes it to be realised.

impermissible or impossible condition

Article 60

(1) A contract in which a suspensive or dissolving condition is set that is in contravention of the constitution, compulsory regulations or moral principles shall be null and void.

(2) A contract concluded under an impossible suspensive condition shall be null and void; an impossible dissolving condition shall be deemed non-existent.

securing of conditioned right

Article 61

If a contract is concluded under a suspensive condition the creditor whose right is conditioned may request appropriate securing of the right, if the exercise thereof is endangered.

VIII. Deadline

calculation of time

Article 62

(1) A deadline stipulated in days shall be counted from the first day after the development from which it is counted, and shall pass at the end of the last day.

(2) A deadline stipulated in weeks, months or years shall pass on the day that corresponds in terms of name and number to the day the development from which the deadline is counted arose; if there is no such day in the final month it shall pass on the final day of the month.

(3) If the final day coincides with a holiday under the law the next working day shall be deemed the final day.

(4) The beginning of the month shall indicate the first day of the month, the middle of the month the fifteenth of the month, and the end of the month the final day of the month, unless it follows otherwise from the intention of the parties, from the nature of the contractual relationship or from custom.

application of rules on conditions

Article 63

If a contract is to take effect at a specific time the sense of the rules on a suspensive condition shall apply; if a contract is to cease to be valid after a specific period the sense of the rules on a dissolving condition shall apply.

IX. Earnest and Withdrawal Money

1. Earnest

return and inclusion of earnest

Article 64

(1) If upon the conclusion of a contract one party gives the other party a sum of money or a net quantity of other compensatory material as a sign that the contract has been concluded (earnest), the contract shall be deemed to have been concluded when the earnest is provided, unless agreed otherwise.

(2) During the performance of the contract the earnest must be returned or included in the performance of obligations.

(3) Unless agreed otherwise a party that provides earnest may not withdraw from the contract by leaving the earnest for the other party; neither shall the other party be able to do such by returning double the earnest.

non-performance of contract

Article 65

(1) If the party that provided earnest is responsible for the non-performance of a contract the other party may choose either to demand the performance of the contract if possible and the reimbursement of damage with the earnest counting towards the compensation or being returned, or to be satisfied with the earnest received.

(2) If the party that received the earnest is responsible for the non-performance of a contract the other party may choose to demand the performance of the contract if possible, the reimbursement of damage and the return of the earnest, or the return of double the earnest.

(3) When the other party demands the performance of the contract the party shall at all times have the right to reimbursement of damage incurred because of the delay.

(4) The court may reduce an excessively large earnest at the request of an interested party.

part performance of obligations

Article 66

(1) In the part performance of obligations the creditor may not retain the earnest, but may demand either the performance of the remainder of the obligations and the reimbursement of damage owing to the delay, or the reimbursement of damage owing to incomplete performance, but in both cases shall count the earnest towards the compensation.

(2) If the creditor withdraws from the contract and returns that which was received as part performance the creditor may choose among the other claims pertaining to a party if the contract remains unperformed for reasons on the part of the other party.

2. Withdrawal Money

role of withdrawal money

Article 67

- (1) The contracting parties may agree that one or both of them has the right to withdraw from the contract if withdrawal money is provided.
- (2) If a party that has the right to withdraw from a contract (entitled party) declares to the other party that the withdrawal money will be provided the former may no longer demand the performance of the contract.
- (3) The party that has the right to withdraw from a contract must provide the withdrawal money at the same time as declaring the withdrawal.
- (4) If the contracting parties have not stipulated until when the entitled party may exercise the right to withdraw from the contract such may be done at any time until the time stipulated for the performance of the obligations.
- (5) The right to withdraw from a contract shall expire if the entitled party begins to perform the contractual obligations or to accept performance by the other party.

earnest as withdrawal money

Article 68

- (1) If when earnest was deposited the right to withdraw from the contract was agreed the earnest shall be deemed to be withdrawal money and each party may withdraw from the contract.
- (2) If in this case the party that deposited the earnest withdraws such party shall forfeit the earnest; if the party that received the earnest withdraws such party must return double the earnest.

Subsection 2: Representation

I. Representation (General)

possibility of representation

Article 69

- (1) Contracts and other legal transactions may be concluded via a representative.
- (2) The entitlement to representation shall be based on the law, on other legal acts and on the declaration of intention by the person represented (authorisation).

effects of representation

Article 70

(1) A contract concluded by a representative on behalf of a represented person and within the limits of the representative's authorisations shall be immediately binding for the represented person and the other contracting party.

(2) Other legal actions by the representative shall have immediate legal effect for the represented person under equal conditions.

(3) The representative must notify the other party regarding the representative's appearance on behalf of the represented person; however the contract shall also have legal effect for the represented person and the other party if the representative fails to do so if the other party knew or should have known from the circumstances that the representative was appearing as a representative.

transfer of authorisations

Article 71

(1) Representatives may not transfer their authorisations to another person unless permitted to do so by law or by contract.

(2) In exceptional cases they may do so if circumstances prevent them from conducting a transaction in person and the interests of the represented person demand that the transaction be conducted without delay.

transgression of authorisations

Article 72

(1) If a representative transgresses the authorisations the represented person shall only be bound insofar as the latter approves the transgression.

(2) If the represented person fails to approve the contract within the period customarily required for a contract to be studied and assessed approval shall be deemed not to have been given.

(3) The approval specified in the previous paragraph shall have retrospective effect unless the parties stipulate otherwise.

(4) If the other party did not know and was not obliged to know about the transgression of authorisations, upon learning of them such party may immediately declare that the contract is not felt to be binding without waiting for the represented person to say anything on the matter.

(5) If the represented person does not wish to approve the contract the representative and the represented person shall be jointly and severally liable for damage incurred by the other party if it did not know and was not obliged to know about the transgression of authorisations.

contract concluded by unauthorised person

Article 73

(1) A contract concluded by a person as an authorised person on behalf of another without the latter's authorisation shall be binding for the person represented without authorisation only if subsequently approved thereby.

(2) The party with whom the contract was concluded may request that the person represented without authorisation pronounce whether the contract is approved thereby by a suitable deadline.

(3) If the person represented without authorisation fails to approve the contract by the deadline stipulated the contract shall be deemed never to have been concluded.

(4) In this case the party with whom the contract was concluded may demand reimbursement for damage from the person that concluded the contract as an authorised person without authorisation if the former did not know and was not obliged to know that the latter did not hold the authorisation.

II. Authorisation

process of authorisation

Article 74

(1) An authorisation is the entitlement to act as representative conferred upon the authorised person by the authoriser via a legal transaction.

(2) The existence and extent of an authorisation shall be dependent on the legal relationship upon which it is based.

(3) Legal persons may also be authorised persons.

specific form of authorisation

Article 75

The form prescribed by law for a specific contract or any other legal transaction shall also apply to the authorisation for concluding such a contract or transaction.

extent of authorisation

Article 76

(1) An authorised person shall only be allowed to conduct those legal transactions for which the authorisation was given.

(2) An authorised person that holds a general authorisation shall only be allowed to conduct those legal transactions classed among ordinary business.

(3) Without a special authorisation for each individual case authorised persons may not assume an obligation under a bill of exchange, conclude a contract of surety, a contract on settlement, or a contract on the alienation or encumbrance of real estate, become involved in a dispute, conclude an arbitration agreement, or waive any right without recompense.

revocation and narrowing of authorisation

Article 77

(1) Authorisers may of their own volition narrow or revoke an authorisation, even if such a right has been waived by contract.

(2) The authoriser may revoke or narrow any authorisation through a declaration of no special form.

(3) If the revocation or narrowing of an authorisation violates an order contract, a work contract or any other contract the authorised person shall have the right to reimbursement for any damage incurred.

effect of termination and narrowing of authorisation in respect of third person

Article 78

(1) The revocation or narrowing of an authorisation shall have no effect in respect of a third person that concluded a contract or conducted any other legal transaction with the authorised person and did not know and was not obliged to know that the authorisation was revoked or narrowed.

(2) In such a case the authoriser shall have the right to demand that the authorised person reimburse any damage incurred for this reason, unless the authorised person did not know and was not obliged to know that the authorisation was revoked or narrowed.

(3) This shall also apply in other cases of the termination of an authorisation.

other cases of termination of authorisation

Article 79

(1) Authorisations shall terminate with the winding-up of the authorised person if such is a legal person, unless stipulated otherwise by law.

(2) Authorisations shall terminate with the death of the authorised person.

(3) Authorisations shall terminate with the winding-up or death of the person that issued it, unless the transaction embarked upon cannot be interrupted without damage to the legal successors or if the authorisation also applies in the event of the death of the person that issued it, either according to such person's intention or with regard to the nature of the transaction.

III. Commercial Authorisation

employee authorisation

Article 80

Persons who on the basis of a contract with a company or sole trader perform work that requires the conclusion or performance of specific contracts, such as retailers in shops, persons that perform specific work in the catering and hospitality sector, and tellers at post offices and banks, shall thereby have the right to conclude and perform such contracts.

travelling sales representative's rights

Article 81

(1) A travelling sales representative for a company or sole trader shall only be authorised for those legal transactions relating to the sale of goods and cited in the authorisation.

(2) If it is not certain, a travelling sales representative shall be deemed not to have the right to conclude contracts, but merely to collect orders.

(3) Travelling sales representatives authorised to conclude contracts on the sale of goods shall not be authorised to conclude contracts on credit or the acceptance of sales revenue, unless they hold a special authorisation for credit sales or the acceptance of sales revenue.

(4) Travelling sales representatives shall have the right to accept for the authoriser declarations regarding faults in goods and other declarations in connection with the performance of a contract concluded with their involvement, and to take measures on behalf of the authoriser necessary to preserving the authoriser's contractual rights.

Subsection 3: Basis of Contracts

application of provisions and interpretation of disputed provisions

Article 82

(1) The provisions of a contract shall be applied as they read.

(2) In the interpretation of disputed provisions it shall not be necessary to adhere to the literal meaning of the expressions used, but shall be necessary to identify the contracting parties' common intentions and interpret the provision so as to comply with the principles of obligational law set out in the present code.

unclear provisions in special cases

Article 83

If a contract was concluded using content printed in advance or the contract was otherwise prepared and proposed by one of the contracting parties it shall be necessary to interpret unclear provisions in favour of the other party.

supplementary rule

Article 84

It shall be necessary to interpret unclear provisions in a gratuitous contract in terms of the meaning that is less of a burden for the debtor; it shall be necessary to interpret unclear provisions in a lucrative contract in such a sense that mutual performance is in the correct ratio.

extra-judicial interpretation of contracts

Article 85

(1) The contracting parties may stipulate that in the event of disagreement regarding the meaning and intention of contractual provisions interpretation of the contract shall fall to a third person.

(2) Unless stipulated otherwise in the contract the parties may not in such a case initiate a dispute before a court or any other relevant authority without previously obtaining an interpretation, unless the third person does not wish to provide the interpretation.

Subsection 4: Invalidity of Contract

I. Null and Void Contract

nullity

Article 86

(1) A contract that contravenes the constitution, compulsory regulations or moral principles shall be null and void if the purpose of the contravened rule does not assign any other sanction or if the law does not prescribe otherwise for the case in question.

(2) If one party alone is prohibited from concluding a specific contract the contract shall remain in force unless stipulated otherwise by law for the case in question, while the party that infringed the legal prohibition shall bear the appropriate consequences.

consequences of nullity

Article 87

(1) If a contract is null and void each contracting party must return everything to the other party that was received on the basis of the contract; if this is impossible or if return is prevented by the nature of that which was performed appropriate monetary compensation must be provided according to the prices at the time the court ruling was issued, unless stipulated otherwise by law.

(2) If a contract is null and void because in terms of its content or purpose it contravenes fundamental moral principles the court may entirely or partly reject a claim by the dishonest party for the reimbursement of that provided to the other party; in ruling the court shall consider the extent to which one or both of the parties acted in good faith and the significance of the interests under threat.

partial nullity

Article 88

(1) The contract itself shall not be null and void owing to the nullity of any contractual provision if it can stand without the null provision and if the provision was not a contractual condition or a decisive motive for reason of which the contract was concluded.

(2) Nevertheless a contract shall remain in force even when the null provision was a condition therefor or a decisive motive if the purpose of determining nullity is to rid the contract of the provision and it would be valid without it.

conversion

Article 89

If a null and void contract fulfils the conditions for the validity of another contract the other contract shall apply between the contracting parties if in accordance with the purpose viewed by the contracting parties when they concluded the contract and if the contract can be deemed to have been concluded when they learnt of the nullity of their contract.

subsequent cessation of grounds for nullity

Article 90

(1) A null and void contract shall not become valid if the prohibition or other grounds for nullity later ceases.

(2) If the prohibition is of minor significance and the contract was performed nullity may not be applied.

liability of person culpable for nullity of contract

Article 91

The contracting party culpable for the conclusion of a null and void contract shall be liable to the other contracting party for damage incurred thereby because of the nullity of the contract if the latter did not know and was not obliged to know of the grounds for nullity.

application of nullity

Article 92

The court shall attend to nullity as an official duty and any person concerned may make reference to it.

unlimited application of nullity

Article 93

The right to apply nullity shall not expire.

II. Challengeable Contract

when a contract is challengeable

Article 94

A contract shall be challengeable if concluded by a party that has limited capacity to contract, if during conclusion there were errors regarding the parties' intention, or if so stipulated in the present code or any other act of law.

annulment of contract

Article 95

(1) A contracting party in whose interest challengeability is defined may request that the contract be annulled.

(2) The other contracting party may request that the first contracting party declare, within a set period that may not be shorter than 30 days, whether the latter is adhering to the contract, otherwise the contract shall be deemed to have been annulled.

(3) If the contracting party specified in the first paragraph of this article fails to declare or declares that such party is not adhering to the contract the contract shall be deemed to have been annulled.

consequences of annulment

Article 96

(1) It shall be necessary to return anything that was performed on the basis of a challengeable contract that was annulled; if this is impossible or if return is prevented by the nature of that which was performed appropriate monetary compensation must be provided.

(2) Monetary compensation shall be provided according to the prices at the time of return or at the time the court ruling was issued.

liability for annulment of contract

Article 97

The contracting party that caused the challengeability shall be liable to the other contracting party for the damage incurred thereby owing to the annulment of the contract if the latter did not know and was not obliged to know of the grounds for the challengeability of the contract.

liability of person with limited capacity to contract

Article 98

A person with limited capacity to contract shall be liable for the damage incurred in the annulment of the contract if a ruse was employed to convince the other contracting party that the former had the capacity to contract.

expiry of right

Article 99

(1) The right to request the annulment of a challengeable contract shall expire one year from the day the entitled person learnt of the grounds for challengeability, or one year after the end of duress.

(2) In any case this right shall expire three years after the day the contract was concluded.

Subsection 5: Bilateral Contracts

I. Liability for Material and Legal Errors in Performance

liability for material and legal errors

Article 100

(1) In a bilateral contract each contracting party shall be liable for material errors in the party's own performance.

(2) A contracting party shall also be liable for legal errors in performance, and must protect the other party against the rights and claims of third persons by which the party's right would be excluded or restricted.

(3) The sense of the provisions of the present code on the seller's liability for material and legal errors shall apply to these debtor's obligations, unless prescribed otherwise for the particular case.

II. Objection to Non-Performance of Contract

rule of simultaneous performance

Article 101

(1) In bilateral contracts neither party shall be obliged to perform their own obligations if the other party is not simultaneously performing the latter's obligations or is unwilling to do so, unless agreed otherwise or stipulated otherwise by law, or unless it follows otherwise from the nature of the transaction.

(2) If one party claims in court that such party was not obliged to perform the obligations until the other party performed the other party's obligations the court shall instruct the former to perform the obligations when the latter does so.

if performance of obligations by one party is uncertain

Article 102

(1) If it is agreed that one party will perform such party's obligations first and after the contract is concluded the material circumstances of the other party deteriorate to the extent that it is uncertain that the latter will be able to perform the latter's obligations, or this is uncertain for other serious reasons, the party that undertook to perform the obligations first shall defer performance until the other party performs the other party's obligations or until the other party provides sufficient security that the obligations will be performed.

(2) This shall also apply if the material circumstances of the other party were so serious before the contract was concluded and the other party did not know and was not obliged to know of such.

(3) In such cases the party that undertook to perform the obligations first may request security by a suitable deadline; if the deadline is not met the party may withdraw from the contract.

III. Termination of Contract Owing to Non-Performance

party's right if other party fails to perform obligations

Article 103

If in a bilateral contract a party fails to perform such party's obligations and it is not stipulated otherwise the other party may demand the performance of the obligations or withdraw from the contract under the conditions set out in the following articles through an ordinary declaration if the contract is not rescinded by law alone.

if performance on time is an essential component of the contract

Article 104

- (1) If the performance of obligations by a specific deadline is an essential component of the contract and the debtor fails to perform them by the deadline the contract shall be rescinded by law alone.
- (2) Nevertheless the creditor may retain the contract in force if after the deadline the creditor notifies the debtor without delay that performance of the contract is demanded.
- (3) A creditor that demands the performance of the contract and does not obtain it within a suitable period may withdraw from the contract.
- (4) These rules shall apply both if the contracting parties agreed that the contract would be deemed rescinded if not performed by a specific deadline and if the performance of the contract by a specific deadline is an essential component of the contract by the nature of the transaction.

if performance on time is not an essential component of the contract

Article 105

- (1) If the performance of obligations by a specific deadline is not an essential component of the contract the debtor shall retain the right to perform the debtor's obligations and the creditor shall retain the right to demand performance.
- (2) A creditor that wishes to withdraw from the contract must allow the debtor a suitable additional period for performance.
- (3) If the debtor fails to perform the obligations within the additional period the same consequences as if the deadline was an essential component of the contract shall arise.

withdrawal from contract without additional period

Article 106

The creditor may withdraw from the contract without allowing the debtor an additional period for performance if it follows from the debtor's behaviour that the obligations will not be performed within the additional period.

withdrawal from contract before deadline

Article 107

If before the deadline for the performance of obligations it is clear that one party will not perform such party's contractual obligations the other party may withdraw from the contract and demand the reimbursement of damage.

withdrawal from contract with series of obligations

Article 108

(1) If in a contract with a series of obligations one party fails to perform an obligation the other party may within a suitable period withdraw from the contract in respect of all future obligations if it is clear from the circumstances that these will also not be performed.

(2) The party may withdraw from the contract in respect of not only the future obligations but also obligations already performed if the performance thereof without the missing obligations has no significance for the party.

(3) The debtor may retain the contract in force by providing appropriate security.

obligation to notify

Article 109

A creditor that withdraws from a contract owing to the non-performance of a debtor's obligation must notify the debtor of such without delay.

when withdrawal from contract is impossible

Article 110

It shall not be possible to withdraw from a contract owing to the non-performance of an insignificant part of an obligation.

effects of rescinded contract

Article 111

(1) If a contract is rescinded the two parties shall be released from their obligations, with the exception of an obligation to reimburse any damage.

(2) A party that has fully or partly performed the contract shall have the right to the return of everything provided.

(3) If both parties have the right to demand the return of everything provided the rules applying to the performance of bilateral contracts shall apply to the mutual return.

(4) Each party shall owe the other party reimbursement for the benefits the party enjoyed in the meantime from that which the party is obliged to return or reimburse.

(5) A party returning money must pay interest from the day the payment was received.

IV. Rescission or Amendment of Contract Owing to Change of Circumstances

presumptions

Article 112

(1) If after the conclusion of a contract circumstances arise that render the performance of obligations by one party more difficult or owing to which the purpose of the contract cannot be achieved and in both cases to such an extent that the contract clearly no longer complies with the expectations of the contracting parties and in the general opinion it would be unjust to retain it in force as it is, the party whose obligations have been rendered more difficult to perform or the party that owing to the changed circumstances cannot realise the purpose of the contract may request the rescission of the contract.

(2) It shall not be possible to request the rescission of a contract if the party making reference to the changed circumstances should have taken such circumstances into consideration when the contract was concluded, or could have avoided them or could have averted the consequences thereof.

(3) The party requesting the rescission of the contract may not make reference to changed circumstances that arose after the deadline stipulated for the performance of such party's obligations.

(4) A contract shall not be rescinded if the other party offers to have the relevant contract conditions justly amended or allows such.

(5) If a court rescinds a contract owing to changed circumstances it shall at the request of the other party instruct the party that requested the rescission to reimburse the other party for an appropriate part of the damage incurred for reason of the rescission of the contract.

obligation to notify

Article 113

A party that owing to changed circumstances is entitled to request the rescission of a contract must notify the other party regarding the intention to request a rescission as soon as the former learns that such circumstances have arisen. A party that fails to do such shall be liable for damage incurred by the other party because notification regarding the request was not provided on time.

circumstances significant to court ruling

Article 114

In ruling on a request to rescind or amend a contract for reason of changed circumstances the court shall primarily take into consideration the purpose of the contract, the risks customary for contracting parties in commercial transactions during the performance of contracts of the same type, and the balance of the interests of the two contracting parties.

waiver of reference to changed circumstances

Article 115

Through a contract the parties may waive any reference to specific changed circumstances in advance, unless such is opposed to the principle of conscientiousness and fairness.

V. Impossibility of Performance

impossibility of performance for which neither party is responsible

Article 116

(1) If the performance of obligations becomes impossible for one party to a bilateral contract because of a development for which neither party was responsible the obligation of the other party shall also expire; if the latter has already performed part of the latter's obligations the latter may demand return according to the rules on the return of that which was acquired unjustly.

(2) If the partial impossibility of performance is the consequence of a development for which neither party was responsible the other party may withdraw from the contract if the part performance does not satisfy such party's needs; otherwise the contract shall remain in force and the other party shall have the right to demand the proportionate reduction of such party's obligations.

impossibility of performance for which party is responsible

Article 117

(1) If the performance of obligations becomes impossible for one party to a bilateral contract because of a development for which the other party was responsible the obligation of the former shall expire while the former's claim on the other party shall remain; the claim shall be reduced only insofar as the former benefited from being released of the obligation.

(2) In addition all the rights that the former would have held in respect of third persons in connection with the subject of the obligations whose performance became impossible must be ceded to the other party.

(3) If the performance of obligations becomes impossible for one party to a bilateral contract because of a development for which such party was responsible the other party may choose to demand compensation for the non-performance or to withdraw from the contract and demand the reimbursement of damage.

VI. Excessive Deprivation

clear disproportion in mutual performance

Article 118

(1) If there was clear disproportion between the contracting parties' obligations when a bilateral contract was concluded the injured party may request the rescission of the contract if such party did not know and was not obliged to know of the true value at the time.

(2) The right to request the rescission of the contract shall expire one year after the contract is concluded.

(3) The waiver of this right in advance shall have no legal effect.

(4) The contract shall remain in force if the other party offers to supplement to the true value.

(5) The rescission of chance bargains, contracts concluded on the basis of a public auction and contracts in which a higher price was given for the material out of a special inclination may not be requested for reason of such disproportion.

usurious contract

Article 119

(1) If anyone exploits another's distress, the severity of the assets situation thereof, or the inexperience, recklessness or dependence thereof, and reserves for the former or for a third person benefits that are in clear disproportion to what the former provided or did or undertook to provide or do, such a contract shall be null and void.

(2) The sense of the provisions of the present code on the consequences of nullity and on partial nullity of contracts shall apply to usurious contracts.

(3) If the injured party requests that obligations thereof be reduced to a just size, the court shall grant such a request if possible; in such an event the contract shall remain in force with an appropriate amendment.

(4) The injured party may lodge a request for the reduction of obligations to a just size within five years of the contract being concluded.

VIII. General Terms and Conditions of Contract

obligation

Article 120

(1) The general terms and conditions set out by one contracting party, whether contained in a formulaic contract or referred to by the contract, shall supplement the special agreements between the contracting parties in the same contract and shall as a rule be equally binding.

(2) The general terms and conditions of a contract must be published in the customary manner.

(3) The general terms and conditions shall be binding for a contracting party that knew or should have known thereof when the contract was concluded.

(4) If there is any discrepancy between the general terms and conditions and the special agreements the latter shall prevail.

nullity of certain general terms and conditions

Article 121

(1) Any provisions of general terms and conditions that oppose the actual purpose for which the contract was concluded or good business customs shall be null and void, even if the general terms and conditions they are contained in were approved by the relevant authority.

(2) The court may reject the application of individual provisions of general terms and conditions that remove another party's right to object or appeal, or provisions based on which a party loses contractual rights or deadlines or that are otherwise unjust or too strict for the party.

IX. Transfer of Contract

conditions for transfer

Article 122

(1) Either party to a bilateral contract may transfer the contract to a third person, who shall thereby become the holder of all the former's rights and obligations deriving from the contract, if the other party consents thereto.

(2) Via the transfer of a contract the contractual relationship between the transferring party and the other party shall pass to the recipient and the other party when the other party consents to the transfer; if the consent is given in advance the transfer shall be deemed to take place when the other party is notified of the transfer.

(3) Consent to the transfer of a contract shall only be valid if given in the form prescribed by law for the conclusion of the transferred contract.

(4) The sense of the provisions on parties' rights in connection with a contract on takeover of debt shall also apply to the transfer of a contract.

transferring party's responsibilities

Article 123

(1) The transferring party shall be liable to the recipient for the validity of the transferred contract.

(2) The transferring party shall not guarantee to the recipient that the other party will perform the other party's obligations deriving from the transferred contract, unless the transferring party specifically undertakes to do so.

(3) The transferring party shall not guarantee to the other party that the recipient will perform the contractual obligations, unless the transferring party specifically undertakes to do so.

objections

Article 124

The other party may exercise all the objections deriving from the transferred contract against the recipient, and all those from other relationships with the recipient; the other party may not exercise objections held against the transferring party.

I. Generation of Obligation for Contracting Parties

effects of contract between contracting parties and legal successors thereof

Article 125

- (1) A contract shall generate rights and obligations for the contracting parties.
- (2) A contract shall also have effect for the universal legal successors of the contracting parties, unless stipulated otherwise in the contract or unless it follows otherwise from the nature of the contract itself.
- (3) A right in favour of a third person may be established via a contract.

II. Contract in Favour of Third Person

direct right of third person

Article 126

- (1) If a contract establishes a right in favour of a third person the third person acquires the right directly against the debtor, unless agreed otherwise or unless it follows otherwise from the circumstances of the transaction.
- (2) A contracting party shall have the right to request that the other contracting party perform the obligation towards the third person that the contracting party undertook to perform in the third party's favour.

revocation of right in favour of third person

Article 127

- (1) A contracting party that is entitled to request that the fellow contracting party perform an obligation to a third person may revoke or amend the right established in favour of the third person at any time until the third person declares that the right is accepted.
- (2) If it is agreed that the fellow contracting party that committed in favour of the third person will only perform the obligation after the contracting party's death, the contracting party may at any time, including via his/her will, revoke the right in favour of the third person, unless it follows otherwise from the contract itself or from the circumstances.

debtor's objections against third person

Article 128

The debtor may exercise all objections against the third person that the former holds against the contracting party from the contract in favour of the third person.

refusal by third person

Article 129

If the third person refuses the right established in favour thereof or if the contracting party revokes it the right shall pertain to the contracting party, unless agreed otherwise or unless it follows otherwise from the nature of the transaction.

promise of action by third person

Article 130

(1) A promise made to another that a third person will do something or refrain from something shall not bind the third person; the person that made the promise shall be liable for any damage incurred by the other person because the third person did not wish to commit to doing such or refraining from such.

(2) The person that makes the promise shall not be liable if the promise made to the other person was solely that the former would endeavour to have the third person undertake to do something or refrain from something and in the event the person failed despite all the necessary endeavours.

Section 2: Infliction of Damage

Subsection 1: General Principles

basis for liability

Article 131

(1) Any person that inflicts damage on another shall be obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former.

(2) Persons shall be liable for material damage and activities that result in major risk of damage to the environment, irrespective of culpability.

(3) Persons shall also be liable for damage irrespective of culpability in other cases defined by law.

damage

Article 132

Damage comprises the diminution of property (ordinary damage), prevention of the appreciation of property (lost profits), the infliction of physical or mental distress or fear on another person, and encroachment upon the reputation of a legal person.

request for disposal of risk of damage

Article 133

(1) Any person may request that another person dispose of a source of danger that threatens major damage to the former or an indeterminate number of persons and refrain from the activities from which the alarm or risk of damage derives, if the occurrence of alarm or damage cannot be prevented by appropriate measures.

(2) At the request of an interested person the court shall order appropriate measures to prevent the occurrence of damage or alarm or to dispose of a source of danger to be taken at the expense of the possessor thereof should the latter fail to do so.

(3) If damage arises during the performance of generally beneficial activities for which permission has been given by the relevant authority it shall only be possible to demand the reimbursement of damage that exceeds the customary boundaries.

(4) Nevertheless, appropriate measures to prevent the occurrence of damage or to reduce damage may also be demanded in such a case.

request to cease infringement of personal rights

Article 134

(1) All persons shall have the right to request the court or any other relevant authority to order that action that infringes the inviolability of the human person, personal and family life or any other personal right be ceased, that such action be prevented or that the consequences of such action be eliminated.

(2) The court or other relevant authority may order that the infringer cease such action, with failure to do so resulting in the mandatory payment of a monetary sum to the person affected, levied in total or per time unit.

Subsection 2: Culpable Liability

when culpability is given

Article 135

Culpability is given when the injurer inflicts damage intentionally or out of negligence.

non-liable person

Article 136

(1) Any person who for reason of disturbances in mental development or mental health problems or on any other grounds is not capable of accounting for his/her actions shall not be liable for damage inflicted on another.

(2) Any person who inflicts damage on another in a temporary state of being of unsound mind shall be liable for the damage, unless it is shown that the person did not enter such state through any fault of his/her own.

(3) If a person enters such state through the fault of another, the person that caused the former to enter such state shall be liable for the damage.

liability of minors

Article 137

- (1) Minors under the age of seven shall not be liable for any damage they inflict.
- (2) Minors aged seven and over but under fourteen shall not be liable for damage, unless it is shown that they were capable of accounting for their actions when the damage was inflicted.
- (3) Minors aged fourteen and over shall be liable according to the general rules on liability for damage.

self-defence, emergency, aversion of damage to other

Article 138

- (1) Any person who in self-defence inflicts damage on an assailant shall not be obliged to reimburse the damage, except in the case of unreasonably excessive self-defence.
- (2) If a person inflicts damage in an emergency the injured party may demand compensation from the person liable for the occurrence of the risk of damage or from those from whom damage was averted, but may not request compensation from the latter greater than the benefit they had therefrom.
- (3) Any person that incurs damage when the risk of damage is averted from another shall have the right to demand therefrom the reimbursement of the damage to which the latter was reasonably exposed.

allowed self-help

Article 139

- (1) Any person that during allowed self-help inflicts damage on the person that caused the need for self-help shall not be obliged to reimburse.
- (2) The term “allowed self-help” entails the right of any person to avert the infringement of a right when immediate danger is threatened, if such protection is necessary and if the manner in which the infringement is averted accords with the circumstances in which the danger arises.

injured party's consent

Article 140

- (1) Any person that allows another person to do something to the former's detriment may not demand from the latter the reimbursement of the damage that the latter thereby inflicted.
- (2) A declaration by which an injured party consents to another inflicting damage thereto by an act prohibited by law shall be null and void.

Subsection 3: Liability for Other

persons with disturbances in mental development and mental health problems

Article 141

(1) The person that according to law, according to a ruling by the relevant authority or according to a contract is obliged to supervise a person who for reason of disturbances in mental development or mental health problems or for any other reason is not capable of accounting for his/her actions shall be liable for any damage inflicted thereby.

(2) Such person may be released from liability if it is shown that such person conducted the obligatory supervision or that the damage would have occurred even under careful supervision.

parental liability

Article 142

(1) Parents shall be liable for damage inflicted on another by their child until the child reaches the age of seven, irrespective of culpability.

(2) They shall be released from liability if grounds for the exclusion of liability according to the rules on liability irrespective of culpability are given.

(3) Parents shall not be liable if the damage occurred while the child was entrusted to another and such person was liable therefor.

(4) Parents shall be liable for damage inflicted on another by a child of theirs who is aged over seven but is not yet of age, unless it is shown that the damage occurred through no culpability of their own.

joint and several liability

Article 143

If in addition to the parents a child is liable for damage, they shall be jointly and severally liable.

liability of others for minors

Article 144

(1) The guardian, school or other institution shall be liable for damage inflicted by a minor while under the supervision of the guardian, school or other institution, unless it is shown that the supervision was conducted with due care or that the damage would have occurred even under careful supervision.

(2) If the minor is also liable for damage, they shall be jointly and severally liable.

special parental liability

Article 145

(1) If supervision of a minor is not the responsibility of the parents but another person the injured party shall have the right to demand compensation from the parents if the damage occurred for reason of the poor upbringing of the minor or the poor example or bad habits set by the parents, or if the damage can otherwise be attributed to their culpability.

(2) If the person responsible for supervision in this case must pay compensation to the injured party such person shall have the right to demand that the parents reimburse the sum paid out.

just liability

Article 146

(1) If damage was inflicted by a person not liable therefor and compensation cannot be obtained from the person that should have supervised the former the court may order the injurer to reimburse all the damage or a part thereof if justice demands such, particularly in respect of the financial situation of the injurer and the injured party.

(2) If the damage was inflicted by a minor capable of accounting for his/her actions who cannot reimburse it the court may if justice demands such, particularly in respect of the financial situation of the parents and the injured party, order the parents to reimburse all the damage or a part thereof, even if not liable therefor.

Subsection 4: Liability for Employees

employer liability

Article 147

(1) The legal or natural person with whom an employee was working at the time the damage was inflicted shall be liable for damage inflicted on a third person by an employee during work or in connection with work, unless it is shown that the employee acted as was necessary under the given circumstances.

(2) The injured party shall have the right to demand the reimbursement of damage directly from the employee if such damage is inflicted intentionally.

(3) Any person that reimburses an injured party for damage inflicted by an employee intentionally or out of gross negligence shall have the right to demand the reimbursement of the sum paid out from the employee.

(4) This right shall expire six months after the day the compensation was paid.

(5) The provision of the first paragraph of this article shall not encroach upon the rules on liability for damage originating from dangerous objects or dangerous activities.

legal person's liability for damage inflicted by body thereof

Article 148

(1) A legal person shall be liable for damage inflicted on a third person by a body of the legal person during the performance of its functions or in connection therewith.

(2) Unless stipulated otherwise by law for the individual case, the legal person shall have the right to demand reimbursement of the sum paid out from a person that inflicted the damage intentionally or out of gross negligence.

(3) This right shall expire six months after the day the compensation was paid.

Subsection 5: Liability for Damage from Dangerous Object or Dangerous Activities

I. General Provisions

presumption of causality

Article 149

Damage occurring in connection with a dangerous object or dangerous activities shall be deemed to originate from the dangerous object or dangerous activities unless it is shown that such was not the cause.

who is liable for damage

Article 150

The holder of a dangerous object shall be liable for damage therefrom; the person involved in the dangerous activities shall be liable for damage therefrom.

unlawful removal of dangerous object from holder

Article 151

If a dangerous object was removed unlawfully from the holder, not the holder but the person that took the dangerous object shall be liable for any damage originating therefrom, unless the holder was responsible therefor.

delivery of object to third person

Article 152

(1) A person entrusted with the use of a dangerous object by its holder or a person otherwise responsible for supervising the object that is not employed by the holder shall be liable instead of the holder, as the holder would be.

(2) However in addition thereto the holder of the object shall also be liable if the damage was the result of any concealed faults or hidden attributes of the object to which the holder drew no attention.

(3) In such a case the liable person that paid compensation to the injured party shall have the right to demand the entire sum from the holder.

(4) A holder that entrusts a dangerous object to a person who is not capable of handling it or entitled to do so shall be liable for damage originating therefrom.

exemption from liability

Article 153

- (1) The holder shall be exempted from liability if it is shown that the damage originated from any cause outside the object whose effect could not be foreseen, avoided or averted.
- (2) The holder of an object shall also be exempted from liability if it is shown that the damage occurred exclusively because of action by the injured party or a third person that could not be foreseen and the consequences of which could not be avoided or eliminated.
- (3) The holder shall be partly exempted from liability if the injured party contributed to the occurrence of the damage.
- (4) If a third person contributed to the occurrence of the damage such person shall be jointly and severally liable therefor to the injured party together with the holder of the object.
- (5) A person assisting the holder in the use of the object shall not be deemed a third person.

II. Liability During Accident Caused by Moving Motor Vehicles

Article 154

- (1) The rules on culpable liability shall apply to an accident involving moving motor vehicles caused exclusively through the fault of one vehicle holder.
- (2) If the fault is mutual the holders shall each be liable for all the damage incurred thereby, in proportion to each holder's level of fault.
- (3) If nobody is at fault the holders shall be liable for equal shares, unless justice demands otherwise.
- (4) If the two holders of the motor vehicles are partly or fully liable for damage suffered by others the liability shall be joint and several.

III. Liability of Manufacturer of Faulty Object

Article 155

- (1) A person that markets any object manufactured by the person that entails a risk of damage to people or property for reason of any type of fault shall be liable for the damage occurring because of such fault.
- (2) Any manufacturer that has failed to do everything necessary to prevent any damage that could be foreseen through a warning, safe packaging or any other appropriate measure shall also be liable for the dangerous attributes of an object.

Subsection 6: Special Cases of Liability

liability for acts of terrorism, public demonstrations and events

Article 156

The state or the person that should have prevented such according to regulations shall be liable for damage caused by death or physical injury as a result of acts of terrorism or during public demonstrations and events.

event organiser's liability

Article 157

The organiser of an assembly of a large number of people in a closed area or in the open air shall be liable for damage caused by death or physical injury occurring because of the extraordinary circumstances that can arise in such opportunities such as mass movement and general disorder.

liability of holder of animal

Article 158

(1) The holder of a dangerous animal shall be liable for damage inflicted thereby.

(2) The holder of a domestic animal shall be liable for damage inflicted thereby, unless it is shown that the holder attended to the necessary care and supervision.

liability of holder of building

Article 159

The holder of the building or area from which the object fell shall be liable for damage occurring if a dangerously positioned or discarded object falls from a building.

liability for demolition of structure

Article 160

The holder of the structure shall be liable for damage occurring if part of a structure is demolished or collapses, unless it is shown that the event was not the result of inadequate quality of construction and that the holder did everything to avert the danger.

liability because of omission of emergency aid

Article 161

(1) Any person who without any risk to himself/herself fails to aid anyone whose life or health is clearly endangered shall be liable for damage thus occurring, if given the circumstances of the case the damage should have been foreseen.

(2) The court may exempt such person from reimbursing the damage if justice so demands.

liability in connection with obligation to conclude contract

Article 162

Any person obliged by law to conclude any contract must reimburse the damage if such person fails to conclude the contract without delay at the request of a person concerned.

liability in connection with performance of transactions of general importance

Article 163

Any person that performs municipal or other similar activities of general importance shall be liable for damage if such person ceases to perform the services or performs the services irregularly without justifiable grounds.

Subsection 7: Reimbursement of Damage

I. Reimbursement of Material Damage

re-establishment of previous situation and monetary compensation

Article 164

(1) The liable person shall be obliged to re-establish the situation prior to the occurrence of the damage.

(2) If through the re-establishment of the previous situation the damage is not entirely rectified the liable person shall be obliged to pay monetary compensation for the remainder of the damage.

(3) If the re-establishment of the previous situation is impossible or if the court is of the opinion that it is not necessary for the liable person to do such, the court shall order the liable person to pay appropriate monetary compensation to the injured party.

(4) The court shall award monetary compensation to the injured party if the latter so demands, unless the circumstances of the case in question justify the re-establishment of the previous situation.

when obligation to compensate falls due

Article 165

The obligation to compensate shall be deemed to have fallen due at the moment the damage occurred.

compensation for destroyed thing removed in illicit manner

Article 166

If a thing that was removed from the holder in an illicit manner is destroyed because of force majeure the liable person shall be obliged to provide monetary compensation therefor.

compensation in form of monetary annuity

Article 167

- (1) In the event of death, physical injury or damage to health the compensation shall as a rule have the form of a monetary annuity, either lifelong or for a specific period.
- (2) A monetary annuity awarded as compensation shall be paid monthly in advance, unless the court stipulates otherwise.
- (3) The creditor shall have the right to request the necessary security for the payment of the annuity, unless such would not be justified given the circumstances of the case.
- (4) If the debtor fails to provide the security stipulated by the court the creditor shall have the right to demand that a one-off sum be paid thereto instead of the annuity; this shall be levied in respect of the size of the annuity and the creditor's probable lifespan, with a rebate for the appropriate interest.
- (5) On serious grounds the creditor may also request that the debtor immediately or subsequently pay a one-off sum instead of the annuity in other cases.

II. Amount of Reimbursement of Material Damage

ordinary damage and lost profit

Article 168

- (1) The injured party shall have the right to the reimbursement of ordinary damage and the reimbursement of lost profit.
- (2) The reimbursement of damage shall be levied according to the prices when the court ruling is issued, unless stipulated otherwise by law.
- (3) In the estimation of lost profit the profit that could justifiably have been expected given the normal course of events or given the special circumstances but could not be achieved owing to the injurer's action or omission shall be taken into consideration.
- (4) If an object was destroyed or damaged intentionally the court may levy compensation with regard to the value the object had for the injured party.

full compensation

Article 169

When considering the circumstances arising after the infliction of damage the court shall award the injured party compensation in the amount necessary to restore the injured party's financial situation to what it would have been without the damaging act of omission.

reduced compensation

Article 170

- (1) Having taken the injured party's financial situation into consideration the court may order the liable person to pay a compensation sum lower than the amount of damage if the damage was

not inflicted intentionally or out of gross negligence, the liable person is in a weak financial situation and the payment of full compensation would entail great hardship for the liable person.

(2) If the injurer inflicted the damage when acting for the benefit of the injured party the court may levy reduced compensation; in so doing the court shall take the diligence shown by the injurer in the injurer's own matters into consideration.

shared liability

Article 171

(1) An injured party that contributed to the occurrence of the damage or caused the damage to be greater than it would otherwise have been shall have the right to proportionately reduced compensation only.

(2) If it is impossible to determine which part of the damage is the consequence of the injured party's action the court shall award compensation having taken the circumstances of the case into consideration.

III. Reimbursement of Material Damage in Case of Death, Injury and Damage to Health

loss of earnings, treatment costs and funeral expenses

Article 172

(1) Any person that causes someone to die must reimburse the latter's funeral expenses.

(2) Such person must also reimburse costs of treatment owing to the injuries caused, other necessary expenses in connection with treatment, and the earnings lost because of incapacity to work.

right of person maintained by deceased

Article 173

(1) A person maintained or regularly supported by the deceased and a person that by law had the right to request maintenance therefrom shall have the right to the reimbursement of the damage suffered because of the loss of maintenance or the support.

(2) Such damage shall be reimbursed thereto by the payment of a monetary annuity; the amount shall be levied with regard to all the circumstances of the case and may not be larger than the sum the injured party would have obtained from the deceased had the deceased lived.

reimbursement of damage in case of physical injury or damage to health

Article 174

(1) Any person that causes another physical injury or damages the health of another must reimburse the latter with the costs in connection with treatment, other necessary expenses thereto connected and the earnings lost because of incapacity to work during treatment.

(2) If owing to full or partial incapacity to work the injured party loses earnings, the injured party's needs are permanently increased, or the possibilities for the injured party's further development and progress are destroyed or reduced the liable person must pay a specific monetary annuity thereto as reimbursement for the damage.

change in compensation awarded

Article 175

The court may thenceforth increase an annuity at the request of the injured party or may reduce or cancel it at the request of the injurer if there is a significant change in the circumstances presented before the court when the previous ruling was issued.

non-transferability of rights

Article 176

(1) It shall not be possible to transfer a right to compensation in the form of a monetary annuity for the death of a close associate or for physical injury or damage to health to another person.

(2) Sums of compensation that have fallen due may be transferred to another person if the compensation sum was set by a written agreement between the parties or by a final court ruling.

IV. Reimbursement of Material Damage in Case of Defamation or Calumny

reimbursement of material damage in case of defamation or calumny

Article 177

(1) Any person that defames another or asserts or disseminates untrue statements on the past, knowledge or capability of another, even though the former knows or should have known that they were untrue, and thereby inflicts material damage on the latter must reimburse such damage.

(2) However any person that reports anything untrue about another without knowing that such was untrue shall not be liable for the damage inflicted if there was a genuine interest in so doing for the former or the person to whom the report was made.

V. Reimbursement of Immaterial Damage

publication of judgement or correction

Article 178

In a case of the infringement of a personal right the court may order the publication of the judgement or a correction at the injurer's expense or order that the injurer must retract the statement by which the infringement was committed or do anything else through which it is possible to achieve the purpose achieved via compensation.

monetary compensation

Article 179

(1) Just monetary compensation independent of the reimbursement of material damage shall pertain to the injured party for physical distress suffered, for mental distress suffered owing to a reduction in life activities, disfigurement, the defamation of good name or reputation, the truncation of freedom or a personal right, or the death of a close associate, and for fear, if the circumstances of the case, particularly the level and duration of distress and fear, so justify, even if there was no material damage.

(2) The amount of compensation for immaterial damage shall depend on the importance of the good affected and the purpose of the compensation, and may not support tendencies that are not compatible with the nature and purpose thereof.

persons entitled to monetary compensation in case of death or serious disability

Article 180

(1) If a person dies the court may award just monetary compensation to his/her immediate family members (spouse, children and parents) for their mental distress.

(2) In the event of a person becoming seriously disabled the court may award his/her spouse, children or parents just monetary compensation for their mental distress.

(3) Such compensation may also be awarded to siblings if there was a long-term union for life between them and the deceased or injured party.

