
UNIFORM ACT RELATING TO GENERAL COMMERCIAL LAW

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

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

The Contracting States present have deliberated upon and unanimously adopted the Uniform Act set out below.

PRELIMINARY CHAPTER SCOPE

Article 1

Every trader, be he a natural or legal person including all commercial companies of which a State or a person governed by public law is a member, as well as every economic interest group, whose place of business or registered office is situated on the territory of one of the Contracting

States to the Treaty on the Harmonization of Business Law in Africa, (hereinafter referred to as "Contracting States"), shall be subject to the provisions of this Uniform Act.

Besides, every trader shall be subject to the laws which are not contrary to the provisions of this Uniform Act applicable in the Contracting State of his place of business or registered office.

Natural persons or corporate bodies, and economic interest groups, set up or being formed on the date of entry into force of this Uniform Act must harmonize the conditions under which they carry on their activity with this new legislation within a period of two years from the date of publication of this Uniform Act in the Official Gazette.

After this time limit, any party concerned may bring an action before the court of competent jurisdiction for such regularization to be ordered, where necessary under financial compulsion.

BOOK I

STATUS OF TRADER

CHAPTER 1

DEFINITION OF TRADER AND COMMERCIAL TRANSACTIONS

Article 2

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

Article 3

Commercial transactions shall include:

- the purchase of movable or immovable property for resale;
- banking, stock-exchange, currency exchange, brokerage and transit transactions;
- contracts between traders for business purposes;
- the industrial exploitation of mines, quarries and any natural resource deposit;
- rental of personal property;
- manufacturing, transportation and telecommunication operations;
- middlemen's business transactions such as commission, brokerage and agency, as well as middleman's operations relating to the purchase, underwriting, sale or rental of immovable property, businesses, shares in commercial companies or building societies; and
 - transactions carried out by commercial companies.

Article 4

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

Article 5

Proof of commercial transactions can be given by any means with respect to traders.

CHAPTER 2

CAPACITY TO TRADE

Article 6

No person shall engage in trading as a regular occupation unless he has the legal capacity to trade.

Article 7

A minor shall not have the status of trader or engage in trading unless he is emancipated.

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

Article 8

No person shall engage in a commercial activity incompatible with his previous status.

There shall be no incompatibility unless it is provided for by a text.

The person invoking the incompatibility shall be bound to provide proof of it.

Transactions carried out by a person in a state of incompatibility shall nevertheless be valid with respect to third parties acting in good faith.

Third parties shall, where they so desire, take advantage of transactions carried out by a person who is in a situation of incompatibility, but the latter can take no advantage of such transactions.

Article 9

The exercise of a commercial activity shall be incompatible with the exercise of the following duties or occupations:

- civil servants and staff of public entities and State-owned Enterprises;
- Court officials and Auxiliary officers of Justice: Barrister, Bailiff, Auctioneer, Stock Exchange Broker, Notary, Court Registrar, Legal Administrator, and Liquidator;
- approved Chartered Accountant and approved Accounting Officer, Auditor, Consulting Lawyer, Ship-broker;
- more generally, any occupation the exercise of which is subject to regulations forbidding the exercise of such activity concurrently with a commercial occupation.

Article 10

No person shall carry on a commercial activity, directly or through an intermediary, where he is the subject of:

- a permanent or temporary general ban imposed by a court of one of the Contracting States, whether the said ban is imposed as a principal or accessory penalty;
- a ban imposed by a professional court; in this case, the ban shall apply only to the commercial activity concerned;
- a definite sentence of imprisonment for an ordinary law offence or a non suspended sentence of not less than three months imprisonment for a misdemeanour against property or an offence of an economic or financial nature.

Article 11

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

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

A ban on the bankrupt shall end upon discharge, under the conditions and forms provided for in the Uniform Act regarding the collective procedures for the wiping up of payable accounts.

Article 12

Without prejudice to other sanctions, transactions carried out by a convict shall not be demurrable to third persons acting in good faith.

Good faith shall always be presumed.

However, such transaction shall be demurrable to the convict.

CHAPTER 3

ACCOUNTING OBLIGATIONS OF THE TRADER

Article 13

Every corporate body or natural person who is a trader shall keep a day book in which his commercial transactions shall be recorded on a daily basis.

He shall equally keep a general ledger, with a general summary balance, as well as an inventory book.

These books shall be kept in accordance with the provisions of the Uniform Act relating to the organization and harmonization of business accounting.

Every corporate body which is a trader shall also comply with the provisions of the Uniform Act relating to the Law on commercial

companies and economic interest groups and the Uniform Act relating to the organization and harmonization of business accounting.

Article 14

The day book and the inventory book shall mention the registration number of the natural person or corporate body concerned in the Trade and Personal Property Credit Register.

They shall be numbered and initialled by the President of the court of competent jurisdiction, or by the Judge delegated for this purpose.

They shall be kept without blank spaces or alterations of any kind.

Article 15

The trade books referred to under Article 13 above, which shall be regularly kept, may be admitted in evidence by the judge in disputes between traders.

Article 16

In the course of a dispute, the Judge may order, even as a matter of routine, the presentation of trade books, with a view to extracting information concerning the dispute.

Article 17

Every corporate body engaged in trading shall equally draw up, each year, a summary of its financial statements, in accordance with the provisions of the Uniform Act relating to the organization and harmonization of business

accounting, and to the Uniform Act relating to commercial companies and economic interest groups.

CHAPTER 4 BARRING BY LIMITATION

Article 18

Obligations resulting from trade between traders or between traders and non-traders shall be barred after a period of five years where they are not subject to shorter limitation periods.

BOOK II TRADE AND PERSONAL PROPERTY CREDIT REGISTER

PART I COMMON PROVISIONS

CHAPTER 1 GENERAL PROVISIONS

Article 19

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

1) for the registration of

a) natural persons having the status of trader, within the meaning of this Uniform Act;

b) commercial companies and other corporate bodies subject to registration, as well as branches of foreign companies operating on the territory of the Contracting State.