(4) The compensation specified in the first and second paragraphs of this article may be awarded by the court to an extra-marital partner if there was a union for life between the partner and the deceased or injured party.

violation of dignity

Article 181

A person who was forced into punishable sexual intercourse or another sexual act using fraud, force or the abuse of a relationship of subordination or dependence and a person against whom another criminal act against the dignity of the person or the person's morals was committed shall have the right to just monetary compensation for the mental distress suffered.

reimbursement of future damage

Article 182

At the request of an injured party the court may also award compensation for future immaterial damage if according to the customary course of events it is certain that the damage will last into the future.

monetary compensation for legal person

Article 183

The court shall award a legal person just monetary compensation for the defamation of reputation or good name, independent of the reimbursement of material damage, if it finds that the circumstances so justify, even if there is no material damage.

inheritance and assignment of claim for reimbursement of immaterial damage

Article 184

(1) A claim for the reimbursement of immaterial damage shall pass to heirs only if it was recognised by a final legal ruling or a written agreement.

(2) Such a claim may be the subject of assignment, offset and execution under equal conditions.

shared liability and reduced compensation

Article 185

The sense of the provisions on shared liability and reduced compensation applying to material damage shall also apply to immaterial damage.

Subsection 8: Several Persons' Liability for Same Damage

joint and several liability

Article 186

(1) All those involved shall be jointly and severally liable for damage inflicted by several persons together.

(2) Those who aid or abet the liable person or who help the liable person evade detection shall be jointly and severally liable therewith.

(3) All those that inflicted damage but acted independently shall also be jointly and severally liable for the damage inflicted, if it is not possible to determine their share of the damage inflicted.

(4) If there is no doubt that damage was inflicted by one of two or more specific persons that are in some way connected and it cannot be determined which of them inflicted the damage such persons shall be jointly and severally liable.

joint and several liability of contracting authority and contractor

Article 187

The contracting authority and the contractor for works on real estate shall be jointly and severally liable to a third person for damage they inflict in connection with the execution of such works.

payer's recourse

Article 188

(1) A jointly and several debtor that pays more than such person's share of the damage may demand that each of the other debtors reimburse the payment made therefor.

(2) The size of the share of each individual debtor shall be stipulated by the court with regard to the gravity of such person's culpability and the gravity of the consequences following from such person's actions.

(3) If it is impossible to determine the debtors' shares each shall have an equal share, unless justice demands a different decision in the given case.

Subsection 9: Injured Party's Right After Right to Demand Compensation Expires

Article 189

After the right to demand compensation expires the injured party may according to the rules applying to the case of unjust acquisition demand that the liable person cede that which was acquired by the act through which the damage was inflicted to the injured party.

Section 3: Unjust Acquisition

Subsection 1: General Rule

general rule

Article 190

(1) Any person that without a legal basis becomes enriched to the detriment of another shall be obliged to return that which was received if possible, or to otherwise compensate the value of the benefit achieved.

(2) The term enrichment also covers the acquisition of benefit through services.

(3) The obligation to return or compensate shall also arise if a person receives something in respect of a basis that is not realised or subsequently disappears.

Subsection 2: Rules of Return

when return cannot be demanded

Article 191

Any person that pays something despite knowing there is no obligation to pay shall not have the right to demand return unless the right to return is reserved or unless the payment was made under duress.

performance of natural obligation or moral duty

Article 192

It shall not be possible to demand the return of that provided or done to perform any type of natural obligation or moral duty.

extent of return

Article 193

When that which was unjustly acquired is being returned it shall be necessary to return all the fruits thereof and to pay penalty interest from the day the claim was lodged or from the day of acquisition if the acquirer acted in bad faith.

reimbursement of expenses

Article 194

The acquirer shall have the right to the reimbursement of necessary and beneficial expenses; an acquirer that acted in bad faith shall only be entitled to beneficial expenses up to a sum entailing the increase in value upon return.

when that received can be kept

Article 195

It shall not be possible to demand the return of compensation sums baselessly paid out for physical injury, damage to health or death if they were paid to a recipient that acted in good faith.

Authentic Interpretation of Article 195³: As a baselessly paid sum shall be counted also the payment on the basis of a final judicial decision that was later changed or abolished.⁴

use of thing for another's benefit

Article 196

If a person used a thing of such person or another person to benefit a third person and there are no conditions for applying the rules on management without mandate the third person shall be obliged to return the thing if it is not possible to compensate for its value.

expense for another

Article 197

Any person that spends something or does anything for another that the latter would be obliged to do under law shall have the right to demand return therefrom.

use of another's thing for own benefit

³ Official Gazette of the RS, No 32/2004.

⁴ In Slovene: "Za neutemeljeno plačilo se šteje tudi plačilo na podlagi pravnomočne sodne odločbe, ki je bila kasneje spremenjena ali odpravljena."

Article 198

If a person used a thing of another person for the former's own benefit the holder may demand, irrespective of the right to compensation and even if there is no such right, that the former compensate the holder for the benefit gained from use.

Section 4: Management Without Mandate

Subsection 1

general rule

Article 199

The transaction of another may only be embarked upon by someone uninvited if it cannot be deferred without damage occurring or without a clear benefit being delayed.

Subsection 2: Rights and Obligations of Manager Without Mandate

obligations of manager without mandate

Article 200

- (1) A manager without mandate must where possible immediately notify the person whose transaction is being conducted regarding the former's action, and must continue the transaction insofar as is reasonably possible until the latter is able to take over attendance thereto.
- (2) After a transaction is completed the former must issue a bill and surrender everything that was acquired through the transaction to the person whose transaction was conducted.
- (3) Unless stipulated otherwise by law the manager without mandate shall have the obligations of a mandatary.

due diligence and liability

Article 201

- (1) When conducting the transaction of another a manager without mandate must act according to the actual and probable intentions and needs of the person whose transaction is being conducted.
- (2) The manager without mandate shall be obliged to act with the diligence of a good businessperson or the diligence of a good manager.
- (3) With regard to the circumstances in which the uninvited person embarked upon the transaction of another the court may reduce the former's liability or totally exempt the former from liability for negligence.
- (4) The rules on such person's contractual and non-contractual liability shall apply to the liability of a manager without mandate with incapacity to contract.

rights of manager without mandate

Article 202

(1) A manager without mandate that acted throughout as was necessary and did what was demanded by the circumstances shall have the right to request that the person whose transaction was conducted release the former from all liabilities taken on because of the transaction, take over all liabilities concluded in the latter's name and reimburse all the necessary and beneficial expenditure and the damage that occurred, even if the anticipated successful outcome was not achieved.

(2) If the manager without mandate averted damage from the person whose transaction was conducted or acquired a benefit therefor that entirely accords with the latter's intentions and needs, the former shall be due an appropriate payment for such endeavours.

removal of additions

Article 203

Each manager without mandate shall have the right to remove things by which the assets of the other were increased and for which no reimbursement of expenses was obtained, if they can be separated without damaging the thing to which they were added; the person in whose transactions the former was involved may keep such additions if such person so desires and the current value thereof is returned to the former, although no more than the actual expenditure.

Subsection 3: Conduct of Another's Transactions Despite Prohibition

conduct of another's transactions despite prohibition

Article 204

(1) Any person that interferes with the transaction of another despite a prohibition from the person whose transaction was embarked upon and that knew or should have known of the prohibition shall not have the rights pertaining to a manager without mandate.

(2) Such person shall be liable for damage inflicted by the interference in the transactions of another, even if it occurs through no fault of the former.

(3) If the prohibition from conducting a transaction contravenes the law or morality, particularly if someone prevented another from performing any legal obligation that could not be deferred, the general rules on management without mandate shall apply.

Subsection 4: False Management

false management

Article 205

(1) Any person that conducts the transaction of another with the intention of keeping all the benefits achieved despite knowing that the transaction is another's must at the request of the

person whose transaction was conducted provide a bill as a manager without mandate and must deliver all the benefits achieved to the latter.

(2) A person whose transaction was conducted by another may also demand the return of things to the previous situation and the reimbursement of damage.

Subsection 5

approval

Article 206

If the person whose transaction was conducted subsequently approves what was conducted the manager without mandate shall be deemed a mandatary that has acted according to the former's mandate from the beginning.

Section 5: Unilateral Declaration of Intention

Subsection 1: Public Promise of Reward

when it is binding

Article 207

(1) A promise made via a public tender to reward a person that performs a specific action, achieves a certain success or reaches a specific position or a promise made under any other condition shall bind the person that made it to performing it.

(2) Any person that promises a reward or makes an invitation to a prize competition must stipulate a deadline for the competition; if such person fails to do so any person that wishes to participate in the competition shall have the right to request that the court stipulate an appropriate deadline.

retraction of promise

Article 208

(1) A promise may be retracted in the manner it was made or via a personal message; however those that have performed the action and did not know and were not obliged to know that the promise of the reward had been retracted shall have the right to demand the reward promised, while those that before the retraction had expenses necessary for the action specified in the public tender shall have the right to be reimbursed therefor, unless the person that promised the reward shows that the expenses were in vain.

(2) A promise to reward may not be retracted if in the tender a deadline was stipulated for the action or for notification of the achievement of success or of the implementation of a specific concept.

who has right to reward

Article 209

(1) The person that first performs the action for which the reward was promised shall have the right to the reward.

(2) If several persons perform the action simultaneously each shall have a share of the reward, unless justice demands different division.

case of tender

Article 210

(1) The conferral of a reward shall be decided upon by the organiser of the tender or by one or more persons designated thereby.

(2) If the rules according to which the reward is to be conferred are set out in the conditions of tender or any other general regulations applying to the specific tender each participant in the tender shall have the right to request the annulment of a decision on the conferral of the reward if the reward was not conferred in accordance with such rules.

(3) The organiser of the tender shall acquire the ownership or any other right on the work rewarded in the tender only if this was stipulated when the tender was published.

termination of obligation

Article 211

The obligation of the person that promised the reward shall terminate if by the deadline stipulated in the tender no notification is received from anyone that has performed the action, achieved the success or performed the conditions set out in the public tender; if no deadline was stipulated the obligation shall terminate one year after the publication of the tender.

Subsection 2: Securities

I. General Provisions

definition

Article 212

(1) A security is a written document by which the issuer undertakes to perform the obligation recorded thereon to the lawful holder thereof.

(2) A written record on another medium shall be deemed a security if so stipulated by a separate act of law.

essential components

Article 213

(1) Securities must have the following essential components:

1. an indication of the type of security
2. the business name and head office address or name and address of residence of the issuer of the security
3. the business name or name of a person to whom it is payable or who orders to whom the security is payable, or an indication that the security is payable to the bearer
4. a precise indication of the issuer's obligation deriving from the security
5. the place and date the security was issued, and the serial number for those securities issued in a series
6. the signature of the issuer of the security or a facsimile of the signature of the issuer of a security issued in a series

(2) Other essential components for particular securities may be stipulated by a separate act of law.

(3) Any document that does not contain all of the essential components is not a security.

to whom a security may be payable

Article 214

A security may be declared in favour of the bearer, a registered name or by order.

origin of obligation

Article 215

The obligation specified in a security shall originate at the moment the issuer delivers the security to the beneficiary.

II. Rights Deriving from Securities

to whom right deriving from security pertains

Article 216

(1) The receivable deriving from a security shall be tied to the paper itself and shall pertain to its lawful bearer.

(2) It shall be presumed that the bearer is the lawful holder of a bearer security.

(3) The lawful holder of a registered security or a security by order is the person to whom the security is payable or a person to whom it has been correctly transferred.

(4) An acquirer of a bearer security that acted in good faith shall become its lawful holder and shall acquire the right to the receivable recorded thereon, even if the security left the hands of the issuer or previous holder against the will of such.

who may request fulfilment

Article 217

The fulfilment of the receivable specified in a security may only be requested upon submission by the lawful holder or a person authorised thereby.

III. Transfer of Security

transfer of right in bearer security

Article 218

The right specified in a bearer security shall be transferred via the delivery thereof.

transfer of right in registered security

Article 219

- (1) The right specified in a registered security shall be transferred via cession.
- (2) A separate act of law may stipulate that the right specified in a registered security may also be transferred by endorsement.
- (3) The right specified in a registered security shall be transferred by recording the business name or name of the new holder on the paper itself, adding the signature of the transferor and entering the transfer in the securities register administered by the issuer.

transfer of right in security by order

Article 220

The right specified in a security by order shall be transferred by endorsement.

types of endorsement

Article 221

- (1) Endorsements may be full, in blank or to the bearer.
- (2) A full endorsement shall contain a declaration of transfer, the business name or name of the person to whom the right specified in the security is being transferred (the endorsee), and the signature of the transferor (the endorser), and may also contain other information (place and date, etc.).
- (3) An endorsement in blank shall only contain the endorser's signature.
- (4) In the transfer of a security by endorsement to the bearer the word "bearer" or any other sign entailing the same shall be recorded instead of the name of the endorsee.
- (5) Endorsement to the bearer shall apply as an endorsement in blank.
- (6) A partial endorsement shall be null and void.

transfer of authorisation and transfer into pledge

Article 222

(1) A security may also be transferred as a transfer of authorisation or a transfer into pledge.

(2) In a transfer of authorisation the words “value in authorisation” or similar shall be recorded, and in a transfer into pledge the words “value into pledge” or similar shall be recorded.

effect of transfer of rights

Article 223

(1) Through the transfer of the rights specified in a security the new holder shall acquire all the rights that were held by the previous holder.

(2) The transfer of rights specified in a registered security either by cession or by endorsement shall have no effect against the issuer until the issuer receives notification of such or until the transfer is entered in any securities register that the issuer administers.

(3) The assignor or endorser shall not be liable for the non-performance of obligations by the issuer, unless stipulated otherwise by law or unless a provision to the contrary is recorded on the security itself.

effect of transfer of authorisation and transfer into pledge

Article 224

The holder of a security that was transferred thereto as a “transfer in authorisation” or a “transfer into pledge” may execute all the rights deriving therefrom, but may only transfer the security to another as a transfer of authorisation.

evidence of legality of transfer

Article 225

(1) The last endorsee shall prove the right specified in the security using an uninterrupted chain of endorsements.

(2) The sense of this rule shall also apply to the last assignee.

prohibition of transfer

Article 226

(1) The transfer of a security by order via an endorsement shall be prohibited using the phrase “not by order” or a similar phrase of the same meaning.

(2) The right specified in a security for which transfer by endorsement has been prohibited may only be transferred by cession.

(3) Transfer by endorsement may be prohibited by the issuer or the endorser.

(4) The transfer of a registered security may be prohibited via a separate act of law or a declaration by the issuer recorded on the security itself.

IV. Changes to Securities

changes made by issuer

Article 227

(1) At the holder's request and expense the issuer of a bearer security or a security by order may change it into a registered security.

(2) Unless the change is expressly prohibited, at the holder's request and expense the issuer of a registered security may change it into a bearer security or a security by order.

changes made by holder during transfer

Article 228

(1) The endorser may transfer a security by order via an endorsement to a bearer, unless stipulated otherwise by a separate act of law.

(2) The assignor or endorser may only transfer a registered security to a specific person.

(3) A bearer security may also be transferred by an endorsement to a specific person.

merger and split of securities

Article 229

(1) At the holder's request and expense securities issued in a series may be merged into a single security or several securities.

(2) At the holder's request and expense a security may be split into several securities for a smaller amount, which may not be lower than the lowest denomination issued in the series.

V. Performance of Obligation in Security

termination of obligation

Article 230

(1) The obligation in a security shall terminate when performed by the issuer for the lawful holder.

(2) The receivable specified in a security shall also terminate if the security pertains to the issuer, unless stipulated otherwise by a separate act of law.

(3) An issuer of a bearer security that acted in good faith when performing it for the bearer shall also be released from the obligation if the latter was not the lawful holder.

prohibition of performance

Article 231

(1) If the issuer of a bearer security knows or should have known that the bearer is not the lawful holder and has not been authorised thereby the issuer must refuse performance or be liable for the damage.

(2) The issuer of a security may not validly perform the obligation if the relevant authority so prohibits or if the issuer knows or should have known that a procedure to have the security amortised or invalidated was introduced.

payment of interest and other yield after payment of principal

Article 232

A debtor that paid the principal to the holder of a security must pay the coupon interest and other yield on the same security submitted for payment after payment of the principal, unless such claims have become statute-barred.

objection to claim for performance of obligation

Article 233

(1) Against a claim by the holder of a bearer security or security by order the issuer may only exercise those objections that concern the issue of the security itself, such as forgery, then objections deriving from the content of the security itself such as the deadline and conditions, and finally objections held against the holder of the security, such as offsetting, deficiencies in the legally prescribed procedure for acquiring the security and a deficiency of authorisation.

(2) Against a claim by the holder to whom the security was delivered the issuer may exercise objections to errors in the legal transaction based on which the transfer was conducted, but may not exercise such objections against a claim by a subsequent holder.

(3) If the holder of a security knew or should have known when receiving the security from the predecessor that the latter was handing over the security in order to avoid an objection against the latter by the issuer, the issuer may also exercise this objection against the holder of the security.

(4) Other types of objection for individual types of security may be set out by a separate act of law.

VI. Identification Papers and Signs

identification papers

Article 234

The sense of the relevant provisions on securities shall apply to railway tickets, theatre tickets and other types of entrance ticket, vouchers and similar documents containing a specific obligation for the issuer thereof on which the creditor is not indicated and for which it does not

follow either therefrom or from the circumstances in which they were issued that they cannot be ceded to another.

identification signs

Article 235

(1) Cloakroom tags and similar signs consisting of a piece of paper, metal or other material on which a number is customarily inscribed or the number of articles handed over is customarily indicated and that do not contain anything specific on the issuer's obligation are intended solely for identifying the creditor in the relationship for whose occurrence they were issued.

(2) The issuer of an identification sign shall be released from the obligation if it is performed for the bearer in good faith; however it shall not be presumed that the bearer is the true creditor and is entitled to demand performance, and this must be proved in a dispute.

(3) The creditor may demand performance of the obligation even though the identification sign has been lost.

(4) Otherwise it shall be necessary in each case to consider the joint intention of the issuer and the recipient of the sign, and what is customary.

VII. Other Provisions

replacement of damaged security

Article 236

The holder of a damaged security that is not suitable for a transaction but whose authenticity and content can be precisely determined shall be entitled to request a new security in the same amount, and must return the damaged security and reimburse the costs.

amortisation of security

Article 237

(1) A lost security may be declared invalid (amortised).

(2) The issuer of a security must deliver all documents to the current holder of the security at the request thereof and upon reimbursement of the costs, and provide all the information the holder requires in the amortisation procedure.

statute-barring of receivables in security

Article 238

The rules on statute-barring shall apply to receivables in securities, unless stipulated otherwise by a separate act of law.

Title III: Effects of Obligations

Section 1: Creditor's Rights and Debtor's Obligations

Subsection 1: Right to Reimbursement of Damage

I. General Rules

performance of obligations and consequences of non-performance

Article 239

- (1) The creditor shall be entitled to demand the performance of the obligation by the debtor, and the debtor shall be obliged to perform it in good faith in all aspects as declared.
- (2) If the debtors fails to perform the obligation or is late in performing it the creditor shall also be entitled to demand the reimbursement of damage incurred thereby for this reason.
- (3) A debtor that was given an appropriate additional deadline for performance by the creditor shall also be liable for damage because of a delay in performance.
- (4) The debtor shall also be liable for the partial or full incapacity to perform, even if not culpable therefor, if it occurred when there was a delay for which the debtor was responsible.
- (5) Nevertheless the debtor shall be released from liability for damage if it is shown that the thing that was the subject of the obligation would have been destroyed accidentally even if the debtor had performed the obligation on time.

release of debtor's liability

Article 240

The debtor shall be released from liability for damage if it is shown that the debtor was unable to perform the obligation or was late in performing the obligation owing to circumstances arising after the conclusion of the contract that could not be prevented, eliminated or avoided.

contractual expansion of liability

Article 241

- (1) A debtor's liability may be expanded by contract to cover a case in which the debtor would otherwise not be liable.
- (2) Nevertheless the fulfilment of such a contractual provision cannot be demanded if this would be in contravention of the principle of conscientiousness and fairness.

limitation and exclusion of liability

Article 242

- (1) It shall not be possible to exclude the debtor's liability for intent or gross negligence in advance by contract.

(2) However, at the request of an interested party the court may also annul a contractual provision on the exclusion of liability for slight negligence if such an agreement derives from the debtor's monopoly position or in any way from the unequal nature of the relationship between the contracting parties.

(3) A contractual provision that stipulates the maximum amount of compensation shall be valid if the amount stipulated is not in clear disproportion to the damage or unless stipulated otherwise by law for an individual case.

(4) In the case of limitation of the level of compensation the creditor shall have the right to full compensation if the debtor caused the incapacity to perform intentionally or out of gross negligence.

amount of compensation

Article 243

(1) The creditor shall have the right to the reimbursement of ordinary damage and lost profit that the debtor should have expected upon breach of contract as potential consequences of the breach of the contract given the facts that were known or should have been known.

(2) In the case of fraud, intentional non-performance or non-performance owing to gross negligence the creditor shall have the right to demand that the debtor reimburse all the damage that occurred because of the breach of contract, irrespective of whether the debtor knew of the particular circumstances for which reason it occurred.

(3) If during a breach of contract any benefit accrued to the creditor in addition to the damage it shall be necessary to take the benefit into suitable consideration when levying the compensation.

(4) A party the makes a reference to a breach of contract must take all reasonable measures to reduce the damage inflicted by the breach; otherwise the other party may demand reduced compensation.

(5) The sense of the provisions of this article shall also apply to the non-performance of obligations that did not arise from a contract, unless stipulated otherwise by the present code for individual cases thereof.

creditor's responsibility

Article 244

If the creditor or a person for whom the creditor is responsible is also responsible for the damage that occurred or the size thereof or responsible for rendering the debtor's position more difficult the compensation shall be proportionately reduced.

liability owing to omission of notification

Article 245

A contracting party that is obliged to notify the other party regarding facts that influence their mutual relationship shall be liable for damage incurred by the other party because the latter was not notified on time.

application of provisions on reimbursement of damage

Article 246

Unless stipulated otherwise in the provisions of this subsection, the sense of the provisions of the present code on the reimbursement of non-contractual damage shall apply to the reimbursement of damage occurring through the breach of a contractual obligation.

II. Penalty

general rules

Article 247

(1) The creditor and debtor may agree that the debtor will pay the creditor a specific monetary sum or will provide any other type of material benefit thereto if the debtor fails to perform the debtor's obligation or is late in performing the obligation (penalty).

(2) Unless it follows otherwise from the contract the penalty shall be deemed to have been agreed for the case when the debtor is late in performing.

(3) A penalty may not be agreed for a pecuniary obligation.

manner of stipulation

Article 248

(1) The contracting parties may arbitrarily stipulate the size of the penalty, either in total or as a percentage, for each day of delay or otherwise.

(2) The penalty must be agreed in the form prescribed for the contract in which the obligation to which it relates originated.

accessory nature

Article 249

An agreement on a penalty shall have the legal fate of the obligation to which it relates.

debtor's obligation

Article 250

The creditor may not demand a penalty if the non-performance or delay occurred for a reason for which the debtor is not responsible.

creditor's rights

Article 251

(1) If a penalty is agreed for the case of non-performance of an obligation the creditor may demand performance of the obligation or the penalty.

(2) The right to demand the performance of the obligation shall be lost if the payment of the penalty is demanded.

(3) If a penalty is agreed for the case of non-performance the debtor shall not have the right to pay the penalty and withdraw from the contract, unless this was the contracting parties' intention when they agreed thereon.

(4) If a penalty is agreed for the case of a delay in performance by the debtor the creditor shall have the right to demand both the performance of the obligation and the payment of the penalty.

(5) The creditor may not demand the penalty for a delay if the creditor accepted the performance of the obligation but failed to immediately notify the debtor that the right to the penalty was being reserved.

reduction of penalty

Article 252

At the debtor's request the court shall reduce a penalty if it finds it to be highly disproportionate to the value and importance of the subject of the obligation.

penalty and compensation

Article 253

(1) The creditor shall have the right to demand the penalty even if it exceeds the damage incurred thereby and even if no damage was incurred thereby.

(2) If the damage incurred by the creditor is greater than the penalty the creditor shall have the right to demand the difference up to the value of full compensation.

compensation and penalty set by law

Article 254

If an amount of compensation for non-performance of an obligation or a delay in performance is set by law under the name penalties, penalty, compensation or any other name and the contracting parties in addition agreed on a penalty in the contract the creditor shall not have the right to demand both the penalty and the compensation set by law, unless such is permitted by law.

Subsection 2: Challenge of Debtor's Legal Actions

general rule

Article 255

(1) Any creditor whose claim has fallen due for payment may, irrespective of when it arose, challenge a legal act by the debtor that was done to the detriment of creditors.

(2) A legal act shall be deemed to have been done to the detriment of creditors if because of the act the debtor does not have sufficient assets to fulfil the creditor's claim.

(3) The term "legal act" shall also cover an omission for reason of which the debtor lost any material right or through which any material obligation arose therefor.

condition for challenge

Article 256

(1) Lucrative disposal may be challenged if during disposal the debtor knew or should have known that creditors were thereby being damaged and if the third person with whom or for whose benefit the legal act was done knew or should have known of such.

(2) If the third person is the debtor's spouse or is related in a direct line of descent or indirectly to the level of three times removed or directly or indirectly by marriage to the level of once removed it shall be presumed that such person knew that through such disposal the debtor was acting to the detriment of creditors.

(3) For gratuitous disposal and equivalent legal acts the debtor shall be deemed to have known that such disposal was to the detriment of creditors, and the matter of whether the third person knew or should have known of such shall not be a requirement for a challenge thereto.

(4) The waiver of an inheritance shall be deemed gratuitous disposal.

deadline for filing of action

Article 257

(1) A challenging action may be filed within a year in the case of disposal specified in the first paragraph of the previous article, and within three years in other cases.

(2) The deadline specified in the previous paragraph shall be deemed to be from the day the challenged legal act was done or from the day it was necessary to do the omitted act.

exclusion from challenge

Article 258

It shall not be possible to challenge customary special-occasion gifts, prize gifts or gifts made out of gratitude for reason of detriment to creditors if they are in proportion to the debtor's financial capacities.

how to challenge

Article 259

(1) A challenge may be made via a suit (action) or an objection.

(2) A challenging action shall be filed against the third person with whom or for whose benefit the legal act was done or against the universal legal successors thereto.

(3) If the third person alienates the benefit acquired through the challenged disposal via a lucrative transaction an action may only be filed against the acquirer if the latter knew that the acquisition by the predecessors could be challenged; if the benefit is alienated via a gratuitous transaction an action may be filed against the acquirer even if the latter did not know of such.

(4) The defendant may avoid the challenge if the defendant performs the debtor's obligation.

effect of challenge

Article 260

If the court grants the claim the legal act shall only lose effect against the plaintiff and only insofar as is necessary to fulfil the plaintiff's claim.

Subsection 3: Right of Retention

execution of right of retention

Article 261

(1) The creditor of a claim that has fallen due shall have the right to retain any thing of the debtor that is in the creditor's hands until the claim is paid thereto.

(2) If the debtor becomes insolvent the creditor shall have the right of retention, even if the claim has not yet fallen due.

exceptions

Article 262

(1) The creditor shall not have the right of retention if the debtor demands the return of a thing that against the debtor's will is no longer in the debtor's possession or if the debtor demands the return of a thing that was delivered to the creditor for safekeeping or for loan use.

(2) The creditor may not retain an authorisation obtained from the debtor, other documents, cards, letters or similar things belonging to the debtor, or other things that cannot be placed on sale.

mandatory return of thing before performance of obligation

Article 263

The creditor shall be obliged to return a thing to the debtor if the latter offers adequate security for the claim.

effect of right of retention

Article 264

A creditor that on the basis of the right of retention holds a thing of the debtor in the creditor's hands may be repaid from the value thereof in the same manner as a pledgee, but must notify the debtor on time regarding such intention prior to deciding such.

Section 2: Creditor's Rights in Special Cases

when obligation is provision of thing of specific type

Article 265

When the obligation is the provision of a thing of a specific type and the debtor becomes delayed the creditor may, having informed the debtor of such in advance, buy a thing of the same type according to the creditor's choice and demand that the debtor reimburse the purchase money and the damage, or the value of the things owed and the reimbursement of damage.

when obligation is service

Article 266

When the obligation is a service and the debtor fails to perform the obligation on time the creditor may, having informed the debtor of such in advance, do what the debtor should have done at the debtor's expense and may demand compensation therefrom for the delay and also the reimbursement of any damage incurred because of this method of performance.

when obligation is omission

Article 267

(1) When the obligation is an omission the creditor shall have the right to the reimbursement of damage if the debtor acts in contravention of the obligation.

(2) If anything was constructed in contravention of the obligation the creditor may demand that this be removed at the debtor's expense and that the debtor reimburse the damage incurred by the creditor in connection with the construction and removal.

(3) If the court finds that such is clearly of greater benefit it may rule, having taken the general interest and the creditor's justified interest into consideration, that what was constructed should not be demolished but that the creditor should have the damage reimbursed in cash.

right to demand compensation instead of court award

Article 268

(1) If the debtor fails to perform the obligation by the deadline stipulated therefor by a final ruling the creditor may demand that the debtor perform the obligation by an appropriate additional deadline and declare that after such deadline the creditor will no longer accept performance but will demand compensation for non-performance.

(2) After the additional deadline passes the creditor may only demand compensation for non-performance.

judicial penalties

Article 269

(1) If the debtor fails to perform any non-pecuniary obligation on time as determined by a final ruling the court may at the creditor's request set an appropriate additional deadline therefor and in order to exert influence thereon, irrespective of any damage, pronounce that should the debtor fail to perform the obligation by such deadline the debtor will have to pay the creditor a specific sum of money for each day of delay from the day the deadline past or for any other unit of time.

(2) If the debtor subsequently performs the obligation the court may reduce the sum so stipulated, taking the purpose for which the payment was ordered into consideration in so doing.

Title IV: Termination of Obligation

Section 1: General Rule

general rule

Article 270

(1) An obligation shall terminate when performed or in other cases stipulated by law.

(2) Surety, pledges and other accessory rights shall expire upon the termination of the principal obligation.

Section 2: Performance

Subsection 1: General Rules on Performance

I. Who May Perform and Costs of Performance

performance by debtor or third person

Article 271

(1) An obligation may be performed by the debtor and also by a third person.

(2) The creditor shall be obliged to accept performance from any person that has any legal interest in the obligation being performed, even if the debtor opposes such performance.

(3) The creditor shall be obliged to accept performance from a third person if the debtor consents thereto, unless according to the contract or the nature of the obligation itself the debtor must perform the obligation in person.

(4) The creditor may accept performance from a third person without the debtor's conscientiousness, even if the creditor has been notified that the debtor does not wish any other person to perform the obligation.

(5) However, the creditor may not accept performance from a third person if the debtor has proposed thereto that the debtor will perform the obligation.

performance by person with incapacity to contract

Article 272

(1) A debtor with incapacity to contract may validly perform an obligation if the existence of the obligation is not in doubt and if the deadline for the performance thereof has fallen due.

(2) Nevertheless it shall be possible to challenge performance if such a person repays a statute-barred debt or a debt deriving from gaming or betting.

costs of performance

Article 273

The costs of performance shall be borne by the debtor, unless caused by the creditor.

II. Performance via Subrogation

definition

Article 274

(1) When performing the obligation of another any performer may prior to or during performance agree with the creditor that the fulfilled claim be transferred thereto with all or some of the accessory rights.

(2) The creditor's rights may also be transferred to the performer by a contract between the debtor and the performer concluded prior to performance.

(3) The subrogation of the performer in respect of the creditor's rights in these cases shall occur upon performance.

subrogation by law

Article 275

If an obligation is performed by a person that has any legal interest therein the creditor's claim with all the accessory rights shall be transferred thereto upon performance by law alone.

subrogation during part performance

Article 276

(1) During part performance of the creditor's claim the accessory rights by which the performance of the claim is secured shall be transferred to the performer only insofar as they are not required for the performance of the remainder.

(2) However, the creditor and the performer may agree to exploit guarantees in proportion to their claims, and may also agree that the performer will have priority in repayment.

evidence and means of security

Article 277

(1) The creditor shall be obliged to deliver to the performer means by which the claim can be evidenced or secured.

(2) Exceptionally the creditor may deliver to the performer a thing received as a pledge from the debtor or from any other person, but only if the pledger consents thereto; otherwise the thing shall remain in the creditor's possession to be kept safe for the performer.

how much can be demanded from debtor

Article 278

The performer to whom the claim was transferred may not demand more from the debtor than was paid to the creditor.

exclusion of creditor's liability for existence and collectibility of claim

Article 279

(1) A creditor that accepted performance from a third person shall not be liable for the existence or collectibility of the claim upon performance.

(2) The application of the rules on unjust acquisition shall not be excluded thereby.

III. For Whom Performance is Made

beneficiary

Article 280

(1) An obligation must be performed for the creditor or a person designated by law, a court ruling or a contract between the creditor and debtor or designated by the creditor alone.

(2) Performance shall also be valid when made for a third person if the creditor subsequently approves thereof or makes use thereof.

performance for creditor with incapacity to contract

Article 281

(1) A debtor shall only be released by performance for a creditor with incapacity to contract if the performance was beneficial to the creditor or if the subject of the performance is still in the possession thereof.

(2) A creditor with incapacity to contract that acquires the capacity to contract may then approve performance received when the creditor had the incapacity to contract.

IV. Subject of Performance

content of obligation

Article 282

(1) Performance is the execution of that which is the content of the obligation; therefore the debtor may not perform it with anything else, and the creditor may not demand anything else.

(2) Performance shall not be deemed valid if that which the debtor delivered as the owed thing and the creditor accepted as such is not in fact such; the creditor shall have the right to return that which was delivered and to demand the owed thing.

substitutional performance

Article 283

(1) The obligation shall terminate if in agreement with the debtor the creditor accepts anything else in place of that which was owed thereto.

(2) In this case the debtor shall be liable as a seller for material and legal errors in the thing provided in place of the thing owed.

(3) Nevertheless the creditor may demand from the debtor, but no longer from the surety, the fulfilment of the original claim and compensation in place of a claim from the debtor's liability for material and legal errors in the thing.

delivery for sale

Article 284

If the debtor delivers any thing or any other right for the creditor to sell to repay the claim from the sum obtained and to deliver the remainder to the debtor, the obligation shall only terminate when the creditor has been repaid from the sum obtained.

part performance

Article 285

(1) The creditor shall not be obliged to accept part performance, unless the nature of the obligation imposes otherwise.

(2) However, the creditor shall be obliged to accept part performance of a pecuniary obligation, unless the creditor has a specific interest in refusing it.

obligation to provide thing of specific type

Article 286

- (1) If things are defined by type alone the debtor must provide a thing of medium quality.
- (2) However the debtor must provide things of appropriate quality if the debtor is acquainted with the purpose thereof.

V. Accounting of Performance

order of accounting

Article 287

- (1) When there are several obligations of the same type between the same persons and that which the debtor performs is not sufficient to be able to settle all the obligations, if the creditor and debtor have not agreed on such the obligations shall be accounted in the order stipulated by the debtor, by the time of performance at the latest.
- (2) If there is no declaration on accounting by the debtor the obligations shall be settled in the order that they fell due for performance.
- (3) If several obligations fall due at the same time those that have least security shall be settled first; if they are equally secured those that place the greatest burden on the debtor shall be settled first.
- (4) If the obligations are equivalent in all the above they shall be settled in the order in which they arose; if they arose at the same time that which was provided on account of performance shall be divided among all the obligations in proportion to their size.

accounting of interest and costs

Article 288

If in addition to the principal the debtor owes interest and costs these shall be settled such that costs are repaid first, then interest and then the principal.

VI. Time of Performance

if deadline is not stipulated

Article 289

If no deadline is stipulated and the purpose of the transaction, the nature of the obligation and other circumstances do not demand a specific deadline for performance the creditor may demand immediate performance of the obligation, and the debtor may demand that the creditor immediately accept performance.

early performance

Article 290

(1) If the deadline was agreed exclusively in the debtor's interest the debtor shall be entitled to perform the obligation before the agreed deadline, but must inform the creditor of this intention and ensure that it is not at an inopportune time.

(2) In other cases when the debtor offers early performance the creditor may reject it, or may also accept it and reserve the right to compensation if the creditor notifies the debtor of such without delay.

creditor's right to demand early performance

Article 291

The creditor shall have the right to demand early performance if the debtor fails to provide security as promised or at the creditor's request fails to supplement security diminished through no fault of the creditor, or if the deadline was agreed exclusively in the creditor's interest.

if stipulation of deadline is left to one party

Article 292

If stipulation of the time of performance is left to the volition of the creditor or the debtor and the entitled person fails to stipulate a deadline even after a reminder the other party may request that the court set an appropriate deadline for performance.

pecuniary obligations

Article 293

(1) If paid through the mediation of a bank or other organisation at which the creditor has an account and unless stipulated otherwise by the contracting parties a debt shall be deemed to have been settled when a money transfer in favour of the creditor or an order from the debtor's bank or organisation to approve the amount stated therein for the creditor's account reaches the bank or organisation at which the creditor has an account.

(2) If payment by post is agreed upon by contract the parties shall be presumed to have agreed that by paying the stipulated sum in at the post office the debtor will have settled the liability to the creditor; if such a manner of payment is not agreed the debt shall be settled when the creditor receives the money transfer.

VII. Place of Performance

general rules

Article 294

(1) The debtor shall be obliged to perform the obligation and the creditor shall be obliged to accept it at a place stipulated by the legal transaction or by law.

(2) If the place of performance is not stipulated and cannot be stipulated according to the purpose of the transaction, the nature of the obligation or any other circumstances it shall be necessary to perform the obligation in the place where the debtor had a head office or residence when the obligation originated.

(3) The customary residence, or the place where the person resides if there is no customary residence, shall be deemed to be the place of residence

(4) If the debtor is a legal person or sole trader that has units in different areas the place of performance shall be deemed to be the seat of the unit that must do what is required for the performance of the obligation if when the contract was concluded the creditor knew or should have known of this circumstance.

place of performance of pecuniary obligations

Article 295

(1) Pecuniary obligations shall be performed in the place where the creditor has a head office or residence.

(2) If the payment is made by order the pecuniary obligations shall be performed at the head office of the organisation where the creditor's cash funds are.

(3) If the creditor changes the place where the creditor had a head office or residence when the obligation originated and the costs of performance increase for this reason the increase in costs shall be at the creditor's expense.

VIII. Receipt

presumptions in connection with receipt

Article 296

(1) Any person that fully or partly performs an obligation shall have the right to request that the creditor issue a receipt therefor at the expense of the latter.

(2) A debtor that pays a pecuniary obligation via a bank or post office may only request a receipt from the creditor if there are justifiable grounds for so doing.

(3) If a receipt is issued for the full payment of a principal, it shall be presumed that the interest and any court costs and other costs have also been paid.

(4) If a debtor with periodic charges such as rent and other claims charged periodically such as claims originating from the use of electricity, water or telephone has a receipt for payment of claims due later it shall be presumed that those falling due for payment before have been paid.

refusal of receipt

Article 297

If the credit refuses to provide a receipt the debtor may deposit the subject of the obligation with the court.

IX Return of IOU

return of IOU

Article 298

- (1) When a debtor performs the obligation in full the debtor may request that in addition to a receipt the creditor also return the IOU thereto.
- (2) If the creditor is unable to return the IOU the debtor shall have the right to request that the former issue a publicly certified document stating that the obligation has terminated.
- (3) If the IOU has been returned to the debtor it shall be presumed that the obligation has been performed in full.
- (4) A debtor that has only performed the obligation in part shall have the right to request that such performance be recorded on the IOU.

Subsection 2: Delay

I. Debtor's Delay

when debtor is in delay

Article 299

- (1) The debtor shall be deemed to be in delay if the debtor fails to perform the obligation by the deadline stipulated for performance.
- (2) If no deadline for performance is stipulated the debtor shall be deemed to be in delay when, verbally or in writing via an extra-judicial reminder or by initiating any procedure whose purpose is to achieve the performance of the obligation, the creditor demands that the debtor perform the obligation.

II. Creditor's Delay

when creditor is in delay

Article 300

- (1) The creditor shall be deemed to be in delay if without justifiable grounds the creditor refuses to accept performance or prevents it by the action thereof.
- (2) The creditor shall also be deemed to be in delay if when the creditor is ready to accept the performance of the debtor's simultaneous obligation the creditor fails to offer to perform the creditor's own due obligation.
- (3) The creditor shall not be deemed to be in delay if it is shown that at the time performance was offered or at the time stipulated for performance the debtor was not able to perform the debtor's obligations.

effect of creditor's delay

Article 301

(1) If the creditor is in delay the debtor's delay shall terminate and the risk of accidental destruction of or damage to things shall be transferred to the former.

(2) Interest shall cease to be charged from the day the creditor is first in delay.

(3) A creditor in delay shall be obliged to reimburse the debtor for damage incurred because of the delay for which the former is culpable, and any costs in connection with the further safekeeping of things.

Subsection 3: Deposit of Things

deposit of things with court

Article 302

(1) If the creditor is in delay or is unknown, or it is not known reliably who or where the creditor is or if the creditor has incapacity to contract and does not have a representative the debtor may deposit the owed thing with the court for the creditor.

(2) Others that have a legal interest in the obligation being performed shall also have this right.

(3) The debtor must notify the creditor regarding the deposit, if the debtor knows who the creditor is and knows of the creditor's place of residence.

with which court thing is deposited

Article 303

(1) A thing shall be deposited with the court of jurisdiction in the place of performance, unless economy or the nature of the transaction demands the deposit be in the place where the thing is.

(2) Any other court of jurisdiction must accept the thing for safekeeping, and the debtor must provide the creditor with compensation if any damage is incurred thereby through the deposit of the thing at the other court.

delivery to other person for safekeeping

Article 304

(1) If the subject of the obligation is any kind of thing that cannot be kept at the court the debtor may request that the court designate a person to whom the thing should be delivered at the expense of and for the account of the creditor.

(2) For an obligation from a commercial contract the delivery of such a thing to a public warehouse for safekeeping for the creditor's account shall have the effect of deposit with the court.

(3) The debtor must notify the creditor regarding delivery into safekeeping.

retrieval of deposited things

Article 305

(1) The debtor may retrieve the deposited thing.

(2) The debtor must inform the creditor that the thing has been retrieved.

(3) The debtor's right to retrieve the deposited thing shall expire if the debtor declares to the court that this right is being waived, if the creditor declares that the deposited thing is accepted or if a final legal ruling determines that the deposit fulfils the conditions for correct performance.

effect of deposit

Article 306

(1) By depositing the owed thing the debtor shall be released from the obligation when the thing is deposited.

(2) If the debtor was in delay the delay shall terminate.

(3) After the thing is deposited the risk of the accidental destruction thereof or damage thereto shall thenceforth be transferred to the creditor.

(4) Interest shall cease to be charged from the day of the deposit.

(5) If the debtor retrieves the deposited thing the deposit shall be deemed never to have been made, and the debtor's fellow debtors and sureties shall remain bound.

costs of deposit

Article 307

The costs of a valid, uncanceled deposit shall be paid by the creditor in the part that exceeds the costs of performance, which must be paid by the debtor.

sale instead of deposit of thing

Article 308

(1) If a thing is not suitable for safekeeping or if the costs required for the safekeeping or maintenance thereof are in disproportion to its value the debtor may sell it at a public auction in the place stipulated for performance or in any other place if such is in the creditor's interest, and after allowing for expenses shall deposit the sum thus obtained with the court in such place.

(2) If the thing has a daily price or if it is of little value in comparison to the cost of a public auction the debtor may sell it out of hand.

(3) If the thing is such that it could be rapidly destroyed or spoiled the debtor must sell it without delay in the most suitable manner.

(4) In each case the debtor must whenever possible notify the creditor regarding the intended sale and, after the sale, regarding the price obtained and the deposit thereof with the court.

delivery of thing to creditor

Article 309

The court shall deliver the deposited thing to the creditor under the conditions set by the debtor.

sale to cover costs of safekeeping

Article 310

(1) If the costs of safekeeping are not paid by an appropriate deadline the court shall at the request of the depositary order the sale of the thing and shall stipulate the manner of sale.

(2) The costs of the sale and the costs of safekeeping shall be deducted from the sum obtained and the remainder shall be deposited with the court for the creditor.

Section 3: Other Ways for Obligation to Terminate

Subsection 1: Offset (Compensation)

general conditions

Article 311

The debtor may offset claims against the creditor against that which is claimed therefrom by the creditor if the two claims are declared in cash or in other replaceable things of the same type and the same quality and if both have fallen due.

declaration of offset

Article 312

(1) An offset shall originate immediately when the conditions therefor arise, but one party must declare such to the other.

(2) Following a declaration of offset the offset shall be deemed to have originated when the conditions therefor arose.

absence of reciprocity

Article 313

(1) The debtor may not offset that which is owed to the creditor against that which the creditor owes to the debtor's surety.

(2) However, the surety may offset the debtor's obligations to the creditor against the debtor's claim on the creditor.

(3) Any person that placed a thing under pledge for the obligation of another may request that the creditor return the pledged thing thereto if the conditions for the termination of the obligation through an offset are fulfilled, even if the creditor omitted the offset through the creditor's own fault.

statute-barred claim

Article 314

(1) A debt may be offset against a statute-barred claim, but only if the claim was not statute-barred when the conditions for the offset arose.

(2) If the conditions for the offset arose when one of the claims had already become statute-barred the offset shall not originate if the debtor of the statute-barred claim exercises an objection to the offset.

offset against assigned claim

Article 315

(1) The debtor of an assigned claim may exercise with the recipient an offset of the debtor's claims that could have been offset with the assignor prior to notification of assignment.