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

It shall also record documents the filing of which is provided for by the provisions of this Uniform Act and by those of the Uniform Act relating to the Law on commercial companies and economic interest groups.

2) for entries relating to :

a) the pledging of shares;

b) the pledging of a business, and the preferential right of the seller of the business;

c) the pledging of professional equipment and motor vehicles;

d) the pledging of stocks;

- e) the preferential rights of the Treasury, the Customs Administration and Social Security Institutions;
- f) ownership reserve clauses;
- g) leasing contracts.

CHAPTER 2

ORGANIZATION OF THE TRADE AND PERSONAL PROPERTY CREDIT REGISTER

Article 20

The Trade and Personal Property Credit Register shall be kept by the Registry of the court of competent jurisdiction, under the supervision of the President or a Judge delegated for this purpose.

Information entered in each Trade and Personal Property Credit Register shall be centralized in a National Card-Index.

Information entered in each National Card-Index shall be centralized in a Regional Card-Index kept at the Common Court of Justice and Arbitration.

Article 21

The Register kept at the court Registry shall comprise:

- 1) an in-coming register indicating in a chronological order the date and number of each admitted declaration, the full name, trade name or business name of the declarant, as well as the subject of the declaration;

2) a collection of individual files in alphabetical order comprising:

a) for natural persons: their full names, date and place of birth, the nature of activity in which they are engaged and the address of their principal place of business, as well as the addresses of subsidiaries set up within the jurisdiction of the court of the registered office, or outside the said jurisdiction, all declarations, transactions and filed documents concerning them;

b) for commercial companies and other corporate bodies subject to registration: their business name, legal form, nature of activity performed, address of the registered office as well as that of the registered office of subsidiaries set up within the jurisdiction of the court or outside such jurisdiction, all declarations, transactions and documents concerning them.

Article 22

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

The forms shall bear the signature of the declarant, or of his authorized agent who shall show proof of his identity and, unless he is a Barrister, Baillif, Notary or Receiver, possess a power of attorney signed by the declarant.

The first copy shall be kept by the Registry.

The second shall be given to the declarant with indication of the date and description of the formality accomplished.

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

Article 23

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

- 1) for natural persons: their full name, date and place of birth, nature of the activity in which they are engaged, address of their principal place of business, as well as the addresses of subsidiaries set up within the jurisdiction of the court of the registered office and outside the said jurisdiction;
- 2) for commercial companies and other corporate bodies: their business name, legal form, nature of activity exercised, registered capital, address of the registered office and those of subsidiaries set up within the jurisdiction of the court of the registered office and outside the said jurisdiction.

Article 24

In addition, the following shall automatically be mentioned in the Trade Register:

- 1) decisions handed down in individual bankruptcy proceedings or in collective proceedings for the judicial settlement, legal redress or liquidation of property;

2) decisions handing down patrimonial sanctions against managers of corporate bodies;

3) discharge decisions or amnesty orders lifting forfeitures or bans.

The information provided for under this article shall be communicated by the court which handed down the decision, or failing this, by any concerned person to the Registries of the courts within whose jurisdiction the secondary businesses are located.

PART II

REGISTRATION IN THE TRADE AND PERSONAL PROPERTY CREDIT REGISTER

CHAPTER 1

REGISTRATION CONDITIONS

Section 1

Registration of natural persons

Article 25

Every natural person having the status of trader as provided for in this Uniform Act shall, within the first month of operation of his business, apply to the Registry of the competent court within whose jurisdiction the

business is operated for registration in the Trade and Personal Property Credit Register.

The application for registration shall indicate :

- 1) the full name and domicile of the applicant;
- 2) his date and place of birth;
- 3) his nationality;
- 4) where applicable, the name under which he runs the business and the sign used;
- 5) the activity or activities carried out, and the form of operation;
- 6) the date and place of marriage, the type of marriage property option adopted, clauses demurrable to third persons restricting the free disposal of property of the spouses or the absence of such clauses, actions for separation of property;
- 7) the full name, date and place of birth, domicile and nationality of persons with power to commit by their signature the responsibility of the applicant;
- 8) the address of the principal place of business and, where applicable, the address of each of the other subsidiaries or branches operated on the territory of the Contracting State;

9) where applicable, the nature and the place of operation of the activity of the last subsidiaries previously operated with an indication of their registration number (s) in the Trade and Personal Property Credit Register;

10) the date of commencement, by the applicant, of the operation of the principal business and, where applicable, the other subsidiaries.

Article 26

The applicant shall be required to furnish the following documents in proof of his declarations:

- 1) a copy of his birth certificate, or any administrative document proving his identity;
- 2) a copy of his marriage certificate, where necessary;
- 3) an extract of his criminal record, or failing this, any other document in lieu thereof; where the applicant is not a national of the Contracting State in which he is requesting registration, he shall also have to furnish an extract of his criminal record from the authorities of his country of birth, and failing this, any other document in lieu thereof;
- 4) a residence permit;
- 5) a copy of the title deed or lease of the principal place of business, and where applicable, of the other subsidiaries;
- 6) in case of purchase of the business or management lease, a copy of the purchase certificate or the management lease deed;

7) where necessary, a prior authorization to operate the business.

Section 2

Registration of companies and other corporate bodies

Article 27

The companies and other corporate bodies referred to in the Uniform Act relating to the Law on commercial companies and economic interest groups shall apply for registration in the Trade and Personal Property Credit Register, within a month of their formation, to the Registry of the court within whose jurisdiction their registered office is located.