(2) The debtor may also offset with the recipient those of the debtor's claims against the assignor that were acquired prior to the notification of assignment but whose deadline for fulfilment had not fallen due when the debtor was notified regarding the assignment, but only if they fall due before the deadline for the fulfilment of the assigned claim or simultaneously therewith.

(3) A debtor that without reservation declares to the recipient consent to the assignment may no longer exercise an offset therewith of any of the debtor's claims against the assignor .

(4) If the assigned claim is recorded in public registers the debtor may only exercise an offset of the debtor's claim with the recipient if such claim is recorded as an assigned claim or if the recipient was informed of its existence during assignment.

cases when offset is excluded

Article 316

The following may not terminate via an offset:

1. claims that cannot be attached
2. claims for things or the value of things that were placed in safekeeping or made available for loan for the debtor, or that the debtor rightlessly took or retained
3. claims arising through the intentional infliction of damage
4. compensation claims for damage done with damage to health or cause of death
5. claims deriving from a lawful obligation for maintenance

attached claim of other party

Article 317

The debtor may not exercise an offset of a claim if the claim only fell due after a third person encroached on the creditor's claim against the debtor through an attachment.

accounting of offset

Article 318

If there are several obligations between two persons that can terminate through an offset the rules applying to the accounting of performance shall apply to the offset.

Subsection 2: Release from Debt

agreement

Article 319

(1) An obligation shall terminate if the creditor declares to the debtor that the creditor will not demand performance thereof and the debtor consents to such.

(2) It shall not be necessary for the agreement to be concluded in the form in which the transaction from which the obligation originated was concluded for it to be valid.

waiver of security

Article 320

The return of a pledge and the waiver of other assets with which the performance of an obligation was secured shall not mean that the creditor has waived the right to demand performance thereof.

surety's release from debt

Article 321

(1) The release from debt of the surety shall not release the principal debtor; upon the release from debt of the principal debtor the surety shall be released.

(2) If there are several sureties and the creditor releases one of them from the obligation the others shall remain bound; however their obligation shall be reduced by the part falling to the released surety.

general release from debt

Article 322

Through a general release from debt all of the creditor's claims against the debtor shall expire, with the exception of those of which the creditor did not know when the making the release from debt.

Subsection 3: Novation

conditions

Article 323

(1) An obligation shall terminate if the creditor and the debtor agree to replace the existing obligation with a new obligation, and if the new obligation has a different subject or a different legal basis.

(2) Agreements between the creditor and the debtor by which a provision on the deadline, the place or the manner of performance are changed, much later agreements on interest, penalty, security for performance or on any other accessory provision, and agreements on the issue of a new debt document shall not be deemed novation.

(3) The issue of a bill of exchange or a cheque for reason of any previous obligation shall not be deemed novation, unless such is agreed.

intention to enact novation

Article 324

Novation shall not be presumed; therefore if the parties fail to express the intent that the current obligation should expire when the new obligation is created, the previous obligation shall not terminate but shall remain in addition to the new obligation.

effects of novation

Article 325

(1) Through a contract of novation the previous obligation shall terminate and a new obligation shall originate.

(2) Both pledge and surety shall terminate with the previous obligation, unless otherwise agreed with the surety or pledger.

(3) This shall also apply to other accessory rights in connection with the previous obligation.

if there was no previous obligation

Article 326

(1) The novation shall be without effect if the previous obligation was null and void or had already expired.

(2) If the previous obligation was merely challengeable the novation shall be valid, if the debtor knew of the grounds for challenge.

effect of invalidity

Article 327

If a contract of novation is invalid the novation shall be deemed never to have existed and the previous obligation shall be deemed never to have terminated.

Subsection 4: Confusion

confusion

Article 328

- (1) An obligation shall terminate through confusion if therein the same person becomes creditor and debtor.
- (2) If the surety becomes the creditor the principal debtor's obligation shall not terminate.
- (3) An obligation recorded in a public register shall only terminate through confusion when the deletion thereof is recorded.

Subsection 5: Impossibility of Performance

termination of obligation that cannot be performed

Article 329

- (1) An obligation shall terminate if the performance thereof becomes impossible because of circumstances for which the debtor is not responsible.
- (2) The debtor must prove circumstances that exclude the responsibility thereof.

if subject of obligation is things of specific type

Article 330

- (1) If the subject of an obligation is things of a specific type the obligation shall not terminate when all such things held by the debtor are destroyed because of circumstances for which the debtor is not responsible.
- (2) Nevertheless an obligation shall terminate if the subject of an obligation is things of a specific type that it is necessary to take from a mass of such things and the entire mass is destroyed.

cession of right against third person responsible for impossibility of performance

Article 331

The debtor of a specific thing that is released from an obligation because of the impossibility of performance must cede to the creditor the right that would be held against a third person due to whom the impossibility arose.

Subsection 6: Lapse of Time, Notice of Termination

deadline in long-term debtor relationship

Article 332

A long-term debtor relationship with a specific period of duration shall terminate when the deadline passes, unless the contract or the law stipulates that after such deadline the debtor relationship shall be extended for an indefinite period if appropriate notice of termination is not given.

notice of termination of long-term debtor relationship

Article 333

(1) If the duration of a long-term debtor relationship is not stipulated each party may terminate it by giving notice.

(2) The notice of termination must be delivered to the other party.

(3) The notice of termination may be given at any time, but not at an inappropriate time.

(4) The debtor relationship under notice of termination shall terminate when the notice period stipulated by the contract expires, or if no such period is stipulated by the contract after the expiry of the customary or appropriate notice period stipulated by law.

(5) The parties may agree that their debtor relationship will terminate upon the actual delivery of the notice of termination, unless stipulated otherwise by law for the case in question.

(6) The creditor shall have the right to demand from the debtor that which was due before an obligation terminated through the lapse of time or through notice of termination.

Subsection 7: Death

Article 334

An obligation shall terminate through the death of the creditor or the debtor only if it originated with regard to the personal attributes of either of the contracting parties or with regard to the personal capabilities of the debtor.

Section 4: Statute-Barring

Subsection 1: General Provisions

general rule

Article 335

(1) The right to demand performance of an obligation shall expire through statute-barring.

(2) Statute-barring occurs when the period stipulated in the statute of limitations during which the creditor could demand performance of the obligation expires.

(3) The court may not take notice of statute-barring if the debtor makes no reference thereto.

when statute-barring period begins

Article 336

(1) The period for the statute-barring shall begin on the first day after the day the creditor held the right to demand the performance of the obligation, unless stipulated otherwise by law for individual cases.

(2) If the obligation lies in something not being done, something being omitted or something being endured, the period for the statute-barring shall begin on the first day after the day the debtor acted in opposition to such obligation.

occurrence of statute-barring

Article 337

Statute-barring shall occur when the last day of the period stipulated in the statute of limitations passes.

counting of predecessors' time

Article 338

The time elapsing on behalf of the debtor's predecessors shall count towards statute-barring.

prohibition on change in statute-barring period

Article 339

(1) Through a legal transaction it shall not be possible to stipulate a longer or shorter statute-barring period than that stipulated in the statute of limitations.

(2) Through a legal transaction it shall not be possible to stipulate that some time will be discounted from the statute-barring period.

waiver of statute-barring

Article 340

The debtor may not waive statute-barring before the period therefor expires.

written acknowledgement and securing of statute-barred obligation

Article 341

(1) A written acknowledgement of a statute-barred obligation shall be deemed to be a waiver of statute-barring.

(2) A pledge or any other security provided for a statute-barred claim shall have the same effect.

effect of performance of statute-barred obligation

Article 342

A debtor that performs a statute-barred obligation shall not have the right to demand the return of that provided, even if the debtor did not know that the obligation was statute-barred.

creditor whose claim is secured

Article 343

(1) When the statute-barring period expires a creditor whose claim is secured by a pledge or a mortgage may only be repaid from the encumbered thing if it is in the creditor's hands or if the creditor's right is recorded in a public register.

(2) Statute-barred claims for interest and other periodic charges may not be repaid from the encumbered thing.

accessory claims

Article 344

When a principal claim becomes statute-barred or would have become statute-barred had it not terminated through fulfilment the accessory claims such as claims for interest, fruits, costs and penalties shall also become statute-barred.

when rules on statute-barring do not apply

Article 345

The rules on statute-barring shall not apply in cases when a deadline is stipulated by law by which a suit must be filed or a specific action must be performed because otherwise the right would be lost.

Subsection 2: Period Required for Statute-Barring

general statute-barring period

Article 346

Claims shall become statute-barred after five years, unless a different period is stipulated by the statute of limitations.

periodic claims

Article 347

- (1) Claims for periodic charges that fall due annually or at specific shorter time intervals (periodic claims) shall become statute-barred three years after each individual charge falls due, whether they are accessory periodic claims, such as interest claims, or such periodic claims by which a right itself is drawn upon, such as maintenance claims.
- (2) The same shall apply to annuities by which a principal and interest is repaid in equal periodic amounts stipulated in advance, but shall not apply to instalments and other part performance.
- (3) Irrespective of the first paragraph of this article interest on claims whose statute-barring period is less than three years shall become statute-barred after the same period as the principal claim.

statute-barring of actual right

Article 348

- (1) The actual right from which periodic claims originate shall become statute-barred five years after the oldest unfulfilled claim following which the debtor failed to fulfil any more charges fell due.
- (2) If a right from which periodic claims originate becomes statute-barred the creditor shall lose not only the right to demand future periodic charges, but also the right to claim periodic charges that fell due before the statute-barring.
- (3) The right to maintenance pertaining to someone by law may not become statute-barred.

claims from commercial contracts

Article 349

- (1) Claims from commercial contracts and claims for the return of expenditure arising in connection with such contracts shall become statute-barred after three years.
- (2) The statute-barring period shall run separately for each supply of goods, performance of work and provision of services.

claims for issue of document

Article 350

Claims for the issue of a document for entry in the land register shall become statute-barred after ten years.

claims for rent

Article 351

Claims for rent, whether it is stipulated that it be paid periodically or in a lump sum, shall become statute-barred after three years.

compensation claims

Article 352

- (1) Compensation claims for damage inflicted shall become statute-barred three years after the injured party learnt of the damage and of the person that inflicted it.
- (2) In each case the claim shall become statute-barred five years after the damage occurred.
- (3) Compensation claims for damage that occurred through the breach of a contractual obligation shall become statute-barred after the period stipulated for the statute-barring of the obligation.
- (4) Compensation claims for damage inflicted through an act of sexual abuse of a minor shall become statute-barred fifteen years after the minor comes of age.

compensation claims for damage inflicted by criminal offence

Article 353

- (1) If the damage was inflicted by a criminal offence and a longer statute-barring period is stipulated for criminal prosecution, a compensation claim against the person responsible shall become statute-barred when the period stipulated for the statute-barring of criminal prosecution expires.
- (2) The discontinuance of statute-barring of criminal prosecution shall have as a consequence the discontinuance of statute-barring of the compensation claim.
- (3) This shall also apply to the suspension of statute-barring.

compensation claims for reason of corruption

Article 354

If the damage was inflicted by an act on which the offering, provision, acceptance or demanding of a bribe or any other benefit or the promise thereof had a direct or indirect influence, or by the omission of action that would have prevented an act of corruption, or by any other act that according to law or international treaty entails corruption, the claim shall become statute-barred five years after the injured party learnt of the damage and of the person that inflicted it; in any case it shall become statute-barred fifteen years after the act was committed.

one-year statute-barring period

Article 355

- (1) The following shall become statute-barred after one year:
 1. claims for supplied electricity, thermal energy, gas, and water, for chimney-sweeping services and for municipal cleaning services, if the supply or service was carried out for the needs of a household
 2. radio and television stations' claims for station reception
 3. claims by the post office and telecom companies for the use of telephones and PO boxes, and other claims thereby paid at three-monthly or shorter intervals

4. claims for subscription fees for periodic publications, counted from the end of the period for which the publication was ordered
5. claims for internet access services, services for the use of e-mail and e-mailboxes, website maintenance services, and services connected to access to cable and satellite radio and television stations paid at three-monthly or shorter intervals
6. claims by the administrators of apartment blocks for services and other claims thereby paid at three-monthly or shorter intervals

(2) The statute-barring period shall run from the end of the year in which the claim fell due for payment.

(3) The statute-barring period shall run even if the supply and services continue.

claims determined before court or other relevant authority

Article 356

(1) All claims determined by a final court ruling or by a ruling by another relevant authority or through settlement before the court or another relevant authority shall become statute-barred after ten years, including those for which a shorter period is stipulated by the statute of limitations.

(2) All periodic claims originating from such rulings or settlement and falling due in the future shall become statute-barred after the period stipulated for the statute-barring of periodic claims.

statute-barring periods for insurance contracts

Article 357

(1) Claims by the policyholder or a third person from a life assurance contract shall become statute-barred after five years, and claims from other insurance contracts shall become statute-barred after three years, counted from the first day after the end of the calendar year in which the claim originated.

(2) If the person concerned shows that such person did not know that the insurance case had occurred by the day stipulated in the previous paragraph the statute-barring period shall run from the day such person learnt thereof; in any case the claim shall become statute-barred ten years after the day stipulated in the previous paragraph for life assurance and after five years for other types of insurance.

(3) Insurance agencies' claims from insurance contracts shall become statute-barred after three years.

(4) If in third party liability insurance an injured party claims or obtains compensation from an insured person the statute-barring period for the insured person's claim against the insurance agency shall run from the day the injured party made a judicial claim for compensation against the insured person or when the insured person reimbursed the damage.

(5) A direct claim by a third injured party against an insurance agency shall become statute-barred at the same time as the claim against the insured person liable for the damage becomes statute-barred.

(6) The statute-barring period for a claim held by an insurance agency against the third person liable for the origin of the insurance case shall begin to run when the insured person's claim against such person begins to run, and shall end after the same time.

Subsection 3: Suspension of Statute-Barring

claims between specific persons

Article 358

The statute-barring period shall not run:

1. between spouses
2. between parents and children, as long as the parental right lasts
3. between a ward and the guardian thereof or between a ward and the care authority, as long as the guardianship lasts and as long as bills are not issued
4. between persons cohabiting in an extra-marital union

claims by specific persons

Article 359

The statute-barring period shall not run:

1. during mobilisation, immediate risk of war, a state of emergency, or a state of war, and for claims by persons on military service
2. for claims held by persons employed in the household of another against the employer or the family members thereof as long as such employment lasts

insurmountable obstacles

Article 360

The statute-barring period shall not run while for reason of insurmountable obstacles the creditor is unable to demand the performance of the obligation through the court.

influence of grounds for suspension on statute-barring period

Article 361

(1) If a statute-barring period cannot run because of any lawful grounds, it shall begin to run when such grounds cease.

(2) If the statute-barring period began to run before the grounds for which it was suspended arose, it shall resume when such grounds cease; the time that passed before the suspension shall be counted towards the period stipulated by the statute of limitations.

claims by persons with incapacity to contract

Article 362

(1) The statute-barring period shall run against minors and other persons with incapacity to contract, irrespective of whether they have a lawful representative.

(2) However the statute-barring of a claim by a minor without a representative or by any other person with incapacity to contract without a representative may not occur until two years have passed since such person gained full capacity to contract or obtained a representative.

(3) If a period of less than two years is stipulated for the statute-barring of any claim and the creditor is a minor without a representative or any other person with incapacity to contract without a representative the statute-barring period for the claim shall begin to run when the creditor gains capacity to contract or obtains a representative.

statute-barring of claims by persons engaged in military service

Article 363

Statute-barring against a person engaged in military service or on military exercises, performing alternative civilian service or training for tasks in the police reserves may not occur until three months have passed from the completion of military service, the end of the military exercises, the completion of alternative civilian service or the completion of training in the police reserves.

Subsection 4: Discontinuance of Statute-Barring

acknowledgement of debt

Article 364

(1) Statute-barring shall discontinue when the debtor acknowledges the debt.

(2) A debt may be acknowledged by the debtor not only through a declaration made to the creditor but also indirectly, for example by paying something into an account, by paying interest or by providing security.

filing of suit

Article 365

Statute-barring shall discontinue with the filing of a suit or any other act by the creditor against the debtor before the court or other relevant authority to determine, secure or collect a claim.

withdrawn, dismissed or refused suit

Article 366

(1) Statute-barring shall be deemed not to have discontinued with the filing of a suit or any other act by the creditor against the debtor before the court or other relevant authority done with the intent of determining, securing or collecting a claim if the creditor withdraws the suit or abandons such an act.

(2) Statute-barring shall also be deemed not to have discontinued if the creditor's suit is dismissed or refused or if a measure procured or performed for execution or security is annulled.

suit dismissed owing to lack of jurisdiction

Article 367

(1) If a suit against the debtor is dismissed owing to the court's lack of jurisdiction or for any other grounds not affecting matters themselves and the creditor files a new suit within three months of the ruling by which the suit was dismissed becoming final, statute-barring shall be deemed to have discontinued with the first suit.

(2) The same shall apply in the case of the naming of a predecessor and the exercise of an offset of a claim in a civil suit, even if the court or other authority directs the creditor to exercise the creditor's registered claim in a civil procedure.

creditor's demand

Article 368

The creditor demanding verbally or in writing that the debtor perform the obligation shall not suffice for the discontinuance of statute-barring.

statute-barring period in event of discontinuance

Article 369

(1) After discontinuance the statute-barring period shall begin to run anew, and the time that passed prior to the discontinuance shall not count towards the period stipulated by the statute of limitations.

(2) A statute-barring period discontinued by the debtor's acknowledgement shall begin to run anew from the acknowledgement.

(3) If the statute-barring period discontinued with the filing of a suit or any other act by the creditor against the debtor before the court or any other relevant authority to determine, secure or collect a claim, by the exercise of an offset of the claim in a dispute or by the registration of the claim in any other procedure it shall begin to run anew on the day the dispute is completed or is otherwise settled.

(4) If the statute-barring period discontinued with the registration of the claim in bankruptcy proceedings it shall begin to run anew on the day such proceedings are completed.

(5) This shall also apply if the statute-barring period discontinued with a petition for compulsory execution or security.

(6) A statute-barring period that begins to run anew after discontinuance shall end when the time stipulated by the statute of limitations for the discontinued statute-barring period passes.

statute-barring in event of novation

Article 370

If the statute-barring period discontinued with the debtor's acknowledgement of the debt and the creditor and debtor undertook to change the basis or the subject of the obligation the new claim shall become statute-barred after the period stipulated for the statute-barring thereof.

Title V: Various Types of Obligation

Section 1: Pecuniary Obligations

Subsection 1: General Provisions

principle of monetary nominalism

Article 371

If the subject of an obligation is a sum of money, the debtor must pay the amount of currency in which the obligation is declared, unless the creditor and the debtor agree otherwise in accordance with the law.

reevaluation of pecuniary obligations

Article 372

(1) The contracting parties may agree that the amount of the debtor's pecuniary obligation be stipulated in respect of changes in the price of goods and services expressed by the retail price index determined by the authorised organisation (index-linking clause), in respect of fluctuation in a foreign exchange rate (foreign currency clause), or in respect of changes in other prices, unless such an agreement is in contravention of the law.

(2) If the contracting parties agree on the reevaluation of pecuniary obligations the reevaluation shall be performed for the period from the origin of the obligation to the performance of the obligation, unless the parties agree otherwise.

early payment

Article 373

(1) The debtor may perform a pecuniary obligation early.

(2) A contractual provision by which the debtor waives this right shall be null and void.

(3) A debtor that performs a pecuniary obligation early shall only have the right to deduct from the debt the interest for the period between the day of payment to the day payment falls due if so entitled by the contract or if such is in accordance with custom.

Subsection 2: Interest

definition

Article 374

In addition to the principal the debtor shall also owe interest if so stipulated by law or if the creditor and the debtor so agree.

prohibition of interest on interest

Article 375

(1) No penalty interest shall run on interest that has fallen due for payment but has not been paid, unless stipulated otherwise by law.

(2) A contractual provision that interest shall run on interest that has fallen due for payment but has not been paid shall be null and void.

(3) However it may be agreed in advance in a contract that the interest rate will be higher if the debtor fails to pay the interest that has fallen due on time.

when interest ceases to run

Article 376

Interest shall cease to run when the amount of interest that has fallen due for payment but has not been paid reaches the principal.

presumption of usurious interest

Article 377

(1) If the agreed interest rate for penalty or contractual interest is more than 50% higher than the prescribed penalty interest rate such an agreement shall be deemed a usurious contract, unless the creditor shows that the creditor has not exploited the debtor's distress, the severity of the pecuniary situation thereof, or the inexperience, recklessness or dependence thereof, or that the benefits reserved for the former or for a third person are not in clear disproportion to that which the former provided or did or undertook to provide or do.

(2) The presumption specified in the previous paragraph shall not apply to a commercial contract.

Subsection 3: Delay in Performance of Pecuniary Obligations

penalty interest

Article 378

(1) A debtor that is in delay in performing a pecuniary obligation shall owe penalty interest in addition to the principal.

(2) The interest rate for penalty interest shall amount to 8% per annum, unless stipulated otherwise by a separate act of law.

contractually agreed penalty interest rate

Article 379

The creditor and the debtor may agree that the penalty interest rate be lower or higher than the penalty interest rate prescribed by law.

right to full compensation

Article 380

(1) The creditor shall have the right to penalty interest irrespective of any damage incurred thereby owing to the debtor's delay.

(2) However if the creditor has incurred damage owing to the debtor's delay that is greater than the sum that would be obtained at the account of penalty interest the creditor shall have the right to demand the difference up to full compensation.

procedural interest

Article 381

Penalty interest may only be demanded on unpaid interest from the day when the claim for the payment thereof was lodged with the court.

Subsection 4: Contractual Interest

contractual interest

Article 382

(1) The contracting parties may agree that in addition to the principal the debtor must pay contractual interest for the period from the origin of the pecuniary obligation to the time it falls due.

(2) If contractual interest is agreed but the interest rate and the time it falls due are not stipulated the interest rate shall be 6% per annum and the interest shall fall due at the same time the principal falls due.

interest for non-pecuniary obligations

Article 383

The sense of the provisions of the present code on contractual interest shall apply to other obligations of which the subject is things of a specific type.

Section 2: Obligations with Multiple Subjects

Subsection 1: Alternative Obligations

right to choose

Article 384

If an obligation has two or more subjects of which the debtor must provide only one to be released from the obligation, unless agreed otherwise the debtor shall have the right to choose and the obligation shall terminate when the debtor delivers the chosen subject.

irrevocability and effect of choice

Article 385

(1) The choice is made and may no longer be altered when the party that has such right notifies the other party regarding the choice made.

(2) Once the choice is made the obligation shall be deemed to have been simple from the beginning and the subject thereof shall be deemed to have been the chosen thing from the beginning.

duration of right

Article 386

(1) The debtor shall have the right to choose at any time until one of the owed things is fully or partly delivered to the creditor in compulsory execution at the latter's choice.

(2) If the creditor has the right to choose but fails to pronounce thereon by the deadline stipulated for performance the debtor may demand that the creditor choose, stipulating an appropriate deadline for such; after such deadline passes the right to choose shall pass to the debtor.

choice entrusted to third person

Article 387

If the choice should be made by a third person but the third person fails to do so either party may request that the court do so.

limitation to remaining subject

Article 388

If any subject of an obligation becomes impossible because of a development for which neither party is responsible the obligation shall be limited to the remaining subject.

limitation in event of one party's responsibility

Article 389

(1) If any subject of an obligation becomes impossible because of a development for which the debtor is responsible and the debtor has the right to choose the obligation shall be limited to the remaining subject; if the creditor has the right to choose the creditor may choose to demand the remaining subject or compensation.

(2) If any subject of an obligation becomes impossible because of a development for which the creditor is responsible the debtor's obligation shall terminate; however if the debtor has the right

to choose the debtor may demand compensation and perform the obligation with the remaining subject, and if the creditor has the right to choose the creditor may provide compensation and demand the remaining subject.

Subsection 2: Facultative Obligations and Facultative Claims

I. Facultative Obligations

debtor's right in facultative obligation

Article 390

A debtor whose obligation has a single subject and that is allowed to discharge the obligation by delivering any other specific subject may exploit this possibility at any time until the creditor fully or partly obtains the subject of the obligation in compulsory execution.

creditor's right in facultative obligation

Article 391

(1) In a facultative obligation the creditor may only demand the subject of the obligation from the debtor, not any other subject by which the debtor could perform the obligation should the latter so desire.

(2) If the subject of the obligation becomes impossible because of a development for which the debtor is responsible the creditor may only demand compensation; however the debtor may discharge the obligation by delivering a subject that the debtor was entitled to deliver instead of the owed subject.

II. Facultative Claims

Article 392

(1) If the contract or the law stipulates that the creditor may instead of the owed subject demand any other specific subject from the debtor, the debtor shall be obliged to deliver such subject to the creditor if demanded thereby.

(2) The appropriate rules on facultative and alternative obligations shall otherwise apply to such facultative claims with regard to the contracting parties' intent and the circumstances of the transaction.

Section 3: Obligations with Multiple Debtors or Multiple Creditors

Subsection 1: Divisible Obligations

division of obligations and claims

Article 393

(1) An obligation shall be deemed divisible if that which is owed can be divided into and performed in parts that have the same attributes as the entire subject, and if none of its value is lost through such a division; otherwise it shall be deemed indivisible.

(2) If there are several debtors for a divisible obligation and division is not otherwise stipulated the obligation shall be divided among them into equal parts, and they shall each be responsible for their own part of the obligation.

(3) If there are several creditors for a divisible obligation, unless stipulated otherwise, the claim shall be divided among them into equal parts, and each creditor may only demand such creditor's own part of the claim.

presumption of joint and several liability

Article 394

If there are several debtors for a divisible obligation originating through a commercial contract they shall be jointly and severally liable to the creditor, unless the contracting parties expressly reject joint and several liability.

Subsection 2: Joint and Several Obligations

I. Debtors' Joint and Several Liability

content of debtors' joint and several liability

Article 395

(1) Each debtor in a joint and several obligation shall be liable to the creditor for the entire obligation and the creditor may demand the performance thereof from any of them as desired at any time until it is fully performed; however the obligation shall terminate when one debtor performs it, and all the debtors shall be released from the obligation.

(2) Among several joint and several debtors each may owe with a different deadline for performance, under different conditions and with various deviations in general.

offset

Article 396

(1) Each joint and several debtor may make reference to an offset of a fellow debtor.

(2) Each joint and several debtor may offset a fellow debtor's claim on the creditor against a claim by the creditor, but only in the amount of that part of the fellow debtor's debt in the joint and several obligation.

release from debt

Article 397

(1) Upon any of the joint and several debtors being released from the debt under an agreement all the other debtors shall be released from the obligation.

(2) If the purpose of the release was solely to release the debtor that was released from the debt from the obligation, the joint and several obligation shall be reduced by the part that with regard to the mutual relations among the debtors fell thereto, and the other debtors shall be jointly and severally liable for the remainder of the obligation.

novation

Article 398

(1) Through a novation concluded by the creditor with any of the joint and several debtors the other debtors shall be released.

(2) If the creditor and the debtor restricted the novation to the part of the obligation falling to the debtor the obligation of the others shall not terminate but shall be reduced by such part.

settlement

Article 399

A settlement concluded by one of the joint and several debtors with the creditor shall not have any effect against the other debtors; however they shall have the right to accept it if it is not restricted to the debtor with whom it was concluded.

confusion

Article 400

If the attributes of creditor and debtor for the same joint and several obligation are combined in a single person, the obligation of the other debtors shall be reduced by the part falling to such person.

creditor's delay

Article 401

A creditor that is in delay against one joint and several debtor shall be in delay against the other joint and several debtors.

one debtor's delay and acknowledgement of debt

Article 402

(1) A delay on the part of one joint and several debtor shall have no effect against the other debtors.

(2) The same shall apply to a debt acknowledged by one of the joint and several debtors.

suspension and discontinuance of statute-barring and waiver of statute-barring

Article 403

- (1) If the statute-barring period is not running or is discontinued against one debtor it shall continue to run for the other joint and several debtors and may reach completion; however a debtor against whom the obligation has not become statute-barred and that must perform the obligation shall have the right to demand that the other debtors against whom the obligation has become statute-barred each reimburse their part of the obligation to such debtor.
- (2) The waiver of completed statute-barring shall have no effect against the other debtors.

performer's right to reimbursement

Article 404

- (1) The debtor that performs the obligation shall have the right to demand that each of the fellow debtors reimburse the part of the obligation falling thereto to such debtor.
- (2) The circumstance whereby the creditor has released any of the fellow debtors from the debt or has reduced their debt shall have no influence on this process.
- (3) The part falling to a fellow debtor from whom reimbursement cannot be obtained shall be distributed proportionately among the remaining fellow debtors.

division into equal parts and exception

Article 405

- (1) Unless agreed otherwise or unless it follows otherwise from the legal relationships among the participants in a transaction, an equal part shall fall to each debtor.
- (2) However if joint and several liability was concluded in the exclusive interest of a particular joint and several debtor, such debtor shall be obliged to reimburse the entire sum of the obligation to the fellow debtor that repaid the creditor.

II. Joint and Several Creditors

non-presumption of joint and several liability

Article 406

If there are several persons on the creditor side they shall only be jointly and severally liable if joint and several liability is agreed or stipulated by law.

content of joint and several liability

Article 407

- (1) Each joint and several creditor shall have the right to demand from the debtor the performance of the entire obligation; however the obligation shall also terminate against the other creditors when one of them is repaid.

(2) The debtor may perform the obligation for a creditor of the debtor's own choosing at any time until a particular creditor demands performance.

offset

Article 408

(1) The debtor may offset the debtor's obligation against a claim against the creditor that demands performance therefrom.

(2) The debtor may only offset the debtor's obligation against a claim against another creditor up to the amount of that part of the joint and several claim pertaining to such creditor.

release from debt and novation

Article 409

Through a release from debt and a novation between the debtor and one creditor the joint and several obligation shall be reduced by the amount of the creditor's share in the claim.

settlement

Article 410

A settlement concluded by one of the joint and several creditors with the debtor shall have no effect against the other creditors; however they shall have the right to accept it, unless it only relates the share of the creditor with whom it was concluded.

confusion

Article 411

If the person of one joint and several creditor also combines the attributes of the debtor each of the other joint and several creditors may demand therefrom only their part of the claim.

delay

Article 412

(1) A debtor that is in delay against one joint and several creditor shall be in delay against the other creditors.

(2) A delay on the part of one joint and several creditor shall have an effect against the other creditors.

acknowledgement of debt

Article 413

The acknowledgement of a debt to one creditor shall be in favour of all the creditors.

statute-barring

Article 414

(1) If one creditor discontinues statute-barring or the statute-barring period is not running thereagainst, this shall not benefit the other creditors and the statute-barring period shall continue to run against them.

(2) The waiver of statute-barring against one creditor shall be in favour of all the creditors.

relationship among creditors after performance

Article 415

(1) Each joint and several creditor shall have the right to demand that the creditor that received performance from the debtor deliver thereto the share pertaining thereto.

(2) Unless it follows otherwise from the relationship among the creditors an equal share shall go to each joint and several creditor.

Subsection 3: Indivisible Obligations

Article 416

(1) The sense of the regulations on joint and several obligations shall apply to indivisible obligations with multiple debtors.

(2) If in the case of an indivisible obligation there are several creditors among whom joint and several liability is neither agreed by contract nor stipulated by law, an individual creditor may only demand performance from the debtor if the other creditors have authorised acceptance by such creditor; otherwise each creditor may demand that the debtor perform the obligation for all of them together or deposit it with the court.

Title VI: Change of Creditor or Debtor

Section 1: Assignment of Claim by Contract (Cession)

Subsection 1: General Provisions

which claims may be transferred by contract

Article 417

(1) Through a contract concluded with a third person the creditor may transfer the creditor's claim thereto, with the exception of claims whose transfer is prohibited by law and those that are connected to the creditor's personality or whose nature opposes transfer to another.

(2) If the debtor and the creditor agreed that the creditor could not transfer the claim to another the transfer shall have no legal effect.

(3) If upon transfer a document was submitted demonstrating the existence of a claim from which no prohibition of transfer derives the transfer shall have effect if the recipient did not know and was not obliged to know of a prohibition of transfer.

(4) If the debtor and the creditor from a commercial contract agreed that the creditor could not transfer a pecuniary claim to another the transfer shall nevertheless have effect. In this case the debtor shall also be released from the obligation if it is performed for the assignor of the claim.

accessory rights

Article 418

(1) The accessory rights, such as the right to priority repayment, a mortgage, a pledge, the right from the surety contract, the right to interest and the right to penalty, shall be transferred to the recipient with the claim.

(2) However the assignor may only deliver a pledged thing to the recipient if the pledger consents thereto; otherwise the thing shall remain with the assignor, in safekeeping for the recipient.

(3) It shall be presumed that interest that has fallen due but has not been paid is assigned with the principal claim.

notification of debtor

Article 419

(1) The debtor's consent shall not be required for the transfer of a claim, but the assignor must notify the debtor regarding the assignment.

(2) Performance for the assignor prior to the notification of assignment shall be valid, and the debtor shall thereby be released from the obligation, but only if the debtor did not know of the assignment; otherwise the obligation shall remain and the debtor must perform it for the recipient.

multiple assignment

Article 420

If the creditor assigned the same claim to various persons the claim shall pertain to the recipient regarding whom the creditor first notified the debtor or that first made himself/herself/itself known to the debtor.

Subsection 2: Relationship Between Recipient and Debtor

Article 421

(1) The recipient shall have the same rights against the debtor as those held thereagainst until the assignment by the assignor.

(2) In addition to the objections held against the recipient the debtor may also exercise thereagainst those objections that could have been exercised against the assignor until the debtor learnt of the assignment.

Subsection 3: Relationship Between Assignor and Recipient

delivery of IOU

Article 422

(1) The assignor must deliver an IOU to the recipient if the assignor holds such, and other evidence on the assigned claim and accessory rights.

(2) If the assignor only transfers part of the claim to the recipient the assignor must deliver thereto a certified transcription of the IOU proving the existence of the assigned claim.

(3) At the request of the recipient the assignor must issue certified confirmation of the assignment thereto.

liability for existence of claim

Article 423

If the claim is assigned by a lucrative contract the assignor shall be liable for the existence of the claim when it was assigned.

liability for collectibility

Article 424

(1) The assignor shall be liable for the collectibility of the assigned claim if such was agreed, but only up to the amount received from the recipient, and for the collectibility of interest, costs in connection with assignment and costs in proceedings against the debtor.

(2) It shall not be possible to agree on greater liability for an assignor acting in good faith.

Subsection 4: Special Cases of Assignment of Claim

assignment instead of performance or for collection

Article 425

(1) If the debtor assigns a claim or a part thereof to the creditor instead of performing the debtor's obligation, the obligation for the amount of the claim assigned shall expire when the assignment contract is concluded.

(2) If the debtor assigns a claim to the creditor for collection only, the obligation shall only expire or be reduced when the creditor collects the assigned claim.

(3) In the first and second cases the recipient must deliver to the assignor that which was collected in excess of the claim thereagainst.

(4) In assignment for collection the debtor of the assigned claim may also perform the obligation for the assignor, even if notified regarding the assignment.

assignment as security

Article 426

If a claim is assigned as security for the recipient's claim against the assignor the recipient shall be obliged to act with the diligence of a good businessperson or the diligence of a good manager in collecting the assigned claim, and after collection to deliver the surplus to the assignor once the amount required for repayment of the recipient's claim thereagainst has been kept.

Section 2: Change of Debtor

Subsection 1: Takeover of Debt

I. General Provisions

contract on takeover of debt

Article 427

(1) The takeover of a debt shall be accomplished through a contract between the debtor and the recipient to which the creditor consents.

(2) Either may notify the creditor regarding the conclusion of the contract, and the creditor may report consent to the takeover of the debt to either.

(3) A creditor that without restrictions accepts any performance from the recipient performed in the recipient's own name shall be presumed to have given consent.

(4) The contracting parties may together or separately demand that the creditor pronounce by a stipulated deadline whether the takeover of the debt is consented to; if the creditor fails to pronounce by the stipulated deadline consent shall be deemed not to have been given.

(5) A contract on takeover of debt shall have the effect of a contract on takeover of performance until the creditor consents thereto or if the creditor denies consent.

case when debt is secured by mortgage

Article 428

(1) If during the alienation of any real estate under mortgage it is agreed between the acquirer and the alienator that the acquirer will takeover the debt against the mortgage creditor, the mortgage creditor shall be deemed to have consented to the contract on takeover of debt if no denial of consent is issued thereby within three months of a written request by the alienator.

(2) In the written request it shall be necessary to draw the creditor's attention to such consequence, otherwise the request shall be deemed not have been made.

II. Effects of Contract on Takeover of Debt

change of debtor

Article 429

(1) Through the takeover of a debt the recipient shall take the place of the previous debtor, and the latter shall be released from the obligation.

(2) However, if when the creditor consented to the contract on takeover of debt the recipient was overindebted and the creditor did not know and was not obliged to know of such, the previous debtor shall not be released from the obligation, and the contract on takeover of debt shall have the effect of a contract on accession to debt.

(3) The same obligation that existed until then between the previous debtor and the creditor shall exist between the recipient and the creditor.

accessory rights

Article 430

(1) The accessory rights that existed until then in addition to the claim shall remain; however sureties and pledges provided by third persons shall terminate unless the sureties and pledgers consented to their being liable for the new debtor.

(2) Unless agreed otherwise, the recipient shall not be liable for uncollected interest that fell due prior to the takeover.

objections

Article 431

(1) Against the creditor the recipient may exercise all the objections deriving from the relationship between the previous debtor and the creditor from which the debt taken over originates and the objections that the recipient himself/herself/itself holds against the creditor.

(2) Against the creditor the recipient may not exercise any objections deriving from the relationship between the recipient and the previous debtor that was the basis for the takeover of the debt.

Subsection 2: Accession to Debt

contract on accession to debt

Article 432

Through a contract between the creditor and a third person by which the third person undertakes to the creditor to fulfil the creditor's claim against the debtor the third person shall enter into a commitment in addition to the debtor.

accession to debt during takeover of any property whole

Article 433

(1) Any person to whom any property whole or a individual part thereof is transferred by contract shall together with the previous holder be jointly and severally liable for the debts relating to such whole or part thereof, but only up to the value of the assets thereof.

(2) A contractual provision to exclude or restrict the liability specified in the previous paragraph shall have no legal effect against the creditors.

Subsection 3: Takeover of Performance

Article 434

(1) Performance shall be taken over through a contract between the debtor and a third person by which the third person undertakes to the debtor to perform the debtor's obligation in respect of the creditor.

(2) The recipient shall be liable to the debtor if the recipient fails to perform the obligation for the creditor on time and the creditor demands performance from the debtor.

(3) However, the recipient shall neither take over nor accede to the debt, and the creditor shall therefore hold no right thereagainst.

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REPUBLIC OF SLOVENIA

MINISTRY OF JUSTICE

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BOOK 2: SPECIFIC

Title I: Sales Contract

Section 1: General Provisions

definition

Article 435

(1) Though a sales contract the seller undertakes to deliver the thing being sold to the buyer such that the latter acquires the right of ownership; the buyer undertakes to pay purchase money to the seller.

(2) The seller of any right shall undertake to supply the sold right to the buyer; if the exercise of this right requires possession of a thing the seller shall deliver such to the buyer.

risk

Article 436

(1) Until the delivery of the thing to the buyer the risk of accidental destruction of or damage to the thing shall be borne by the seller; upon the delivery of the thing the risk shall be transferred to the buyer.

(2) The risk shall not be transferred to the buyer if for reason of any defect in the delivered thing the buyer has withdrawn from the contract or demanded the replacement of the thing.

transfer of risk when buyer is in delay

Article 437

(1) If a thing was not delivered because the buyer was in delay the risk shall be transferred to the buyer when the buyer became delayed.

(2) When the subject of the contract is things of a specific type the risk shall be transferred to a buyer in delay if the seller separated things that were clearly intended for delivery and sent the buyer notification of such.

(3) When the nature of the things of a specific type is such that the seller cannot separate a part thereof it shall suffice if the seller does everything necessary for the buyer to be able to take them and sends the buyer notification of such.

Section 2: Components of Sales Contract

Subsection 1: Thing

general rule

Article 438

(1) A thing involved in a contract must be on the market; a sales contract for a thing that is not on the market shall be null and void.

(2) A sale may also relate to a future thing.

if thing is destroyed before contract

Article 439

(1) A sales contract shall be null and void if the thing involved in the contract had already been destroyed when the contract was concluded.

(2) If the thing was only partly destroyed when the contract was concluded the buyer may withdraw from the contract or remain in the contract with a proportionate reduction in the purchase money.

(3) However the contract shall remain valid and the buyer shall only have the right to a reduction in the purchase money if the partial destruction of the thing does not disrupt the contract in achieving its purpose or if such is customary in legal transactions for the thing in question.

sale of another's thing

Article 440

The sale of another's thing shall be binding for the contracting parties; however a buyer that did not know and was not obliged to know that the thing was another's may withdraw from the contract if for this reason the purpose thereof cannot be achieved, and may demand compensation.

sale of disputed right

Article 441

- (1) A disputed right may be the subject of a sales contract.
- (2) However a contract by which a lawyer or any other recipient of a mandate would buy a disputed right the exercise of which was entrusted thereto shall be null and void.

Subsection 2: Purchase Money

if purchase money is not stipulated

Article 442

- (1) If the purchase money is not stipulated in a contract and there is not sufficient information therein based on which it would be possible to stipulate it the contract shall be deemed not to have originated.
- (2) If the purchase money is not stipulated in a commercial sales contract and there is not sufficient information therein based on which it would be possible to stipulate it the buyer must pay the purchase money customarily charged by the seller upon the conclusion of the contract, or appropriate purchase money if there is no customary charge.
- (3) The daily price when the contract is concluded shall be deemed to be appropriate purchase money; if this cannot be determined a price determined by the court with regard to the circumstances of the case shall be so deemed.

prescribed price

Article 443

If the agreed purchase money is greater than the price prescribed for the particular type of thing by the relevant authority the buyer shall only owe the prescribed price; if the agreed purchase money has already been paid the buyer shall have the right to demand the return of the difference.

if daily price is agreed

Article 444

- (1) If a daily price is agreed the buyer shall owe purchase money determined using the official record on the market in the seller's area when the obligation should be performed.
- (2) If there is no such record the daily price shall be stipulated on the basis of the elements customarily used to stipulate prices on the market.

if stipulation of purchase money is entrusted to third person

Article 445

If the stipulation of the purchase money was entrusted to a third person that cannot or does not wish to stipulate the purchase money, and the contracting parties do not subsequently reach agreement thereon but do not annul the contract, appropriate purchase money shall be deemed to have been agreed.

if stipulation of purchase money is left to contracting party

Article 446

If there is a contractual provision by which the stipulation of the purchase money is left to one of the contracting parties the purchase money shall be deemed not to have been agreed.

Section 3: Seller's Obligations

Subsection 1: Delivery of Thing

I. Delivery (General)

time and place of delivery

Article 447

(1) The seller shall be obliged to deliver the thing to the buyer at the time and place stipulated in the contract.

(2) The seller shall as a rule be deemed to have performed the obligation of delivery to the buyer when the thing or a document by which the thing can be taken over is delivered thereto.

subject of delivery

Article 448

(1) Unless agreed otherwise or it follows otherwise from the nature of the transaction, the seller shall be obliged to deliver the thing to the buyer in working order, together with all the accessories.

(2) The fruits and other benefits from the thing shall pertain to the buyer from the day when the seller was obliged to deliver the thing thereto.

if delivery within specific period is agreed

Article 449

If it is agreed that the thing will be delivered within a specific period but it is not stipulated which party will have the right to stipulate the day of delivery within the limits of this period, the seller shall have this right, unless it follows from the circumstances of the case that stipulation of the day was left to the buyer.

if day of delivery is not stipulated

Article 450

If the day of delivery to the buyer is not stipulated the seller must deliver the thing within a suitable period of the contract being concluded, with regard to the nature of the thing and other circumstances.

if place of delivery is not stipulated in contract

Article 451

(1) If the place of delivery is not stipulated in the contract it shall be necessary to deliver the thing at the place where the seller's head office or place of residence was when the contract was concluded.

(2) If when the contract was concluded it was known to the contracting parties where the thing was or where it was to be made it shall be necessary to deliver the thing at such place.

delivery to transporter

Article 452

If under the contract a thing must be transported and the place of performance is not stipulated in the contract, delivery shall be deemed to have been performed upon delivery of the thing to the transporter or to the person organising dispatch.

organisation of transport

Article 453

A seller that is obliged to send the thing to the buyer must conclude the contracts required for transportation to the specific place in the customary manner and under the customary conditions.

costs

Article 454

The costs during and prior to delivery shall be borne by the seller, and the costs of removing the thing and all other costs after delivery shall be borne by the buyer, unless agreed otherwise.

II. Simultaneous Delivery of Thing and Payment of Purchase Money

deferral of delivery until payment of purchase money

Article 455

Unless agreed otherwise or it customarily follows otherwise, the seller shall not be obliged to deliver the thing if the buyer fails to or is not ready to pay the purchase money at the same time; however the buyer shall not be obliged to pay the purchase money before having the opportunity to inspect the thing.

deferral of delivery during transport of thing

Article 456

- (1) When a thing is being delivered by delivery to a transporter the seller may defer the dispatch of the thing until the payment of the purchase money or may send the thing while reserving the right to dispose of it during transport.
- (2) If the right to dispose of the thing during transport is reserved the seller may demand that the thing not be delivered to the buyer at the intended place until the purchase money is paid; the buyer shall not be obliged to pay the purchase money before having the opportunity to inspect the thing.
- (3) If payment upon the delivery of an appropriate document is envisaged in the contract the buyer shall not have the right to refuse to pay the purchase money because the buyer had no opportunity to inspect the thing.

prevention of delivery of dispatched thing

Article 457

- (1) If after the dispatch of a thing it is shown that the buyer's pecuniary circumstances have changed sufficiently for there to be a justifiable doubt as to whether the buyer will be able to pay the purchase money, the seller may prevent the delivery of the thing to the buyer even when the document by which the buyer is entitled to demand the delivery of the thing is already in the buyer's hands.
- (2) The seller may not prevent delivery if demanded by a third person with the correct document that gives such person the right to demand delivery of the thing, unless the document contains reservations regarding the effect of the transfer or if the seller shows that the holder of the document knowingly acted to the detriment of the seller when acquiring the document.

Subsection 2: Liability for Material Defects

I. Material Defects (General)

material defects for which seller is liable

Article 458

- (1) The seller shall be liable for material defects that the thing had when the risk was transferred to the buyer, irrespective of whether the seller knew of them.
- (2) The seller shall also be liable for those material defects that show themselves after the risk was transferred to the buyer if they are the result of a cause that existed prior to this.
- (3) Insignificant material defects shall not be taken into consideration.

when material defect is involved

Article 459

A defect shall be deemed material if:

1. the thing does not have the attributes necessary for the customary use or marketing of the thing
2. the thing does not have the attributes necessary for the special use for which the buyer bought it, and this was or should have been known to the seller
3. the thing does not have the attributes and features that were expressly or tacitly agreed upon or prescribed
4. the seller delivered a thing that does not match the sample or model, unless the sample or model was only shown for information purposes

defects for which seller is not liable

Article 460

(1) The seller shall not be liable for the defects specified in points 1 and 3 of the previous article if they were known or could not remain unknown to the buyer when the contract was concluded.

(2) Those defects that a diligent person with the average knowledge and experience of a person of the same occupation or profession would notice during a customary inspection of the thing shall be deemed to be defects that could not remain unknown to the buyer.

(3) However the seller shall also be liable for defects that the buyer would easily notice if the seller declared that the thing is without any defects or that it has specific attributes or features.

inspection of thing and patent defects

Article 461

(1) The buyer shall be obliged to inspect the thing received in the customary manner or forward it for inspection as soon this is possible under the normal course of events, and to notify the seller regarding any patent defects within eight days or immediately in the case of a commercial contract; otherwise the buyer shall lose the right deriving therefrom.

(2) If the inspection was conducted in the presence of the two parties the buyer must immediately pass on to the seller any comments because of patent defects; otherwise the buyer shall lose the right deriving therefrom.

(3) If the buyer dispatches the thing onward without repacking it and when the contract was concluded the seller knew or should have known of the possibility of such onward dispatch the inspection may be deferred until the thing reaches its intended new destination; in this case the buyer must notify the seller regarding any defects as soon as the buyer could learn of them under the normal course of events from the customers.

latent defects

Article 462

(1) If after the buyer has received the thing it is shown that the thing has any defect that could not be noticed during a customary inspection during reception (a latent defect), the buyer must notify the seller of such within eight days of the day the defect was noticed or without delay in the case of commercial contracts; otherwise the right shall be lost.

(2) The seller shall not be liable for defects that show themselves more than six months after the thing was delivered, unless a longer period is stipulated in the contract.

deadlines for repair and replacement

Article 463

If for reason of any defect it was necessary to repair a thing, deliver another thing, replace parts, etc. the deadlines specified in previous two articles shall be counted from the delivery of the repaired thing, the delivery of the other thing, the replacement of the parts, etc.

notification on defect

Article 464

(1) In the notification on a defect in a thing the buyer must precisely describe the defect and invite the seller to inspect the thing.

(2) If a notification on a defect sent on time to the seller by the buyer by registered post, telegram or any other reliable manner arrives with a delay or the seller fails to receive it the buyer shall nevertheless be deemed to have performed the obligation and to have notified the seller.

significance of seller's knowing of defect

Article 465

The buyer shall not lose the right to make a reference to any defect even if the buyer failed to perform the obligation to inspect the thing without delay or the obligation to notify the seller regarding the defect by the deadline stipulated and even if the defect only shows itself more than six months after delivery if the defect was known or could not have remained unknown to the seller.

contractual restriction or exclusion of seller's liability for material defects

Article 466

(1) The contracting parties may restrict or totally exclude the seller's liability for material defects in the thing.

(2) A contractual provision on restricting or excluding liability for material defects shall be null and void if the defect was known to the seller and the seller failed to inform the buyer, and also if the seller forced such a provision on the buyer by exploiting a predominant position.

(3) A buyer that waived the right to withdraw from the contract because of a material defect in the thing shall retain the other rights owing to such defects.

compulsory public auction

Article 467

For sales at a compulsory public auction liability for defects shall be excluded.

II. Buyer's Rights

buyer's rights

Article 468

(1) A buyer that notifies the seller on time and correctly regarding a defect may:

1. demand that the seller rectify the defect or deliver another thing without the defect (performance of contract)
2. demand that the purchase money be reduced
3. withdraw from the contract

(2) In each of these cases the buyer shall have the right to demand the reimbursement of damage.

(3) In addition and independently of this, the seller shall also be liable to the buyer for damage incurred by other assets of the buyer because of the defect in the thing, according to the general rules on liability for damage.

if contract is not performed by appropriate deadline

Article 469

A buyer that fails to get the required performance of the contract by an appropriate deadline shall retain the right to withdraw from the contract or reduce the purchase money.

when buyer may withdraw from contract

Article 470

(1) The buyer may only withdraw from the contract if an appropriate additional period for performing the contract was allowed for the seller.

(2) The buyer may also withdraw from the contract without allowing an additional period if after being notified regarding a defect the seller informs the buyer that the contract will not be performed or if from the circumstances of the case in question it is clear that the seller will not be able to perform the contract in the additional period.

if contract is not performed in additional period

Article 471

If the seller fails to perform the contract within the additional period the contract shall be annulled by law alone; however the buyer may retain it in validity by declaring without delay to the seller that the contract remains valid.

partial defects

Article 472

(1) If only a part of the delivered thing has defects or if only a part of the thing or a smaller quantity of the thing than was agreed was delivered the buyer may withdraw from the contract according to the previous articles only in respect of the part that has the defects or the part or quantity that is missing.

(2) The buyer may only withdraw from the entire contract if the agreed quantity or agreed thing constitutes a whole or if the buyer has a justifiable interest in accepting the agreed thing or the quantity in whole.

if seller gave a larger quantity to buyer

Article 473

(1) If the seller of things of a specific type gives the buyer a larger quantity than that agreed and the buyer fails to declare within an appropriate period that the surplus is being refused the buyer shall be deemed to have also accepted the surplus and must pay therefor at the same price.

(2) The seller must reimburse the damage to a buyer that does not wish to accept the surplus.

if one price is stipulated for several things

Article 474

(1) If several things or a group of things are sold through a single contract and for a single sum of purchase money and only some of the things have defects the buyer may only withdraw from the contract in respect of the things with a defect; the seller may also withdraw from the seller's side of the contract in respect of the other things.

(2) If the things constitute a whole such that it would be damaging to separate them the buyer may withdraw from the entire contract; if the buyer nevertheless only withdraws from the contract in respect of the things with a defect the seller may also withdraw from the seller's side of the contract in respect of the other things.

loss of right to withdraw

Article 475

(1) The buyer shall lose the right to withdraw from the contract because of a defect in the thing if the thing cannot be returned or cannot be returned in the state in which it was received.

(2) The buyer may nevertheless withdraw from the contract because of any defect if the thing was totally or partly destroyed or damaged owing to a defect that justifies withdrawal from the contract or owing to any development that does not originate from the buyer or from any other person for whom the buyer is liable.

(3) This shall also apply if the thing was totally or partly destroyed or damaged owing to the buyer's obligation to inspect the thing or if before the defect was discovered the buyer used or replaced a part of the thing during its customary use, even if the damage or replacement is insignificant.

retention of other rights

Article 476

A buyer that has lost the right to withdraw from the contract because the thing cannot be returned or cannot be returned in the state in which it was received shall retain the other rights provided thereto by the law because of such a defect.

effects of annulled contract

Article 477

(1) If the contract is annulled because of defects in the thing the effects shall be the same as if a bilateral contract was annulled because of non-performance.

(2) The buyer shall owe the seller the return of the benefits from the thing even when there is no possibility of returning the entire thing or a part thereof and the contract was nevertheless annulled.

reduced purchase money

Article 478

The purchase money shall be reduced in relation to the value of the thing without defects and the value of the thing with the defect when the contract was concluded.

gradual discovery of defects

Article 479

A buyer that achieved a reduction in the purchase money because of any kind of defect may withdraw from the contract or demand a further reduction in the purchase money if another defect is later discovered.

loss of rights

Article 480

(1) The rights of a buyer that notified the seller regarding a defect on time shall expire one year from the day the notification was sent, unless the buyer was unable to exercise them owing to the seller's deception.

(2) After this deadline passes a buyer that notified the seller regarding a defect on time and has not yet paid the purchase money may, as an objection to the seller's claim to be paid the purchase money, exercise a claim for the purchase money to be reduced or the damage to be reimbursed.

III. Warranty for Unimpaired Functioning of Sold Thing

liability of seller and manufacturer

Article 481

(1) If the seller of any machine, engine, item of apparatus or similar thing classed as technical goods delivers a warranty document to the buyer by which the manufacturer guarantees the unimpaired functioning of the thing during a specific period counted from delivery to the buyer and the thing does not function unimpaired the buyer may demand from either the seller or the manufacturer that the thing be repaired within an appropriate period or, should the seller or manufacturer fail to do so, that a thing that functions unimpaired be delivered in its place.

(2) These rules shall not encroach upon the rules on the seller's liability for material defects.

demand for repair or replacement

Article 482

(1) If the thing does not function correctly the buyer may within the warranty period demand from the seller or the manufacturer that that thing be repaired or replaced, irrespective of when the defect in functioning showed itself.

(2) The buyer shall also have the right to the reimbursement of damage incurred thereby because of being unable to use the thing, from the moment the demand for repair or replacement was made until fulfilment of the demand.

extension of warranty period

Article 483

(1) During a minor repair the warranty period shall be extended by the amount of time the buyer was unable to use the thing.

(2) If a thing is replaced or undergoes significant repairs because of incorrect functioning the warranty period shall recommence from the replacement or return of the repaired thing.

(3) If only a part of a thing is replaced or repaired the warranty period shall only recommence for such part.

withdrawal from contract and reduction of purchase money

Article 484

If the seller fails to repair or replace the thing within an appropriate period the buyer may withdraw from the contract or reduce the purchase money and demand compensation.

costs and risk

Article 485

(1) The seller or the manufacturer shall be obliged at such person's own expense to move the thing to the place where it is to be repaired or replaced, and to return the repaired or replaced thing to the buyer.

(2) During this time the seller or manufacturer shall bear the risk of the destruction of or damage to the thing.

liability of cooperating parties

Article 486

If several independent manufactures are involved in the making of individual parts of a thing or in individual actions their liability deriving from such parts or such actions towards the final manufacturer for the incorrect functioning of the thing shall terminate when the liability of the final manufacturer towards the buyer or the thing terminates.

loss of rights

Article 487

The buyer's rights towards the manufacturer deriving from the warranty documentation shall expire one year after the day the buyer demanded the repair or replacement of the thing therefrom.

Subsection 3: Liability for Legal Defects

legal defects

Article 488

(1) The seller shall be liable if any right is held on the sold thing by a third person that excludes, reduces or restricts a right of the buyer, and the buyer was not informed of such and did not consent to taking the thing encumbered with the right.

(2) The seller of any other right shall be liable for the existence thereof and for there being no legal obstacle to the exercise thereof.

notification of seller

Article 489

If it is shown that a third person lays a claim to any right on a thing, the buyer must notify the seller of such, unless the seller already knows of such, and shall demand that the thing be released from the right or claim within an appropriate period; if the subject of the contract is things of a specific type the seller must deliver another without legal defects.

sanctions for legal defects

Article 490

(1) If the seller fails to act according to the buyer's demand and someone takes the thing from the buyer the contract shall be rescinded by law alone; if the buyer's right is reduced or restricted the buyer may choose to withdraw from the contract or demand a proportionate reduction in the purchase money.

(2) If the seller fails to accede to the buyer's demand to release the thing from the third person's right or claim within an appropriate period, the buyer may withdraw from the contract if for this reason the buyer's purpose cannot be fulfilled.

(3) In each case the buyer shall have the right to the reimbursement of the damage incurred thereby.

(4) If when the contract was concluded the buyer knew of the possibility of the thing being taken or the buyer's rights being reduced or restricted, the buyer shall not have the right to compensation if this possibility is realised, but shall have the right to demand the return of or a reduction in the purchase money.

if buyer fails to notify seller

Article 491

A buyer that enters into a dispute with a third person without notifying the seller and loses the dispute may nevertheless make a reference to the seller's liability for legal defects, unless the seller shows that the seller had the means available to refute the third person's claim.

if third person's right is patently well-founded

Article 492

(1) The buyer shall also have the right to make a reference to the seller's liability for legal defects when the buyer recognises the patently well-founded right of the third person without the seller's notification and without a dispute.

(2) If the buyer pays out a specific sum of cash to the third person so that the latter waives the well-founded right the seller may be released from the liability by reimbursing the buyer for the sum paid out and the damage incurred.

contractual limitation or exclusion of seller's liability

Article 493

(1) The seller's liability for legal defects may be limited or entirely excluded by contract.

(2) If when the contract was concluded any defect in the seller's rights was known or could not have remained unknown to the seller a contractual provision on the limitation or exclusion of liability for legal defects shall be null and void.

limitations of public law nature

Article 494

The seller shall also be liable for special limitations of a public law nature that were not known to the buyer if the seller knew of such or knew that such could be expected and failed to inform the buyer of such.

loss of right

Article 495

(1) The buyer's right deriving from legal defects shall expire one year after the day the buyer learnt of the third person's right.

(2) If the third person initiates a dispute before this deadline passes and the buyer requests that the seller intervene therein the buyer's right shall only expire six months after the final outcome of the dispute.

Section 4: Buyer's Obligations

Subsection 1: Payment of Purchase Money

time and place of payment

Article 496

(1) The buyer must pay the purchase money at the time and place stipulated in the contract.

(2) Unless agreed otherwise or it is customary otherwise, it shall be necessary to pay the purchase money upon delivery in the place the thing is delivered.

(3) If it is not necessary to pay the purchase money upon delivery it must be paid at the seller's place of residence or head office.

interest on sale on credit

Article 497

If a thing sold on credit yields fruits or other benefits the buyer shall owe interest from when the thing was delivered, irrespective of whether the purchase money had fallen due for payment.

payment of purchase money during serial supply

Article 498

(1) During serial supply the buyer must pay the purchase money for each supply when delivery is taken, unless agreed otherwise or it follows otherwise from the circumstances of the transaction.

(2) If the buyer provided an advance payment in a contract with serial supply the first supplies shall be charged from the advance payment, unless agreed otherwise.

Subsection 2: Takeover of Thing

Article 499

(1) The takeover of the thing shall comprise the actions necessary to facilitate delivery and out of which the buyer can remove the thing.

(2) If without justifiable grounds the buyer refuses to take a thing whose delivery was offered on time in the agreed or customary manner, the seller may withdraw from the contract if there is a reasonable doubt as to whether the buyer will pay the purchase money.

Section 5: Obligation for Safekeeping of Thing for Fellow Contracting Party

cases of obligatory safekeeping

Article 500

(1) If because the buyer is in delay the risk is transferred thereto before the thing is delivered thereto, the seller must keep the thing safe with the diligence of a good businessperson or with the diligence of a good manager, and take appropriate measures to this end.

(2) This shall also apply to the buyer if the thing was delivered thereto and the buyer wishes to return it to the seller either because the buyer has withdrawn from the contract or because another thing has been requested in its place.

(3) In both the first and second cases the contracting party that must take the necessary measures for storing the thing shall have the right to the return of the necessary costs of storage.

if buyer refuses to accept sent thing

Article 501

A buyer that refuses to accept a thing sent thereto at the intended destination and made available there must take it on behalf of the seller if the latter is not at the intended destination and there is no other there that could take it on the seller's behalf, but under the condition that this is possible without paying the purchase money and without any major inconveniences or excessive costs.

right of party obliged to keep thing safe

Article 502

A contracting party that under the previous provisions is obliged to take measures to keep a thing safe may, under the conditions and with the consequences stipulated in the provisions of the present code on deposit with the court and on the sale of an owed thing, deposit the thing with the court, deliver it to another for safekeeping or sell it for the account of the other party.

Section 6: Reimbursement of Damage If Sales Contract is Rescinded

general rule

Article 503

If a sales contract was rescinded because one of the contracting parties breached the contract the other party shall have the right to the reimbursement of damage incurred for this reason under the general rules on the reimbursement of damage inflicted by a breach of contract.

if thing has daily price

Article 504

(1) If the contract was rescinded because one of the contracting parties breached the contract and the thing has a daily price the other party may demand the difference between the purchase money stipulated in the contract and the daily price as at the day when the contract was rescinded on the market in the place in which the transaction was conducted.

(2) If on the market in which the transaction was conducted there is no daily price, the daily price on the market that in the case in question can stand in shall be taken for calculating the refund; the difference in transport costs must be added to this price.

if things are sold or bought for coverage

Article 505

(1) If the subject of the sale is a certain quantity of things of a specific type and one party fails to perform the obligation on time the other party may sell or buy them for coverage and may demand the difference between the purchase money stipulated in the contract and the purchase money in the covering sale or covering purchase.

(2) A sale or purchase for reason of coverage must be performed within an appropriate period and in an appropriate manner.

(3) The creditor must notify the debtor regarding the intended sale or purchase.

reimbursement of other damage

Article 506

In addition to the right to the reimbursement of damage under the rules specified in the previous articles a party that remains faithful to the contract shall have the right to the reimbursement of any major damage.

Section 7: Cases of Sale Through Special Agreement

Subsection 1: Right of Pre-Emption

definition

Article 507

Through a contractual provision on the right of pre-emption the owner of a thing (the seller) undertakes to notify the pre-emption beneficiary regarding the intended sale of the thing to a specific person and the conditions of such sale, and to offer the beneficiary the opportunity to buy the thing under the same conditions.

deadline for right and for payment of purchase money

Article 508

- (1) The pre-emption beneficiary must notify the seller in a reliable manner regarding a decision to exercise the right of pre-emption within thirty days of receiving notification of the intended sale.
- (2) At the same time as declaring the purchase of the thing the pre-emption beneficiary must pay the purchase money stipulated in the owner's notification of the intended sale or deposit it with the court.
- (3) If the owner stipulated a specific deadline for payment of the purchase money in the conditions of sale the pre-emption beneficiary may only exploit this deadline by providing sufficient security.

possibility of inheritance and alienation

Article 509

The right of pre-emption may not be inherited or alienated, unless stipulated otherwise by law.

during compulsory public auction

Article 510

- (1) During a compulsory public auction the pre-emption beneficiary may not make a reference to the right of pre-emption.
- (2) However a pre-emption beneficiary whose right of pre-emption is recorded in a public register may demand the invalidation of an auction if not specially invited thereto.

duration of right of pre-emption

Article 511

- (1) The right of pre-emption shall expire at the time stipulated by contract.
- (2) If the duration is not stipulated the right of pre-emption shall expire five years after the contract was concluded.

if transfer of property was performed without pre-emption beneficiary being notified

Article 512

- (1) If the seller sells a thing and transfers the ownership to a third person without notifying the pre-emption beneficiary and the beneficiary's right of pre-emption was known or could not have remained unknown to the third person, the pre-emption beneficiary may within six months of learning of the sales contract demand that the contract be annulled and the thing be sold thereto under the same conditions.
- (2) If the seller erroneously notifies the pre-emption beneficiary regarding the conditions of the sale to the third person and this was known or could not have remained unknown to the third person the six month deadline shall run from the day the pre-emption beneficiary learnt of the true contractual conditions.

(3) The entitlement shall in any case terminate five years after the transfer of the property to the third person.

statutory right of pre-emption

Article 513

(1) Specific persons may hold the right of pre-emption under law.

(2) The duration of a statutory right of pre-emption shall be unlimited.

(3) The sense of the rules on the contractual right of pre-emption shall apply to the statutory right of pre-emption, unless stipulated otherwise for the individual case.

Subsection 2: Purchase on Trial

definition

Article 514

(1) If it is agreed that the buyer takes the thing under the condition that the buyer tests it to determine whether it complies with the buyer's requirements, the buyer must notify the seller whether the contract is being adhered to by the deadline stipulated in the contract or by the customary deadline, but by an appropriate deadline stipulated by the seller; otherwise the buyer shall be deemed to have withdrawn from the contract.

(2) If the thing was delivered to the buyer on trial until a specific deadline and the buyer fails to return it without delay after the deadline passes or fails to declare to the seller that the buyer is withdrawing from the contract the buyer shall be deemed to be adhering to the contract.

objective trial

Article 515

If the trial was agreed in order to determine whether the thing has a specific attribute or is suited to a specific use the existence of the contract shall not depend on the buyer's discretion but on whether the thing in fact has the attribute or is suited to the specific use.

risk

Article 516

The risk of the accidental destruction of or damage to a thing that was delivered to the buyer on trial shall be borne by the seller until the buyer declares that the contract is being adhered to, or until the deadline by which the buyer was obliged to return the thing passes.

purchase after inspection and purchase reserving right to test

Article 517

The sense of the provisions on purchase on trial shall apply to purchase after inspection and purchase reserving the right to test.

Subsection 3: Sale by Sample or Model

Article 518

(1) In a sale by sample or by model the seller shall be liable if the thing delivered to the buyer does not conform to the sample or model, under the regulations on the seller's liability for material defects in the thing if it is a matter of a commercial contract or under the regulations on liability for non-performance of obligations in other cases.

(2) However the seller shall not be liable for non-conformity if the sample or model was only shown to the buyer to provide information and so that the buyer could approximately determine the attributes of the thing without any promise of conformity being made.

Subsection 4: Sale by Specification

sale by specification

Article 519

(1) If in the contract the buyer reserves the right to subsequently stipulate the form, size or any other detail of the thing and the buyer fails to do so by the agreed date or by an appropriate deadline counted from the seller's request to do so, the seller may withdraw from the contract or perform the specification in respect of that which was known about the buyer's requirements.

(2) A seller that performs the specification alone must inform the buyer of the details thereof and stipulate an appropriate period for the buyer to stipulate otherwise.

(3) If the buyer fails to make use of this opportunity the specification made by the seller shall be binding.

Subsection 5: Conditional Sale

conditions

Article 520

(1) The seller of a specific item of movable property may via a special contractual provision reserve title to the thing once delivered to the buyer until the buyer pays the purchase money.

(2) The reservation of title shall have effect against a buyer's creditor only if the buyer's signature on the contract containing the provision on the reservation of title was notarised prior to the buyer's bankruptcy or the attachment of the movable property.

(3) Title to things on which special public registers are administered may only be reserved if so stipulated by the regulations on the organisation and administration of such registers.

risk

Article 521

The risk of the accidental destruction of or damage to the thing shall be borne by the buyer from when the thing is delivered.

Subsection 6: Sale by Instalments

definition

Article 522

Through a contract on sale by instalments the seller undertakes to deliver to the buyer a specific item of movable property before the purchase money is fully paid, and the buyer undertakes to repay in instalments at specific intervals.

form of contract

Article 523

A contract on sale by instalments must be compiled in written form.

essence of contract

Article 524

In addition to the thing and its price the contractual documentation must for a cash sale cite the total amount of all repayments, including those paid when the contract is concluded, the amount of individual instalments, the number thereof and the payment deadlines therefor.

withdrawal from contract and demand for full payment of purchase money

Article 525

(1) The seller may withdraw from the contract if the buyer is in delay with the initial instalment.

(2) After payment of the initial instalment the seller may withdraw from the contract if the buyer is in delay with at least two successive instalments that entail at least one-eighth of the purchase money.

(3) In exceptional cases the seller may withdraw from the contract if the buyer is only in delay with a single instalment when no more than four instalments were envisaged for paying the purchase money.

(4) In the cases specified in the second and third paragraphs of this article the seller may instead of withdrawing from the contract demand that the buyer pay the entire remainder of the purchase money, but must allow the buyer an additional fifteen-day period before doing so.

consequences of annulled contract

Article 526

(1) If a contract is annulled the seller must return the received instalments to the buyer together with interest from the day they were received and return the necessary costs the buyer had for the thing.

(2) The buyer must return the thing to the seller in the state in which it was when delivered and must provide recompense for the use thereof until the annulment of the contract.

Subsection 6: Sale with Documentary Credit

parties' obligations

Article 527

(1) If the payment is agreed upon using a documentary credit the buyer shall be obliged to ensure at the buyer's own expense and by an appropriate deadline that a first-rate bank opens a documentary credit that must be in accordance with the sales contract. The documentary credit must be valid for sufficient time after the performance of the seller's obligation for the seller to be able to collect and submit the documents to the bank.

(2) If the bank fails to open the documentary credit in accordance with the previous paragraph or fails to pay the credit amount even though the seller submitted the relevant documents, the provisions on debtor's delay shall apply to the relationship between the buyer and the seller.

(3) A seller that does not use a documentary credit opened by a bank in accordance with the sales contract shall not lose the right to demand the purchase money, but shall be obliged to reimburse the damage to the buyer.

(4) The parties may stipulate that the opening of a documentary credit is a condition for the validity of the sales contract.

(5) If a documentary credit is extended by agreement between the two parties each of them shall bear half of the costs; if there is an extension for reasons on the part of one of the parties such party shall bear the costs of the extension.

(6) The provisions of this article shall not encroach upon the rules on a documentary credit as a bank transaction, and vice-versa.

Title II: Contract of Exchange

definition

Article 528

(1) Through a contract of exchange each contracting party undertakes in respect of the fellow contracting party to deliver an exchanged thing thereto such that the latter acquires the title.

(2) Other transferable rights may also be the subject of an exchange.

effects of contract of exchange

Article 529

The obligations and rights originating for the seller via a sales contract shall originate for each contracting party via a contract of exchange.

Title III: Sales Order

definition

Article 530

(1) Through a sales order contract the recipient of the order undertakes to sell a specific thing delivered thereto by the mandator for specific purchase money by a specific deadline or to return the thing by the deadline.

(2) It shall not be possible to cancel a sales order.

risk of destruction of and damage to thing

Article 531

The thing delivered to the recipient of the order shall remain the mandator's and the mandator shall bear the risk of it being accidentally destroyed or damaged; however it shall not be at the disposal of the mandator until returned thereto.

when recipient of order is deemed to have purchased thing

Article 532

(1) If the recipient of the order fails to sell the thing or to deliver the stipulated purchase money to the mandator by the stipulated deadline and fails to return it by this deadline the recipient shall be deemed to have purchased the thing.

(2) However the recipient's creditors may not attach the thing until the purchase money is paid to the mandator.

Title IV: Deed of Gift

Section 1: General

definition

Article 533

(1) Through a deed of gift one person (the donor) undertakes to transfer title or any other right free of charge to the donee or in any other manner enrich the donee at the expense of the donor's assets, and the donee declares to consent to such.

(2) The waiver of a right shall also be deemed a deed of gift if the obliged person consents to such.

(3) The waiver of a right regarding which there is no obliged person and that is not ceded to another shall not be deemed a deed of gift.

gratuity

Article 534

A contract concluded by a donor out of gratitude or any other moral obligation shall be deemed a deed of gift if the donee did not have the right to demand the gift through a lawsuit.

mixed gift

Article 535

If under the same contract or another contract the donee is obliged to enrich the donor it shall be a matter of a deed of gift only in respect of the surplus value.

periodic performance

Article 536

If the donor's obligation comprises periodic performance it shall expire upon the donor's death.

donor's liability for damage

Article 537

(1) Any person that knowingly gives another's thing and conceals this circumstance from the donee shall be liable for the damage.

(2) If the gifted thing has a defect or a dangerous attribute owing to which damage is incurred by the donee the donor shall be liable for the damage if the donor knew or should have known of the defect or dangerous attribute and failed to warn the donee.

Section 2: Form

form

Article 538

(1) If the donor does not immediately transfer the thing or right to the donee such that the latter is able to freely dispose of it the deed of gift must be concluded in written form.

(2) If the deed of gift is not concluded in the form specified in the previous paragraph the donee may not demand the performance thereof via a suit.

Section 3: Revocation of Deed of Gift

revocation because of constraint

Article 539

(1) A donor that after the conclusion of the deed comes to a position whereby the donor's maintenance is endangered may revoke the deed of gift.

(2) The revocation specified in the previous paragraph shall not be possible if the donee would thereby come to a position in which the donee's maintenance would be threatened.

(3) The donee may keep a gift if the donee ensures the donor's maintenance.

revocation because of gross ingratitude

Article 540

(1) The donor may also revoke the deed of gift because of gross ingratitude if after the conclusion thereof the donee behaves towards the donor or a person close thereto such that according to fundamental moral principles it would be unjust for the donee to keep that which was received.

(2) The deed may also be revoked by the donor's heir for reason of the behaviour towards the donor.

(3) Revocation because of the donee's behaviour shall also be possible against the donee's heir.

(4) Revocation shall not be possible if the donee's behaviour towards the donor ceases.

revocation because of subsequent births

Article 541

A donor who has a child after the deed was concluded and had none before may revoke the gift of deed.

consequences of revocation

Article 542

(1) Through the declaration of revocation the donor shall demand the return of the gifted thing or right or the payment of the value by which the donee was enriched on the basis of the deed of gift.

(2) If the deed of gift has not yet been performed revocation shall have the consequence of the termination of the donor's obligation.

deadlines for revocation

Article 543

A deed of gift may be revoked within one year of the day the donor learnt of the reason for revocation.

waiver of revocation

Article 544

A waiver of revocation shall be null and void.

Section 4: Gift in Event of Death

gift in event of death

Article 545

A deed of gift to be performed after the donor's death shall only be valid if concluded in the form of a notarial protocol and if the document on the concluded deed is delivered to the donee.

Title V: Contract on Delivery and Distribution of Property (Contract of Delivery)

definition

Article 546

Through a contract of delivery the deliverer undertakes to deliver and distribute property to his/her descendants, adopted children and adopted children's descendants.

conditions for validity

Article 547

- (1) The contract shall only be valid if consented to by all the deliverer's descendants, adopted children and adopted children's descendants who by law would be called on to inherit under the contract (descendants).
- (2) The contract must be concluded in the form of a notarial protocol.
- (3) Any descendant who fails to give consent may give it later in the same form.
- (4) Delivery and distribution shall remain valid if a descendant who did not consent dies prior to delivery without leaving any descendants, renounces inheritance, is disinherited or is unworthy of inheritance.

subject of delivery and distribution of property

Article 548

- (1) Only the deliverer's current property may be included in delivery and distribution, either entirely or in part.
- (2) A provision on the manner of distributing the property that will be in the deliverer's estate shall be invalid.

position of delivered property

Article 549

(1) When an ancestor who has delivered and distributed his/her property for life dies his/her estate shall only comprise the property not included in the delivery and distribution and the property subsequently acquired.

(2) The property acquired by his/her descendants via delivery and distribution shall not be classed among his/her estate and shall not be taken into consideration when the value thereof is determined.

descendants' consent

Article 550

(1) If any descendant fails to consent to the delivery and distribution those parts of the property delivered to the other descendants shall be deemed gifts and after the ancestor's death shall be treated as gifts made to the heirs by the ancestor.

(2) The treatment shall be the same if after delivery and distribution consented to by all the descendants a child is born to the deliverer or a descendant who was pronounced dead appears.

reservation of rights during delivery

Article 551

(1) During delivery and distribution the deliverer may reserve for himself/herself, his/her spouse or any other person the right to usufruct on all or part of the delivered property or claim a lifelong annuity in kind or in cash, lifelong maintenance or any other compensation.

(2) If usufruct or a lifelong annuity is agreed for the deliverer and his/her spouse together in the event of the death of one of them the usufruct or lifelong annuity shall pertain to the other in its entirety until the death of the other, unless agreed otherwise or unless follows otherwise from the circumstances of the case.

right of deliverer's spouse

Article 552

(1) During delivery and distribution the deliverer may also consider his/her spouse; in so doing it shall be necessary for the spouse to consent thereto.

(2) If the spouse is not considered his/her rights to a compulsory portion shall remain intact.

(3) In such a case the delivery and distribution shall remain valid, but in the determination of the value of the estate according to which the compulsory portion of the surviving spouse is determined those parts of the decedent's property delivered to his/her descendants shall be deemed to be gifts.

deliverer's debts

Article 553

(1) The descendants to whom a deliverer distributes his/her property shall not be liable for his/her debts, unless stipulated otherwise during delivery and distribution.

(2) The deliverer's creditors may challenge delivery and distribution under the conditions applying to the challenging of gratuitous disposal.

warranty

Article 554

The obligation of warranty originating after division among fellow heirs shall also originate among descendants after delivery and distribution of property delivered and distributed thereto by their ancestor or adoptive parent.

revocation of delivery

Article 555

(1) The deliverer may revoke the contract for reason of gross ingratitude if after it is concluded a descendant behaves towards the deliverer or a person close thereto such that according to fundamental moral principles it would be unjust to keep that which was received.

(2) The deliverer shall have the same right if the descendant fails to provide him/her or any other with the maintenance agreed by the contract on delivery and distribution or fails to settle the deliverer's debts when the contract charged the descendant with the settlement thereof.

(3) In other cases of non-fulfilment of burdens taken over by a contract on delivery and distribution the court shall rule whether the deliverer has the right to demand the return of the property given or merely the right to demand the forcible fulfilment of the burdens, having taken the significance of the burdens to the deliverer and other circumstances of the case into consideration.

rights of descendant, adopted child and adopted child's descendant after revocation

Article 556

(1) A descendant who had to return to the deliverer that which was received during delivery and distribution may demand his/her compulsory portion after the deliverer's death, unless disinherited or unworthy of inheriting from the deliverer, or unless the inheritance was renounced.

(2) In the calculation of the compulsory portion those parts of the property delivered and distributed for life by the decedent to the other descendants shall be deemed to be gifts.

Title VI: Contract of Lifelong Maintenance

definition

Article 557

(1) Through a contract of lifelong maintenance a contracting party (the maintaining party) undertakes to support the other contracting party or any other person (the maintained party), and the other contracting party declares that he/she will leave the former all or part of his/her property comprising real estate and the movable property intended for the use and enjoyment of the real estate, whereby the delivery thereof is deferred until the deliverer's death.

(2) Such a contract may also cover other movable property of the maintained party, which must be cited in the contract.

(3) Contracts by which against a promise of inheritance a union for life or a community of property is agreed or one contracting party agrees to take care of and protect the other, work his/her estate and attend to a funeral after his/her death or anything else for the same purpose shall also be deemed contracts of lifelong maintenance.

form

Article 558

A contract of lifelong maintenance must be composed in the form of a notarial protocol.

prohibition of disposal in favour of maintaining party

Article 559

The maintained party may waive the disposal of the property that is the subject of the contract of lifelong maintenance in favour of the maintaining party.

liability for debts

Article 560

After the maintained party's death the maintaining party shall not be liable for the debts thereof, but it may be stipulated in the contract that the maintaining party will be liable for the maintained party's existing debts to specific creditors.

annulment of contract

Article 561

(1) The contracting parties may by agreement annul a contract of lifelong maintenance, even after they have begun to perform it.

(2) If under a contract of lifelong maintenance the contracting parties cohabit and their relationship deteriorates such that communal life becomes intolerable each party may request that the court annul the contract.

(3) Each party may request that the contract be annulled if the other party fails to perform such party's obligations.

changed circumstances

Article 562

(1) If after the contract is concluded the circumstances change such that the performance of the contract becomes significantly more difficult the court shall at the request of one of the parties renew their relationship or annul it, having taken all the circumstances into consideration.

(2) The court may alter the maintained party's right into an annuity for life, if this suits the two parties.

termination of contract

Article 563

(1) If the maintaining party dies the obligations thereof shall be transferred to his/her spouse and to those descendants, adopted children and adopted children's descendants called to inherit if they consent thereto.

(2) If they do not consent to the continuation of the contract of lifelong maintenance the contract shall be annulled and they shall have no right to demand compensation for previous maintenance.

(3) If the spouse, descendants, adopted children or adopted children's descendants cannot take over the contractual obligations they shall have the right to demand compensation from the maintained party.

(4) The court shall set such compensation at its own discretion, having taken the financial circumstances of the maintained party and those entitled to continue the contract of lifelong maintenance into consideration.

Title VII: Contract of Subsistence

definition

Article 564

(1) Through a contract of subsistence one party (the subsistee) undertakes to transfer title to specific real estate to the other party (the recipient), and the recipient undertakes to provide specific benefits and services to the subsistee or any other person until the death thereof.

(2) The movable property intended for the use and enjoyment of the real estate shall be the subject of the contract together with the real estate, unless stipulated otherwise by the contracting parties.

recipient's obligations

Article 565

The recipient's obligations may be agreed in the form of periodic cash benefits, provision of vital necessities, care, provision of housing, permission to enjoy specific land and similar.

encumbrance

Article 566

If the recipient expropriates the received real estate the new acquirer shall also be liable for the performance of the obligations in the contract of subsistence if the subsistence is recorded in the land register (encumbrance).

form

Article 567

The contract must be composed in the form of a notarial protocol.

annulment of contract

Article 568

(1) If the contracting parties cohabit and their relationship deteriorates such that communal life becomes unbearable each party may request that the contract be annulled.

(2) Each party may request that the contract be annulled if the other party fails to perform such party's obligations.

Title VIII: Loan Contract

Section 1: General Provisions

definition

Article 569

(1) Through a loan contract the lender undertakes to deliver to the borrower a specific sum of money or a specific quantity of other replaceable things, and the borrower undertakes to return the same sum of money or an equal quantity of things of the same type and quality thereto.

(2) The borrower shall acquire title to the things received.

interest

Article 570

(1) The borrower may undertake to owe interest in addition to the principal.

(2) In commercial contracts the borrower shall owe interest unless agreed otherwise.

Section 2: Lender's Obligations

delivery of promised things

Article 571

(1) The lender must deliver the stipulated things at the agreed time, or when the borrower demands if the deadline for delivery is not stipulated.

(2) The borrower's right to demand the delivery of the stipulated things shall expire three months after the lender becomes delayed, and in any case one year after the conclusion of the contract.

borrower's diminished pecuniary circumstances

Article 572

(1) If it is shown that the borrower's pecuniary circumstances are such that it is uncertain as to whether the borrower will return the loan the lender may refuse to deliver the promised things if the lender did not know of such when the contract was concluded or if the borrower's pecuniary circumstances diminished after the conclusion of the contract.

(2) However the lender must perform the obligation if the borrower or another provides adequate security therefor.

damage because of defects in loaned things

Article 573

(1) The lender must reimburse the borrower for any damage inflicted thereon because of material defects in the loaned things.

(2) However in the case of a gratuitous loan the lender need only reimburse the damage when the defects were known or could not have remained unknown to the lender and the lender failed to inform the borrower.

Section 3: Borrower's Obligations

deadline for return of loan

Article 574

(1) The borrower must return the same quantity of things of the same type and quality by the deadline stipulated.

(2) If the contracting parties did not stipulate a deadline for the return of the loan and it cannot be determined from the circumstances, the borrower must return the loan after the passing of an appropriate deadline, which may not be shorter than two months counted from the lender's demand for the return of the loan.

choice in return of loan

Article 575

(1) If cash was not loaned and it was agreed that the borrower would return the loan in cash the borrower shall nevertheless be entitled to choose to return the loaned things or a cash sum that accords to the value thereof at the time and place stipulated in the contract for the return.

(2) This shall also apply if it is impossible to return the same quantity of things of the same type and quality.

withdrawal from contract

Article 576

The borrower may withdraw from the contract before the lender delivers the promised thing thereto; if the lender incurs any damage for this reason the borrower must reimburse it.

early return of loan

Article 577

The borrower may return the loan before the deadline stipulated for the return, but must notify the lender regarding this intention and reimburse any damage.

Section 4: Purpose-Specific Loan

Article 578

If the contract stipulated the purpose for which the borrower may use the loaned cash and the borrower uses it for any other purpose the lender may withdraw from the contract.

Title IX: Loan for Use Contract

Section 1: General Provisions

definition

Article 579

Through a loan for use contract the lender undertakes to deliver a thing to the borrower for gratuitous use, and the borrower undertakes to return the thing.

Section 2: Borrower's Obligations

use of thing

Article 580

(1) The borrower may use the thing solely for the purpose stipulated by the contract.

(2) If the purpose of use is not stipulated by the contract the borrower may use the thing with the diligence of a good manager in accordance with its nature and purpose.

(3) A borrower that uses the thing in a manner not permitted shall be liable for any accidental destruction or damage.

maintenance of thing

Article 581

(1) The borrower shall bear the costs of regularly maintaining the thing.

(2) The borrower may request the refund of extraordinary maintenance costs according to the rules of management without mandate. Upon the termination of the loan the borrower may remove the equipment used to supply the thing that can be separated.

transfer of use

Article 582

The borrower may not cede the use of the thing to a third person without the lender's permission.

return of thing

Article 583

(1) The lender must return the thing at the time agreed.

(2) If the duration is not stipulated the contract shall terminate as soon as the borrower uses the thing for the purpose stipulated by the contract or at the end of the period in which such use can be carried out.

(3) If the duration and purpose are not stipulated the lender may demand the thing whenever the lender so wishes.

termination of contract

Article 584

The lender may terminate the contract without notice and demand the immediate return of the thing if:

1. the borrower dies
2. the borrower uses the thing in contravention of the contract or cedes use to a third person without entitlement
3. the lender requires the thing owing to unforeseen circumstances

liability

Article 585

The lender shall not be liable for any deterioration or alteration of the thing that is a customary consequence of use in accordance with the contract.

Section 3: Lender's Obligations

damage owing to defects

Article 586

If the loaned thing has a defect or a dangerous attribute owing to which damage was incurred by the borrower and the lender knew or should have known of the defect or dangerous attribute but failed to warn the borrower the lender shall be liable for the damage.

Title X: Lease (Rental) Contract

Section 1: General Provisions

definition

Article 587

(1) Through a lease (rental) contract the lessor undertakes to deliver a specific thing to the lessee for use, and the lessee undertakes to pay a specific rent for this.

(2) The use shall comprise usufruct of the thing (collection of fruits), unless otherwise agreed or unless the custom is otherwise.

Section 2: Lessor's Obligations

delivery of thing

Article 588

The lessor must deliver the leased thing to the lessee together with its accessories and fittings.

maintenance of thing

Article 589

(1) During the lease the lessor must maintain the thing and repair it as required.

(2) The lessor must reimburse the lessee for the costs of maintaining the thing paid thereby in place of the lessor.

(3) Costs for minor repairs caused by the customary use of the thing and the costs of use itself shall be charged to the lessee.

(4) The lessee must notify the lessor regarding necessary repairs.

withdrawal from contract and reduction of rent because of repairs

Article 590

(1) If necessary repairs to the leased thing hinder its use to a considerable degree and for a lengthy period the lessee may withdraw from the contract.

(2) The lessee shall have the right to a reduction in rent in proportion to how much the use of the thing was limited because of such repairs.

changes in leased thing

Article 591

(1) During the lease the lessor may not make any changes to the leased thing without the lessee's consent if the changes would hinder the use thereof.

(2) If the changes in the thing reduce the lessee's use to a certain degree the rent shall be reduced by an appropriate proportion.

liability for material defects

Article 592

(1) The lessor shall be liable to the lessee for all defects in the leased thing that hinder its agreed or customary use, irrespective of whether the lessor knew of them, and for deficient attributes or features that were expressly or tacitly agreed upon.

(2) Insignificant defects shall not be taken into consideration.

defects for which lessor is not liable

Article 593

(1) The lessor shall not be liable for defects in the leased thing that were known or could not have remained unknown to the lessee when the contract was concluded.

(2) However the lessor shall also be liable for a defect in the leased thing that remained unknown to the lessee out of gross negligence, if the lessor knew of the defect and intentionally kept silent towards the lessee.

extension of liability for material defects

Article 594

A lessor that stated the thing has no defects of any kind shall be liable for all defects in the leased thing.

contractual exclusion or limitation of liability

Article 595

(1) Liability for material defects in the leased thing may be excluded or limited by contract.

(2) A contractual provision by which such liability is to be excluded or limited shall be null and void if the lessor knew of the defects and intentionally kept silent, if the defect is such that it prevents the use of the leased thing, or if the lessor exploited a dominant position and acquired the provision through duress.

notification of lessor regarding defects and dangers

Article 596

(1) The lessee shall be obliged to notify the lessor regarding any defect in the leased thing that shows itself during the lease without unnecessary delay, unless the lessor already knows of it.

(2) The lessee shall also be obliged to notify the lessor regarding any unforeseen danger that threatens the leased thing during the lease so that the latter may take appropriate measures.

(3) A lessee that fails to notify the lessor regarding a defect or occurring danger of which the lessor did not know shall lose the right to the reimbursement of damage incurred because of the defect or danger, and must reimburse the damage incurred for this reason by the lessor.

lessee's rights if thing has defect

Article 597

(1) If upon delivery the leased thing has any defect that cannot be rectified the lessee may choose to withdraw from the contract or demand a reduction in the rent.

(2) If the thing has any defect that can be rectified without major inconvenience for the lessee and the delivery of the thing by a specific deadline was not an essential component of the contract the lessee may demand that the lessor rectify the defect by an appropriate deadline or reduce the rent.

(3) If the lessor fails to rectify the defect by the appropriate additional deadline stipulated by the lessee the lessee may withdraw from the contract or demand a reduction in the rent.