The application shall mention:

- 1) the business name;
- 2) where applicable, the commercial name, acronym or sign;
- 3) the activity or activities carried out;
- 4) the form of the company or corporate body;
- 5) the amount of the registered capital with indication of the amount of contributions in cash and an evaluation of contributions in kind;
- 6) the address of the registered office, and where applicable, that of the principal place of business and of each of the other subsidiaries;
- 7) the duration of the company or the corporate body as fixed by its articles of association;

8) the full name and domicile of business partners who have unlimited liability vis-à-vis the company's debts, with an indication of their date and place of birth, nationality, date and place of marriage, the type of marriage property option adopted and clauses demurrable to third persons restricting the free disposal of property of the spouses or the absence of such clauses, as well as actions for the separation of property;

9) the full name, date and place of birth, and domicile of managers, administrators or business partners with general power to commit the responsibility of the company or corporate body;

10) the full name, date and place of birth and domicile of Auditors where their designation is provided for by the Uniform Act relating to the Law on commercial companies and economic interest groups.

Article 28

The following supporting documents shall, under the penalty of rejection, be attached to the application:

- 1) two certified true copies of the articles of association;
- 2) two copies of the validity and conformity certificate or of a certified true copy of a certificate of payment of shares;
- 3) two certified true copies of the list of managers, administrators or business partners having an unlimited liability vis-à-vis the company's debts or with power to commit the company;

- 4) two extracts of the criminal record of the persons referred to in paragraph (3) above; where the applicant is not a national of the Contracting State in which he is applying for registration, he will also have to furnish an extract of his criminal record from the authorities of his country of birth, and failing this, any other document in lieu thereof;
- 5) where necessary, a prior authorization to operate the business.

Article 29

Every natural person or corporate body not subject to registration in the Trade and Personal Property Credit Register because of the location of his registered office shall, within a month of the setting up of a branch or subsidiary on the territory of one of the Contracting States, apply for registration of such business.

The application, which shall be deposited at the Registry of the court within whose jurisdiction such branch or subsidiary will be established, shall indicate:

- 1) the name of the branch or subsidiary;
- 2) where necessary, its commercial name, acronym or sign;
- 3) the activity or activities carried out;
- 4) the name of the foreign company that owns the said branch or subsidiary; its commercial name, acronym or sign; the activity or activities carried out; the form of the company or corporate body; its nationality; the address of its registered office; where applicable, the full name and

domicile of the business partners having an unlimited liability vis-à-vis the company's debts;

5) the full name, date and place of birth of the natural person resident on the territory of the Contracting State with power to represent and manage the branch.

Section 3

Common provisions for the registration of natural persons and corporate bodies

Article 30

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

No person shall be principally registered in several registers or in the same register under several numbers.

Once the applicant's application is complete, the court Registry shall assign him a registration number and shall mention it on the form given to him.

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

Article 31

Where the place of operation of a business or the registered office of a corporate body is transferred, an application shall be filed for:

- such business or corporate body to be struck off the Trade and Personal Property Credit Register of the court within whose jurisdiction they were registered;

- a new registration in the Trade and Personal Property Credit Register of the court within whose jurisdiction the place of operation of the business or registered office has been transferred; such registration shall only be final after the verification provided for under paragraphs 4 and 5 above.

To this effect, natural persons carrying on business shall furnish information and documents in accordance with Articles 25 and 26 above; companies and other corporate bodies subject to registration shall furnish information and documents in accordance with Articles 27 and 29 above.

These formalities must be accomplished by the applicant within one month of the transfer.

The Registry responsible for the Trade and Personal Property Credit Register within whose jurisdiction the trader has transferred his business or where the company has transferred its registered office shall, within one month of the new registration, ensure that the business or corporate body is struck off the Register by requiring that the latter produce an attestation issued by the Registry of the place of the previous registration.

Where the applicant fails to act, the Registry shall automatically effect the change at the expense of the applicant.

Article 32

Every registration, as well as every entry or indication establishing changes that have occurred since the date of their registration in the status and legal capacity of natural persons or corporate bodies subject to registration, shall equally be the subject of a notice to be published in a newspaper empowered to publish legal notices within a month of entry of such formality.

The notice shall contain:

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

Section 4

Supplementary and secondary modifying entries

Article 33

Where the situation of a person subject to registration subsequently undergoes changes which require that the information entered in the Trade and Personal Property Credit Register be amended or supplemented, such person shall, within thirty days of the changes, file an application for such amendment or supplement.

Any change concerning particularly the civil status, the marriage property option, the legal capacity and activity of a natural person subject to registration, or particularly any change concerning the articles of

association of a corporate body, shall be entered in the Trade and Personal Property Credit Register.

Every application for a supplementary or secondary change to the Register shall be signed by the person declaring the change or by an authorized agent who shall show proof of his identity and, where he is not a Barrister, Bailiff, Notary, Receiver or other auxiliary officer of Justice empowered by law for this purpose, shall have a special power of attorney.

Article 34

Every natural person or corporate body subject to registration in the Trade and Personal Property Credit Register shall be bound, where he is operating secondary commercial businesses or branches within the jurisdiction of other courts, to apply for secondary registration within one month from the beginning of the operation.

Such application shall mention, in addition to the reference to the principal registration, the information required:

- for natural persons, by Article 25 (1) to (6) above ;
- for corporate bodies, by Article 27 (1) to (9) above.

Article 35

The application shall be filed at the Registry of the court within whose jurisdiction the secondary business is located.

The Registry in charge of the Register shall forward within one month of the secondary registration, a copy of the application for secondary

registration to the court Registry in charge of the Register where the principal registration was effected.

A registration number shall be assigned for every registration of a secondary business, which shall be inserted, within one month of such registration, in a newspaper empowered to publish legal notices.

Section 5

Striking off the register

Article 36

Every registered natural person shall, within one month of cessation of his commercial activity, apply for removal from the Trade and Personal Property Credit Register.

In the event of death of a registered natural person, his rightful claimants must, within a period of three months from the date of his death, apply for the cancellation of the registration in the Register, or for its modification, where they themselves have to continue to operate the business.