(4) In each case the lessee shall have the right to the reimbursement of damage.

if defect occurs during lease and if thing does not have agreed or customary attributes

Article 598

(1) The provisions of the previous article shall also apply if during the lease a defect occurs in the leased thing.

(2) They shall also apply if the leased thing does not have an attribute that it should have under the contract or that is customary, or if it loses such an attribute during the lease.

lessor's liability for legal defects

Article 599

(1) When a third person owns any right on the leased thing or a part thereof and turns to the lessee with the claim or arbitrarily takes the thing from the lessee the third person must inform

the lessee of such, unless the lessee already knows of such; otherwise the third person shall be liable for damage.

(2) If it is found that a third person has any right that totally excludes the lessee's right to use the thing the lease contract shall be rescinded by law alone and the lessor must reimburse the damage to the lessee.

(3) If the third person's right merely limits the lessee's right the lessee may choose to withdraw from the contract or demand a reduction in the rent; in any case the lessee may demand the reimbursement of damage.

Section 3: Lessee's Obligations

use of thing pursuant to contract

Article 600

(1) The lessee shall be obliged to use the thing with the diligence of a good businessperson or with the diligence of a good manager.

(2) The lessee may only use it as stipulated by the contract or in line with the purpose of the thing.

(3) The lessee shall be liable for damage incurred because the leased thing was used in breach of the contract or contrary to its purpose, irrespective of whether it was used by the lessee, a person working under the lessee's mandate, a sub-lessee or any other person allowed to use the thing by the lessee.

termination because of use contrary to contract

Article 601

If after a reminder by the lessor the lessee uses the thing contrary to the contract or its purpose or if the lessee neglects the maintenance of the thing and there is a danger of considerable damage being incurred by the lessor, the lessor may terminate the contract without notice.

payment of rent

Article 602

(1) The lessee shall be obliged to pay the rent by the deadlines stipulated by the contract or by law, that is by the deadlines customary in the place where the thing was delivered to the lessee.

(2) Unless agreed otherwise or is customary otherwise in the place of delivery, rent shall be paid every six months for a thing leased for one or more years; if the thing is leased for a shorter period it shall be paid after such period.

termination because of unpaid rent

Article 603

(1) The lessor may terminate the lease contract if the lessee fails to pay the rent within fifteen days of the lessor demanding it.

(2) However the contract shall remain valid if the lessee pays the rent owed before receiving notice of the termination.

return of leased thing

Article 604

(1) The lessee shall be obliged to keep the leased thing safe and to return it undamaged after the lease ends.

(2) The thing shall be returned at the place it was delivered to the lessee.

(3) The lessee shall not be liable for wear and tear to the thing owing to customary use, or for damage incurred because the thing has reached the end of its useful life.

(4) If during the lease the lessee made any changes to the thing the lessee shall be obliged to return it to the state it was in when received for leasing.

(5) The lessee may take any additions added to the thing if such can be separated without damaging the thing; however the lessor may keep them by compensating the lessee for their value upon return.

Section 4: Sublease

when thing can be subleased

Article 605

(1) Unless agreed otherwise, the lessee may lease the leased thing to another (sublease) or otherwise deliver the thing for use by another, but only if damage is not thereby inflicted on the lessor.

(2) The lessee shall guarantee to the lessor that the sublessee will use the thing according to the lease contract.

when lessor may refuse permission

Article 606

When the lessor's permission is required for the sublease of a thing the lessor may only refuse such on justifiable grounds.

termination because of non-permitted sublease

Article 607

The lessor may terminate the lease contract if the lessee subleases the leased thing without the lessor's permission when such is required by law or by the contract.

lessor's direct request

Article 608

In order for the lessor's claims arising from the lease to be repaid the lessor may directly request from the sublessee the payment of the amount the latter owes the lessee from the sublease.

termination of sublease by law alone

Article 609

A sublease shall terminate in any case when the lease terminates.

Section 5: Alienation of Leased Thing

alienation after delivery for leasing

Article 610

(1) In the alienation of a thing that prior to this was delivered to another for leasing the acquirer of the thing shall assume the place of the lessor; thenceforth the rights and obligations deriving from the lease shall exist between the acquirer and the lessee.

(2) The acquirer may not demand that the lessee deliver the thing prior to the end of the period for which the lease was agreed, or the end of the period of notice if the duration of the lease is not stipulated by the contract or by law.

(3) The transferor shall be jointly and severally liable as a surety for the obligations held by the acquirer deriving from the lease.

right to rent

Article 611

(1) The acquirer of a leased thing shall have the right to the rent from the first period after acquiring the thing, unless agreed otherwise; if the lessor received this rent in advance the lessor must deliver it to the acquirer.

(2) The lessee must pay the rent solely to the acquirer from the moment of being notified of the alienation of the leased thing.

alienation of leased thing prior to delivery to lessee

Article 612

(1) If the thing about which a lease contract was concluded is delivered to the acquirer and not the lessee the acquirer shall assume the place of the lessor and take over the lessor's obligations towards the lessee if when the contract on alienation was concluded the acquirer knew of the lease contract.

(2) An acquirer that did not know of the lease contract when the contract on alienation was concluded shall not be obliged to deliver the thing to the lessee; the lessee may only demand the reimbursement of damage from the lessor.

(3) The transferor shall be jointly and severally liable as a surety for the obligations held by the acquirer towards the lessee deriving from the lease.

termination of contract because of alienation of thing

Article 613

If because of the alienation of a leased thing the lessor's rights and obligations were transferred to the acquirer the lessee may in any case terminate the contract, but in so doing must observe the legal periods of notice of termination.

Section 6: Termination of Lease

end of stipulated period

Article 614

(1) A lease contract concluded for a stipulated period shall terminate at the end of the period for which it was concluded.

(2) This shall also apply in cases when the contracting parties did not declare their intentions and the duration of the lease was stipulated by law.

tacitly renewed lease

Article 615

(1) If following the end of the period for which the lease contract was concluded the lessee continues to use the thing and the lessor does not oppose such, a new lease contract for an indefinite period shall be deemed to have been concluded with the same terms and conditions as the previous contract.

(2) Security provided by third persons for the first lease shall expire at the end of the period for which the lease was concluded.

termination

Article 616

(1) A lease contract whose duration is not stipulated and cannot be determined from the circumstances or local customs shall terminate through notice of termination, which each party may give to the other, observing the stipulated period of notice of termination.

(2) If the period of notice of termination is not stipulated by the contract, by law or according to local customs the period of notice of termination shall be eight days; notice of termination may not be given at an inappropriate time.

(3) If the leased things are a health hazard the lessee may terminate the contract without notice, even if this was known when the contract was concluded.

(4) The lessee may not waive the right specified in the third paragraph of this article.

destruction of thing by force majeure

Article 617

(1) The lease shall terminate if the leased thing is destroyed by force majeure.

(2) If the leased thing is partly destroyed or merely damaged the lessee may withdraw from the contract or may remain with the lease and demand an appropriate reduction in the rent.

death

Article 618

If the lessor or the lessee die and it is not agreed otherwise the lease shall continue with their heirs.

Title XI: Contract for Work

Section 1: General Provisions

definition

Article 619

Through a contract for work the contractor undertakes to perform a specific transaction such as the manufacture or repair of a thing, or physical or intellectual work, and the ordering party undertakes to pay the contractor for this.

relationship to sales contract

Article 620

(1) A contract by which one party undertakes to make a specific movable thing from the party's own material shall in case of doubt be deemed a sales contract.

(2) However a contract shall remain a contract for work if the ordering party undertook to supply the essential part of the material required to make the thing.

(3) In any case a contract shall be deemed a contract for work if the contracting parties primarily had contracted work in mind.

quality of contractor's material

Article 621

(1) If it is agreed that the contractor will make the thing using the contractor's own material and the quality thereof is not stipulated, the contractor shall be obliged to provide material of medium quality.

(2) The contractor shall be liable to the ordering party for the quality of the material used in the same way as a seller.

Section 2: Supervision

Article 622

The ordering party shall have the right to supervise the transaction and to provide instructions if this suits the nature of the transaction; the contractor must facilitate this.

Section 3: Conclusion of Contract After Bidding

invitation to bid for cost of work

Article 623

(1) An invitation to bid for the execution of specific works according to specific conditions and with specific guarantees addressed to a specific or indefinite number of persons shall bind the inviting party to conclude a contract for such works with the person that offers the lowest price, unless such obligation was excluded in the invitation to bid.

(2) If the obligation to conclude a contract was excluded, the invitation to bid shall be deemed an invitation to interested parties to prepare offers for the contract according to the published conditions.

invitation to bid for artistic or technical solutions for intended works

Article 624

An invitation to bid for artistic or technical solutions for intended works addressed to a specific or indefinite number of persons shall bind the inviting party to conclude a contract under the conditions contained in the invitation with the bidding participant whose solution is approved by a commission whose composition is published in advance, unless such obligation was excluded in the invitation to bid.

Section 4: Contractor's Obligations

defects in material

Article 625

(1) The contractor shall be obliged to draw the ordering party's attention to any defects in the material that the ordering party delivered and that the contractor noticed or should have noticed; otherwise the contractor shall be liable for any damage.

(2) If the ordering party requested that the thing be made from material with defects to which the contractor had drawn attention the contractor must act in accordance with this request, unless it is clear that the material is not suitable for the work ordered or if making the thing from the requested material could damage the contractor's reputation; in this case the contractor may withdraw from the contract.

(3) The contractor shall be obliged to draw the ordering party's attention to any deficiencies in the order and to other circumstances of which the contractor knew or should have known and that could be significant to the ordered work or the execution of the work on time; otherwise the contractor shall be liable for any damage.

obligation to execute work

Article 626

(1) The contractor shall be obliged to execute the work according to the agreement and according to the rules of the transaction.

(2) The contractor must execute the work by the deadline stipulated, or in the time reasonably required for such transactions if no deadline is stipulated.

(3) The contractor shall not be liable for any delay occurring because the ordering party failed to deliver the material thereto on time, because the ordering party requested changes or because the ordering party failed to settle an owed advance payment, or in general for any delay occurring because of the ordering party's action.

withdrawal from contract because of deviation from agreed conditions

Article 627

(1) If during the execution of the work it is shown that the contractor is not keeping to the contractual conditions and is not in general working as the contractor should and that the work executed will have defects, the ordering party may warn the contractor of this and stipulate a deadline by which the work should be adapted to the obligations.

(2) If the contractor fails to fulfil the ordering party's requirements by this deadline the ordering party may withdraw from the contract and demand the reimbursement of damage.

withdrawal from contract prior to deadline

Article 628

(1) If the deadline is an essential component of the contract and the contractor is so delayed in starting or finishing off the transaction that it is clear that it will not be completed on time the ordering party may withdraw from the contract and demand the reimbursement of damage.

(2) The ordering party shall also have this right when the deadline is not an essential component of the contract if for reason of the delay the ordering party no longer has an interest in the contract being performed.

entrustment of execution of transaction to third person

Article 629

(1) Unless it follows otherwise from the contract or the nature of the transaction, the contractor shall not be obliged to perform the transaction in person.

(2) The contractor shall remain liable to the ordering party even if not performing the transaction in person.

liability for associates

Article 630

The contractor shall be liable for persons that worked on the accepted transaction under the contractor's orders as if the contractor had done the work in person.

direct claim on ordering party by contractor's associates

Article 631

The associates may turn directly to the ordering party for their claims towards the contractor and demand that the ordering party settle their claims from the sum owed at that moment to the contractor if they are acknowledged.

delivery of manufactured thing to ordering party

Article 632

(1) The contractor shall be obliged to deliver the manufactured or repaired thing to the ordering party.

(2) The contractor shall be released from this obligation if the thing that was manufactured or repaired was destroyed for a reason for which the contractor is not liable.

Section 5: Liability for Defects

inspection of executed work and notification of contractor

Article 633

(1) The ordering party shall be obliged to inspect the executed work as soon as this is possible following the ordinary course of events and to notify the contractor without delay regarding any defects identified.

(2) If upon the contractor's request to inspect and accept the executed work the ordering party fails to do so without justifiable grounds the work shall be deemed to have been accepted.

(3) After the inspection and acceptance of the performed work the contractor shall no longer be liable for defects that could have been noticed during a customary inspection, unless the contractor knew of them and failed to show them to the ordering party.

latent defects

Article 634

(1) If any defect that could not have been noticed during a customary inspection later shows itself the ordering party may make reference thereto under the condition that the contractor is notified thereof as soon as possible, that is within a month of the defect being discovered.

(2) The ordering party may no longer make any reference to defects once two years have passed from the transaction being performed.

expiry of right

Article 635

(1) An ordering party that notified the contractor on time regarding defects in an executed transaction may no longer exercise rights in court proceedings one year after such notification.

(2) If the ordering party notified the contractor on time regarding defects, after such deadline passes the ordering party may exercise the right to a reduction in the payment and a reimbursement of the damage via an objection to the contractor's claim for payment.

when contractor does not have right to make reference to previous articles

Article 636

The contractor may not make any reference to any provision of the previous articles if the defect relates to facts that were known or could not have remained unknown thereto and the contractor failed to report them to the ordering party or if the contractor's action misled the ordering party into failing to exercise the rights on time.

right to demand rectification of defects

Article 637

(1) An ordering party that notified the contractor on time that the executed work had a defect may demand that the contractor rectify the defect and may stipulate an appropriate deadline therefor.

(2) The ordering party shall also have the right to the reimbursement of the damage incurred for this reason.

(3) If the rectification of the defect would require excessive costs the contractor may refuse to do the work, but in this case the ordering party may choose to reduce the payment or withdraw from the contract, and shall have the right to the reimbursement of damage.

special case of withdrawal from contract

Article 638

If the performed transaction has such a defect that the work is useless or if it was performed in breach of express contractual conditions the ordering party may withdraw from the contract and demand the reimbursement of damage without previously demanding the rectification of the defect.

ordering party's right regarding other defects in executed transaction

Article 639

(1) If the executed transaction has such a defect that the work would not be useless or if the transaction was not executed in breach of express contractual conditions the ordering party shall be obliged to allow the contractor to rectify the defect.

(2) The ordering party may stipulate an appropriate deadline for the contractor for the rectification of the defect.

(3) If the contractor fails to rectify the defect by this deadline the ordering party may choose to rectify the defect at the contractor's expense, to reduce the payment or to withdraw from the contract.

(4) The ordering party may not withdraw from the contract over the matter of an insignificant defect.

(5) In any case the ordering party shall have the right to the reimbursement of damage.

reduction of payment

Article 640

The payment shall be reduced in proportion to the value of the executed work without defects when the contract was concluded and the value that the executed work with the defect would then have had.

Section 6: Ordering Party's Obligations

obligation to accept work

Article 641

The ordering party shall be obliged to accept work executed according to the provisions of the contract and the rules of the transaction.

stipulation and execution of payment

Article 642

(1) The payment shall be stipulated by contract unless stipulated by a mandatory tariff or any other legal act.

(2) If the payment is not stipulated the court shall stipulate it such that it accords with the value of the work, the time customarily required for such a transaction and the customary payment for the type of work.

(3) The ordering party shall not be obliged to make the payment before inspecting and approving the executed work, unless agreed otherwise.

(4) This shall also apply if the execution and delivery of the work in parts was agreed.

estimate with express guarantee

Article 643

(1) If the payment was agreed on the basis of an estimate with the contractor's express guarantee as to its accuracy, the contractor may not demand a higher payment even if more work was invested in the transaction and execution required higher expenditure than was anticipated.

(2) This shall not exclude the application of the rules on the rescission and amendment of the contract for reason of changed circumstances.

(3) If the payment was agreed on the basis of an estimate without the contractor's express guarantee as to its accuracy and during the work it is shown that overspending is unavoidable, the contractor must notify the ordering party of such without delay; otherwise the contractor shall lose any claim for higher costs.

Section 7: Risk

if material was provided by contractor

Article 644

(1) If the material for making a thing was provided by the contractor and the thing was damaged or destroyed for any reason prior to delivery to the ordering party this shall be a matter of the contractor's risk, and the contractor shall not have the right to a refund for the material provided or to payment for the work.

(2) If the ordering party has inspected and approved the executed work the thing shall be deemed to have been delivered thereto and to have remained in safekeeping with the contractor.

(3) If the ordering party is in delay because of failure to accept the offered thing the risk of accidental destruction or damage shall be transferred to the ordering party.

if material was provided by ordering party

Article 645

(1) If the material for making a thing was provided by the ordering party the ordering party shall assume the risk of its accidental destruction or damage.

(2) The contractor shall have the right to payment only if the thing was accidentally destroyed or damaged after the ordering party became delayed, or if the ordering party failed to respond to a correct invitation to inspect the thing.

risk during delivery in parts

Article 646

If it is agreed that the ordering party will inspect and accept individual parts as they are made the contractor shall have the right to payment for making the parts the ordering party has inspected and approved, even if they were destroyed in the contractor's possession through no fault of the contractor.

Section 8: Lien

contractor's lien

Article 647

In order to secure payment for the work, recompense for the material used and other claims deriving from a contract for work, the contractor shall have a lien on the things made or repaired and on other objects delivered thereto by the ordering party in connection with the work, as long as they are in the contractor's possession and the contractor does not relinquish them voluntarily.

Section 9: Termination of Contract

termination of contract by ordering party's wish

Article 648

Until the ordered transaction is completed the ordering party may withdraw from the contract whenever such party wishes; however in this event the ordering party must pay the agreed payment to the contractor, minus the costs not incurred by the contractor that would have been incurred had the contract not been rescinded, and also that which was earned elsewhere and that which the contractor had no intention of earning.

Title XII: Building Contract

Section 1: General Provisions

definition

Article 649

(1) A building contract is a contract for work through which the contractor undertakes to build a specific structure on specific land according to a specific plan by a specific deadline or to carry out any other construction work on such land or on an existing structure, and the ordering party undertakes to pay the contractor a specific fee for the work.

(2) A building contract must be concluded in written form.

structure

Article 650

The term “structure” in this title means buildings, dams, bridges, tunnels, water pipes, sewage ducts, roads, railways, wells and other built structures that require major, demanding work to make.

supervision of works and quality control of material

Article 651

The contractor shall be obliged to facilitate for the ordering party constant supervision of the works and control over the quality and quantity of the material used.

deviation from plan

Article 652

(1) The contractor must have written approval from the ordering party for any deviation from the construction plan or the contracted works.

(2) The contractor may not demand an increase to the agreed fee for works performed without such approval.

urgent unforeseen works

Article 653

(1) The contractor may also carry out urgent unforeseen works without the ordering party’s prior approval if this cannot be supplied because of the urgency of the works.

(2) Unforeseen works are those that had to be performed urgently to ensure the stability of the structure or to prevent the occurrence of damage, and that were caused by the unexpectedly heavy nature of the land, unexpected water or any other extraordinary, unexpected development.

(3) The contractor must notify the ordering party without delay regarding such phenomena and the measures taken.

(4) The contractor shall have the right to fair payment for the unforeseen works it was necessary to perform.

(5) The ordering party may withdraw from the contract if the agreed fee would be considerably higher owing to such works; the ordering party must notify the contractor of such without delay.

(6) In the event of withdrawal from the contract the ordering party must pay the contractor an appropriate part of the fee for the work already performed, and a fair reimbursement of the necessary costs.

fee for works

Article 654

The fee for works may be stipulated for a unit of measurement of agreed works (unit fee) or in a total sum for the entire structure (total agreed fee).

change in fee

Article 655

- (1) Unless stipulated otherwise in the contract regarding a change in the fee, a contractor that performs the obligation by the contractual deadline may demand a higher fee for the works if between the conclusion and the performance of the contract the price of elements on which the fee was based rises such that the fee should be more than two per cent higher.
- (2) If the contractor fails to carry out the works by the contractual deadline for reasons for which the contractor is liable, the contractor may demand a higher fee for the works if between the conclusion of the contract and the day the works under contract were due to be completed the price of elements on which the fee was based rises such that under the new prices for such elements the fee should be more than five per cent higher.
- (3) In the cases specified in the previous two paragraphs the contractor may only demand the shortfall in the fee for the works that exceeds two or five per cent respectively.
- (4) The contractor may not make reference to a higher price for elements on which the fee for the works was based if the prices rose after the contractor became delayed.

provision on invariability of fee

Article 656

- (1) If it was agreed that the fee for the works would not be changed when the prices for elements on which the fee was based rise after the contract was concluded, the contractor may demand such a change despite such a contractual provision if the prices for elements rise such that the fee for the works should be more than ten per cent higher.
- (2) However in this case the contractor may only demand the shortfall in the fee for the works that exceeds ten per cent, unless the prices for such elements rose after the contractor became delayed.

withdrawal from contract because of higher fee

Article 657

- (1) If in the cases specified in the previous articles the agreed fee would rise significantly the ordering party may withdraw from the contract.
- (2) In the event of withdrawal from the contract the ordering party must pay the contractor an appropriate part of the agreed fee for the work performed to date, and a fair reimbursement for necessary costs.

ordering party's right to demand reduction in agreed fee

Article 658

- (1) If in the time between the conclusion of the contract and the performance of the contractor's obligation the prices for elements on which the fee was based fell by more than two per cent and the work was performed by the agreed deadline the ordering party shall have the right to demand an appropriate reduction in the agreed fee for the works above such a percentage.

(2) If it was agreed that the fee for the works would not be changed and the work was performed by the agreed deadline the ordering party shall have the right to a reduction in the agreed fee when the prices for elements on which the fee was based fell such that the fee would be more than ten per cent lower, the reduction being for the difference above ten per cent.

(3) If the works contractor is in delay the ordering party shall have the right to a proportionate reduction in the fee for the works for each fall in the price of elements on which the fee was based.

Section 2: Building Contract with Special Provision

fee stipulated with turnkey clause

Article 659

(1) If a building contract contains a turnkey provision or any similar provision the contractor independently undertakes to carry out all the works required for the construction and use of a specific structure.

(2) In this case the agreed fee shall also cover the value of unforeseen and excess works, and shall exclude the influence of missing works thereon.

(3) If several contractors participate as contracting parties in a turnkey contract their liability towards the ordering party shall be joint and several.

Section 3: Liability for Defects

application of rules on contract for work

Article 660

Unless stipulated otherwise in this title, the appropriate provisions from the title of the present code on the contract for work shall apply to liability for defects in a structure.

transfer of rights from liability for defects

Article 661

The ordering party's rights against the contractor for reason of defects in a structure shall also be transferred to all subsequent acquirers of the structure or parts thereof, although such that a new period for notification and suit shall not run for subsequent acquirers; the predecessors' period shall count towards theirs.

Section 4: Liability of Contractor and Designer for Solidity of Structure

where liability lies

Article 662

(1) The contractor shall be liable for any defects in the execution of the structure concerning its solidity if such defects show themselves within ten years of the delivery and takeover of works.

(2) The contractor shall also be liable for any deficiencies in the land on which the structure is built that show themselves within ten years of the delivery and takeover of works, unless a specialist organisation gave an expert opinion that the land was suitable for construction and during construction no circumstances arose to awaken any doubt over the justification of the expert opinion.

(3) This shall also apply to the designer, if the defect in the structure originates from any defect in the plan.

(4) Under the provisions of the previous paragraphs the two shall be liable not only to the ordering party, but also to any other acquirer of the structure.

(5) It shall not be possible to exclude or limit their liabilities by contract.

obligation to notify and loss of right

Article 663

(1) The ordering party or other acquirer shall be obliged to notify the contractor and designer regarding defects within six months of discovering the defect; otherwise the ordering party or acquirer shall lose the right to make reference thereto.

(2) The right of the ordering party or other acquirer against the contractor or designer deriving from their liability for defects shall expire one year after the day the contractor or designer was notified regarding the defect.

(3) The contractor or designer may not make reference to the provisions of the previous paragraphs if the defect relates to facts that were known or could not have remained unknown thereto and that they failed report to the ordering party or other acquirer, or if through their action they misled the ordering party or other acquirer into failing to exercise the rights on time.

reduction and exclusion of liability

Article 664

(1) The contractor shall not be released from liability if the defect occurred because during the execution of individual works the contractor acted according to the ordering party's requirements.

(2) However if prior to the execution of individual work according to the ordering party's requirements the contractor warned the former regarding the risk of defects occurring the contractor's liability shall be reduced, and may also be excluded under the circumstances of the case in question.

recourse

Article 665

(1) If in the relationship with the ordering party the contractor and designer are liable for a defect their liability shall be joint and several.

(2) A designer that formulated the plan for the structure and that was entrusted with supervising the execution of the works shall also be liable for defects in the executed works that occurred because of reasons for which the contractor is liable if they could be noticed during customary and appropriate supervision of the works, but shall have the right to demand appropriate reimbursement from the contractor.

(3) A contractor that reimbursed damage inflicted because of a defect in the executed works shall have the right to demand reimbursement from the designer in the extent to which the defects in the executed works originate from defects in the plan.

(4) If a person entrusted with part of the transaction by the contractor is liable for a defect the contractor must, if intending to demand reimbursement therefrom, notify such person regarding the defect within two months of being notified by the ordering party.

Title XIII: Contract of Carriage

Section 1: General Provisions

definition

Article 666

(1) Through a contract of carriage a carrier undertakes to transport a person or a thing to a specific place, and the passenger or sender undertakes to make a specific payment thereto for this.

(2) Those involved in transport as their regular activities and all others that undertake by contract to perform transport for payment shall be deemed carriers pursuant to the present code.

carrier's obligations in route transport

Article 667

(1) A carrier that performs transport on a specific route (route transport) shall be obliged to regularly and correctly maintain the published route.

(2) A carrier shall be obliged to accept for transport any person and any thing that fulfils the conditions stipulated in the published general terms and conditions.

(3) If the carrier's ordinary means of transport do not suffice for all the required transport priority shall be given to persons and things for which priority is stipulated in special regulations, and further priority shall be stipulated in the order of the requests; in so doing the longer transport shall be decisive in ascribing priority to requests made simultaneously.

withdrawal from contract

Article 668

(1) The sender or passenger may withdraw from the contract before it begins to be performed, and must reimburse the damage incurred for this reason by the carrier.

(2) If at the beginning of transport the carrier is so delayed that the agreed transport no longer has any meaning for the other party or if the carrier cannot or does not wish to perform the agreed transport the other party may withdraw from the contract and demand the return of that which was paid for the transport.

size of payment for transport

Article 669

(1) If the size of the payment for transport is stipulated by a tariff or any other published binding legal act, a higher payment may not be pronounced by the contract.

(2) If the size of the payment for transport is not stipulated by a tariff, any other published binding legal act or by the contract the carrier shall have the right to the customary payment for the type of transport.

(3) The sense of the provisions on payment in the title of the present code on the contract for work shall apply to other matters.

limitation of application of provision of this title

Article 670

The provisions of this title shall apply to all types of transport, unless stipulated otherwise by law for individual types of transport.

Section 2: Contract on Carriage of Freight

Subsection 1: General Provisions

delivery of thing

Article 671

The carrier shall be obliged to deliver the thing accepted for transport to the sender or a specific person (the recipient) in a specific place.

regarding what sender must notify carrier

Article 672

(1) The sender must notify the carrier regarding the type of consignment and the contents and quantity thereof, and must report where the consignment is to be transported, the name and address of the recipient, the name and address of the sender and everything else necessary for the carrier to be able to perform the obligation without delay or obstacles.

(2) If the consignment contains valuables, securities or other expensive things the sender must notify the carrier of such when handing it over for transport and must report the value thereto.

(3) If it is a matter of the transport of a dangerous thing or a thing that requires special conditions of transport the sender must notify the carrier of such on time so that the carrier is able to take appropriate measures.

(4) A sender that fails to provide the carrier with the information specified in the first and third paragraphs of this article or provides erroneous information shall be liable for damage incurred for this reason.

bill of freight

Article 673

(1) The contracting parties may agree to compile a bill of freight on a consignment handed over for transport.

(2) The bill of freight must contain the name and address of the sender and the carrier, the type, contents and quantity of the consignment, the value of any valuables and other expensive things, the place of destination, the sum of payment for the transport or a note that payment was made in advance, a provision on the amount by which the consignment was encumbered, and the place and day of issue of the bill of freight.

(3) Other provisions of the contract of carriage may be recorded in the bill of freight.

(4) Both contracting parties must sign the bill of freight.

(5) The bill of freight may contain a "by order" provision or may be made out to the bearer.

contract of carriage and bill of freight

Article 674

The existence and validity of the contract of carriage shall be independent of the existence and correctness of the bill of freight.

confirmation of acceptance for transport

Article 675

If a bill of freight is not issued the sender may request that the carrier issue a confirmation of the acceptance of the consignment for transport with the information that must be contained in the bill of freight.

Subsection 2: Relationship Between Sender and Carrier

packing

Article 676

(1) The sender shall be obliged to pack the thing in the prescribed or customary manner such that no damage will occur and the safety of people and property will not be threatened.

(2) The carrier shall be obliged to draw the sender's attention to any deficiencies in packing that can be noticed; otherwise the carrier shall be liable for damage to the consignment inflicted for this reason.

(3) However the carrier shall not be liable for damage to the consignment if despite being warned regarding deficient packing the sender demands that the carrier accept the consignment for transport with the deficiencies.

(4) The carrier shall be obliged to refuse the consignment if the deficiencies in the packing thereof are such that they could endanger people or property or cause any damage.

(5) The carrier shall be liable for damage inflicted on third persons for reason of deficiencies in packing while the thing is with the carrier, but shall have the right to demand compensation from the sender.

payment for transport and costs in connection with transport

Article 677

(1) The sender shall be obliged to pay the carrier for transport and costs in connection with transport.

(2) If the bill of freight does not cite that the sender is paying for transport and the other costs in connection with transport the sender shall be presumed to have instructed the carrier to charge such costs to the recipient.

disposal of consignment

Article 678

(1) The sender may dispose of the consignment and alter the order specified in the contract, and may instruct the carrier to cease further transport of the consignment, return it thereto, deliver it to another recipient or send it to any other place.

(2) The sender's right to alter the order shall expire when the consignment reaches the place of destination, when the carrier delivers the bill of freight to the recipient, when the carrier requests that the recipient accept the consignment, or when the recipient demands the delivery thereof.

(3) If the bill of freight was issued by order or to the bearer the holder of the bill of freight shall exclusively hold the sender's rights specified in the previous paragraph.

(4) An entitled person that exploits the right and gives the carrier a new order must reimburse the costs and damage incurred by the carrier because of this, and at the carrier's request shall give a guarantee that the costs and damage will be reimbursed thereto.

direction of transport

Article 679

(1) The carrier must perform the transport according to the agreed route.

(2) If it was not agreed along which route the transport must be performed the carrier must perform the transport along the route that best suits the interests of the sender.

obstacles to transport

Article 680

- (1) The carrier must notify the sender regarding all circumstances that could influence the transport, and act according to the sender's instructions.
- (2) The carrier shall not be obliged to act according to the sender's instructions if the fulfilment thereof could endanger people or property.
- (3) If the case is such that it is not possible to wait for the sender's instructions the carrier must act as the carrier would in such a position with the diligence of a good businessperson or the diligence of a good manager, and must notify the sender of such and request the sender's further instructions.
- (4) The carrier shall have the right to reimbursement of the costs incurred because of obstacles arising through no fault of the carrier.

payment during interruption in transport

Article 681

- (1) If for any reason for which the carrier is liable the transport is interrupted, the carrier shall have the right to a proportion of the payment for the transport performed, but must reimburse any damage incurred by another party because of the interruption.
- (2) If the transport was interrupted for a reason for which none of the parties concerned was liable the carrier shall have the right to the difference between the agreed payment for the transport and the transport costs from the place where the transport was interrupted to the place of destination.
- (3) The carrier shall not have the right to a part of the payment if during transport the consignment was destroyed because of force majeure.

if consignment cannot be delivered

Article 682

- (1) If it is not possible to notify the recipient regarding the arrival of the consignment, if the recipient does not wish to accept it, if it is not possible to deliver the consignment or if the recipient fails to pay the carrier the payment owed and other sums charged on the consignment, the carrier must notify the sender of such, request the sender's instructions and take all measures necessary to ensure the safekeeping of the thing at the sender's expense.
- (2) If an entitled person fails to take any measures in respect of the consignment by an appropriate deadline the carrier shall have the right to sell the thing under the rules on the sale of an indebted thing in the event of the creditor's delay and to pay off the claims from the revenue acquired; the remainder must be deposited with the court for the entitled person.

carrier's liability towards sender

Article 683

A carrier that delivered the consignment to the recipient but failed to charge the sum that was charged on the consignment must pay the sum to the sender, but shall have the right to demand reimbursement from the recipient.

Subsection 3: Relationship Between Carrier and Recipient

recipient's notification of consignment's arrival

Article 684

(1) The carrier must notify the recipient without delay that the consignment has arrived, place it at the latter's disposal as agreed and submit the bill of freight, if issued, to the latter.

(2) If the bill of freight was issued by order or to the bearer the carrier shall only be obliged to act according to the previous paragraph if the bill of freight cites the person at the place of destination that must be notified regarding the consignment's arrival.

delivery of consignment if duplicate bill of freight issued

Article 685

The carrier may refuse to deliver the consignment unless a duplicate of the bill of freight, on which the recipient confirmed delivery of the consignment thereto, is delivered to the former at the same time.

recipient's right to demand delivery of consignment

Article 686

(1) The recipient may exercise against the carrier the rights specified in the contract of carriage and demand that the carrier deliver the bill of freight and consignment thereto as soon as the consignment arrives at the place of destination.

(2) Before the consignment arrives at the place of destination the carrier shall only be obliged to deliver it to the recipient at the latter's request if so authorised by the sender.

(3) The recipient may only exercise the rights specified in the contract of carriage and demand that the carrier deliver the consignment if the recipient fulfils the conditions stipulated in the contract of carriage.

identification and determination of state of consignment

Article 687

(1) The entitled person shall have the right to demand that using an official record the consignment be identified and, if the consignment is damaged, the nature of the damage be stated.

(2) If it is determined that the consignment is not that which was delivered to the carrier or that the damage is greater than is stated by the carrier, the costs of determination shall be borne by the carrier.

recipient's obligation to pay for transport

Article 688

(1) Unless stipulated otherwise in the contract of carriage or the bill of freight, the recipient shall upon accepting the consignment and any bill of freight undertake to pay the carrier for transport and the sums charged on the consignment.

(2) If the recipient does not feel obliged to pay the carrier as much as demanded the recipient may only exercise the rights in the contract by depositing the disputed sum with the court.

Subsection 4: Carrier's Obligation for Loss, Damage or Delay of Consignment

loss or damage of consignment

Article 689

(1) The carrier shall be liable for any loss of or damage to the consignment during the time between accepting it and delivering it, unless it is a consequence of the action of the entitled person, an attribute of the consignment, or external causes that could not be anticipated and could not be avoided or averted.

(2) Provisions of the contract of carriage, the general terms and conditions of transport, tariffs or any other legal act that limit such liability shall be null and void.

(3) However a provision by which the maximum sum of compensation is stipulated in advance under the condition that it is not in clear disproportion to the damage shall be valid.

(4) This limitation of compensation shall not be valid if the carrier inflicted the damage intentionally or out of gross negligence.

(5) Unless agreed otherwise, the compensation shall be levied using the market price of the consignment at the time and place of handover for transport.

loss of or damage to consignment of expensive things

Article 690

(1) If a consignment containing valuables, securities or other expensive things is lost or damaged the carrier shall only be obliged to reimburse the damage incurred if when the things were handed over for transport the carrier was informed of the nature and value of the things or if the carrier inflicted the damage intentionally or out of gross negligence.

(2) If other things were present in the consignment with the stated things the carrier shall be liable for the loss thereof or damage thereto under the general rules on the carrier's liability.

refund of payment for transport

Article 691

If the consignment is totally lost the carrier shall in addition to the damage be obliged to refund to the sender that which was paid for transport.

if recipient accepts consignment without objection

Article 692

- (1) If the recipient accepts the consignment without objection and pays the carrier's claim to the carrier, the carrier's liability shall terminate, unless damage to the consignment was stated by official record prior to the acceptance of the consignment.
- (2) The carrier shall remain liable for damage to the consignment that could not be noticed during delivery if the recipient notifies the carrier of such immediately upon discovering the damage; however this must be within eight days of delivery.
- (3) The carrier may not make any reference to the provisions of the previous two paragraphs if the carrier inflicted the damage intentionally or out of gross negligence.

carrier's liability for delay

Article 693

The carrier shall be liable for the damage incurred because of a delay, unless the reason for the delay is any fact that excludes the carrier's liability for the loss of or damage to the thing.

liability for assistants

Article 694

The carrier shall be liable for persons working during the transport at the carrier's orders.

Subsection 5: Involvement of Several Carriers in Transport of Consignment

when liability is joint and several

Article 695

- (1) A carrier that entrusts the complete or partial transport of a consignment accepted for transport to any other carrier shall continue to be liable for the transport thereof from acceptance to delivery, but shall have the right to reimbursement from the carrier entrusted with the consignment.
- (2) However if the other carrier accepts the consignment from the first with a bill of freight, the former shall become a party to the contract of carriage with the rights and obligations of a joint and several debtor and a joint and several creditor; their shares shall be proportional to their involvement in the transport.
- (3) This shall also apply when for the transport of a certain consignment the same contract binds several carriers that will be sequentially involved in the transport.
- (4) Each of the several carriers shall have the right to demand the determination of the state of the consignment when it is delivered thereto for performing the carrier's part of the transport.

(5) Joint and severally liable carriers shall bear the damage in proportion to their share in the transport, with the exception of any carrier that shows that the damage did not occur when the consignment was being transported thereby.

(6) Objections against a subsequent carrier shall also take effect against all the previous carriers.

carriers' shared liability

Article 696

When several carriers stipulated by the sender are sequentially involved in the transport of the same consignment they shall each be liable solely for their part of the transport.

Subsection 6: Lien

when carrier has lien

Article 697

(1) In order to secure payment for the transport and the refund of the necessary costs incurred by the transport the carrier shall have a lien on the things handed over thereto for transport and in connection with the transport as long as they are in the carrier's possession or as long as the carrier holds documentation that allows the disposal thereof.

(2) If several carriers were involved sequentially in the transport their claims in connection with the performed transport shall be secured with such a lien, and the final carrier shall be obliged to charge all claims according to the bill of freight, unless the bill of freight states otherwise.

(3) The claims of the previous carrier and the lien thereof shall be transferred by law alone to the subsequent carrier that pays such claims thereto.

(4) This shall also apply if the carrier pays a freight forwarding agent's claim.

conflict of liens

Article 698

(1) When in addition to a carrier's lien there are at the same time liens held by the commission agent, the freight forwarding agent and the warehouse on the same thing, the priority of claim shall go to any of these creditors originating through dispatch and transport in the reverse order to that in which they originated.

(2) Other claims by the commission agent and the warehouse and claims by the freight forwarding agent and the carrier originating because of advance payments shall only be settled after the claims cited in the previous paragraph, and in the order they originated.

Section 3: Passage Contract

general provision

Article 699

The carrier shall be obliged to perform passenger transport with the means of transport stipulated in the passage contract and under the conditions of comfort and hygiene deemed necessary with regard to the means of transport and the length of journey.

passenger's right to designated place

Article 700

The carrier shall be obliged to give the passenger the place on the means of transport as agreed.

carrier's liability for delay

Article 701

- (1) The carrier shall be obliged to bring the passenger to the specified place on time.
- (2) The carrier shall be liable for any damage incurred by the passenger owing to a delay, unless the delay arose on grounds that the carrier could not have averted even with the diligence of a good expert.

carrier's liability for passenger safety

Article 702

- (1) The carrier shall be liable for the safety of the passengers from the beginning to the end of transport, in the case of both lucrative and free-of-charge transport, and must reimburse the damage arising because of damage to the health of, injury to or the death of a passenger, unless it arose because of the passenger's action or for an external reason that could not be anticipated, avoided or averted.
- (2) Provisions of a contract, the general conditions of carriage, the tariff or any other legal act by which this liability is reduced shall be null and void.

liability for luggage handed over for transport and for other things

Article 703

- (1) The luggage handed over to the carrier by the passenger must be taken together with the passenger and delivered to the passenger after transport is completed.
- (2) The carrier shall be liable for the loss of or damage to luggage handed over thereto by the passenger according to the provisions on the transport of freight.
- (3) The carrier shall be liable for damage to the things a passenger has on his/her person according to the general rules on liability.

Title XIV: Licence Agreement

Section 1: General Provisions

definition

Article 704

Through a licence agreement the licence provider undertakes to wholly or partly cede to the licence acquirer the right to exploit a patented invention, technical know-how or experience, or a trademark, pattern or model, and the licence acquirer undertakes to make a specific payment for such.

form

Article 705

A licence agreement must be concluded in written form.

duration of licence

Article 706

A licence for exploiting a patented invention, pattern or model may not be concluded for a period longer than the duration of the legal protection of such rights.

exclusive licence

Article 707

(1) The licence acquirer shall only acquire the exclusive right to exploit the subject of the licence through a licence agreement if such is expressly agreed (an exclusive licence).

(2) Other possibilities for exploiting the subject of the licence shall be retained by the licence provider.

(3) If the licence agreement does not state the type of licence involved a non-exclusive licence shall be deemed to have been issued.

Section 2: Licence Provider's Obligations

delivery of subject of licence

Article 708

(1) The licence provider shall be obliged to deliver the subject of the licence to the licence acquirer by the stipulated deadline.

(2) The licence provider shall also be obliged to deliver the technical documentation required for the practical use of the subject of the licence to the licence acquirer.

provision of instructions and reports

Article 709

The licence provider shall be obliged to provide the licence acquirer with all the instructions and reports required for the successful exploitation of the subject of the licence.

liability for usability

Article 710

The licence provider shall be liable to the licence acquirer for the technical feasibility and the technical usability of the subject of the licence.

liability for legal defects

Article 711

(1) The licence provider shall be liable for ensuring that the right of exploitation that is the subject of the licence pertains thereto, that it is not encumbered, and that it is not restricted in favour of a third person.

(2) If the subject of the agreement is an exclusive licence the licence provider shall guarantee that the right of exploitation has not been either wholly or partly ceded to another.

(3) The licence provider shall be obliged to protect and defend the right ceded to the acquirer against all claims by third persons.

obligation of provider of exclusive licence

Article 712

If an exclusive licence has been agreed upon, the licence provider may not in any form exploit the subject of the licence or individual parts thereof, and may not allow another person to do so within the boundaries of the licence's area of validity.

Section 3: Licence Acquirer's Obligations

exploitation of subject of licence

Article 713

The licence acquirer must exploit the subject of the licence in the manner agreed, in the extent agreed and within the boundaries agreed.

exploitation of subsequent upgrades

Article 714

Unless stipulated otherwise by law or by contract, the licence acquirer shall not be entitled to exploit subsequent upgrades to the subject of the licence.

safeguarding of confidentiality of subject of licence

Article 715

If the subject of the licence is an unpatented invention or confidential technical know-how or experience the licence acquirer must safeguard the confidentiality of such.

quality

Article 716

(1) If through a production licence a licence to use a trademark was also ceded the licence acquirer may only place the goods on the market with such a trademark if the goods are of the same quality as the goods produced by the licence provider.

(2) A contractual provision to the contrary shall be null and void.

marking

Article 717

The licence acquirer shall be obliged to mark the goods with labelling on production under licence.

payment

Article 718

The licence acquirer must pay the licence provider the agreed payment at the time and in the manner stipulated in the contract.

reporting

Article 719

If the payment depends on the extent of the exploitation of the subject of the licence the licence acquirer must report the level of exploitation to the licence provider and settle the payment each year, unless a specific shorter period is stipulated in the contract.

change in agreed payment

Article 720

If the agreed payment becomes clearly disproportionate to the revenues gained by the licence acquirer by exploiting the subject of the licence a concerned party may request a change therein.

when sublicence may be issued

Article 721

(1) The acquirer of an exclusive licence may cede the right to exploit the subject of the licence to another (a sublicence).

(2) It may be agreed in the contract that the licence acquirer may not provide a sublicence to another or may not provide a sublicence without the permission of the provider.

when licence provider may deny permission

Article 722

When the licence provider's permission is required for a sublicence the provider may only deny permission for the acquirer of an exclusive licence on serious grounds.

termination because of non-permitted sublicence

Article 723

The licence provider may terminate the licence agreement without notice if a sublicence was provided without the licence provider's permission when such was required by law or by the contract.

direct claim by licence provider

Article 724

(1) No separate legal relationship shall be established through a sublicence between the sublicence acquirer and the licence provider, even when the licence provider gave the permission required for concluding the sublicence.

(2) In order to pay off claims arising from the licence the licence provider may directly demand from the sublicence acquirer the payment of the sums owed to the sublicence provider from the sublicence.

Section 5: Termination of Contract

end of definite period

Article 725

A licence agreement concluded for a definite period shall terminate when the period for which it was concluded ends, and no notice need be given.

tacitly renewed licence

Article 726

(1) If after the period for which the licence agreement was concluded the licence acquirer continues to exploit the subject of the licence and the licence provider does not oppose this, a new licence agreement for an indefinite period shall be deemed to have been concluded under the same conditions as the previous agreement.

(2) Security provided by third persons for the initial licence shall expire at the end of the period for which it was concluded.

notice of termination

Article 727

(1) A licence agreement whose duration is not stipulated shall terminate through notice of termination, which either party may give to the other, observing the stipulated period of notice in so doing.

(2) If no period of notice is stipulated in the agreement the period shall be six months, but the licence provider may not give notice of termination during the first year of the agreement's validity.

death, bankruptcy and liquidation

Article 728

(1) If the licence provider dies the licence agreement shall continue with the licence provider's heirs, unless agreed otherwise.

(2) If the licence acquirer dies the licence agreement shall continue with the licence acquirer's heirs who inherit the company.

(3) If the licence acquirer undergoes bankruptcy or liquidation the licence provider may withdraw from the agreement.