Where the application for striking off is not filed within the time-limit referred to in the two preceding paragraphs of this article, the court Registry shall strike off the business following a decision of the competent court before which the matter is brought at the request of the Registry or of any party concerned.

Every removal from the Register shall be inserted in a newspaper empowered to publish legal notices.

Article 37

The dissolution of a corporate body for any reason whatsoever shall be declared, so that it should be entered in the Trade and Personal Property Credit Register within a period of one month at the Registry of the competent court where the corporate body is registered.

The same shall apply in the case of nullity of the company, with effect from the date the decision pronouncing it is handed down.

The company shall be struck off the Register at the request of the liquidator made within one month of the closure of liquidation operations.

Where the request is not made within the prescribed deadline, the Registry of the competent court seised shall of its own or at the behest of any party concerned, and upon the decision of the court seised, strike off the company from the register.

Every removal from the Register shall be inserted in a newspaper empowered to publish legal notices.

CHAPTER 2

EFFECTS OF REGISTRATION AND DISPUTES

Section 1

Effects of registration

Article 38

Any person registered in the Trade and Personal Property Credit Register shall be presumed, save proof to the contrary, to have the status of trader within the meaning of this Uniform Act.

However, such presumption shall not be invoked with respect to economic interest groups.

Every natural person or corporate body registered in the Trade and Personal Property Credit Register shall be bound to indicate on its invoices, order forms, tariffs and commercial documents, as well as on every correspondence its number and place of registration in the Register.

Article 39

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

However, they shall not rely on their failure to have themselves registered in the Register in order to avoid the liabilities and obligations inherent in that status.

Article 40

Persons subject to registration in the Trade and Personal Property Credit Register may, in their commercial activities, rely on the deeds and documents subject to registration as against third parties and public

services, which may however rely on them, only if such deeds and documents have been published in the Register.

This provision shall not apply where the persons subject to registration establish that, at the time of the transaction, the third parties and services in question had knowledge of the deeds and documents concerned.

Section 2

Disputes relating to registration

Article 41

The court Registry in charge of the Trade and Personal Property Credit Register shall have the responsibility of ensuring that applications are complete and ascertaining the conformity of the information they provide to the supporting documents attached thereto.

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

Disputes between the applicant and the Registry shall also be referred to the said court.

Article 42

Where the corporate body or natural person who is a trader fails to apply for registration within the prescribed time-limit, the competent court may, automatically or at the request of the Registry in charge of the Trade and

Personal Property Credit Register, or any other applicant, take a decision ordering the party concerned to have his registration effected.

The competent court may, under the same conditions, order any natural person or corporate body registered in the Trade and Personal Property Credit Register to have either:

- information added to or amended in the Register;
- necessary information added or amendment made to the Register in case of an incorrect or incomplete declaration;
- its removal from the Register effected.

Article 43

Any person required to fulfil any of the formalities prescribed in this part but who fails to do so or who fulfils a formality under false pretences, shall be punished with the penalties provided by the national criminal law or, where applicable, by the special criminal law enacted by the Contracting State pursuant to this Uniform Act.

PART III

ENTRY OF PERSONAL PROPERTY SECURITIES

CHAPTER 1

CONDITIONS FOR PERSONAL PROPERTY SECURITY ENTRY

Section 1

Pledging of shares

Article 44

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

- 1) the original copy of the security deed where it is a private document, or an authentic copy thereof where it is a record or a court decision authorizing the creditor to have the pledge entered in the Register.
- 2) four copies of an entry form indicating:
 - a) the full name, business name, registered capital, domicile or registered office of the parties, as well as the registration number of the company whose shares are pledged;
 - b) the nature and date of the deed(s) deposited;
 - c) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
 - d) the secured creditor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

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

Article 45

The court Registry shall ascertain the form's conformity to the security deed presented.

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

- 1) mention the entry in the individual file opened in the name of the company whose shares are concerned with this security entry;
- 2) file the deeds and a copy of the declaration form that was given to him in the file kept in the name of the corporate body whose shares are concerned with this security entry;
- 3) give to the applicant the second copy of his declaration, mentioning the date and the number of the entry.

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

Section 2

Pledging of a business and entry of the preferential right of the seller of a business

Article 46

Where a business is pledged, the secured creditor shall present to the Registry of the competent court within whose jurisdiction the corporate body or natural person who owns or operates the business is registered:

- 1) the original copy of the security deed where it is a private document or an authentic copy thereof if it is a record or a court decision authorizing the creditor to have the pledge entered in the Register;
- 2) four copies of an entry form indicating:
 - a) the full name, business name, domicile or registered office of the parties, as well as the registration number of corporate body or natural person who owns or operates the business to be entered in the Register;
 - b) the nature and date of the deed(s) deposited;
 - c) a description of the business to be pledged;
 - d) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
 - e) the secured creditor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

Article 47

In the case of sale of the business, the seller may have his preferential right entered in the Trade and Personal Property Credit Register.

In this connection, he shall present:

- 1) the original copy of the bill of sale where its a private deed, or an authentic copy thereof where it is a record;
- 2) four copies an entry form indicating:
 - a) the full name, business name, domicile or registered office of the parties, and, where necessary, the registration number of the corporate body or the natural person purchasing the business;
 - b) the nature and date of the documents deposited;
 - c) a description of the business to be pledged in order to facilitate its identification;

- d) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
- e) the secured creditor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

Article 48

Where the pledge or the preferential right of the seller concerns patents, trade marks, and industrial drawings and designs, it shall, apart from the entry of the creditor's security under the conditions stipulated in Articles 46 and 47 above, meet the specific provisions relating to industrial property.

Article 49

The court Registry shall ascertain that the form conforms to the security deed presented.

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

- 1) mention the entry in the individual file opened in the name of the corporate body or the natural person against whom the entry is made;
- 2) file the deed and a copy of the declaration form that was given to him in the file kept in the name of the corporate body or the natural person against whom the entry is made, mentioning the date and number of the entry;
- 3) give to the applicant the second copy of his declaration endorsed by the Registry, mentioning the date and number of the entry.

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

Article 50

Any modification by agreement or court order of the security or preferential right shall be entered in the Register under the conditions and in the forms provided for the initial entry.

Any application for the cancellation by court order of the sale of a business shall be recorded in advance in the Trade and Personal Property Credit Register, in accordance with the provisions stipulated for this purpose by the Uniform Act on the organization of securities.

Section 3

Pledging of professional equipment and motor vehicles

Article 51

Where professional equipment belonging to a natural person or corporate body subject to registration in the Trade and Personal Property Credit Register is pledged, the secured creditor shall present to the Registry of the competent court within whose jurisdiction the buyer is registered:

- 1) the original copy of the security deed where it is a private document, or an authentic copy thereof if it is a record or a court decision authorizing the creditor to have the pledge entered in the Register;
- 2) four copies of an entry form indicating:
 - a) the full name, business name, domicile or registered office of the parties, as well as the registration number of the buyer against whom the entry is made;
 - b) the nature and date of the deed(s) deposited;
 - c) a description of the property to be pledged to facilitate its identification and location, and an indication, where necessary, that the property is likely to be moved;
 - d) the amount of the money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;

e) the secured creditor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

Article 52

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

- 1) the original copy of the security deed where it is a private document, or an authentic copy thereof where it is a court decision authorizing the creditor to have it entered in the Register;
- 2) four copies of an entry form indicating:
 - a) the full name, business name, domicile or registered office of the parties, as well as the registration number of the buyer against whom the entry is made;
 - b) the nature and date of the deed(s) deposited;
 - c) a description of the property pledged in order to facilitate its identification;
 - d) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
 - e) the secured creditor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

Article 53

After ascertaining that the form conforms to the security deed presented, the court Registry shall enter the security under the conditions stipulated in Article 49 above.

Any modification by agreement or court order of the security shall be entered in the Register under the conditions and in the forms stipulated for the initial entry.

Section 4

Pledging of stocks

Article 54

Where stocks are lodged as security, the pledger shall file the following at the Registry of the court within whose jurisdiction the natural person or corporate body who owns the stocks pledged is registered:

- 1) the original of the security deed where it is a private document, or an authentic copy thereof where it is a record or a court decision authorizing the creditor to have the deed entered in the Register;
- 2) four copies of an entry form indicating:
 - a) the full name, business name, domicile or registered office of the parties, as well as the registration number of the corporate body or the natural person who owns the pledged stocks against whom the entry is made;
 - b) the nature and date of the deed(s) deposited;
 - c) a description of the stocks pledged in order to facilitate their identification;
 - d) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
 - e) the secured creditor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

Article 55

After ascertaining that the form confirms to the security deed presented, the court Registry shall enter the pledge as stipulated in Article 49 above.

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

Any modification by agreement or court order of the security shall be entered in the Register under the conditions and in the forms stipulated for the initial entry.

Section 5

Entry of preferential rights of the Treasury, the Customs Administration and Social Security Institutions

Article 56

In the case of entry of the preferential right of the Treasury, the competent Public Accounting Officer shall present the following to the Registry of the competent court within whose jurisdiction the debtor is registered:

- 1) the original copy of the proof of debt, or the court ruling authorizing the Treasury to have the entry made;
- 2) four copies of an entry form specifying:
 - a) the full name, business name, domicile or registered office of the debtor, as well as his registration number;
 - b) the nature and date of the debt;
 - c) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
 - d) the Treasury's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

After ascertaining that the form conforms to the proof of debt presented, the Registry shall enter the preferential right under the conditions stipulated in Article 49 above.

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

Article 57

In the case of entry of the preferential right of the Customs Administration, the latter shall present the following to the Registry of the competent court within whose jurisdiction the debtor is registered:

- 1) the original copy of the proof of debt, or the court decision authorizing the Customs Administration to have the entry made;
- 2) four copies of an entry form specifying:
 - a) the full name, business name, domicile or registered office of the debtor against whom the entry is made, as well as his registration number;
 - b) the nature and date of the debt;
 - c) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
 - d) the Customs Administration's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

After ascertaining that the form conforms to the proof of debt presented, the court Registry shall enter the preferential right under the conditions stipulated in Article 49 above.

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

Article 58

In the case of entry of the preferential right of a Social Security Institution, the latter shall present the following to the Registry of the competent court within whose jurisdiction the debtor is registered:

- 1) the original copy of the proof of debt, or the court order authorizing the Social Security Institution to have the entry made;
- 2) four copies of an entry form specifying:
 - a) the full name, business name, domicile or registered office of the debtor against whom the entry is made, as well as his registration number;
 - b) the nature and date of the debt;
 - c) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
 - d) the Social Security Institution's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

After ascertaining that the form conforms to the proof of debt presented, the Registry shall enter the preferential right under the conditions stipulated in Article 49 above.

Any notification by agreement or court order of the preferential right shall be entered in the Register under the conditions and in the forms stipulated for the initial entry.

Section 6

Entry of ownership reserve clauses

Article 59

A seller of goods who has an agreement or order form accepted by the buyer, clearly specifying an ownership reserve clause may have such clause entered in the Trade and Personal Property Credit Register.

In this connection, he shall file the following at the Registry of the competent court within whose jurisdiction the buyer of the goods is registered:

- 1) a certified true copy of the deed specifying the ownership reserve clause;
- 2) four copies of an entry form specifying:
 - a) the full name, business name, domicile or registered office of the parties, as well as the registration number of the natural person or corporate body purchasing the goods which are the object of the reserve clause;
 - b) the nature and date of the deed(s) deposited;
 - c) a description of the goods which are the object of the ownership reserve clause in order to facilitate their identification;
 - d) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
 - e) the election of domicile of the creditor benefiting from the ownership reserve clause within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

Article 60

After ascertaining that the form conforms to the deed containing the ownership reserve clause, the Registry shall enter the ownership reserve clause under the conditions stipulated in Article 49 above.