Title XV: Contract of Deposit

Section 1: Contract of Deposit (General)

Subsection 1: General Provisions

definition

Article 729

(1) Through a contract of deposit the depositary undertakes to accept a thing from the depositor, to keep it safe and to return it thereto when requested thereby.

(2) Only movable property may be the subject of a contract of deposit.

safekeeping of another's thing

Article 730

(1) A valid contract of deposit may also be concluded in such person's own name by a person that is not entitled to dispose of a thing or is not the owner of the thing, and the depositary must return the thing thereto unless the depositary learns that the thing was stolen.

(2) If a third person files a suit demanding the thing from the depositary and states that such person is entitled to dispose thereof or is the owner thereof, the depositary must report to the court the identity of the person from whom the thing was received and must inform the depositor of the suit filed.

Subsection 2: Depositary's Obligations

obligation of safekeeping and notification

Article 731

(1) The depositary shall be obliged to keep the thing safe as if it were the depositary's own thing, or with the diligence of a good businessperson or the diligence of a good manager if it is a matter of lucrative safekeeping.

(2) If the place and manner of safekeeping are stipulated in the contract the depositary may only change them if so demanded by altered circumstances; otherwise the depositary shall also be liable for the accidental destruction of or damage to the thing.

(3) The depositary must inform the depositor of any change noticed in the things and of any danger that could lead the thing to be damaged in any way.

delivery of thing to another for safekeeping

Article 732

The depositary may not deliver the entrusted thing to another for safekeeping without the depositor's consent or without being forced to do so; otherwise the depositary shall also be liable for the accidental destruction of or damage to the thing.

use of thing

Article 733

(1) The depositary shall not have the right to use the thing entrusted thereto for safekeeping.

(2) A depositary that uses the thing without permission shall owe the depositor appropriate compensation and in so doing shall be liable for the accidental destruction of or damage to the thing.

(3) If any kind of non-consumable thing was placed in safekeeping and the depositary was permitted to use it, the rules of a loan contract shall apply to the relationship between the contracting parties, and the contract shall be judged solely with regard to the time and place of the return of the thing according to the rules of a contract of deposit, unless the contracting parties stipulated otherwise in this respect.

use of thing and delivery thereof to another

Article 734

If the depositary uses the thing without the depositor's consent and without being forced to so in contravention of the contract, changes the place or manner of the safekeeping or delivers the thing to another, the depositary shall not be liable for the accidental destruction of or damage to the thing that would have occurred even if the depositary had acted in accordance with the contract.

return of thing

Article 735

(1) The depositary shall be obliged to return the thing as soon as the depositor demands, including all the fruits and other benefits therefrom.

(2) If a deadline is stipulated for the return of the thing the depositor may demand the return of the thing before the deadline, unless the deadline was not agreed exclusively in the interest of the depositor.

(3) It shall be necessary to return the thing at the place it was delivered to the depositary, unless another place is stipulated in the contract; in such a case the depositary shall have the right to the reimbursement of the costs of transporting the thing.

Subsection 3: Depositary's Rights

reimbursement of costs and damage

Article 736

The depositary shall have the right to demand that the depositor reimburse the justifiable costs incurred by the depositary in keeping the thing and the damage incurred because of safekeeping.

payment

Article 737

The depositary shall not have the right to payment for the depositary's endeavours, unless payment was agreed, the depositary's activities comprise the acceptance of things for safekeeping, or payment could be expected given the circumstances of the transaction.

return of thing during gratuitous safekeeping

Article 738

(1) A depositary that undertook to keep a thing free of charge for a specific period may return it to the depositor before the agreed deadline if the thing itself is threatened with destruction or damage or if damage could be incurred by the depositary because of further safekeeping.

(2) If a deadline was not agreed the depositary specified in the previous paragraph may withdraw from the contract at any time, but must stipulate an appropriate deadline for the depositor to take the thing.

Subsection 4: Special Cases of Safekeeping

false safekeeping

Article 739

If replaceable things were placed in safekeeping with the depositary having the right to consume them and the obligation to return the same quantity of things of the same type, the rules of a loan contract shall apply to the depositary's relationship with the depositor; the rules of a contract of deposit shall only apply with regard to the time and place of the return of the thing, unless the contracting parties stipulated otherwise in this respect.

emergency safekeeping

Article 740

A person to whom a thing was entrusted in an emergency, such as in the event of a fire, an earthquake or a flood, must keep it safe with high diligence.

Section 2: Safekeeping by Hotelkeeper

hotelkeeper as depositary

Article 741

(1) Hotelkeepers shall be deemed depositaries in respect of the things that guests bring with them, and if the things disappear or are damaged shall be liable for damage in the amount of the value of the things, to a maximum of 50,000 tolar.

(2) Hotelkeepers that offer guests lodging shall be deemed depositaries in respect of the things that guests bring with them, and if the things disappear or are damaged shall be liable for damage in the amount of the value of the things, to a maximum of 150,000 tolar.

(3) This liability shall be excluded if the things were destroyed or damaged owing to circumstances that could not be avoided or averted, or for any reason lying in the thing itself, or if they disappeared or were damaged through the guest's own fault or through the fault of those that the guest brought with him/her or came to visit him/her.

(4) The hotelkeeper shall owe full compensation if the guest delivered the thing thereto for safekeeping and if the damage arose through the hotelkeeper's own fault or the fault of a person for whom the hotelkeeper is liable.

hotelkeeper's obligation to accept thing for safekeeping

Article 742

(1) A hotelkeeper shall be obliged to accept for safekeeping things that guests bring with them and that they wish to place in safekeeping, unless there is no suitable space for them or the safekeeping thereof would exceed the hotelkeeper's capacities for any other reason.

(2) Any hotelkeeper that refuses to accept things for safekeeping without justification shall owe the guest full compensation for any damage incurred for this reason.

guest's obligation to register damage

Article 743

The guest shall be obliged to register that a thing has disappeared or been damaged as soon as the guest learns of such; otherwise the guest shall only have the right to compensation if he/she shows that the damage arose through the fault of the hotelkeeper or a person for whom the hotelkeeper is liable.

publications on exclusion of liability

Article 744

Declarations displayed in the hotelkeeper's premises that contrary to the provisions of the present code exclude, limit or condition the hotelkeeper's liability for things guests bring with them shall have no legal effect.

right of retention

Article 745

Hotelkeepers that accept guests for overnight lodging shall have the right to retain the things the guests brought with them until full payment for the lodging and other services.

extension of application of provisions on safekeeping by hotelkeeper

Article 746

The sense of the provisions on safekeeping by a hotelkeeper shall also apply to hospitals, garages, railway sleeper compartments, organised camps, etc.

Title XVI: Contract of Storage

Section 1: General Provisions

definition

Article 747

(1) Through a contract of storage the warehouser undertakes to accept and store specific goods, do all that is necessary or agreed upon to preserve them in the specific state and to deliver them at the request of the depositor or any other entitled person, and the depositor undertakes to make a specific payment thereto for such.

(2) When handing over the goods the depositor must provide all the necessary information thereon and state the value thereof.

exclusion of liability and certain warehouse obligations

Article 748

(1) The warehouse shall be liable for damage to the goods, unless it is shown that the damage occurred owing to circumstances that could not be avoided or averted, or occurred through the depositor's fault, because of faults in the goods or the dangerous properties of the goods, or because of poor packaging.

(2) The warehouse shall be obliged to draw the depositor's attention to faults in the goods or the dangerous properties of the goods or to poor packaging because of which damage to the goods could occur as soon as the warehouse notices or should have noticed such.

(3) If unpreventable changes begin to occur to the goods that threaten to spoil or destroy the goods the warehouse must sell the goods without delay in the most appropriate manner when the depositor would be unable to do such on time at the warehouse's request.

(4) The warehouse shall be obliged to do everything necessary to uphold the depositor's right against a carrier that delivered the goods for the depositor in a damaged or deficient state.

when goods must be insured

Article 749

(1) The warehouse shall only be obliged to insure the goods accepted for safekeeping if such is agreed.

(2) Unless it is stipulated in the contract which risks must be covered by the insurance, the warehouse shall be obliged to insure against the customary risks.

limitation of compensation

Article 750

The compensation that must be paid by the warehouse because of the destruction or diminution of the goods or damage thereto during the period between acceptance and delivery may not exceed the actual value of the goods, unless the damage was inflicted intentionally or out of gross negligence.

mixing of replaceable things

Article 751

(1) The warehouse may not mix accepted replaceable things with things of the same type and same quality unless the depositor consented thereto or it is clear that it is a matter of things that can be mixed without the risk of any damage being inflicted on the depositor.

(2) If the things are mixed the warehouseer may at the request of an entitled person deliver the part thereto pertaining from the mix of replaceable things without the involvement of other entitled persons.

inspection of goods and removal of samples

Article 752

The warehouseer shall be obliged to allow an entitled person to inspect the goods and remove samples thereof.

warehouseer's claim and lien

Article 753

(1) In addition to the right to payment for safekeeping the warehouseer shall also have the right to the reimbursement of the necessary costs for preserving the goods.

(2) The warehouseer shall have a lien on the goods for the claims deriving from the contract of storage and other claims originating in connection with the safekeeping of the goods.

collection of goods and sale of uncollected goods

Article 754

(1) The depositor may collect the goods before the agreed deadline.

(2) If the depositor fails to collect the goods after the agreed deadline or if a year passes and no deadline for the safekeeping was stipulated in the contract the warehouseer may sell the goods at a public auction for the depositor's account; however the warehouseer must first notify the depositor of this intention and allow an additional period of at least eight days for the depositor to collect the goods.

defects during reception of goods

Article 755

(1) The recipient of the goods must inspect the goods at the moment they are received.

(2) If during the reception of the goods the recipient notices any defects the recipient must immediately inform the warehouseer of such; otherwise the goods shall be deemed to have been received in order.

(3) The recipient must notify the warehouseer in a reliable manner regarding defects that could not be noticed when the goods were received within seven days of the goods being received; otherwise the goods shall be deemed to have been received in order.

application of rules on safekeeping

Article 756

The sense of the rules on safekeeping shall apply to contracts of storage, unless regulated otherwise by the rules on warehousing.

Section 2: Warehouse Receipt

obligation to issue warehouse receipt

Article 757

A warehouse that performs warehousing activities as a registered activity shall be obliged to issue a warehouse receipt to the depositor at the request thereof for the goods accepted into the warehouse.

composition and content of warehouse receipt

Article 758

(1) The warehouse receipt shall be composed of a receipt and a lien document.

(2) The following information must be cited in the receipt and the lien document: the business name or name of the depositor, the head office address of place of residence thereof, the warehouse's business name and head office address, the warehouse receipt's date and number, the location of the warehouse, the type, state and quantity of goods, indication of the amount for which the goods are insured, and other information required for identifying the goods and for determining the value thereof.

(3) The receipt and lien document must make reference to each other.

warehouse receipt for parts of goods

Article 759

(1) The depositor may request that the warehouse divide the goods into specific parts and issue a separate warehouse receipt for each part.

(2) A depositor that has already obtained a warehouse receipt for the whole quantity of goods may request that the warehouse divide the goods into specific parts and issue a separate warehouse receipt for each part in place of the warehouse receipt already received.

(3) The depositor may request that the warehouse issue a warehouse receipt solely for a part of the replacement goods stored therewith.

rights of holder of warehouse receipt

Article 760

(1) The holder of the warehouse receipt shall have the right to demand the delivery of the goods cited therein.

(2) The holder may only dispose of the goods cited in the warehouse receipt by producing the warehouse receipt.

transfer of receipt and lien document

Article 761

- (1) The receipt and lien document may only be transferred by endorsement, either together or separately.
- (2) It shall be necessary to inscribe the date thereon upon each transfer.
- (3) At the request of the recipient of the receipt or lien document the transfer thereto shall be inscribed in the warehouse register, whereby the recipient's head office address or place of residence shall also be recorded therein.

rights of holder of receipt

Article 762

- (1) The transfer of the receipt without the lien document shall give the recipient the right to demand the delivery of the goods only if such person pays the holder of the lien document the sum that should be paid on the day the claim falls due or deposits such with the warehouse.
- (2) If the sum to which the holder of the lien document has the right can be paid using the purchase money obtained, the holder of the receipt may request that the goods be sold, and the surplus be delivered thereto.
- (3) If it is a matter of replaceable things the holder of the receipt without the lien document may demand that the warehouse deliver part of the goods thereto, under the condition that the former deposit with the warehouse the appropriate sum of cash for the holder of the lien document.

rights of holder of lien document

Article 763

- (1) The transfer of the lien document without the receipt shall give the recipient a lien on the goods.
- (2) Upon the first transfer the business name or name and head office address or place of residence of the creditor, the amount of the creditor's claim including interest and the day payment falls due must be inscribed on the lien document.
- (3) The first recipient of the lien document must notify the warehouse without delay of the lien document's transfer thereto, and the warehouse must inscribe this transfer in its register and mark the inscription on the lien document itself.
- (4) Unless that which is stipulated in the previous paragraph is done the lien document may not be transferred onwards by endorsement.
- (5) A lien document on which the lien creditor's claim is not cited shall tie the entire value of the thing cited therein in favour of the lien creditor.

protest over non-payment and sale of goods

Article 764

- (1) A holder of a lien document without a receipt that at the deadline has not been paid the claim secured by the lien document must lodge a protest according to the bill of exchange act; otherwise the holder shall lose the right to demand payment from the recipients.
- (2) A holder of a lien document that has filed a protest may demand the sale of the goods under the lien eight days after the claim fell due; a recipient that paid the claim secured by the lien to the holder of the lien document shall have the same right.
- (3) An amount required for the coverage of the sales costs, the warehouse's claim deriving from the contract of storage and other claims by the warehouse shall be removed from the sum obtained from the sale; the secured claim of the holder of the lien document shall then be paid therefrom, while the remainder shall go to the holder of the receipt.

demand for payment from recipients of lien document

Article 765

- (1) The holder of the lien document may only demand payment from the recipient if unable to gain full payment through the sale of the goods under the lien.
- (2) This must be demanded within the period stipulated in the bill of exchange for a claim against an endorser, which shall begin to run on the day the goods were sold.
- (3) The holder of the lien document shall lose the right to demand payment from the recipients unless the former demands the sale of the goods within one month of the protest.

Title XVII: Contract of Mandate

Section 1: General Provisions

definition

Article 766

- (1) Through a contract of mandate the mandate recipient undertakes to the mandator to perform specific transactions therefor.
- (2) At the same time the mandate recipient shall acquire the right to perform the transactions.
- (3) The mandate recipient shall have the right to payment for such person's endeavours, unless agreed otherwise or it follows otherwise from the nature of the mutual relationship.

persons obliged to respond to offered mandate

Article 767

Any person that performs another's transactions as a profession or any person that publicly offers to do so must notify the other party without delay should the former refuse to accept a mandate relating to such transactions; otherwise the former shall be liable for the damage incurred by the latter for this reason.

Section 2: Mandate Recipient's Obligation

execution of mandate as declared

Article 768

(1) The mandate recipient must execute the mandate according to the instructions received with the diligence of a good businessperson or the diligence of a good manager; in so doing the mandate recipient must remain within the mandate recipient's boundaries and at all times attend to the mandator's interests, which must be the former's guide.

(2) If the recipient is of the opinion that the execution of the mandate according to the instructions obtained would harm the mandator the former must warn the latter of such and request new instructions.

(3) If the mandator did not provide specific instructions on a transaction that must be performed the recipient shall be obliged to act with the diligence of a good businessperson or the diligence of a good manager, taking the mandator's interests into consideration, and as the recipient would act in the recipient's own affairs if it is a matter of a gratuitous mandate.

deviation from mandate and instructions

Article 769

(1) The mandate recipient may only deviate from the mandate and instructions obtained with the mandator's consent; if because of a shortage of time or for any other reason the recipient cannot ask for consent the recipient may only deviate from the mandate and instructions if, all the circumstances having been assessed, there is justification in thinking that such is demanded by the mandator's interests.

(2) A recipient that transgresses the boundaries of the mandate or deviates from the instructions obtained without it being a case specified in the previous paragraph shall not be deemed a recipient but a manager without mandate, unless the mandator later approved what was done.

substitution

Article 770

(1) The recipient must execute the mandate in person.

(2) The recipient may only entrust execution of the mandate to another if the mandator allows such or if circumstances compel such.

(3) In such cases the recipient shall only be liable for the choice of substitute and for the instructions provided thereto.

(4) In other cases the recipient shall be liable for the substitute's work and for the accidental destruction of or damage to the thing therewith.

(5) In any case the mandator may demand directly of the substitute that the latter perform the obligation deriving from the mandate.

issue of invoice

Article 771

The mandate recipient must provide an invoice on the transaction performed and deliver everything received from performing the entrusted transactions to the mandator without delay, irrespective of whether any person owed that which was received for the mandator.

reporting

Article 772

At the mandator's request the mandate recipient must report thereto on the state of the transactions and provide an invoice thereto before the stipulated time.

liability for use of mandator's money

Article 773

A mandate recipient that uses money received for the mandator for the former's own purposes must pay interest thereto at the highest permitted contractual interest rate, charged from the day use began, and must pay penalty interest on other owed money that could not be delivered thereto on time, charged from the day it should have been delivered.

joint and several liability of mandate recipients

Article 774

If through the same mandate a transaction was entrusted to several people to be performed together they shall be jointly and severally liable for the obligations deriving from such a mandate, unless agreed otherwise.

Section 3: Mandator's Obligations

monetary advance

Article 775

The mandator must at the mandate recipient's request provide a specific sum of money thereto for the anticipated expenses.

reimbursement of expenses and takeover of obligations

Article 776

(1) The mandator must reimburse the mandate recipient for all the necessary costs the latter had in performing the mandate, together with interest charged from the day they were paid, even if through no fault of the latter the latter's endeavours were in vain.

(2) The mandator must take over the obligations taken on by the mandate recipient in the latter's name when performing the transactions entrusted thereto, or must release the latter from such obligations in any other manner.

reimbursement of damage

Article 777

The mandator shall be obliged to reimburse the mandate recipient for any damage incurred during performance of the mandate through no fault of the latter.

size of payment

Article 778

Unless agreed otherwise, the mandator shall owe the customary payment or a fair payment if there is no such custom.

payment

Article 779

(1) Unless agreed otherwise, the mandator must pay the mandate recipient after the transaction is performed.

(2) A mandate recipient that through no fault of such person only performs the mandate in part shall have the right to a proportionate amount of the payment.

(3) If the payment agreed in advance would be in clear disproportion to the services performed the mandator may request a reduction therein.

lien

Article 780

For securing the payment and costs the mandate recipient shall hold a lien on the mandator's movable property acquired thereby on the basis of the mandate, and also on monetary sums received for the mandator.

joint and several liability of mandators

Article 781

If several persons entrust the execution of a mandate to a recipient they shall be jointly and severally liable thereto.

Section 4: Termination of Mandate

withdrawal from contract

Article 782

(1) The mandator may withdraw from the contract.

(2) In the event of withdrawal from a contract under which a payment pertains to the mandate recipient for the latter's endeavours the mandator must pay an appropriate part of the payment and reimburse the damage incurred by the latter because of the withdrawal from the contract, unless there were justifiable grounds for withdrawal.

notice of termination

Article 783

(1) The mandate recipient may terminate the mandate whenever such person so desires, but not at an inappropriate time.

(2) The recipient must reimburse the mandator for damage incurred thereby because of the termination of the mandate at an inappropriate time, unless justifiable grounds were given for the termination.

(3) Even after the termination the recipient must continue those transactions that cannot be deferred, until the mandator has the opportunity to take over concern therefor.

death, winding-up of legal person

Article 784

(1) The mandate shall terminate upon the death of the recipient.

(2) The recipient's heirs shall be obliged to inform the mandator of the recipient's death at the earliest opportunity and to do everything necessary to protect the mandator's interests until the mandator is capable of taking over concern therefor.

(3) The mandate shall only terminate upon the death of the mandator if so agreed or if the recipient received the mandate in respect of the recipient's personal relationship with the mandator.

(4) The mandate recipient must in this case continue with the transactions entrusted thereto if damage would otherwise be inflicted on the heirs, for as long as they are incapable of taking over concern therefor.

(5) If the mandator or the recipient is a legal person the mandate shall terminate when such person is wound up.

bankruptcy, loss of capacity to contract

Article 785

The mandate shall terminate if the mandator or mandate recipient goes into bankruptcy or partly or wholly loses the capacity to contract.

when mandate terminates

Article 786

(1) If the mandator withdraws from the contract, dies, goes into bankruptcy or partly or wholly loses the capacity to contract the mandate shall terminate when the mandate recipient learns of the development owing to which the mandate is to terminate.

(2) If the recipient obtained a written authorisation it must be returned after the termination of the mandate.

exceptions

Article 787

If the mandate was issued so that the recipient could achieve the fulfilment of certain of the latter's claims against the mandator, the latter may not withdraw from the contract and the mandate shall not terminate upon either the death or bankruptcy of the mandator or recipient or if one of the two partly or wholly loses the capacity to contract.

Title XVIII: Commission Agency Contract

Section 1: General Provisions

definition

Article 788

(1) Through a commission agency contract the commission agent undertakes, for a payment, to perform one or more transactions entrusted thereto by the commissioner in the former's name for the latter's account.

(2) The commission agent shall have the right to a payment even if not agreed upon.

application of rules on contract of mandate

Article 789

The sense of the rules on a contract of mandate shall apply to a commission agency contract, unless regulated otherwise by the commission rules.

conclusion of transaction under conditions different to those in mandate

Article 790

(1) A commission agent that concluded a transaction under conditions less favourable than those stipulated in the mandate and should not have done so must refund the difference to the commissioner and reimburse the damage inflicted.

(2) In the case specified in the previous paragraph the commissioner may refuse to accept the concluded transaction, under the condition that the commission agent is notified of such immediately.

(3) The commissioner shall lose this right if the commission agent shows readiness to immediately refund the difference to the former and reimburse the damage inflicted.

(4) If a transaction was concluded under conditions more favourable than those stipulated in the mandate all benefits so achieved shall go to the commissioner.

sale of goods to insolvent person

Article 791

The commission agent shall be liable to the commissioner for damage if the goods were sold to a person the former knew or should have known to be insolvent.

if commission agent buys goods from commissioner or sells own goods thereto

Article 792

(1) If the commissioner so allows, a commission agent entrusted with the sale or purchase of goods quoted on the stock exchange or on the market may retain the goods as the buyer or supply them as the seller at the price valid when the entrusted transaction is executed.

(2) In this case the relationship deriving from a sales contract shall originate between the commission agent and the commissioner.

(3) If there is a discrepancy between the stock exchange price or market price and the price stipulated by the commissioner a commission agent acting as seller shall have the right to the lower of the two prices while a commission agent acting as buyer must pay the higher price.

Section 2: Commission Agent's Obligations

safekeeping and insurance

Article 793

(1) The commission agent must ensure the safekeeping of the entrusted goods with the diligence of a good businessperson.

(2) A commission agent that fails to insure the goods even though this should have been done under the mandate shall also be liable for the accidental destruction of or damage to the goods.

report on state of goods received

Article 794

(1) When the goods sent by the commissioner are received from the carrier the commission agent must determine the state thereof and report without delay to the commissioner regarding the day of the goods' arrival and any visible damage or deficiencies; otherwise the commission agent shall be liable for any damage incurred by the commissioner because of such an omission.

(2) The commission agent must do everything necessary to protect the commissioner's rights against the person liable.

report on changes to goods

Article 795

The commission agent must report to the commissioner regarding any changes to the goods owing to which the goods could lose their value; if the former does not have time to await the latter's instructions or the latter is delaying the instructions and the risk of significant damage is threatened the former must sell the goods in the most appropriate manner.

report of fellow contracting party's name to commissioner

Article 796

- (1) The commission agent must report the name of the person with whom the entrusted transaction was performed to the commissioner.
- (2) This rule shall not apply to the sale of movable property via commission-based sales outlets, unless agreed otherwise.

provision of invoice

Article 797

- (1) The commission agent must provide an invoice on the performed transaction without unnecessary delay.
- (2) The commission agent must deliver to the commissioner everything received from the transaction performed for the latter.
- (3) The commission agent may transfer to the commissioner claims and other rights acquired against a third person with whom the transaction was performed in the name of the commission agent and for the account of the commissioner.

del credere

Article 798

- (1) The commission agent shall only be liable for the performance of the obligation of such person's fellow contracting party if the former specifically guaranteed to perform such (del credere).
- (2) A commission agent that guaranteed the performance of the obligation of a fellow contracting party shall have the right to a special payment (del credere commission).

Section 3: Commissioner's Obligations

payment (commission)

Article 799

(1) The commissioner shall be obliged to pay the commission agent a commission when the transaction performed by the commission agent is executed, and also if the execution thereof is prevented by any reason for which the commissioner is liable.

(2) If the transaction is executed in steps the commission agent may demand a proportionate part of the payment after each part performance.

(3) If the execution of the concluded transaction does not occur for a reason for which neither the commission agent nor the commissioner is liable, the commission agent shall have the right to appropriate payment for such person's endeavours.

(4) A commission agent that did not act faithfully to the commissioner shall not have the right to payment.

size of payment

Article 800

(1) If the amount of the payment is not stipulated in the contract or a tariff the commission agent shall be entitled to a payment appropriate to the transaction performed and the level of success achieved.

(2) If in a particular case the payment is disproportionately large in comparison to the transaction performed and the level of success achieved, at the commissioner's request the court may reduce it to a fair amount.

reimbursement of costs

Article 801

(1) The commissioner must reimburse the commission agent for the costs necessary to the execution of the mandate, together with interest charged from the day the costs were paid.

(2) The commissioner shall be obliged to pay the commission agent separately for the use of the latter's warehouses and means of transport, unless such is covered by the payment for execution of the transaction.

monetary advance to commission agent

Article 802

Unless stipulated otherwise in the commission agency contract, the commissioner shall not be obliged to provide in advance to the commissioner the assets the latter requires to perform the transaction entrusted thereto.

Section 4: Lien

Article 803

(1) The commission agent shall hold a lien on the things that are the subject of the commission agency contract, as long as such things are therewith or with a person that holds them in

possession therefor, or as long as a document that allows them to be disposed of by the commission agent is held thereby.

(2) From the value of such things the commission agent may settle such person's claims deriving from all the commission transactions with the commissioner ahead of the commissioner's other creditors, and also from loans and advances made thereto, irrespective of whether they originated in connection with these matters or in connection with other matters.

(3) The commission agent shall have a priority right to repayment from those claims acquired for the commissioner when fulfilling the latter's mandate.

Section 5: Relations with Third Persons

commissioner's rights to claims from transaction with third person

Article 804

(1) The commissioner may only demand the fulfilment of claims from a transaction concluded by the commission agent for the account of the former with a third person when the commission agent cedes them to the commissioner.

(2) However, with regard to the relations among the commissioner, the commission agent and the commission agent's creditors, such claims shall be deemed the commissioner's claims from the moment they originate.

limitation of right of commission agent's creditors

Article 805

For the purpose of collecting their claims, the commission agent's creditors may not even in the event of the commission agent's bankruptcy encroach upon the rights and things that the commission agent acquired in the commission agent's own name for the commissioner when fulfilling the mandate, unless it is a matter of claims that originated in connection with the acquisition of such rights and things.

bankruptcy of commission agent

Article 806

(1) In the event of the bankruptcy of the commission agent the commissioner may demand that the things delivered by the latter to the commission agent for the former to sell and the things supplied for the latter by the commission agent be removed from the bankruptcy estate.

(2) In the same case the commissioner may demand that a third person to whom the commission agent delivered things pay the commissioner therefor or pay the part as yet unpaid for.

Title XIX: Commercial Agency Contract

Section 1: General Provisions

definition

Article 807

(1) Through a commercial agency contract the agent undertakes to attend all the time to ensuring third persons conclude contracts with the agent's mandator and in this sense to mediate between them and the mandator, and also after acquiring authorisation to conclude contracts with third persons in the name of and for the account of the mandator, while the mandator undertakes to provide a specific payment (commission) for each contract.

(2) An agent under the first paragraph of this article may be a legal or natural person that independently and with a lucrative purpose performs agency activities as a registered activity.

(3) A commercial agent may also conclude a commercial agency contract as a mandator.

(4) A mandator may have several agents in the same area for the same types of transaction, unless stipulated otherwise by contract.

(5) Without the mandator's consent the agent may not take on any obligations to work for another mandator in the same area and for the same types of transaction or for the same circle of clients.

form

Article 808

(1) Each party may request that a document be compiled on the content of the contract, including all the latest changes, and that it be signed by the other party. The parties may not waive this right.

(2) Irrespective of the first paragraph of this article the parties may agree that the written form be a condition for the validity of the contract and changes thereto.

conclusion of contracts in mandator's name

Article 809

An agent that acquires a special or general authorisation from the mandator may conclude contracts in the name and for the account thereof.

acceptance of fulfilment

Article 810

The agent may not demand or accept the fulfilment of the mandator's claims, unless specially authorised therefor.

declaration to agent for mandator

Article 811

If a contract was concluded with the mediation of an agent, the mandator's fellow contracting party may make valid declarations to the agent relating to defects in the subject of the contract and other declarations in connection with it in order to protect and exercise the rights deriving from the contract.

declarations in mandator's name

Article 812

In order to protect the rights of the mandator the agent shall be entitled to make the necessary declarations to the former's fellow contracting party.

insurance

Article 813

In order to insure the mandator's interests the agent may request measures necessary for the insurance thereof.

Section 2: Agent's Obligations

concern for mandator's interests

Article 814

(1) When performing the contract the agent must act honestly, in good faith and with concern for the mandator's interests, and in all transactions entered into must act with the diligence of a good businessperson.

(2) When performing the contract the agent must particularly endeavour to mediate or conclude transactions appropriately, whereby the agent must consider the instructions provided by the mandator.

(3) An agreement between the parties that is contrary to the first or second paragraph of this article shall be null and void.

information and reporting

Article 815

(1) The agent must provide the mandator with all the necessary information on the market situation, particularly the information important to each individual transaction.

(2) The agent shall be obliged to report regularly to the mandator on the agent's work, particularly on third persons that are willing to negotiate with the mandator or conclude a contract therewith, and on the contracts concluded in the mandator's name.

(3) An agreement between the parties that would be contrary to the first or second paragraph of this article shall be null and void.

participation in conclusion of transactions

Article 816

The agent shall be obliged to participate according to the mandator's instructions in the conclusion of transactions and subsequently until the total completion thereof.

safeguarding of commercial confidentialities

Article 817

(1) The agent shall be obliged to safeguard the mandator's commercial confidentialities of which the former learns in connection with the transactions entrusted thereto.

(2) An agent that misuses such confidentialities or reveals them to another shall be liable therefor, even after the commercial agency contract terminates.

return of things made available for use

Article 818

When the commercial agency contract terminates the agent must return to the mandator all the things delivered by the latter to the former for use while the contract was valid.

special case of liability

Article 819

(1) The agent shall only be liable to the mandator for the performance of obligations deriving from a contract on which the agent mediated or concluded in the latter's name under an authorisation if the former gave a special written guarantee of such.

(2) A guarantee of performance under the first paragraph of this article shall only be possible for specific transactions or transactions with a specific person.

(3) An agent that gives a guarantee to the mandator for the performance of the obligations deriving from a contract on which the agent mediated shall also have the right to a special payment (del credere commission).

Section 3: Mandator's Obligations

general rule

Article 820

(1) The mandator must act honestly and in good faith in the relationship with the agent. The mandator must notify the agent if the mandator will not fulfil a transaction with a third person or if a third person failed to fulfil a transaction.

(2) The mandator must at the mandator's own expense make available to the agent all the necessary documentation, samples, plans, price lists, advertising material, general terms and conditions of business, etc. The costs of translating and printing advertising material in Slovene shall be borne by the agent.

(3) The mandator must provide the agent with all the necessary information for executing the commercial agency contract.

obligation to notify

Article 821

(1) The mandator may accept or reject the conclusion of a contract prepared by the agent at the former's own discretion, but must in each case notify the agent without delay regarding the decision. The mandator must also notify the agent regarding the fulfilment or non-fulfilment of transactions concluded with third persons.

(2) The mandator shall be obliged to notify the agent without delay that it is necessary to reduce the scope of transactions concluded with the agent's mediation to a level smaller than that justifiably expected by the agent, so that the agent may reduce the agent's enterprise to an appropriate measure; otherwise the mandator shall be liable to the agent for damage incurred thereby.

obligatory nature of provisions

Article 822

An agreement between the parties that is contrary to the previous articles shall be null and void.

payment (commission)

Article 823

(1) The mandator must pay the agent a commission for the contracts concluded with the latter's mediation, and also for those contracts concluded by the agent if so authorised.

(2) The agent shall also have the right to a payment for those contracts concluded directly by the mandator with parties found by the agent.

(3) An agent that in accordance with a contract only works in a specific area or with specific parties shall also have the right to a payment for those contracts concluded for the mandator with parties from that area or with the specific parties without the agent's mediation.

(4) The agent shall only have the right to a commission for a contract concluded after the termination of the relationship between the agent and the mandator if the contract is the result of the agent's endeavours during the relationship with the mandator and was concluded a reasonable time after the termination of this relationship or if the third person's offer to conclude the contract came to the agent or the mandator prior to the termination of their relationship and it is a matter of any of the contracts under the first, second or third paragraphs of this article.

(5) The second and third paragraphs of this article shall not apply if the right to a commission was acquired by a previous agent in accordance with the fourth paragraph of this article, unless under the circumstances it would be just for the commission to be shared between the agents.

size of payment

Article 824

(1) If the amount of payment is not stipulated in the contract or a tariff the agent shall have the right to a payment customary in the area where the agent performed the activities for the mandator, with regard to the type of agency transactions. An agent that performed activities for the mandator in several areas shall be entitled to the commission customary in the area where the agent's head office is located.

(2) If it is not possible to determine such a custom the agent shall be entitled to commission in an amount that takes all the circumstances of the transaction into consideration, particularly the number and value of the transactions between the mandator and the third person and the scope and difficulty of the agent's endeavours.

(3) If in a particular case the payment is disproportionately large in comparison to the services, at the mandator's request the court may reduce it to a fair amount.

acquisition of right to payment

Article 825

(1) The agent shall acquire the right to a commission if, and in the extent to which, the mandator performs or should have performed the transaction with the third person or if the third person performs such person's part of the obligations deriving from the transaction with the mandator.

(2) The agent shall not have the right to a commission when it is clear that the contract will not be performed and the reason for the non-performance is not on the part of the mandator. If in such a case the commission has already been paid the agent must return it.

(3) The agent shall acquire the right to a commission at the latest when the third person performs or should have performed such person's obligations from the contract if the mandator has performed the mandator's part.

(4) If the contract between the mandator and the third person is being executed for a longer period the agent shall have the right to an appropriate advance on the commission.

(5) It shall not be possible to amend the rights specified in this article by contract to the detriment of the agent.

charging of commission

Article 826

(1) Every three months the mandator must formulate an invoice of the commission to which the agent is entitled, separately for each month, and send it thereto. The invoice must contain all the essential components based on which it was formulated.

(2) The mandator shall be obliged to pay the commission for the entire period by the end of the month after the last month of the invoicing period. It may be stipulated by contract that the invoicing period be shorter than three months.

(3) If the agent so requests, the mandator shall be obliged to deliver an excerpt from the ledgers on all the transactions entitling the agent to a commission and notify the agent regarding all the circumstances affecting the commission.

(4) If the mandator refuses the agent's request or if the agent has doubts over the accuracy of the excerpt the agent may request that an official auditor inspect the mandator's ledgers and documents in respect of the figures significant to the commission and report them thereto.

(5) The agent's rights under this article may not be limited or excluded by contract.

special payment

Article 827

An agent that with the mandator's authorisation collected any of the latter's claims shall have the right to a special payment on the amount collected.

costs

Article 828

(1) The agent shall not have the right to the reimbursement of costs originating from the ordinary performance of agency transactions, unless agreed otherwise or it is customary otherwise.

(2) However the agent shall have the right to the reimbursement of special costs incurred in favour of the mandator or paid under the latter's mandate.

Section 4: Lien

agent's lien

Article 829

In order to secure the agent's due claims originating in connection with the contract the agent shall hold a lien on the sums collected thereby for the mandator under the latter's authorisation, and also on all the mandator's things received in connection with the contract from the mandator or any other person, as long as they are with the agent or with a person that holds them in possession for the agent, or as long as a document allowing the disposal thereof is held by the agent.

Section 5: Termination of Contract

termination of contract concluded for indefinite period

Article 830

(1) A contract shall be deemed to have been concluded for an indefinite period unless the parties agree otherwise.

(2) If the contract was concluded for an indefinite period either party may terminate it by giving notice of termination pursuant to this article.

(3) The period of notice shall depend on the duration of the contract and shall amount to one month for each year begun during the contract. If the contract lasts longer than five years the period of notice shall be six months.

(4) The parties may not stipulate shorter periods of notice by contract.

(5) If the parties agree upon longer periods of notice the period must apply equally to the mandator and the agent.

(6) Unless stipulated otherwise by contract, the period of notice shall begin on the first day of the next calendar month and shall end on the last day of the relevant calendar month.

termination of contract concluded for definite period

Article 831

(1) If a commercial agency contract was concluded for a definite period it shall terminate when the period ends.

(2) If the two parties continue to perform a contract specified in the first paragraph after the period for which it was concluded ends, it shall be deemed a contract concluded for an indefinite period. In determining the period of notice the time elapsed since the conclusion of the contract shall be taken into consideration, as it applies to the termination of a contract concluded for an indefinite period.

withdrawal from contract without notice

Article 832

(1) On serious grounds, which must be cited, in particular the non-performance of obligations by the other party, or because of exceptional circumstances each party may withdraw from the contract without the period of notice or before the stipulated time. These rights may not be limited or excluded by contract.

(2) If the declaration thereon does not cite the serious grounds the termination shall be deemed to have been made with the ordinary period of notice.

(3) Each party shall have the right to compensation if no serious grounds were cited for termination without notice or before the stipulated time.

(4) An unjustified termination shall give the other party the right to withdraw from the contract without notice.

withdrawal money

Article 833

(1) After termination of the contract the agent shall have the right to appropriate withdrawal money, if and insofar as the agent obtained new clients for the mandator or appreciably expanded the transactions with previous clients and after the contract terminates the mandator enjoys significant benefits with such clients, or if the payment of withdrawal money is demanded by special circumstances, in particular the loss of commission on transactions with such clients.

(2) In determining the withdrawal money it shall be necessary to make appropriate consideration of the commission obtained by the agent for contracts concluded after the termination of the relationship with the mandator and any prohibition on competitive activities after the termination of the relationship with the mandator.

(3) The amount of withdrawal money pursuant to the first and second paragraphs of this article may not exceed the average annual commission over the last five years or the relevant shorter period since the conclusion of the contract.

(4) When a contract concluded for a definite period terminates before the end of this period or when a contract concluded for an indefinite period terminates before five years have passed since it was concluded the agent shall have the right to appropriate withdrawal money in the amount of the difference between the costs incurred by the agent in connection with the introduction of the product to the market and all the other costs incurred by the agent in connection with the performance of the contract, and the revenues obtained by the agent on the basis of the performance of the contract and the revenues the agent would in all likelihood have obtained by the end of the duration of the contract if concluded for a definite period or in five years from the conclusion of the contract if concluded for an indefinite period.

(5) The agent shall also have the right to withdrawal money pursuant to the previous paragraph if not entitled to withdrawal money pursuant to the first paragraph of this article, or if the relevant withdrawal money pursuant to the first paragraph of this article would be lower than the relevant withdrawal money pursuant to the previous paragraph.

(6) Payment of withdrawal money shall not exclude the agent's right to compensation.

grounds for excluding withdrawal money

Article 834

The mandator shall not be obliged to pay withdrawal money if:

1. the contract was terminated by the agent; however the agent may also demand withdrawal money in this case if the grounds for the termination of the contract are circumstances on the part of the mandator or if the agent terminated the contract because of age or disease on the part of the agent that would prevent the continuation of the contractual relationship
2. the mandator terminated the contract because of the agent's culpable behaviour
3. in accordance with an agreement between the mandator and the agent another enters into the contract in place of the agent; such an agreement shall not be permissible before the termination of the contractual relationship

exercise of withdrawal money

Article 835

(1) The right to withdrawal money shall also originate if the contract terminated because of the agent's death.

(2) An agent that fails to report to the mandator within one year of the termination of the contractual relationship that withdrawal money is being demanded shall lose the right to the withdrawal money.

(3) The parties may not waive or reduce the rights in connection with withdrawal money in advance to the detriment of the agent.

(4) With regard to the excerpt from the ledgers and notification of significant circumstances influencing the determination of withdrawal money, the agent shall as appropriate have the same rights as in the charging of commission.

prohibition on competition after termination of contract

Article 836

(1) It may be stipulated by contract that after the termination of the contract the agent may not perform any activities that would compete with the mandator's activities.

(2) Such a provision shall only be valid if in written form and if it relates to the same area, the same persons and the same goods as those stipulated in the contract.

(3) When the contract terminated on grounds on the part of the mandator, such a provision shall only bind the agent if the mandator paid appropriate withdrawal money thereto when the contract terminated and if during the prohibition on competition the mandator pays appropriate monthly compensation thereto in an amount equal to the average monthly commission over the last five years of the contract or for the duration of the contract if it was in force for less than five years.

(4) Such a provision shall bind the agent for at least two years after the termination of the contract.

(5) If the agent terminated the contract because of the mandator's culpable behaviour and a prohibition on competition after termination of the contract was agreed in the contract, the agent may, within one month of the termination, make a written declaration to the mandator that the agent will not observe the prohibition.

(6) The provisions of this article may not be amended by contract to the detriment of the agent.

Title XX: Brokerage Contract

Section 1: General Provisions

definition

Article 837

Through a brokerage contract the broker undertakes to endeavour to find and place in contact with the mandator a person that will negotiate with the mandator to conclude a specific contract, and the mandator undertakes to make a specific payment to the broker for such if the contract is concluded.

application of provisions on contract for work

Article 838

When it is agreed that the broker will have the right to a specific payment even if the broker's endeavours remain unsuccessful, such a contract shall be assessed according to the provisions applying to a contract for work.

acceptance of performance

Article 839

(1) A mandate for brokerage shall not include the right for the broker to be able to accept for the mandator the performance of the obligations specified in the contract concluded via the broker's brokerage.

(2) The broker must have a special written authorisation for such.

cancellation of mandate for brokerage

Article 840

The mandator may cancel the mandate for brokerage whenever desired, if this has not been waived and the cancellation is not in breach of good faith.

mandator not obliged to conclude contract

Article 841

The mandator shall not be obliged to enter into negotiations for the conclusion of a contract with the person found by the broker, or to conclude a contract therewith under the conditions reported to the broker, but shall be liable for damage when having failed to act in good faith.

Section 2: Broker's Obligations

obligation to seek opportunity

Article 842

(1) The broker must seek an opportunity to conclude the specific contract and draw the mandator's attention thereto with the diligence of a good businessperson.

(2) The broker must broker the negotiations and endeavour to see the contract concluded if the broker specifically undertook to do so.

(3) The broker shall not be liable if despite the necessary diligence the broker's endeavours do not succeed.

obligation to inform

Article 843

The broker must inform the mandator of all circumstances significant to the intended transaction that were or should have been known to the broker.

broker's liability

Article 844

(1) The broker shall be liable for damage incurred by either party between whom the broker is brokering if the damage occurred because the broker brokered for a person with incapacity to contract whose incapacity was or should have been known to the broker, or a person whom the broker knew or should have known would be unable to perform the obligations specified in the contract, and in general for any damage incurred through the broker's fault.

(2) The broker shall be liable for damage incurred by the mandator because the broker informed a third person regarding the content of the mandate, the negotiations or the conditions of the concluded contract without the mandator's permission.

brokerage diary and brokerage certificate

Article 845

A broker in the commercial sector must record all the essential information on a contract concluded via the broker's brokerage in a special ledger (the brokerage diary), and at the request of clients must issue an excerpt from the ledger signed by the broker (a brokerage certificate).

Section 3: Mandator's Obligations

payment

Article 846

(1) The broker shall have the right to a payment, even if not agreed upon.

(2) If the size of the payment is not stipulated by a tariff or any other legal act, by the contract or by custom the court shall stipulate it by taking the broker's endeavours and the services performed into consideration.

(3) At the mandator's request the court may reduce the agreed brokerage payment if it finds that it is excessively high in comparison with the broker's endeavours and services.

(4) It shall not be possible to request the reduction of the agreed payment if it was paid to the broker after the conclusion of a contract that the broker brokered.

when broker acquires right to payment

Article 847

(1) The broker shall acquire the right to a payment when the contract that the broker brokered is concluded, unless agreed otherwise.

(2) If the contract was concluded under a suspensive condition the broker shall acquire the right to a payment when the condition is fulfilled.

(3) If the contract was concluded under a dissolving condition the fulfilment of this condition shall not affect the broker's right to a payment.

(4) If the contract is invalid the broker shall have the right to a payment if the grounds for invalidity were not known thereto.

reimbursement of costs

Article 848

(1) The broker shall not have the right to the reimbursement of the costs incurred thereby in the fulfilment of the mandate, unless so agreed.

(2) If the right to reimbursement of costs is recognised in the contract the broker shall also have the right to the reimbursement when a contract is not concluded.

brokerage for both parties

Article 849

(1) Unless agreed otherwise, a broker that obtained a mandate for brokerage from both parties may demand from each party only half of the brokerage payment and only half of the costs if it was agreed that they be reimbursed.

(2) The broker must attend to the interests of the two parties between whom the broker is brokering with the diligence of a good businessperson.

loss of right to payment

Article 850

A broker that acts in breach of contract or for the other party contrary to the interests of the mandator shall lose the right to the brokerage payment and the reimbursement of costs.