The Registry shall give the applicant a copy of the form bearing clearly the indication "ownership reserve clause" as well as the number and date of the entry;

Any modification by agreement or court order of the ownership reserve clause shall be entered in the Register under the conditions and in the forms stipulated for the initial entry.

Section 7

Entry of leasing contracts

Article 61

In the case of conclusion of a leasing contract, the lessor may file the following at the Registry of the competent court within whose jurisdiction the corporate body or natural person holding the lease is registered:

- 1) the original copy of the deed bearing the leasing contract where it is a private document, or an authentic copy thereof where it is a record;
- 2) four copies of an entry form specifying:
 - a) the full name, business name, domicile or registered office of the lessee, as well as his registration number;
 - b) the nature and date of the document(s) filed;
 - c) a description of the property which is the object of the leasing, in order to facilitate its identification;

d) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;

e) the lessor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

Article 62

After ascertaining that the form conforms to the document presented, the Registry shall enter the leasing contract as stipulated in Article 49 above.

The form given to the applicant after entry shall clearly bear the indication "leasing contract" and the date it is issued which shall correspond to the date of entry in the Trade and Personal Property Credit Register.

Any modification by agreement or court order of the leasing contract shall be entered in the Register under the conditions and in the forms stipulated for the initial entry.

CHAPTER 2 EFFECTS OF, AND DISPUTES RELATING TO ENTRY

Article 63

An entry duly made in the Trade and Personal Property Credit Register shall be binding on the parties and third parties as from the date of registration:

1) during a period of five years for entry of a pledge of shares, a pledge of a business and a pledge of professional equipment and motor vehicles, and entry of the preferential right of the seller and leasing contracts;

2) during a period of three years for the entry of the general preferential rights of the Public Treasury, the Customs Administration and Social Security Institutions.

3) during a period of one year for the entry of a pledge of stocks and of an ownership reserve clause.

At the end of these periods, and save in the case of renewal thereof by the applicant under the conditions stipulated in Article 62 above, the entry shall expire and shall be automatically struck off the Register by the court Registry.

Article 64

The renewal of an entry shall be made under the same conditions as for the initial entry.

After verifying that the forms submitted at the Registry are in accordance with the title deeds, the Registry shall renew the entry.

A validly renewed entry shall have effect vis-à-vis the parties and third persons as from the date of filing of the application for renewal, in accordance with the conditions stipulated in Article 63 above.

The court Registry shall give the applicant a copy of the form bearing clearly the indication "renewal of registration".

Article 65

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

In any case, the competent court could even before deciding on the merits of the case, totally or partially cancel the entry, where the applicant shows proof of serious and legitimate motives.

Article 66

Claims for total or partial cancellation of the entry could also be made by filing a deed showing the consent of the creditor or of his rightful claimants.

Four copies of a form bearing the following information shall also be attached to the application for cancellation:

- 1) the full name, business name, domicile or registered office, as well as the registration number of the natural person or corporate body against whom the entry had been made, or in the case of an entry concerning shares, the registration number of the company whose shares are the object of the entry;
- 2) the nature and date of the deed(s) filed;
- 3) the applicant's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

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

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

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

Article 67

The Registry shall be responsible for ensuring that applications for entry, renewal of entry or cancellation of personal property securities are complete and ascertaining that the information contained in them conforms to the supporting documents presented.

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

Article 68

Any personal property security entry made under fraud or containing inaccurate information given mala fide, shall be punished with the penalties provided for by the national criminal law.

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

BOOK III

COMMERCIAL LEASE AND BUSINESS

PART I

COMMERCIAL LEASE

PRELIMINARY CHAPTER

SCOPE

Article 69

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

- 1) premises or buildings for commercial, industrial, handicraft or professional purposes;
- 2) secondary premises adjoining premises or a building for commercial, industrial, handicraft or professional purposes, provided that, where these secondary premises belong to different owners, the rental is intended for use jointly and that such use is made known to the lessor at the time of conclusion of the lease;
- 3) non built-on estate on which buildings for industrial, commercial, handicraft or profession purposes have been constructed, either before or after conclusion of the lease, where such buildings are built or used with the consent or knowledge of the owner.

Article 70

The provisions of his Part shall also apply to industrial or commercial legal entities governed by public law and to public corporations whether they are lessors or lessees.

CHAPTER 1

CONCLUSION AND DURATION OF LEASE

Article 71

A commercial lease shall be any agreement, even unwritten, between the owner of immovable property or part thereof falling within the scope of Article 69 of this Act and any natural person or corporate body allowing the latter to carry on any commercial, industrial, handicraft or professional activity on the premises with the consent of the owner.

Article 72

The parties shall freely determine the duration of leases.

A commercial lease may be concluded for a specified or unspecified duration.

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

CHAPTER 2

OBLIGATIONS OF THE LESSOR

Article 73

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

He shall be presumed to have fulfilled this obligation:

- where the lease is verbal, or
- where the lessee has signed the lease without making any reserves concerning the state of the premises.

Article 74

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

The lessee shall bear the inconveniences of the repairs.

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

The amount of the rent shall thus be reduced in proportion to the time the lessee was deprived of the use of the premises.

If the urgent repairs make it impossible to enter into possession of the premises, the lessee could request the legal termination of the lease or its suspension during the duration of the repair works.

Article 75

If the lessor refuses to carry out the major repairs, the lessee may bring an action before the competent court to authorize him to carry out such repairs, in accordance with the rules governing this activity on behalf of the lessor.

In such case, the competent court shall determine the cost of the repairs and the modalities of reimbursement.

Article 76

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

Article 77

The lessor shall be liable to the lessee for disturbance affecting the use and enjoyment caused by him or by his rightful claimants or agents.

Article 78

The lease shall not come to an end by the sale of the premises leased.

In case of transfer of ownership of the immovable property in which the premises leased are located, the buyer shall automatically assume the obligations of the lessor and shall pursue the execution of the lease.

Article 79

The lease shall not come to an end with the death of either party.

In the case of death of the lessee who is a natural person, the lease shall be continued with the spouse, direct ascendants or descendants of the lessee who have so requested the lessor by an extrajudicial act within a period of three months following the death.

In case of several requests, the lessor shall refer the matter to the competent court to designate a successor for the lease.

Where no request is made within the three-month period, the lease shall be automatically terminated.

CHAPTER 3

OBLIGATIONS OF THE LESSEE

Article 80

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

Article 81

The lessee shall be bound to use the premises leased with due diligence and in accordance with the specifications in the lease or, in the absence of any written agreement, according to the presumed use, depending on the circumstances.

Where the lessee puts the premises into use other than that of which they are intended, and as a result of which the lessor suffers damage, the latter could bring an action before the competent court to terminate the lease.

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

Article 82

The lessee shall be responsible for maintenance repairs.

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

Article 83

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

CHAPTER 4 RENT

Article 84

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

The rent shall be subject to modification under the conditions laid down by the parties or, failing this, at the expiry of each three-year period.

Article 85

In the absence of a written agreement between the parties on the new amount of rent, the earliest petitioner shall refer the matter to the competent court.

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

-
- the location of the premises;
 - their area;
 - state of obsolescence;
 - the commercial rent currently charged in the neighbourhood for similar premises.

CHAPTER 5

TRANSFER - SUB-TENANCY

Article 86

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

- the complete identity of the transferee;
- his address;
- where applicable, his registration number in the Trade and Personal Property Credit Register.

Article 87

The transfer shall not be applicable to the lessor where he is not notified under the conditions stipulated in Article 86 above.

Article 88

The lessor shall have a period of one month following such notification to contest, where necessary, the transfer and to bring the matter before the competent court within that time limit, stating serious and legitimate reasons for objecting to such a transfer.

Violation by the lessee of the lease obligations, especially the non-payment of rent, shall constitute a serious and legitimate reason for objecting to the transfer.

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

Article 89

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

In case of authorized sub-tenancy, the lessor shall be notified of the same in any written form.

The sub-tenancy shall not be binding on him where he is not notified.

Article 90

Where the total or partial sub-tenancy rent is higher than the principal lease rent, the lessor shall have the choice to ask for a corresponding increase in the principal lease rent, an increase which, failing an agreement between the parties, shall be fixed by the competent court, taking into account the information referred to in Article 85 above.

CHAPTER 6

CONDITIONS AND FORMS OF RENEWAL

Article 91

The right to renew a lease for a specified or an unspecified duration shall be acquired by the lessee who shows proof of having carried on under the conditions stipulated in the lease, the activity provided for in it during a minimum period of two years.

Article 92

In the case of a fixed term lease, the lessee who has a right to renew his lease, by virtue of Article 91 above, may request such renewal by an extrajudicial act no later than three months before the expiry of the lease.

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

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

Article 93

In the case of a lease of an unspecified duration, any party wishing to terminate it shall give at least a six-month notice of his intention by an extrajudicial act.

The lessee, who benefits from the right of renewal by virtue of the provisions of Article 91 above, may lodge an objection against such notice of termination, at least on its effective date, by notifying the lessor by an extrajudicial act of the objection of the notice of termination.

The lease of an unspecified duration shall cease on the date fixed by the notice of termination where no objection is raised within this time-limit.

Article 94

The lessor may lodge objection against the right to renewal of a lease of specified or unspecified duration by paying the tenant an eviction allowance.

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

Article 95

The lessor may object to the right to renewal of a lease of a specified or an unspecified duration without having to pay an eviction allowance in the following cases:

1) where he has serious and legitimate charge against the lessee to be evicted;

Such charge must either be failure by the tenant to fulfil a substantial obligation under the lease or cessation of operation of the business.

This charge can only be invoked where the acts have been continued or renewed for a period of more than two months after the lessor's formal notice by an extrajudicial act to stop such acts.

2) where he intends to demolish the building in which the premises rented are found and to rebuild it.

In this case, the lessor shall have to show proof of the type and description of the works to be carried out.

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

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

Article 96

Furthermore, the lessor may, without having to pay any eviction allowance, refuse to renew the lease on dwellings attached to the main premises, in order to live in them himself or to have his spouse or ascendants, or descendants or those of his spouse live in them.

Such refusal shall not be admitted where the lessee establishes that the dispossession of the adjoining residential units seriously affects the use and enjoyment of the lease on the main premises, or where the main premises and the residential units form a whole and indivisible block.

Article 97

In case of renewal expressly or impliedly accepted by the parties, and unless otherwise agreed upon by them, the duration of the new lease shall be three years.

The new lease shall take effect from the date of expiry of the previous lease where the latter is of a specified duration, or from the date specified in the notice of termination if the previous lease is of an unspecified duration.

Article 98

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

The lessor shall be notified of the sub-tenancy renewal act under the same conditions as the initially authorized sub-tenancy.

Article 99

The lessee with no right to renewal for whatever reason could however be reimbursed the cost of construction and improvements carried out on the premises with the authorization of the lessor.

Where there is no agreement between the parties, the lessee could bring an action before the competent court as soon as the unrenewed lease of a

specified duration expires, or as soon as the notice to quit is given with respect to a lease of an unspecified duration.

Article 100

Disputes arising from the implementation of the provisions of Part I of this Book shall be brought, at the request of the earliest petitioner, before the competent court within whose jurisdiction the premises leased are located.