Title XXI: Shipping Contract

Section 1: General Provisions

definition

Article 851

(1) Through a shipping contract a freight forwarding agent undertakes to conclude a contract of carriage and other contracts as necessary in the agent's name and for the account of the mandator for the transport of a specific thing, and to perform other customary transactions and acts, and the mandator undertakes to make a specific payment thereto for such.

(2) If so agreed in the contract the freight forwarding agent may conclude a contract of carriage and perform other legal acts in the name and for the account of the mandator.

withdrawal from contract

Article 852

The mandator may withdraw from the contract of such person's own volition, but must in this case reimburse the freight forwarding agent for all the costs incurred thereby until that point and make a proportionate part of the payment thereto for the work done until that point.

application of rules on commission agency contract or commercial agency contract

Article 853

The sense of the rules on a commission agency contract or a commercial agency contract shall apply to those relations between the mandator and freight forwarding agent not regulated in this title.

Section 2: Freight Forwarding Agent's Obligations

warning of deficiency in mandate

Article 854

The freight forwarding agent must draw the mandator's attention to any deficiencies in the mandate, in particular to those owing to which the mandator is exposed to greater costs or damage.

warning of deficiency in packing

Article 855

If the thing is not packed or prepared for transport as it should be the freight forwarding agent shall be obliged to draw the mandator's attention to such deficiencies; if in waiting for the mandator to rectify them the agent would incur damage the agent must rectify them at the mandator's expense.

protection of mandator's interests

Article 856

(1) At every opportunity the freight forwarding agent shall be obliged to act as dictated by the mandator's interests and with the diligence of a good businessperson.

(2) The freight forwarding agent must inform the mandator without delay of any damage to the thing and of any development significant thereto, and take all measures necessary to protecting the mandator's rights against the liable person.

action according to mandator's instructions

Article 857

(1) The freight forwarding agent shall be obliged to adhere to the instructions on the route, the means and method of transport and other instructions obtained from the mandator.

(2) A freight forwarding agent that cannot act according to the instructions must ask for new instructions; if there is not time for this or it is impossible the freight forwarding agent must act as the mandator's interests dictate.

(3) The freight forwarding agent must immediately inform the mandator of any deviation from the mandate.

(4) If the mandator did not stipulate the route, the means or the method of transport the freight forwarding agent shall stipulate them as dictated by the mandator's interests in the case in question.

(5) A freight forwarding agent that deviated from the instructions received shall also be liable for damage incurred owing to force majeure, unless it is shown that the damage would have occurred even if the instructions provided had been adhered to.

freight forwarding agent's liability for others

Article 858

(1) The freight forwarding agent shall be liable for the choice of carrier and for the choice of others with whom a contract is concluded during fulfilment of the mandate (warehousing of goods, etc.), but not for their work, unless such liability was accepted by contract.

(2) A freight forwarding agent that instead of fulfilling the mandate in person entrusts it to another freight forwarding agent shall be liable for the latter's work.

(3) If under the mandate the freight forwarding agent is expressly or tacitly authorised to entrust the fulfilment of the mandate to another freight forwarding agent or if such is clearly in the mandator's interest, the freight forwarding agent shall only be liable for the choice of the other freight forwarding agent, unless liability for the work thereof was accepted by contract.

(4) It shall not be possible to exclude or limit the liability specified in the previous paragraphs by contract.

customs acts and payment of customs duty

Article 859

A mandate for the dispatch of a thing across a border shall include an obligation for the freight forwarding agent to perform all the necessary customs acts and pay the customs duty for the mandator, unless stipulated otherwise in the contract.

when freight forwarding agent performs transport or other tasks

Article 860

(1) The freight forwarding agent may also wholly or partly perform in person the transport of the thing entrusted thereto for dispatch, unless agreed otherwise.

(2) A freight forwarding agent that performs the transport or a part thereof in person shall have the rights and obligations of a carrier and shall in such a case be entitled to an appropriate payment for transport in addition to the dispatch payment and the reimbursement of cost in connection with dispatch.

(3) This shall also apply to other transactions covered by the mandate, custom or the general terms and conditions.

insurance of consignment

Article 861

(1) The freight forwarding agent shall only be obliged to insure the consignment if so agreed.

(2) Unless the risks to be covered by the insurance are stipulated in the contract, the freight forwarding agent shall be obliged to insure the things against the customary risks.

provision of invoice

Article 862

(1) After the transaction is completed the freight forwarding agent must provide an invoice to the mandator.

(2) At the mandator's request the freight forwarding agent must also provide an invoice while fulfilling the mandate.

Section 3: Mandator's Obligations

payment to freight forwarding agent

Article 863

The mandator must pay the freight forwarding agent pursuant to the contract, or pursuant to a tariff or any other legal act if the payment was not agreed; if there are no such tariffs/acts the court shall stipulate the payment.

when freight forwarding agent may demand payment

Article 864

The freight forwarding agent may demand the payment once the freight forwarding agent's obligations from the shipping contract have been performed.

costs and advance

Article 865

(1) The mandator must reimburse the freight forwarding agent for all the necessary costs incurred by the latter when fulfilling the mandate on the dispatch of the thing.

(2) The freight forwarding agent may demand the reimbursement of costs immediately.

(3) At the freight forwarding agent's request the mandator must advance thereto a sum required for the costs demanded by the fulfilment of the mandate on the dispatch of the thing.

if agreed that recipient of thing pays freight forwarding agent

Article 866

If it is agreed that the freight forwarding agent's claims will be charged to the recipient of the thing, the freight forwarding agent shall retain the right to demand payment from the mandator if the recipient does not wish to make the payment thereto.

dangerous things and valuables

Article 867

(1) The mandator must notify the freight forwarding agent regarding attributes of the thing that could lead to the endangerment of people or property or cause damage thereto.

(2) If the consignment contains valuables, securities or other expensive things the mandator must notify the freight forwarding agent of such and report the value thereof when delivering them for dispatch.

Section 4: Special Cases of Freight Forwarding

freight forwarding with fixed payment

Article 868

(1) When a total sum is stipulated in a shipping contract for fulfilment of the mandate on the freight forwarding of a thing, both the payment from the freight forwarding and the payment for transport and the reimbursement of all other costs are included therein, unless agreed otherwise.

(2) In this case the freight forwarding agent shall also be liable for the work of the carrier and other persons attracted into working under the contractual authorisation.

collective freight forwarding

Article 869

(1) When fulfilling mandates acquired the freight forwarding agent may organise collective freight forwarding, unless such is excluded pursuant to the contract.

(2) If through collective freight forwarding the freight forwarding agent gains a difference in the transport fee in favour of the mandator the freight forwarding agent shall have the right to a special additional payment.

(3) In collective freight forwarding the freight forwarding agent shall be liable for any loss of the thing or damage thereto during transport that would not have occurred had the freight forwarding not been collective.

Section 5: Freight Forwarding Agent's Lien

freight forwarding agent's lien

Article 870

(1) In order to secure the freight forwarding agent's claims originating in connection with the shipping contract the freight forwarding agent shall hold a lien on the things delivered thereto for freight forwarding and in connection therewith, as long as the freight forwarding agent has possession of them or as long as a document that allows them to be disposed of by the freight forwarding agent is held thereby.

(2) If another freight forwarding agent is involved in the freight forwarding such person shall be obliged to attend to the settlement of the claims and the exercise of the liens of previous freight forwarding agents.

(3) If the other freight forwarding agent settles the freight forwarding agent's claims against the mandator the claims shall be transferred thereto by law alone, and likewise for freight forwarding agent's liens.

(4) This shall also apply if the other freight forwarding agent settles the carrier's claim.

Title XXII: Contract on Control of Goods and Services

definition

Article 871

(1) Through a contract on control of goods and services one contracting party (the controller) undertakes to perform the agreed control of goods in an impartial and expert manner and to issue a certificate thereon, and the other party (the control ordering party) undertakes to provide an agreed payment for the control performed.

(2) The control of goods may consist of determination of the identity, quality, quantity and other attributes of the goods.

extent of control

Article 872

The controller shall be obliged to perform the control in the extent and in the manner stipulated in the contract, or in an extent and in a manner suited to the nature of the matter if nothing is stipulated in the contract.

nullity of individual contractual provisions

Article 873

(1) Contractual provisions that would charge the controller with duties that could affect the impartiality of the control and the accuracy of the document on the control performed (the certificate) shall be null and void.

(2) The control shall be deemed to have been performed when the certificate is issued.

safekeeping of goods and samples

Article 874

- (1) The controller must store the goods delivered thereto by the control ordering party for the agreed control to be performed and protect them against switching.
- (2) The controller must store samples delivered thereto for at least six months, unless agreed otherwise.

obligation to notify control ordering party

Article 875

The controller must notify the ordering party on time regarding all significant circumstances during the control and safekeeping of the goods, in particular the necessary and beneficial costs paid therefor by the controller.

payment

Article 876

- (1) The controller shall have the right to the agreed payment or the customary payment for the control and safekeeping of goods performed.
- (2) The controller shall also have the right to the reimbursement of all necessary and beneficial costs paid for the ordering party.

lien

Article 877

To secure the agreed or customary payment and the reimbursement of the necessary and beneficial costs the controller shall hold a lien on the goods delivered thereto for control.

entrusting of control of goods to another controller

Article 878

- (1) The controller may entrust the agreed control of the goods to another, unless the ordering party expressly prohibited such.
- (2) The controller shall be liable to the ordering party for the work of the other controller.

control of goods with performance of individual legal acts

Article 879

- (1) Following an express order by the ordering party the controller shall be entitled to perform individual legal acts in the name of and for the account of the ordering party in addition to the agreed control of goods.

(2) The controller shall have the right to a special, customary or agreed payment for individual legal acts performed in the name of and for the account of the ordering party.

control of goods with guarantee

Article 880

(1) The controller may guarantee that the attributes of the controlled goods will not change over an agreed period.

(2) The controller shall have the right to a special, customary or agreed payment for taking on a guarantee of the attributes of the goods.

control of services and things not intended for marketing

Article 881

If the control relates to services or things not intended for marketing the controller and the control ordering party shall have the same rights and obligations as in the control of goods.

withdrawal from contract

Article 882

The control ordering party may withdraw from the contract at any time until the control is performed, but in such a case shall be obliged to pay the controller a proportionate part of the payment and the necessary and beneficial costs incurred thereby, and to reimburse the damage.

Title XXIII: Contract on Organised Travel

Section 1: General Provisions

definition

Article 883

(1) Through a contract on organised travel the travel organiser undertakes to supply the traveller with a package of services comprising transport, accommodation and other services thereto connected, and the traveller undertakes to pay a lump-sum price for such.

(2) A retailer of a travel package compiled by a travel organiser that does not have a head office in the country shall be deemed to be the travel organiser.

issue of travel confirmation

Article 884

(1) By the conclusion of the contract at the latest the travel organiser must issue the traveller with a travel confirmation or must conclude a contract in written form that contains all the mandatory components of the travel confirmation.

(2) The travel confirmation must contain the place and date of issue, the logo and title of the travel organiser, the name of the traveller, the location and dates of the beginning and end of the travel package, the number of days of accommodation, the necessary information on timetables, prices and conditions of transport and the quality of the means of transport, the necessary information on the accommodation including the location of the accommodation and type and category of the accommodation facilities, information on the number of meals (e.g. full board, half board, bed and breakfast), a detailed travel itinerary and information on other services included in the total price, information whether a minimum number of travellers is required for the travel to take place and a deadline by which the traveller is to be notified of any cancellation, the total price for the package of services envisaged in the contract, the conditions under which the traveller may demand the annulment of the contract, the deadline for complaints and demands for a reduction in the price because of poor quality or incomplete services, the necessary information on border and customs formalities, hygiene, financial and other administrative regulations, and other information deemed to be useful if included in the travel confirmation.

(3) If prior to the issue of the travel confirmation a travel itinerary containing the information specified in the previous paragraph was delivered to the traveller the travel confirmation may merely refer to the itinerary.

relation between contract and travel confirmation

Article 885

(1) The existence and validity of a contract on organised travel shall not depend on the travel confirmation or the content thereof.

(2) However the travel organiser shall be liable for any damage incurred by the other party if the latter was not issued with the travel confirmation or the travel confirmation was inaccurate.

presumption of accuracy of confirmation

Article 886

That which is inscribed in the confirmation shall be presumed to be accurate until it is shown to be otherwise.

Section 2: Travel Organiser's Obligations

protection of traveller's rights and interests

Article 887

The travel organiser must provide the traveller with services that have the content and attributes of those cited in the contract, confirmation or travel itinerary, and attend to the traveller's rights and interests in accordance with good business customs in this area.

obligation to inform

Article 888

Prior to the conclusion of the contract the travel organiser must provide for the traveller in written form or in any other suitable form the necessary information on border formalities (passports and visas) and the hygiene formalities that apply to travel and accommodation in the intended destination. Prior to the beginning of the travel the travel organiser shall be obliged to inform the traveller of the timetable in the same manner and to precisely indicate the traveller's place on the means of transport (e.g. cabin or deck on a ship, sleeper compartment on a train), information on the address and telephone number of the local representative of the travel organiser or retailer or if there is no local representative information on an emergency telephone number or any other information that will allow the traveller to contact the travel organiser and/or retailer, and information on the optional conclusion of insurance to cover the costs of cancellation of the contract and insurance to cover the costs of assistance and repatriation in the event of illness or accident during travel. In the case of travel or stays abroad by minors the travel organiser must provide information on establishing direct contact with the minor or the responsible officer in the place where the minor is accommodated.

obligation to safeguard confidential information

Article 889

Information obtained by the organiser on the traveller, the traveller's luggage or the traveller's movements may only be reported to others with the traveller's consent or at the request of a relevant authority.

liability for organisation of travel

Article 890

The travel organiser shall be liable for damage inflicted on a traveller because the travel organiser failed to perform the contract and the obligations stipulated by the present code relating to the organisation of travel, or only performed such in part.

travel organiser's liability if travel organiser performs individual services

Article 891

A travel organiser that in person takes over the transport or accommodation of travellers or other services connected to the provision of organised travel shall be liable to the traveller for damage according to the regulations applying to such services.

travel organiser's liability if individual services are entrusted to third persons

Article 892

(1) A travel organiser that entrusts the transport or accommodation of travellers or other services connected to the provision of organised travel to third persons shall be liable to the traveller for damage incurred because such services were not performed or were only performed in part, in accordance with the regulations applying thereto.

(2) Even if the services were provided in accordance with the contract and the regulations relating thereto the travel organiser shall be liable for damage incurred by the traveller during

provision of the services, unless it is shown that in choosing the persons that performed the services the travel organiser acted with the diligence required.

(3) The traveller shall have the right to demand the full or additional reimbursement of damage suffered thereby directly from the third person liable for the damage.

(4) Insofar as the travel organiser reimburses damage to a traveller the former shall acquire all the rights the latter would have held against the third person liable for the damage (the right to recourse).

(5) The traveller shall be obliged to surrender to the travel organiser documents and anything else the latter requires to exercise the right to recourse.

reduction in price

Article 893

(1) If the services specified in the contract on organised travel were performed incompletely or were not of sufficient quality the traveller may demand a proportionate reduction in the price, under the condition that a complaint was filed with the travel organiser within eight days of the end of the travel.

(2) The demand for a reduction in the price shall not affect the traveller's right to demand the reimbursement of damage.

exclusion and limitation of travel organiser's liability

Article 894

(1) Provisions in a contract on organised travel by which the travel organiser's liability is excluded or limited shall be null and void.

(2) However a written contractual provision whereby the maximum compensation is stipulated in advance shall be valid, under the condition that it is not in clear disproportion to the damage.

(3) Such a limitation of compensation shall not be valid if it is a matter of bodily injury or if the travel organiser inflicted the damage intentionally or out of gross negligence.

Section 3: Traveller's Obligations

payment of price

Article 895

The traveller must pay the travel organiser the agreed price for the travel when agreed or whenever is customary.

obligation to provide information

Article 896

At the travel organiser's request the traveller must submit on time all the information required for organising the travel, in particular for travel tickets and accommodation reservations, and the documents required for crossing the border.

fulfilment of prescribed conditions

Article 897

The traveller shall be obliged to ensure that he/she personally, his/her travel documents and his/her luggage fulfil the conditions prescribed by border, customs, financial and other administrative regulations.

traveller's liability for damage inflicted

Article 897

The traveller shall be liable for damage inflicted on the travel organiser by the traveller's failure to perform the obligations originating from the contract and the provisions of the present code.

Section 4: Special Rights and Obligations of Contracting Parties

replacement of traveller with other

Article 899

Unless agreed otherwise, the traveller may designate another to exploit the agreed services in the traveller's place, under the condition that the latter satisfies the special requirements envisaged for the specific travel and that the traveller reimburses the travel organiser for the costs of making the replacement.

increase and reduction in agreed price

Article 900

(1) The travel organiser may only demand an increase in the agreed price if after the contract was concluded there were changes in a currency exchange rate or changes in carriers' tariffs that affect the price of the travel. If such changes caused a reduction in the price of the travel the travel organiser must refund the difference in the price to the traveller.

(2) The travel organiser may only exercise the right to an increase in the agreed price or shall be obliged to recognise the reduction in the agreed price specified in the previous paragraph if the changing of the price after the conclusion of the contract and the method of calculating the change are envisaged in the travel confirmation. The price of the travel may be raised no later than twenty days before the beginning of travel.

(3) If the increase in the agreed price exceeds ten per cent the traveller may withdraw from the contract without being obliged to reimburse the damage.

(4) In this case the traveller shall have the right to be refunded that which was paid to the travel organiser.

traveller's right to withdraw from contract

Article 901

- (1) At any moment the traveller may wholly or partly withdraw from the contract.
- (2) If the traveller withdraws from the contract before the beginning of travel by an appropriate deadline dependent on the type of arrangement (on-time withdrawal), the travel organiser shall have the right to the reimbursement of administrative costs only.
- (3) In the case of late withdrawal from the contract the travel organiser may demand, as a refund from the traveller, a specific percentage of the agreed price, which must be proportionate to the time remaining until the beginning of travel and economically justified.
- (4) The travel organiser shall have the right to the reimbursement of the travel organiser's costs alone if the traveller withdrew from the contract owing to circumstances that could not be avoided or averted and that would have been justifiable grounds for the contract not to have been concluded had they been in place when the contract was concluded, and also if the traveller has supplied an appropriate replacement or if the travel organiser found the replacement.
- (5) If the traveller withdraws from the contract once the travel has begun and the grounds are not circumstances specified in the previous paragraph of this article, the travel organiser shall have the right to the whole amount of the agreed price of the travel.

travel organiser's right to withdraw from contract

Article 902

- (1) The travel organiser may wholly or partly withdraw from the contract without being obliged to reimburse damage if before or during the performance of the contract there arise extraordinary circumstances that could not have been anticipated, avoided or averted and that would have been justifiable grounds for the travel organiser not to have concluded the contract had they been in place when the contract was concluded.
- (2) The travel organiser may also withdraw from the contract without being obliged to reimburse damage if the minimum number of travellers as cited in the travel confirmation has not been gathered, under the condition that the traveller is informed of this circumstance by a suitable deadline, which may not be less than five days before the day the travel was to begin.
- (3) In withdrawal from the contract prior to performance thereof the travel organiser must refund all that was received from the traveller.
- (4) A travel organiser that withdraws from the contract during performance thereof shall have the right to a fair payment for the agreed services that were performed, and shall be obliged to take any measures necessary to secure the traveller's interests.

change in travel itinerary

Article 903

- (1) Changes in the travel itinerary shall only be permitted if caused by extraordinary circumstances that could not be anticipated, avoided or averted by the travel organiser.

(2) The costs incurred by a change in the itinerary shall be borne by the travel organiser, while a reduction in costs shall be to the benefit of the traveller.

(3) The agreed accommodation may only be replaced with accommodation in facilities of the same category or in facilities of a higher category at the travel organiser's expense, and only in the agreed location.

(4) If there are significant changes to the itinerary without justifiable grounds the travel organiser must refund all that was received from a traveller who withdraws from the travel for this reason.

(5) If there is a significant change to the itinerary during performance of the contract a passenger who withdraws shall only pay the actual costs of the services performed therefor.

Title XXIV: Travel Agency Contract

definition

Article 904

Through a travel agency contract the agent undertakes to conclude in the name of and for the account of a traveller either a contract on organised travel or a contract on one or more special services that facilitate particular travel or a particular stay, and the traveller undertakes to pay the agent for such.

obligation to issue confirmation

Article 905

(1) An agent that through the travel agency contract assumes the obligation to conclude a contract on organised travel must issue a travel confirmation when the contract is concluded; in addition to the information relating to the travel itself and the travel organiser's logo and address the travel confirmation must also contain the agent's logo and address and information that the agent is acting as such.

(2) If the travel confirmation makes gives no indication of the agent's attributes as such, the agent in the organisation of the travel shall be deemed to be the organiser.

(3) If the travel agency contract refers to the conclusion of a contract on any special services the agent must issue a confirmation referring to such services and must cite the amount paid therefor in the confirmation.

action according to traveller's instructions

Article 906

(1) The agent shall be obliged to act according to the instructions provided thereto on time by the traveller, if such are in accordance with the contract, the customary business of the agent and the interests of other travellers.

(2) If the traveller fails to provide the necessary instructions the agent must act in the manner most favourable for the traveller in the given circumstances.

choice of third persons

Article 907

The agent shall be obliged to conscientiously choose the third persons that are to perform the services envisaged by the contract, and shall be liable to the traveller for the choice.

application of sense of provisions on organised travel

Article 908

The sense of the provisions of the present code applying to a contract on organised travel shall apply to a travel agency contract, unless stipulated otherwise in this title.

Title XXV: Contract on Lease of Hotel Capacity (Allotment Contract)

Section 1: General Provisions

definition

Article 909

(1) Through an allotment contract a hotelkeeper undertakes to make available to a travel agency for a specific period a specific number of beds in a specific facility, to provide hotel services to persons sent by the agency and to pay a specific commission, and the travel agency undertakes to endeavour to occupy such capacity or to notify the hotelkeeper by specific deadlines that the agency is unable to do so, and to pay a price for the services performed insofar as the leased hotel capacity is exploited.

(2) Unless stipulated otherwise in the contract, the hotel accommodation capacities shall be deemed to have been made available for one year.

form of contract

Article 910

An allotment contract must be concluded in written form.

Section 2: Travel Agency's Obligations

obligation to notify

Article 911

(1) The travel agency shall be obliged to notify the hotelkeeper regarding the occupation of the accommodation capacity.

(2) A travel agency that cannot occupy all the leased accommodation capacity must notify the hotelkeeper of such by the agreed or customary deadlines, send a list of guests thereto and

stipulate a deadline in the notification by which the hotelkeeper may freely dispose of the leased capacity.

(3) Hotel capacity not marked as occupied in the list of guests shall be deemed to be free from the day the hotel receives the list, for the period to which the list relates.

(4) After this deadline the travel agency shall again acquire the right to occupy the leased accommodation capacity.

obligation to observe agreed prices

Article 912

The travel agency may not for hotel services charge the persons it sends to the hotel facility higher prices than those agreed in the allotment contract or cited in the hotel price list.

obligation to pay for hotel services

Article 913

(1) Unless stipulated otherwise in the contract, the travel agency shall pay the hotelkeeper for the hotel services performed when they are performed thereby.

(2) The hotelkeeper shall have the right to demand appropriate payment into an account.

obligation to issue special written document

Article 914

(1) The travel agency must issue a special written document to persons it sends to the hotelkeeper pursuant to the allotment contract.

(2) The special written document shall refer to a name or a specific group, shall be non-transferrable and shall contain an order for the hotelkeeper to provide the services cited therein.

(3) The special written document shall be proof that the person is a client of the travel agency with whom the hotelkeeper concluded the allotment contract.

(4) The mutual claims between the travel agency and the hotelkeeper shall be settled on the basis of the special written document.

Section 3: Hotelkeeper's Obligations

obligation to provide agreed accommodation capacity

Article 915

(1) The hotelkeeper shall accept the final, irrevocable obligation to make available for use the agreed number of beds during the agreed period and to provide the services cited in the special written document to the persons sent by the travel agency.

(2) The hotelkeeper may not conclude a contract with another travel agency by which the capacity already leased pursuant to the allotment contract would be provided.

obligation of equal treatment

Article 916

The hotelkeeper shall be obliged to provide services to the persons sent by the travel agency under conditions equal to those enjoyed by those with whom the hotelkeeper directly concluded a contract on hotel services.

hotelkeeper's obligation to not change prices for services

Article 917

(1) The hotelkeeper may not change the agreed prices without notifying the travel agency of such at least six months in advance, unless there is a change in the exchange rate of currencies that affect the agreed price.

(2) The new prices may only be charged a month after being received by the travel agency.

(3) The new prices shall not apply to services for which the hotelkeeper has already been sent the list of guests.

(4) Changes in price shall in no case have any effect on reservations confirmed by the hotelkeeper.

obligation to pay commission

Article 918

(1) The hotelkeeper shall be obliged to pay the travel agency a commission on the turnover enjoyed pursuant to the allotment contract.

(2) The commission shall be stipulated as a percentage of the price for the hotel services performed.

(3) If the percentage commission is not stipulated in the contract the travel agency shall be entitled to the commission stipulated in its general terms and conditions of business, or a commission according to business customs if there are no general terms and conditions.

Section 4: Travel Agency's Right to Withdraw from Contract

right to withdraw from leased accommodation capacity

Article 919

(1) The travel agency may temporarily withdraw from using the leased accommodation capacity without withdrawing from the allotment contract and without being obliged to reimburse the damage to the hotelkeeper, if it sends notice of withdrawal thereto by the agreed deadline.

(2) If the deadline for withdrawal is not stipulated the business customs in the hotel sector shall apply.

(3) A hotelkeeper that does not receive the notice of withdrawal by the stipulated deadline shall have the right to the reimbursement of damage.

(4) If the notice of withdrawal is sent by the agreed deadline the travel agency may withdraw from the contract entirely without being obliged to reimburse the damage.

travel agency's obligation to occupy leased capacity

Article 920

(1) It may be specifically stipulated in the allotment contract that the travel agency must occupy the leased hotel capacity.

(2) If in this case the travel agency fails to occupy the leased hotel capacity it must pay the hotelkeeper per day for each bed unused.

(3) The travel agency shall not have the right to wholly or in part terminate the contract by giving notice on time.

Title XXVI: Insurance Contract

Section 1: Common Provisions for Property and Personal Insurance

Subsection 1: General Provisions

definition

Article 921

Through an insurance contract the policyholder undertakes to pay an insurance premium or contribution to the insurance agency, and the insurance agency undertakes in the event of a development entailing an insurance case to pay out the insurance payout or compensation to the policyholder or a third person or do something else.

insurance case

Article 922

(1) A development with regard to which an insurance contract is concluded (the insurance case) must be an uncertain future development independent of the exclusive intention of the contracting parties.

(2) An insurance contract shall be null and void if when it was concluded the insurance case had already arisen, was in the process of arising or was certain to arise, or if at that time the possibility of it arising had already ceased.

(3) If it was agreed that the insurance will cover a specific period before the conclusion of the contract the contract shall only be null and void if when it was concluded it was known to a party

concerned that the insurance case had already arisen or the possibility of it arising had already ceased.

exclusion of certain types of insurance

Article 923

(1) The provisions of this title shall not apply to marine insurance or to other types of insurance to which the rules on marine insurance apply.

(2) These provisions shall not apply to the insurance of claims, or to relations deriving from reinsurance.

deviation from provisions of this title

Article 924

(1) A contract may only deviate from those provisions of this title in which such is expressly permitted, or from those that allow the contracting parties to act as they wish.

(2) Unless prohibited by the present code or any other act of law, deviation from other provisions shall be permissible only if in the undoubted interest of the policyholder.

Subsection 2: Conclusion of Contract

when contract is concluded

Article 925

(1) An insurance contract shall be deemed to have been concluded when the contracting parties sign an insurance policy or a confirmation of coverage.

(2) A written offer to the insurance agency to conclude an insurance contract shall bind the offering party for eight days after the offer arrives at the insurance agency if no shorter period is stipulated; if a medical examination is required it shall be binding for thirty days.

(3) If during this period the insurance agency does not reject an offer that does not deviate from the conditions under which the proposed insurance is concluded it shall be deemed to have accepted the offer and the contract shall be deemed to have been concluded.

(4) In this case the contract shall be deemed to have been concluded when the offer arrived at the insurance agency.

policy and confirmation of coverage

Article 926

(1) The following must be cited in the policy: the contracting parties, the insured thing or insured person, the risk covered by the insurance, the duration of the insurance and period of coverage, the insurance sum or indication that the insurance is unlimited, the premium or contract, the day the policy was issued and the signatures of the contracting parties.

- (2) A confirmation of coverage in which the essence of the contract is inscribed may temporarily substitute for the insurance policy.
- (3) The insurance agency shall be obliged to warn the policyholder that the general and special insurance terms and conditions are constituent part of the contract, and must deliver the text thereof to the policyholder if they are not cited in the policy itself.
- (4) Performance of the obligations specified in the previous paragraph must be determined in the policy.
- (5) If any provision of the general or special terms and conditions fails to accord with any provision of the policy, the provision of the policy shall apply; if any printed policy provision fails to accord with a handwritten policy provision, the latter shall apply.
- (6) By agreement between the contracting parties the policy may be made out to a specific person, by order or to the bearer.

insurance without policy

Article 927

In the insurance terms and conditions specific cases may be defined in which a contractual relationship deriving from insurance originates through the payment of the premium alone.

conclusion of contract in another's name without authorisation

Article 928

- (1) Any person that concludes an insurance contract in the name of another without the latter's authorisation shall be liable to the insurance agency for the obligations deriving from the contract until the person in whose name it was concluded approves it.
- (2) A concerned party may also approve a contract when an insurance case has already arisen.
- (3) If approval is refused the policyholder shall owe the premium for the insurance period in which the insurance agency was informed of the refusal.
- (4) A manager without mandate that informed the insurance agency that the former was appearing without authority in the name of and for the account of another shall not be liable for obligations deriving from insurance.

insurance for another's account or for account of another concerned

Article 929

- (1) In insurance for the account of another or for the account of another whom the insurance concerns the policyholder must pay the premium and perform the other obligations deriving from the contract; however the policyholder may not exercise the rights deriving from the insurance despite holding the policy, unless the person whose interest was insured and to whom the rights pertain consents thereto.
- (2) The policyholder shall not be obliged to deliver the policy to the person concerned until the latter reimburses the former for the premium paid by the former to the insurance agency and the costs of the contract.

(3) The policyholder shall have priority in the right to repayment of such claims from the owed reimbursement and the right to demand payment thereof directly from the insurance agency.

(4) The insurance agency may exercise any objection held in respect of the policyholder deriving from the insurance contract against any beneficiary from insurance for another's account.

insurance agents

Article 930

(1) When an insurance agency authorises a person to represent it but does not stipulate the scope of the authorisation, the agent shall be entitled to conclude insurance contracts in the name and for the account of the insurance agency, to conclude contracts amending or renewing contracts, to issue insurance policies, to collect premiums and to accept declarations addressed to the insurance agency.

(2) If the insurance agency limited the authorisation of its agent but the policyholder did not know of such, the limitations shall be deemed to have not been in effect.

Subsection 3: Policyholder's and Insured Person's Obligations

I. Declaration of Circumstances Significant to Risk Assessment

obligation to declare

Article 931

When concluding the contract the policyholder shall be obliged to declare to the insurance agency all the circumstances significant to the assessment of risk that were known or could not have remained unknown to the former.

intentional false declaration

Article 932

(1) If the policyholder intentionally made a false declaration or intentionally concealed any circumstance of such a nature that the insurance agency would not have concluded the contract had it known the true state of affairs, the insurance agency may demand the annulment of the contract.

(2) If the contract was annulled on the grounds specified in the previous paragraph the insurance agency shall retain the premiums already paid and shall have the right to demand the payment of the premium for the insurance period in which the annulment of the contract was demanded.

(3) The insurance agency's right to demand the annulment of an insurance contract shall expire if it fails to declare its intention to exercise this right to the policyholder within three months of learning of the false declaration or the concealment.

intentional falsehood or incompleteness of declaration

Article 933

- (1) If the policyholder made any kind of false declaration or omitted any mandatory information but did not do so intentionally, the insurance agency may within one month of learning of the falsehood or incompleteness of the declaration choose to withdraw from the contract or to propose a higher premium in proportion to the greater risk.
- (2) In such a case the contract shall terminate fourteen days after the insurance agency notified the policyholder of its withdrawal from the contract; if it proposes a higher premium the contract shall be rescinded by law alone if the policyholder does not accept the proposal within fourteen days of receiving it.
- (3) If the contract is rescinded the insurance agency must return the part of the premium pertaining to the time remaining to the end of the insurance period.
- (4) If an insurance case arose before the falsehood or incompleteness of the declaration was determined, or after such but before the rescission of the contract or before an agreement on a higher premium is reached, the insurance payout shall be reduced in proportion to the level of the premiums paid and the level of the premiums that should have been paid with regard to the true risk.

extension of application of previous articles

Article 934

The provisions of the previous articles on the consequences of false declarations or concealment of circumstances significant to the assessment of risk shall also apply to insurance concluded in the name of and for the account of another to the benefit of a third person, for another's account or for the account of a person concerned if such persons knew of the falsehood of the declaration or the concealment of circumstances significant to the assessment of risk.

cases in which the insurance agency cannot refer to falsehood or incompleteness of declaration

Article 935

- (1) If when the contract was concluded circumstances significant to the assessment of risk were known or could not have remained unknown to the insurance agency, and the policyholder made a false declaration or concealed them, the insurance agency may not make reference to the falsehood of the declaration or the concealment.
- (2) This shall also apply if the insurance agency learnt of such circumstances during the insurance but did not exercise the rights provided by law.

II. Payment of Premium

obligation to pay and accept premium

Article 936

- (1) The policyholder shall be obliged to pay the insurance premium, but the insurance agency shall be obliged to accept the premium from any person that has a legal interest in the payment.
- (2) The premium shall be paid by the agreed deadlines; if there must be a one-off payment it shall be paid when the contract is concluded.
- (3) The premium must be paid at the place where the policyholder has the head office or place of residence, unless any other place is stipulated in the contract.

consequences of non-payment of premium

Article 937

- (1) If it is agreed that it is necessary to pay the premium when the contract is concluded, the insurance agency's obligation to pay the insurance payout or compensation stipulated in the contract shall begin on the day after the day the premium is paid in.
- (2) If it is agreed that it is necessary to pay the premium after the contract is concluded, the insurance agency's obligation to pay the insurance payout or compensation stipulated in the contract shall begin on the day stipulated in the contract as the day the insurance begins.
- (3) The insurance agency's obligation to pay the insurance payout or compensation stipulated in the contract shall terminate if the policyholder fails to pay an insurance premium that falls due after the conclusion of the contract by the time it falls due and this is not done by another interested party within thirty days of the policyholder being delivered a registered letter from the insurance agency stating that the payment has fallen due.
- (4) After the deadline specified in the third paragraph of this article expires the insurance agency may, if the policyholder is in delay with the payment of a premium that must be paid after the conclusion of the contract or other subsequent premiums, rescind the insurance contract without any notice of termination, such that the rescission of the insurance contract occurs with the passing of the deadline specified in the third paragraph of this article and the termination of the insurance coverage if the policyholder was warned in a registered letter that the premium had fallen due and insurance coverage would terminate.
- (5) If the policyholder pays the premium after the deadline specified in the third paragraph of this article passes but within one year of the premium falling due, the insurance agency shall be obliged in the event of the insurance case arising to pay the insurance payout or compensation from midnight after the premium and penalty interest is paid.
- (6) The provisions of this article shall not apply to life assurance or health insurance.

III. Notification of Insurance Agency Regarding Changes in Risk

increase in risk

Article 938

- (1) With regard to property insurance the policyholder shall be obliged to notify the insurance agency regarding any change in circumstances that could be significant to the assessment of risk; with regard to personal insurance the policyholder shall only be obliged if the risk increases because the insured person's work has changed.

(2) The policyholder must notify the insurance agency without delay regarding greater risk if the risk increased through any action by the policyholder; if the risk increased without the policyholder's involvement the policyholder must notify the insurance agency within fourteen days of learning of it.

(3) If the increase in risk is such that the insurance agency would not have concluded the contract if such was the situation when it was concluded, the insurance agency may withdraw from the contract.

(4) If the increase in risk is such that the insurance agency would only have concluded the contract under a higher premium if such was the situation when it was concluded, the insurance agency may propose a new level of premium to the policyholder.

(5) If the policyholder does not consent to the new level of premium within fourteen days of receiving the proposal the contract shall terminate by law alone.

(6) However the contract shall remain valid and the insurance agency shall no longer be entitled to propose a new level of premium to the policyholder or withdraw from the contract if it fails to exercise these rights within thirty days of learning in any way of the increase in risk or if before this deadline passes it shows in any way that it consents to the extension of the contract (if it accepts a premium, pays an insurance payout for an insurance case arising after the increase, etc.).

if insurance case arises meanwhile

Article 939

If an insurance case arises before the insurance agency was notified regarding the increase in risk or after it was notified but before it withdrew from the contract or agreed an increase in the premium with the policyholder, the insurance payout shall be reduced in proportion to the difference between the paid premiums and the premiums that should have been paid with regard to the increased risk.

reduction in risk

Article 940

(1) If after the insurance contract is concluded the risk reduces the policyholder shall have the right to demand an appropriate reduction in the premium, counted from the day the policyholder notified the insurance agency regarding the reduction.

(2) If the insurance agency does not consent to a reduction in the premium the policyholder may withdraw from the contract.

obligation to notify regarding arisen insurance case

Article 941

(1) With the exception of life assurance and health insurance the policyholder must notify the insurance agency regarding an arisen insurance case within three days of learning of it.

(2) A policyholder that fails to perform this obligation within the period stipulated must reimburse the insurance agency for any damage it incurred for this reason.

nullity of provisions on loss of right

Article 942

Contractual provisions pursuant to which the insured person would lose the right to compensation or the insurance sum if such person fails to perform any of the prescribed or agreed obligations after an insurance case arises shall be null and void.

Subsection 4: Insurance Agency's Obligations

payment of compensation or agreed sum

Article 943

(1) If an insurance case arises the insurance agency must pay the insurance payout or compensation by the agreed deadline, which may not be longer than fourteen days, counted from the day it received the notification that the case had arisen.

(2) If a specific period is needed to determine the existence of an obligation on the part of the insurance agency or the amount in question, the deadline shall run from the day the existence and amount of the obligation were determined.

(3) If the amount of the obligation is not determined by the deadline specified in the first paragraph of this article the insurance agency must pay the beneficiary the undisputed part of the obligation as an advance at the latter's request.

exclusion of insurance agency's liability in case of intent or fraud

Article 944

If the policyholder, insured person or beneficiary caused the insurance case intentionally or via fraud the insurance agency shall not be bound to make any payment, and a contractual provision to the contrary shall be null and void.

objections by insurance agency

Article 945

(1) Against a claim by the bearer of a policy and against a claim by any other referring to the policy, the insurance agency may exercise any objection it holds in connection with the contract against the person with whom it concluded the contract.

(2) In exceptional cases the insurance agency may only exercise objections that originated before the insurance case arose against claims by a third person in voluntary insurance against liability and against claims by the holders of specific rights on an insured thing whose right was transferred from the destroyed or damaged thing by law alone to the compensation deriving from the insurance.

Subsection 5: Duration of Insurance

beginning of effect of insurance

Article 946

- (1) Unless agreed otherwise, the insurance contract shall be in effect from midnight on the day indicated in the insurance policy as the day the insurance begins, until the end of the final day of the period for which it was concluded. The duration of the insurance shall be deemed not to have been stipulated if there is a duration agreed in the insurance contract with the possibility of renewal of the contract for an equal period if the parties do not terminate the contract before the premium stipulated in the insurance terms and conditions falls due.
- (2) If the duration of the insurance is not stipulated in the contract each party may withdraw therefrom on the day the premium falls due, but must notify the other party of such in writing at least three months before the premium falls due.
- (3) If the insurance is concluded for more than three years each party may after this time passes withdraw from the contract with a period of notice of six months by informing the other party of such in writing.
- (4) It shall not be possible to exclude a party's right to withdraw from the contract as stipulated in the previous paragraphs by contract.
- (5) The provisions of this article shall not apply to life assurance or health insurance.

effect of bankruptcy on insurance

Article 947

- (1) If the policyholder goes bankrupt the insurance shall continue, but each party shall have the right to withdraw from the contract within three months of bankruptcy proceedings being introduced; in this case the part of the premium that accords to the remaining period of insurance shall go towards the policyholder's bankruptcy estate.
- (2) In the case of the bankruptcy of the insurance agency the insurance contract shall cease to be valid thirty days after bankruptcy proceedings were introduced.

Section 2: Property Insurance

Subsection 1: General Provisions

insurance interest

Article 948

- (1) Property insurance may be concluded by any person that has an interest in an insurance case not arising and that would otherwise incur any kind of property loss.
- (2) Insurance rights may only be held by those that in the event of damage occurring have a property interest in an insurance case not arising.

purpose of property insurance

Article 949

- (1) Through property insurance the reimbursement of the damage incurred on the insured person's property should an insurance case arise is ensured.
- (2) The insurance payout may not be larger than the damage incurred by the insured person through the insurance case arising.
- (3) In the insurance of crops, fruits and other land products the damage shall be determined with regard to the value they would have at harvesting, unless agreed otherwise.
- (4) Contractual provisions whereby the insurance payout is limited to an amount smaller than the damage shall be valid.
- (5) In the determination of the damage, lost profit shall only be taken into consideration if such was agreed.
- (6) If in the same insurance period several insurance cases occur in series, for each of the cases the full insurance payout from the insurance shall be determined and paid with regard to the whole insurance sum, without any reduction for the amount of compensation already paid in the period.
- (7) If through the insurance contract the value of the insured thing was determined by agreement the insurance payout shall be determined according to this value, unless the insurance agency shows that the value stipulated in the contract is significantly larger than the true value and there are no justifiable grounds for this difference (as for example the insurance of a used thing for the value of a new thing of the same type or the insurance of a subjective value).

prevention of insurance case and relief

Article 950

- (1) The insured person shall be obliged to take the prescribed measures, agreed measures and all other measures necessary to preventing the insurance case from arising; if an insurance case arises the insured person must take all measures in such person's power to limit the damaging consequences.
- (2) The insurance agency must reimburse all the costs, losses and other damage caused by a reasonable attempt to avert the immediate danger of an insurance case arising and an attempt to limit the damaging consequences thereof, even when such attempts were unsuccessful.
- (3) The insurance agency shall be obliged to make the reimbursement even when together with the reimbursement of the damage from the insurance case it exceeds the insurance sum.
- (4) If the insured person fails to perform the obligation to prevent an insurance case or the obligation to relieve and has no excuse for this, the insurance agency's obligation shall be reduced by the amount of extra damage incurred because of this.

cession of damaged insured thing

Article 951

Unless agreed otherwise, the insured person shall not have the right to cede the damaged insured thing to the insurance agency after an insurance case arises and demand therefrom the payment of the insurance payout in the amount of the whole insurance sum.

destruction of thing because of development not envisaged in policy

Article 952

(1) If the insured thing or a thing for which insurance against liability was concluded in connection with its use is destroyed during the insurance period because of any development not envisaged in the policy, the contract shall thenceforth cease to be valid and the insurance agency must return to the policyholder a proportionate part of the premium for the remaining time.

(2) If one or more things covered by the same contract are destroyed because of any development not envisaged in the policy, the insurance shall remain valid in respect of the remaining things, with the changes required because of the diminution of the insured subject.

Subsection 2: Limitation of Insured Risks

damage covered by insurance

Article 953

(1) The insurance agency shall be obliged to reimburse damage incurred accidentally or at the fault of the policyholder, the insured person or the insurance beneficiary, unless with regard to the specific damage such an obligation is expressly excluded in the insurance contract.

(2) It shall not be liable for damage inflicted by such persons intentionally, and any provision in the policy pursuant to which it would be liable in such a case shall be null and void.

(3) If an insurance case occurs the insurance agency shall be obliged to reimburse any damage inflicted by any person for whose action the insured person is in any way liable, irrespective of whether the damage was inflicted intentionally or out of gross negligence.

damage inflicted because of defects in insured thing

Article 954

The insurance agency shall not be liable for damage to an insured thing that originated from defects therein, unless agreed otherwise.

damage inflicted by military operations

Article 955

(1) The insurance agency shall not be obliged to reimburse damage inflicted by military operations, unless agreed otherwise.

(2) The insurance agency must prove that the damage was inflicted by such a development.

Subsection 3: Overinsurance and Contract with Several Policyholders

overinsurance

Article 956

(1) If in the conclusion of a contract one party uses fraud to justify an insurance sum that is greater than the true value of the insured thing the other party may demand the annulment of the contract.

(2) If the agreed insurance sum is greater than the value of the insured thing but no party acted in bad faith, the contract shall remain valid and the insurance sum shall be reduced to the true value of the insured thing while the premiums are proportionately reduced.

(3) In both cases an insurance agency acting in good faith shall retain the premiums received and shall have the right to an unreduced premium for the current period.

subsequent reduction of value

Article 957

If during the insurance the insured value decreases, each contracting party shall have the right to an appropriate reduction in the insurance sum and the premium, beginning on the day when the claim for a reduction was reported to the other party.

multiple and double insurance

Article 958

(1) If any thing is insured with two or more insurance agencies against the same risk, for the same interest and for the same time such that the total of the insurance sums does not exceed its value (multiple insurance), each of the insurance agencies shall be liable for the full performance of the obligations originating from the contract it concluded.

(2) If the total of the insurance sums exceeds the value of the insured thing (double insurance) but the policyholder did not act in bad faith, all the insurance shall be valid and each insurance agency shall have the right to the agreed premium for the insurance period in progress, while the insured person shall have the right to demand from each of the insurance agencies the insurance payout pursuant to the contract concluded with it, but in total no more than the amount of damage.

(3) If an insurance case arises the policyholder must notify each insurance agency that insured the same risk of such and inform it of the name and addresses of the other insurance agencies, and the insurance sums from the individual contracts concluded with them.

(4) After payment of the compensation to the insured person each insurance agency shall bear part of the insurance payout in the same ratio as that between the insurance sum to which it committed and the total of all the insurance sums; an insurance agency that paid more shall have the right to demand from the other insurance agencies the reimbursement of the excess amount paid.

(5) Any contract concluded without stipulating the insurance sum or unlimited coverage shall be deemed to have been concluded with the maximum insurance sum.

(6) The other insurance agencies shall be liable for a share that an insurance agency cannot pay, in proportion to their shares.

(7) A policyholder that concluded an insurance contract by which double insurance arose without knowing of the insurance previously concluded may, irrespective of whether the previous insurance was concluded by the policyholder or another person, demand an appropriate reduction in the insurance sum and premiums in the later insurance within one month of learning of such; however the insurance agency shall retain the premiums received and shall have the right to the premium for the current period.

(8) If the double insurance occurred because the value of the insured thing decreased during the insurance the policyholder shall have the right to an appropriate reduction in the insurance sums and premiums starting on the day the request for a reduction is reported to the insurance agency.

(9) If the policyholder acted in bad faith in the occurrence of the double insurance any insurance agency may demand the annulment of the contract, retain the premiums received and demand an unreduced premium for the current period.

co-insurance

Article 959

If an insurance contract is concluded with several insurance agencies that have agreed to bear and share the risk equally, each of the insurance agencies cited in the insurance policy shall be liable to the insured person for the full insurance payout.

Subsection 4: Underinsurance

underinsurance

Article 960

(1) If it is found that at the start of the insurance period in question the value of the insured thing is greater than the insurance sum, the insurance payout owed by the insurance shall be proportionately reduced, unless agreed otherwise.

(2) The insurance agency shall be obliged to provide full compensation up to the amount of the insurance sum if it was agreed that the relation between the value of the thing and the insurance sum was not significant for determining the insurance payout.

Subsection 5: Transfer of Contract and Payment of Insurance Payout from Insurance to Another

transfer of contract to acquirer of insured thing

Article 961

(1) In the alienation of an insured thing and a thing for which insurance against liability was concluded in connection with its use, the policyholder's rights and obligations shall be transferred by law alone to the acquirer, unless agreed otherwise.

(2) If only a part of insured things that in respect of the insurance is not a separate entity is alienated, the insurance contract shall be transferred under law alone in respect of the alienated things.

(3) If because of the alienation of the thing the likelihood of an insurance case arising increases or decreases the general provisions on an increase or decrease in risk shall apply.

(4) A policyholder that fails to inform the insurance agency that the insured thing has been alienated shall remain bound in respect of the payment of premiums falling due after the alienation.

(5) The insurance agency and the acquirer of the insured thing may withdraw from the contract with a period of notice of fifteen days, whereby they must inform the other party within thirty days of learning of the alienation.

(6) It shall not be possible to withdraw from a contract if the insurance policy is made out to the bearer or by order.

assignment of insurance payout to holders of lien and other rights

Article 962

(1) After an insurance case arises the subject of the liens and other rights previously held on the insured thing, both in the insurance of a person's own thing and in the insurance of another person's things for the obligation of the safekeeping and return thereof, shall be the owed insurance payout, and the insurance agency may not pay it to the insured person without the consent of the beneficiaries.

(2) These may demand directly from the insurance agency that it pay their claims within the limits of the insurance sum according to the legally prescribed order.

(3) However the payment of the insurance payout shall remain valid if upon payment the insurance agency did not know and was not obliged to know of the rights.

Subsection 6: Transfer of Insured Person's Rights Against Liable Person to Insurance Agency (Subrogation)

subrogation

Article 963

(1) Upon the payment of compensation from insurance all the insured person's rights against a person that is in any way liable for the damage up to the amount of the insurance payout made shall be transferred by law alone to the insurance agency.

(2) If through the fault of the insured person such a transfer of rights to the insurance agency is partly or wholly made impossible the insurance agency shall to an appropriate extent be free of its obligations towards the insured person.

(3) The transfer of rights from the insured person to the insurance agency may not be to the detriment of the insured person; if the insurance payout obtained from the insurance agency is for any reason lower than the damage incurred the insured person shall have the right to obtain a payment from the liable person's assets for the remaining compensation before the payment of the insurance agency's claim deriving from the rights transferred thereto.

(4) Irrespective of the rule on the transfer of the insured person's rights to the insurance agency, the rights shall not be transferred thereto if the damage was inflicted by a person who is a direct relative of the insured person, a person for whose action the insured person is liable or who lives in the same household, or a person who works for the insured person, unless any of these inflicted the damage intentionally.

(5) If any of those specified in the previous paragraph was insured against liability the insurance agency may demand that his/her insurance agency reimburse the amount paid to the insured person.

Subsection 7: Insurance Against Liability

insurance agency's liability

Article 964

(1) In insurance against liability the insurance agency shall only be liable for damage incurred when an insurance case arises if a third injured party demands compensation.

(2) The insurance agency shall bear the costs of any dispute over the insured person's liability within the limits of the insurance sum.

injured party's own right and direct suit

Article 956

(1) In insurance against liability the injured party may demand directly of the insurance agency that it reimburse the damage incurred by the party because of the development for which the insured person is liable, but no more than the amount of its obligation.

(2) From when the insurance case arises the injured party shall have such party's own right to compensation from the insurance, and no subsequent change in the insured person's rights against the insurance agency shall have any affect on the injured party's right to compensation.

Section 3: Personal Insurance

Subsection 1: General Provisions

stipulation of insurance sum

Article 966

In contracts on personal insurance (life assurance or accident insurance), the size of the insurance sum that must be paid by the insurance agency if an insurance case arises shall be stipulated in the policy by agreement between the contracting parties.

life assurance policy

Article 967

(1) In addition to the components that every policy must have, the following must be cited in a life assurance policy: the full name of the person to whose life the assurance relates, the date of birth thereof, and the development or period on which the origination of the right to demand payment of the insurance sum depends.

(2) A life assurance policy may be made out to a specific name or by order, but may not be made out to the bearer.

(3) In order for an endorsement of a policy to be valid it must contain the name of the beneficiary, be dated and be signed by the endorser.

age of policyholder or insured person

Article 968

Irrespective of the general provisions of this title on the consequences of false declarations and concealment of circumstances significant to the assessment of risk, the following rules shall apply to false declarations of age in contracts on life assurance:

1. a contract on life assurance shall be null and void and the insurance agency shall in any case be obliged to return all the premiums received if when it was concluded the age of the policyholder or insured person was falsely declared and the true age exceeds the age limit up to which the insurance agency concludes life assurance pursuant to its conditions and price lists
2. if the policyholder or insured person was falsely declared to be younger and the true age does not exceed the age limit up to which the insurance agency concludes life assurance, the contract shall remain valid and the insurance sum shall be reduced in proportion to the difference between the agreed premium and the premium envisaged for life assurance for a person of the insured person's age
3. if the policyholder or insured person is younger than was declared when the contract was concluded, the premium shall be reduced by an appropriate amount and the insurance agency must refund the difference between the premiums received and the premiums to which it has a right

consequences of unpaid premium and reduction of insurance sum

Article 969

(1) If in life assurance the policyholder fails to pay any premium when it falls due the insurance agency shall not have the right to demand payment in court.

(2) If at the insurance agency's request, which must be delivered by registered post, the policyholder fails to pay a due premium by the deadline stipulated in the letter, which may not be shorter than one month counted from when the letter was delivered, and this is not done by any other interested party, the insurance agency may only, if at least three annual premiums have been paid prior to then, declare to the policyholder that it is reducing the insurance sum to the redeemable value of the insurance; if at least three annual premiums have not been paid by that time the insurance agency may declare that it is withdrawing from the contract.

(3) If the insurance case arose before the contract was rescinded or the insurance sum reduced, the insurance sum shall be deemed to have been reduced or the contract shall be deemed to have been rescinded, with regard to whether premiums had been paid for at least three years.

insurance of third person

Article 970

(1) Life assurance may refer to the life of the policyholder, and may also refer to the life of a third person (the insured person).

(2) This shall also apply to accident insurance.

(3) If the insurance refers to the case of the death of a third person, such person's written consent shall be required for the insurance to be valid, and shall be provided on the policy or in a special letter when the policy is signed, together with indication of the insurance sum.

insurance of minors and persons removed of capacity to contract for case of death

Article 971

(1) Insurance of a third person who has not reached the age of fourteen or a person whose capacity to contract has been totally removed for the case of death shall be null and void, and the insurance agency must therefore refund all the premiums received from such a contract.

(2) For insurance of a third person who has reached the age of fourteen for the case of death to be valid the written consent of such person's legal representative and the written consent of the insured person shall be required.

cumulation of compensation and insurance sum

Article 972

(1) In personal insurance an insurance agency that has paid out the insurance sum may not hold any right to compensation from a third person liable for the insurance case arising.

(2) The policyholder or beneficiary shall hold the right to compensation from a third person liable for the insurance case arising, irrespective of the third person's right to the insurance sum.

(3) The provisions of the previous two paragraphs shall not apply to the case when accident insurance is concluded as insurance against liability.

Subsection 2: Excluded Risks

suicide of policyholder or insured person

Article 973

(1) If the cause of death is suicide in the first year of the insurance the death shall not be covered by the insurance contract for the case of death.

(2) If suicide occurs within three years of the contract being concluded the insurance agency shall not be obliged to pay the insurance sum to the beneficiary, but only the mathematical reserve of the contract.

murder of policyholder or insured person

Article 974

The insurance agency shall be free of the obligation to pay the beneficiary the insurance sum if the latter causes the death of the policyholder or insured person in a premeditated manner; if at least three annual premiums have been paid by that time it must pay out the mathematical reserve of the contract to the policyholder, or to the policyholder's heirs if the contract applied to the policyholder.

intentional causing of accident

Article 975

The insurance agency shall be free of the obligations deriving from a contract on accident insurance if the policyholder or insured person caused the accident intentionally.

military operations

Article 976

(1) If the death of the insured person is the consequence of military operations the insurance agency shall not be obliged to pay the insurance sum to the beneficiary, unless agreed otherwise, but must pay out the mathematical reserve of the contract.

(2) Unless agreed otherwise, the insurance agency shall be free of the obligations deriving from a contract on accident insurance if the accident was caused by military operations.

contractual exclusion of risk

Article 977

Other risks may also be excluded from the insurance through the contract on insurance for the case of death or on accident insurance.

Subsection 3: Policyholder's Rights Before Insurance Case Arises

redemption

Article 978

(1) When a contract on life assurance is concluded for the whole life of the policyholder or insured person the insurance agency must at the policyholder's request pay out the redeemable value of the policy if at least three annual premiums have been paid by that time.

(2) The policy must cite the conditions under which the policyholder may request the payout of the redeemable value, and the method in which the value is calculated in accordance with the insurance conditions.

(3) The right to redeem may not be exercised by the policyholder's creditors or by an insurance beneficiary; the insurance agency shall pay out the redeemable value to the insurance beneficiary at the latter's request if the designation of the beneficiary is irrevocable.

(4) Irrespective of the previous paragraph the redemption of the policy may be requested by a creditor that had the policy delivered thereto in pledge if the claim secured by the pledge is not settled when it falls due.

advance payment

Article 979

(1) When a contract on life assurance is concluded for the whole life of the policyholder or insured person, at the policyholder's request the insurance agency may pay out in advance part of the insurance sum to the policyholder up to the redeemable value of the policy, which the policyholder may subsequently return.

(2) The policyholder must pay the stipulated interest on the received advance payment.

(3) A policyholder that is in delay with the payment of the interest due shall be treated as having requested redemption.

(4) The insurance policy must cite the conditions for advance payment, the possibility that the sum received at the account of the advance payment may be returned to the insurance agency, the interest rate, and the consequences of failing to pay the interest as it falls due as stipulated in the insurance conditions.

pledge of policy

Article 980

(1) A life assurance policy may be pledged.

(2) The pledge of the policy shall only have an effect in respect of the insurance agency if it is informed in writing that the policy has been pledged to a specific creditor.

(3) A policy made out by order shall be pledged by endorsement.

Subsection 4: Life Assurance in Favour of Third Person

designation of beneficiary

Article 981

(1) The policyholder may designate the person that will hold the rights deriving from the contract in the contract itself, of through a subsequent legal transaction or by a will.

(2) If the insurance applies to the life of another, the written consent thereof shall be required for the designation of the beneficiary.

(3) It shall not be necessary for the beneficiary to be designated by name; the citation of the information required to designate the beneficiary shall suffice.

(4) If children or descendants are designated as beneficiaries, those subsequently born shall also benefit, while benefit intended for a spouse shall pertain to the person married to the policyholder at the policyholder's death.

division of benefit among beneficiaries

Article 982

If children, descendants and heirs in general are designated as the beneficiaries and the policyholder did not stipulate the division among them, the insurance sum shall be divided in proportion to their hereditary shares, or in equal shares if the beneficiaries are not heirs.

revocation of provision on designation of beneficiary

Article 983

(1) A provision by which a specific person is to obtain the benefit from insurance may only be revoked by the policyholder; the rights thereof may not be exercised by either the policyholder's creditors or legal heirs.

(2) The policyholder may revoke a provision on benefit at any time until the beneficiary in any manner declares that it is being accepted; it shall thereby become irrevocable.

(3) However the policyholder may revoke a provision on benefit even after the beneficiary declares it is being accepted if the beneficiary attempts to kill the policyholder or the insured person; if the benefit was assigned gratuitously the provisions on revocation of a gift shall also apply to revocation.

(4) The beneficiary shall be deemed to have rejected the benefit intended therefor if, after the policyholder's death, at the request of the policyholder's heirs the beneficiary fails within one month to declare it is being accepted.

beneficiary's own direct right

Article 984

(1) The insurance sum to be paid to a beneficiary shall not count towards the policyholder's estate even when the policyholder's heirs are designated as beneficiaries.

(2) The right to the insurance sum shall only be held by the beneficiary, from the conclusion of the contract itself, irrespective of how and when the beneficiary was designated and irrespective of whether the beneficiary declared acceptance before or after the death of the policyholder or insured person; the beneficiary may therefore turn directly to the insurance agency with a request for payment of the insurance sum.

(3) If the policyholder designated his/her children, descendants or heirs in general as beneficiaries, each beneficiary so designated shall have the right to an appropriate part of the insurance sum, even if the inheritance is waived thereby.

policyholder's and insured person's creditors

Article 985

(1) The policyholder's and insured person's creditors shall have no right to the insurance sum agreed for the beneficiary.

(2) If the premiums paid in by the policyholder were disproportionately large in comparison to the policyholder's circumstances when they were paid, the policyholder's creditors may request the delivery of the part of the premiums that exceeded the policyholder's circumstances if the conditions under which the creditors have the right to challenge the debtor's legal acts are fulfilled.

assignment of insurance sum

Article 986

The beneficiary may also transfer the right to the insurance sum to another before the insurance case, but shall require the written consent of the policyholder therefor, which must cite the name of the person to whom the right is being transferred; if the insurance applies to the life of another such person's consent shall also be required.

if designated beneficiary dies before maturity

Article 987

If the person designated without reimbursement as the beneficiary dies before the insurance principal or annuity matures the benefit from the insurance shall pertain not to the beneficiary's heirs but to the next beneficiary; if no such beneficiary is designated it shall pertain to the policyholder's assets.

insurance for case of death without designated beneficiary

Article 988

If the policyholder for the case of death does not designate a beneficiary or if the designation of the beneficiary remains without effect because of revocation, because of refusal by the designated person or for any other reason, and the policyholder does not designate another beneficiary, the insurance sum shall pertain to the policyholder's assets and shall be transferred as the policyholder's part with the policyholder's other rights to the heirs thereof.

payment of insurance sum in good faith to person not entitled

Article 989

(1) When the insurance agency pays out the insurance sum to a person that would have the right thereto had the policyholder not designated a beneficiary, the insurance agency shall be free of the obligations deriving from the insurance contract if when payment was made it did not know and was not obliged to know that the beneficiary was designated in a will or any subsequent legal act that was not sent to the insurance agency, while the beneficiary shall have the right to demand reimbursement from the person that received the insurance sum.

(2) This shall also apply to a change of beneficiary.

Title XXVII: Contract of Partnership

definition

Article 990

Through a contract of partnership two or more persons undertake to endeavour to achieve a common purpose permitted by law using their contributions as stipulated in the contract.

contributions

Article 991

- (1) Each partner shall be obliged to contribute that which is stipulated by the contract (the contribution) to the partnership.
- (2) A contribution may be money, a thing, a right, a claim, or a service, allowance or omission with assets value.
- (3) Unless stipulated otherwise by the contract, the partner's contributions shall be equal.
- (4) Property may also be given solely for use or enjoyment as a contribution to the partnership.
- (5) If any of the partners is ensured benefit alone without an obligation to supply a contribution, the contract shall not be deemed to be a contract of partnership.
- (6) If such is required to preserve assets within the partnership or to avert damage, each partner shall be obliged, in addition to the contribution stipulated in the contract, to contribute a proportionate part of that required for preserving the assets or preventing the damage.
- (7) Each partner shall be liable as a seller or lessor for legal and material defects in the contribution.

decision-making and management

Article 992

- (1) Each partner shall have one vote. The contract may stipulate a different number of votes for the partners.
- (2) The partners shall decide on partnership matters unanimously; the partners shall in particular decide in such a manner on the use of the profit and other benefits, the manner in which loss is covered, the entry of a new partner or exclusion of a current partner, claims against any partner for settlement of damage to the partnership, revocation of management, termination of the contract and other issues encroaching on management.
- (3) The contract may stipulate that the partners are to decide on the matters specified in the previous paragraph by a majority of votes. In such a case a majority or at least two-thirds of the votes of all the partners shall be required for a decision.
- (4) The partners shall conduct the management jointly and equally.
- (5) It may be stipulated by the contract that each of the partners conduct management independently, or that management be conducted by only some of the partners jointly or independently, just one of the partners, or one or more other persons appointed unanimously by the partners.
- (6) The partners may on justifiable grounds revoke management by any of the partners.

(7) The sense of the provisions of the present code on a contract of mandate shall apply to managers.

(8) The manager shall have the right to payment for such person's efforts, if the contract so stipulates.

(9) Each partner shall have the right to be informed of the partnership's transactions and matters.

exercise of rights and obligations in partnership

Article 993

(1) Each partner must perform the partnership's transactions and be concerned therewith with the diligence and in the manner applied to the partner's own transactions.

(2) If the purpose of the partnership is connected to the partners' activities or profession, they shall be obliged to act with the diligence of a good businessperson or the diligence of a good expert.

(3) A partner may not do anything that would diminish the possibility of achieving the common purpose.

benefits and loss

Article 994

(1) Each partner shall be entitled to part of the benefit achieved in the partnership, unless stipulated otherwise by the contract.

(2) Each partner shall be obliged to bear part of the loss incurred by the partnership's functioning.

(3) Unless stipulated otherwise by the contract, the partners shall participate in the benefits and loss with shares equal to their shares in the contributions.

appearance against third persons

Article 995

(1) A partner or manager that appears against third persons in such person's own name and for the account of the partnership shall alone acquire the rights and obligations in relation to the third person.

(2) If a partner or manager appears in the name of the partnership or the partners the provisions of the present code on representation in general shall apply.

(3) In the case specified in the second paragraph of this article all the partners shall become joint and several creditors or debtors and the provisions of the present code on joint and several liability shall apply; an agreement among the partners stipulating otherwise shall have no legal effect in respect of third persons.

(4) The partners' obligations pursuant to this article towards third persons shall not terminate with the winding-up of the partnership.

assets in partnership

Article 996

The partners shall hold equal co-ownership and other co-holding shares in the assets of the partnership originating through the partners' contributions or the partnership's operations, unless stipulated otherwise by the contract.

relationships among partners

Article 997

(1) If the costs and obligations towards third persons are not settled from the assets of the partnership, the partners shall be obliged to do so in equal parts; the contract may also stipulate different parts.

(2) A partner that for the implementation of a contract settled any cost or any obligation of the partnership or other partners towards third persons in excess of the amount the partner was obliged to settle by contract shall have the right to demand the reimbursement of a proportionate part from the other partners.

change in partners

Article 998

(1) If the contract so allows, a new partner may enter the partnership.

(2) Unless stipulated otherwise by the contract, a partner that enters the partnership anew shall be obliged to provide the same contribution as the other partners and shall be entitled to the benefit originating after such partner's entry into the partnership.

(3) The new partner shall only be liable towards third persons for obligations incurred after such became a partner.

(4) A partner may not transfer such partner's position to a third person, but may transfer it to another partner if the contract so allows and under the conditions stipulated by the contract.

exclusion of partner

Article 999

(1) On justifiable grounds partners may demand the exclusion of a partner via a suit. The contract may also stipulate that the partners themselves decide on exclusion. In such a case the partner so affected may via a suit demand the annulment of the resolution if such partner feels it to be unjustified.

(2) The excluded partner shall have the right to reimbursement of the market value of such partner's share at the time of exclusion.

(3) The other partners must pay out this value within three years of the exclusion.

(4) If the other partners demand compensation from the excluded partner, they may retain the value of the excluded partner's share until the judgement becomes final or an agreement is reached with the excluded partner.

winding-up of partnership

Article 1000

(1) A partnership shall be wound up:

1. when the period for which it was founded ends
2. when it achieves the purpose for which it was founded or when achieving this purpose becomes impossible
3. if the partners so conclude
4. if a partner dies or loses the capacity to contract, or if bankruptcy, liquidation or composition proceedings are introduced against a partner as a sole trader
5. if a partner ceases to exist as a legal person owing to changes in status, or if bankruptcy, liquidation or composition proceedings are introduced thereagainst
6. if after execution a partner's share is acquired by a third person
7. if through an act by a national authority a partner is prevented from performing activities that are vital to achieving the common purpose
8. if a partner terminates the contract

(2) If after the period specified in point 1 of the previous paragraph the partners continue to implement the contract of partnership, the contract shall be deemed to have been concluded for an indefinite period.

(3) If the contract so stipulates, a contract of partnership shall apply to the remaining partners even after an individual partner no longer participates in the partnership for any of the reasons specified in points 4 to 8 of the first paragraph inclusive.

termination of contract

Article 1001

(1) A partner may terminate the contract if such is stipulated in the contract.

(2) Irrespective of the previous paragraph a partner may terminate a contract concluded for an indefinite period; a three-month period of notice shall apply to termination in this case.

(3) On justifiable grounds a partner may via a suit demand the termination of a contract concluded for a definite period before the end of this period and with no period of notice.

liquidation

Article 1002

(1) If the partnership is wound up the partners shall be obliged to perform liquidation, in particular such that obligations towards third persons are settled, the partners are compensated for the costs and payments that exceed the amount they are obliged to pay under the contract, and the remainder of the assets is divided among the partners in parts equal to those applying to the contributions; the contract may stipulate different parts.

(2) If the partnership's assets are not sufficient to cover the costs and obligations the missing amount must be covered by the partners in the ratio applying to their contributions.

Title XXVIII: Community

definition

Article 1003

If any right pertains to several persons together the provisions of this title shall apply, unless stipulated otherwise by law.

shares

Article 1004

(1) In case of doubt, each participant shall have an equal share in the right that is the subject of the community.

(2) Each participant may freely dispose of such person's own share.

(3) If a participant transfers the share to another person the resolutions and obligations that applied to the first participant before transfer shall apply to the latter.

(4) All the participants shall unanimously dispose of the subject of the community as a whole.

participants' obligation

Article 1005

(1) Participants shall use and enjoy the subject of the community and shall decide on common matters in a manner that suits the nature and purpose of the subject of the community and ordinary management.

(2) If the participants fail to act in accordance with the first paragraph or cannot reach agreement on common matters, each participant may request that the court appoint an administrator in non-litigious proceedings to decide on common matters.

use and enjoyment

Article 1006

(1) If the subject of the community is divided in kind, each participant shall use and enjoy such participant's part, but such that the other participants and the subject as a whole are not affected.

(2) The subject of a community that is not divided in kind and is intended for all the participants shall be used and enjoyed by each participant in accordance with the purpose of the subject and such that there is no detriment to simultaneous use by the other participants and to the subject as a whole.

(3) It shall not be possible to limit participant's rights pursuant to the first and second paragraphs without the consent thereof.

decision-making on common matters

Article 1007

(1) The number of votes appropriate to the share thereof shall pertain to each participant.

(2) The participants in a community shall decide by a majority of votes on the ordinary management, use and enjoyment of the subject of the community.

(3) The participants may decide with a two-thirds majority on the improvement of the subject of the community, on better use thereof or on measures important to increasing the value of the subject. If such a decision would limit the rights of any participant or would entail very high costs for the participants, the decision may only be adopted unanimously.

(4) The participants in a community may agree that the matters specified in the second paragraph will be decided upon by one participant alone, certain participants alone or third persons. Such participants or third persons shall be elected with a majority of votes.

(5) Irrespective of the second paragraph each participant may do whatever is required to avert the direct threat of major damage to the subject of the community, if such measures are not taken by participants or third persons pursuant to the second and fourth paragraphs.

(6) The participants may not request any significant changes to the subject of the community or decide on such. Such a request or decision shall be deemed to be a request or decision to terminate the community.

community's costs

Article 1008

(1) Each participant shall be obliged to bear the costs of the subject of the community in proportion to such participant's share, particularly the costs of maintenance, management and joint use.

(2) Each participant shall be obliged to bear a proportionate part of the costs arising because of a decision to improve the subject of the community, to use it better or to take measures important to increasing the value of the subject.

request for termination

Article 1009

(1) Each participant may at any time request the termination of the community.

(2) By agreement the participants may permanently or for a definite period exclude the right to request the termination of the community or stipulate a period of notice.

(3) In cases specified in the second paragraph of this article it shall also be possible to request the termination of the community if there are justifiable grounds for such.

(4) The termination of the community pursuant to the first and third paragraphs may also be requested by a court-appointed administrator.

(5) Irrespective of the second paragraph the participants may at any time unanimously decide to terminate the community.

(6) A community shall also be terminated if the participants alienate the subject of the community as a whole or if the subject of the community no longer exists.

(7) It shall not be possible by agreement to limit the rights of a participant or administrator pursuant to the first, third and fourth paragraphs.

consequences of termination

Article 1010

(1) If such is possible without harming the value of the subject of the community, upon termination division in kind shall be carried out.

(2) If division in kind is not possible the subject of the community shall be sold. From the proceeds the joint obligations towards third persons and participants that settled such obligations for the account of other participants shall be settled first. The remaining proceeds shall be divided among the participants in the community with regard to their shares.

(3) If the subject of the community is real estate it shall be sold at a public auction.

(4) In the purchase pursuant to the second and third paragraphs one or more of the current participants shall have priority under the same conditions as third persons.

(5) The sense of the second paragraph shall also apply if the termination occurs because the participants alienated the subject of the community as a whole or if the subject of the community no longer exists.

(6) If the sale does not succeed the community shall not be terminated.

founding of partnership

Article 1011

(1) If such is not contrary to law, the community may also be terminated by the participants concluding a contract of partnership pursuant to the provisions of the present code or pursuant to the provisions of the act regulating companies.

(2) When the community is terminated pursuant to the first paragraph of this article, the division shall not be carried out if the entire subject of the community is invested in the partnership.

(3) Even after the founding of a partnership the participants in the community shall be liable to third persons as before the founding. Through the contract on partnership the mutual obligations incurred while the community existed may be regulated differently.

Title XXIX: Surety

Section 1: General Provisions

definition

Article 1012

Through a contract of surety the surety undertakes to a creditor to perform a valid and due obligation of the debtor if the debtor has failed to do so.

form

Article 1013

A contract of surety shall only be binding for the surety if such makes the declaration of surety in writing.

capacity to stand surety

Article 1014

Only a person with full capacity to contract may be bound by a contract of surety.

surety for person with incapacity to contract

Article 1015

Any person that as surety undertakes to perform the obligation of any person with incapacity to contract shall be liable to the creditor in the same manner as the surety of a person with capacity to contract.

subject of surety

Article 1016

- (1) Surety may be stood for any valid obligation, irrespective of its content.
- (2) It shall also be possible to accept surety for a conditional obligation and for a specific future obligation.
- (3) Surety for a specific future obligation may be revoked before the obligation originates, if no deadline by which it should originate is stipulated.
- (4) Surety may also be stood for the obligation of another surety (surety's surety).

extent of surety's obligation

Article 1017

- (1) The surety's obligation may not be larger than the obligation of the principal debtor; if it was agreed to be larger it shall be reduced to the size of the debtor's obligation.

(2) The surety shall be liable for the performance of the entire obligation for which surety was accepted, unless the surety's obligation is limited to any part thereof or is otherwise tied to easier conditions.

(3) The surety must reimburse the necessary costs incurred by the creditor in collecting the debt from the principal debtor.

(4) The surety shall also be liable for any increase in the obligation incurred by the debtor's delay or through the fault of the debtor, unless agreed otherwise.

(5) The surety shall only be liable for the contractual interest falling due after the contract of surety is concluded.

transfer of creditor's rights to surety (subrogation)

Article 1018

A creditor's claim settled by the surety shall be transferred to the latter with all the accessory rights and guarantees for the fulfilment thereof.

Section 2: Relationship Between Creditor and Surety

forms of surety

Article 1019

(1) The performance of the obligation may only be demanded of the surety when the principal debtor fails to perform it by the deadline stipulated in a written demand (subsidiary surety).

(2) However the creditor may demand that the surety perform the obligation, even if the creditor has not previously demanded performance from the principal debtor, if it is clear that performance cannot be achieved from the assets of the principal debtor or if the principal debtor goes bankrupt.

(3) A surety that is bound as surety and payer shall be liable to the creditor as the principal debtor for the entire obligation, and the creditor may demand performance thereof from either the principal debtor or the surety, or from both at once (joint and several surety).

(4) The surety shall be liable as surety and payer for an obligation originating from a commercial contract, unless agreed otherwise.

joint and several liability of sureties

Article 1020

Several sureties for a specific debt shall be jointly and severally liable, irrespective of whether they undertook to stand surety together or each of them made an undertaking to the creditor separately, unless their liability is regulated differently by the contract.

loss of right to deadline

Article 1021

If the debtor has lost the right to the deadline stipulated for the performance of the debtor's obligation the creditor nevertheless may not demand performance from the surety before the deadline passes, unless agreed otherwise.

bankruptcy of principal debtor

Article 1022

(1) In the bankruptcy of the principal debtor the creditor shall be obliged to register the claim and notify the surety of such; otherwise the creditor shall be liable to the surety for the damage incurred thereby for this reason.

(2) The reduction of the principal debtor's obligation in bankruptcy or composition proceedings shall not entail a corresponding reduction in the surety's obligation, and the surety shall therefore be liable to the creditor for the whole amount of the surety's obligation.

case of reduced liability for debtor's heir

Article 1023

The surety shall be liable for the whole amount of the obligation for which the surety was accepted, even if the payment of only that part thereof that corresponds to the value of the inherited property could be demanded from the debtor's heir.

surety's objections

Article 1024

(1) The surety may exercise all the principal debtor's objections against the creditor's claim, including an objection to offsetting, but may not exercise the debtor's personal objections.

(2) The debtor's waiver of objections and the debtor's acknowledgement of the creditor's claim shall have no effect in respect of the surety.

(3) The surety may also exercise the surety's personal objections against the creditor, for example nullity of the contract of surety, statute-barring of the creditor's claim thereagainst, and an objection to the offsetting of mutual claims.

obligation to inform surety of debtor's failure

Article 1025

If the debtor fails to perform the debtor's obligation on time the creditor must inform the surety of such; otherwise the creditor shall be liable for the damage incurred by the surety for this reason.

release of surety because of creditor's delay

Article 1026

(1) The surety shall be free of the obligation if at the request thereof after the claim falls due the creditor fails to claim performance from the principal debtor within one month of the request.

(2) When the deadline for performance is not stipulated the surety shall be free of the obligation if at the request thereof after the passing of one year from the conclusion of the contract of surety the creditor fails to provide the necessary declaration for stipulating the day of performance within one month of the request.

release of surety because of abandonment of guarantees

Article 1027

(1) If the creditor abandons a pledge or any other right by which the performance of the claim was secured, or loses such because of the creditor's own gross negligence, and thus prevents the transfer of the right to the surety, the surety shall be free of the obligation towards the creditor in the amount that would have been gained through the exercise of the right.

(2) The rule specified in the previous paragraph shall apply both if the right originated before the contract of surety was concluded and if it originated after the contract of surety was concluded.

Section 3: Relationship Between Surety and Debtor

right to demand reimbursement from debtor

Article 1028

(1) A surety that pays the creditor's claim thereto may demand that the debtor reimburse all that was paid for the debtor, and interest charged from the day of payment.

(2) The surety shall have the right to the reimbursement of the costs incurred in any dispute with the creditor from when the debtor was informed of the dispute, and also to the reimbursement of any damage.

right of surety to joint and several debtor

Article 1029

A surety to one among several joint and several debtors may demand that any of them reimburse the surety for that which was paid to the creditor and the costs.

surety's right to security in advance

Article 1030

Before repaying the creditor a surety that stood with the knowledge or approval of the debtor shall have the right to demand the necessary security from the debtor for the surety's potential claims in the following cases: if the debtor failed to perform the debtor's obligation when it fell due, if the creditor demanded payment from the surety through court proceedings, or if the debtor's pecuniary situation after concluding the contract of surety deteriorates significantly.

loss of right to reimbursement

Article 1031

(1) Against a surety that paid the creditor's claim without the debtor's knowledge the debtor may exercise all legal means by which at the time of payment the debtor could have refused the creditor's claim.

(2) A surety that paid the creditor's claim and failed to inform the debtor of such, whereby the debtor did not know of the payment and paid the same claim again, may not demand reimbursement from the debtor, but shall have the right to demand that the creditor return that which was paid thereto.

right to return of that paid

Article 1032

A surety that without the debtor's knowledge paid a creditor's claim that was subsequently annulled at the debtor's request or expired through offsetting may demand the return of that paid from the creditor alone.

Section 4: Payer's Recourse Against Sureties

Article 1033

If there are several sureties and one of them pays a due claim, such person shall have the right to demand from the other sureties that they reimburse the part pertaining to them.

Section 5: Statute-Barring

Article 1034

(1) Upon the statute-barring of the principal debtor's obligation the surety's obligation shall also become statute-barred.

(2) If the statute-barring period of the principal debtor's obligation is longer than two years the surety's obligation shall become statute-barred two years after the principal debtor's obligation falls due, unless the surety is jointly and severally liable with the debtor.

(3) A discontinuance of the statute-barring of a claim against the principal debtor shall only take effect against the surety if the statute-barring was discontinued by any action taken by the creditor before the court or any other administrative authority to determine, secure or collect the claim against the principal debtor.

(4) The suspension of the statute-barring of the principal debtor's obligation shall have no effect against the surety.

Title XXX: Transfer Order (Assignment)

Section 1: Definition

definition

Article 1035

Through a transfer order (assignment) one person, the transferor (assignor), authorises a second person, the transferee (assignee), to perform something for the former's account for a specific third person, the transfer order recipient (the assignment beneficiary), and authorises the third person to accept performance in the third person's name.

Section 2: Relationship Between Transfer Order Recipient and Transferee

transferee's acceptance

Article 1036

(1) The transfer order recipient shall only have the right to demand performance from the transferee when the latter declares acceptance of the transfer order to the former.

(2) It shall not be possible to revoke acceptance of the transfer order.

transferee's objections

Article 1037

(1) Upon the acceptance of the transfer order a debtor relationship shall originate between the recipient and the transferee, independent of the relationship between the transferor and the transferee and the relationship between the transferor and the transfer order recipient.

(2) A transferee that has accepted the transfer order may only exercise against the transfer order recipient objections relating to the validity of the acceptance, objections based on the content of the acceptance or the content of the transfer order itself, and objections held by the former in person against the latter.

transfer of transfer order

Article 1038

(1) The transfer order recipient may transfer the transfer order to another person before the transferee accepts it, and the other person may transfer it onwards, unless it follows from the transfer order itself or from the particular circumstances that the transfer order is non-transferable.

(2) If the transferee declared acceptance of the transfer order to the transfer order recipient, this shall take effect in respect of all persons to whom the transfer order is successively transferred.

(3) A transferee that declares to the acquirer to whom the transfer order recipient transferred the transfer order that it is accepted may not exercise against the acquirer any objections held in person against the recipient.

statute-barring

Article 1039

(1) The transfer order recipient's right to demand performance from the transferee shall become statute-barred after one year.

(2) If the deadline for performance is not stipulated the statute-barring period shall begin to run when the transferee accepts the transfer order; if the transferee accepted it before it was forwarded to the recipient the statute-barring period shall begin to run when it is forwarded to the recipient.

Section 3: Relationship Between Transfer Order Recipient and Transferor

if transfer order recipient is transferor's creditor

Article 1040

(1) The creditor shall not be obliged to consent to a debtor's transfer order by which the debtor would perform the debtor's obligation, but must inform the latter of refusal immediately; otherwise the creditor shall be liable thereto for damage.

(2) A creditor that consents to the transfer order shall be obliged to demand performance from the transferee.

transfer order is not performance

Article 1041

(1) If the creditor consented to a transfer order by the debtor for performance of the obligation, unless agreed otherwise the obligation shall not terminate upon the former's consent to the transfer order or the transferee's acceptance, but only upon performance by the transferee.

(2) A creditor that consented to a transfer order by the debtor may only demand that the transferor perform that which is owed to the creditor if the creditor did not obtain performance from the transferee at the time stipulated in the transfer order.

transfer order recipient's obligation to notify transferor

Article 1042

If the transferee refuses to consent to the transfer order or refuses performance when demanded therefrom by the transfer order recipient, or declares in advance that the transferee will not perform the transfer order, the transfer order recipient must immediately notify the transferor of such; otherwise the transfer order recipient shall be liable thereto for damage.

withdrawal from accepted transfer order

Article 1043

A transfer order recipient that is not the transferor's creditor and that does not wish to exploit the transfer order may withdraw therefrom, even if the former has already declared acceptance thereof, but must notify the transferor of such without delay.

revocation of authorisation given to transfer recipient

Article 1044

The transferor may revoke the authorisation given to the recipient via the transfer order, unless the transfer order was issued for the performance of any debt of the former towards the latter or in general if the transfer order was issued in the interest of the latter.

Section 4: Relationship Between Transferor and Transferee

if transferee is transferor's debtor

Article 1045

(1) The transferee shall not be obliged to accept the transfer order, even if the transferee is transferor's debtor, unless the former promised such to the latter.

(2) If the transfer order was issued on the basis of the transferee's debt to the transferor, the transferee must perform it up to the amount of such debt if it is in no respect more difficult than performing the obligation towards the transferor.

(3) Upon performance of a transfer order issued on the basis of the transferee's debt to the transferor, the transferee shall be free of the debt towards the transferor in the same extent.

revocation of authorisation given to transferee

Article 1046

(1) The transferor may revoke the authorisation given to the transferee via the transfer order at any time until the transferee declares the acceptance of the transfer order to the recipient or performs it.

(2) The transferor may revoke it even if the transfer order itself states that it is irrevocable, and even if revocation would breach any obligation of the transferor towards the recipient.

(3) The introduction of bankruptcy proceedings on the assets of the transferor shall by law alone have the consequence of revoking the transfer order, unless the transferee had already accepted the transfer order before bankruptcy proceedings were introduced and when accepting did not know and was not obliged to know of the bankruptcy.

Section 5: Death and Removal of Capacity to Contract

Article 1047

The death of the transferor, the transfer recipient or the transferee and the removal of capacity to contract from any of them shall have no effect on a transfer order.

Section 6: Transfer Order in Form of Bearer Paper

Article 1048

(1) A written transfer order may be issued to the bearer.

(2) In this case each holder of the paper shall be in the position of the transfer order recipient in respect of the transferee.

(3) The relationships that via a transfer order originate between the transfer order recipient and the transferor shall in this case only originate between each individual holder of the paper and the person that ceded the paper thereto.

Section 7: Transfer Order in Form of Paper by Order

Article 1049

A written transfer order that refers to money, securities or replaceable things may be issued via a “by order” provision if the transferee is a person involved in commercial activities and if that which the transferee must perform belongs within the framework of these activities.

Title XXXI: Settlement

definition

Article 1050

(1) Through a contract of settlement persons between whom there is a dispute or uncertainty in respect of any legal relationship end the dispute or remove the uncertainty by making mutual concessions, and stipulate their mutual rights and obligations.

(2) An uncertainty shall be deemed to be in effect whenever the exercise of a specific right is uncertain.

where mutual concessions lie

Article 1051

(1) A concession may inter alia lie in the partial or total acknowledgement of any claim by the other party or in the waiver of the party's own claim, in the takeover of any new obligation, in the reduction of an interest rate, in the extension of a deadline, in consent to repayment in part or in a given right to withdrawal money.

(2) A concession may be conditional.

(3) If only one party is making concessions to the other, for example acknowledging a right of the other party, this shall not be deemed settlement and the rules on settlement shall not apply.

capacity

Article 1052

In order to conclude a contract of settlement the capacity to dispose of the right that is the subject of the settlement shall be required.

subject

Article 1053

- (1) Any right that a person can dispose of may be the subject of settlement.
- (2) Settlement on the pecuniary consequences of a criminal act shall be valid.
- (3) Disputes concerning status relationships may not be the subject of settlement.

application of provisions on bilateral contracts

Article 1054

- (1) The general provisions on bilateral contracts shall apply to a contract of settlement, unless stipulated otherwise therefor.
- (2) If under the name of settlement the contracting parties perform any other transaction the provisions of law applying to settlement shall not apply to their relationship, but rather those applying to the transaction actually performed.

excessive deprivation

Article 1055

The annulment of settlement may not be demanded for reason of excessive deprivation.

effect of settlement against surety and pledger

Article 1056

- (1) If through settlement a novation of an obligation is carried out the surety shall be free of the obligation for the performance thereof, and any pledge provided by a third person shall expire.
- (2) Otherwise the surety and third person that pledged a thing shall remain bound; their liability may be reduced through settlement, but may not be increased unless they consent to the settlement.
- (3) If through settlement a debtor acknowledges a disputed claim the surety and the pledger shall retain the right to exercise against the creditor any objections waived by the debtor through the settlement.

settlement on transaction that can be annulled

Article 1057

- (1) Settlement on a legal transaction whose annulment could be requested by one party shall be valid if the party knew of the possibility when the settlement was concluded.
- (2) However settlement on a null and void legal transaction shall be null and void, even if the contracting parties knew of the nullity and wished to eliminate it through settlement.

nullity of settlement

Article 1058

(1) Settlement shall be null and void if it is based on an erroneous belief by the two contracting parties that there is a legal relationship that in reality does not exist, and without such an erroneous belief there would be no dispute or uncertainty between them.

(2) This shall also apply if the contracting parties' erroneous belief relates to ordinary facts.

(3) The waiver of the right to exercise nullity shall have no legal effect, and that which was provided for the account of performance of an obligation deriving from such settlement may be demanded back.

nullity of provision of settlement

Article 1059

The provisions of settlement shall be interpreted as a whole, and the entire settlement shall therefore be null and void if an individual provision is null and void, unless it can be seen from the settlement alone that it is composed of independent parts.

TRANSITIONAL AND FINAL PROVISIONS

application of present Code

Article 1060

The provisions of the present Code shall not apply to obligational relationships that originated before the entry into force of the present code.

cessation of validity and application of other regulations

Article 1061

(1) On the day the present Code enters into force the following shall cease to be valid:

- Articles 106 to 122 of the Inheritance Act (Official Gazette of the SRS, Nos. 15/76 and 23/78; Official Gazette of the RS, Nos. 13/94 – ZN, 40/94 – Decision of the Constitutional Court, 82/94 – ZN, 117/2000 – Decision of the Constitutional Court and 67/2001)
- Article 6 of the Prescribed Interest Rate for Penalty Interest and Basic Interest Rate Act (Official Gazette of the RS, No. 45/95)
- point 5 of Article 47 of the Notary Act (Official Gazette of the RS, Nos. 13/94, 48/94, 82/94 and 41/95)

(2) On the day the present Code enters into force the Obligations Relations Act (Official Gazette of the SFRY, Nos. 29/78, 39/85 and 57/89) shall cease to apply, with the exception of the provisions of Title XXVIII (Articles 966 to 996), Title XXXI (Articles 1035 to 1046), Title XXXII (Articles 1047 to 1051), Title XXXIII (Articles 1052 to 1060), Title XXXIV (Articles 1061 to 1064), Title XXXV (Articles 1065 to 1068), Title XXXVI (Articles 1069 to 1071), Title XXXVII (Articles 1072 to 1082), Title XXXVIII (Articles 1083 to 1087) and Title XXXIX (Article 1088), which shall

continue to be applied as appropriate as national regulations until the issue of the relevant regulations.

(3) Upon the entry into force of the present Code the separate act of law pursuant to the second paragraph of Article 378 of the present Code shall be the Prescribed Interest Rate for Penalty Interest and Basic Interest Rate Act (Official Gazette of the RS, No. 45/95).

Entry into force of present Code

Article 1062

The present Code shall enter into force on 1 January 2002.

No. 310-09/91-1/12
Ljubljana, 3 October 2001

Borut Pahor
President,
National Assembly of Republic of Slovenia

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