CHAPTER 7

LEGAL TERMINATION OF LEASE

Article 101

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

Where the lessee fails to pay the rent or to comply with a clause in the lease, the lessor could bring an action before the competent court to terminate the lease and evict the lessee and all the occupants under his authority, after giving him, by an extrajudicial act, a formal notice to comply with the clauses and conditions of the lease.

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

The lessor who intends to pursue the action for termination of the lease on premises on which a business is operated shall notify his action to the registered creditors.

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

CHAPTER 8

PROVISIONS RELATING TO MATTERS OF PUBLIC POLICY

Article 102

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

PART II

BUSINESSES

CHAPTER 1

DEFINITION OF BUSINESS

Article 103

A business shall comprise a series of resources that enable a trader to attract and maintain customers.

It shall comprise various tangible and intangible elements of property.

Article 104

A business shall obligatorily comprise customers and a sign or trade name.

These elements are referred to as goodwill.

Article 105

A business may also, provided that they are designated by name, comprise the following elements:

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

CHAPTER 2

METHODS OF BUSINESS OPERATION

Article 106

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

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

A management lease shall be an agreement by which a natural or legal person who is the owner of a business transfers it, on contract, to a corporate body or a natural person who is a manager and who runs the business at his own risks.

Article 107

The manager under lease shall have the status of trader and shall be subject to all the obligations relating to this status.

He shall comply with the regulations on registration in the Trade and Personal Property Credit Register.

Every management lease contract shall also be published, within fifteen days following signature thereof, in the form of an extract in a newspaper empowered to publish legal notices.

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

The expiry of the management lease contract at the end of or before the period fixed shall be subject to the same publicity provisions.

Article 108

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

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

Article 109

Natural or legal persons who grant a management lease shall:

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

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

Article 110

The time limits provided for in the preceding article may be cancelled or reduced by the competent court, especially where the person concerned

proves that he was unable to run his business personally or through his agents.

Article 111

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

- the State;
- local councils;
- public establishments;
- disabled persons, with regard to the business they owned before their disablement;
- the heirs or legatee or devisee of a deceased trader, regarding the business operated by the latter;
- management lease contracts signed by attorneys-in-fact responsible in whatever capacity for the administration of a business, provided that they had been authorized to do so by the competent court and that they had met the publicity provisions laid down.

Article 112

The debts of the owner of the business under a management lease may be declared immediately payable by the competent court where it deems that the management lease compromises their collection.

The action shall be instituted by any party concerned, under penalty of preclusion, within three months following the date of publication of the

management lease contract, as provided for in Article 115 of this Uniform Act.

Article 113

The owner of the business shall be jointly and severally liable up to the date of publication of the management lease contract.

Article 114

The expiry of the management lease contract after or before the fixed period shall render immediately payable the debts relating to the operation of the business contracted by the lessee during his management.

CHAPTER 3 TRANSFER OF BUSINESS

Article 115

The transfer of the business shall comply with the general rules of sale, subject to the provisions below, and the specific provisions governing the carrying on of certain commercial activities.

Article 116

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

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

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

Article 117

The sale of a business may be made either by a private document or by a legal document.

The provisions of this chapter shall apply to any document recording a transfer of a business, granted even subject to conditions, including the contribution in the capital of a company.

Article 118

Every document recording the transfer of a business shall indicate:

- 1) the complete civil status of the seller and the buyer with regard to natural persons; the full name, business name, legal form, address of the registered office and objects of the seller and the buyer for corporate bodies.
- 2) their registration number in the Trade and Personal Property Credit Register;
- 3) where applicable, the origin of the property belonging to the previous seller;
- 4) the statement of preferential rights, pledges and entries concerning the business;

- 5) the turnover for each of the past three years of operation or since the acquisition of the business, where it has not been operated for over three years;
- 6) the commercial profits made during the same period;
- 7) the lease, its date and duration, the name and address of the lessor and of the seller where applicable;
- 8) the agreed price;
- 9) the location and elements of the business sold;
- 10) the name and address of the bank designated as trustee where the sale is made by a private document.

Article 119

The omission or inaccuracy of the above information may lead to the nullity of the sale where the buyer so requests and where he proves that such omission or inaccuracy has substantially affected the composition of the business sold and where it has suffered damage.

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

Article 120

Every document recording the sale of a business shall be filed in two certified true copies by the seller and buyer of the business in the Trade and Personal Property Credit Register.

It shall be the duty of the seller and buyer, each in his sphere, to ensure that the corresponding amendment is made in the Register.

Article 121

Every document recording the sale of a business shall, within a period of fifteen clear days from the date the document is drawn up, be published at the instance of the buyer in the form of a notice in a newspaper empowered to publish legal notices published at the place where the seller is registered in the Trade and Personal Property Credit Register.

Article 122

The seller of the business shall be bound to place the business sold at the disposal of the buyer on the date stipulated in the bill of sale.

However, where provision has been made for a cash payment, the seller shall be bound, unless otherwise agreed by the parties, to place the business at the disposal of the buyer only on the date of complete payment.

Article 123

The seller of a business shall abstain from any act tending to disturb the buyer's operation of the business.

The non re-establishment clauses shall be valid only where they are limited, either in time or in space; one of such limitations is enough to make the clause valid.

The seller shall guarantee the buyer the peaceful possession of the business sold, and shall in particular guarantee him against the rights that other persons may claim over the business sold.

Article 124

Where the buyer is partially dispossessed or where he discovers charges that were not declared in the bill of sale, or where the business has concealed defects, he may request the cancellation of the sale, but only where the reduction in possession which he suffers is of such a magnitude that he would not have bought the business if he had had knowledge of it.

Article 125

The buyer shall have the obligation to pay the price on the day and place fixed in the bill of sale to the Notary or any bank designated by mutual agreement of the parties in the bill of sale.

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

Where, at the end of this deadline, no objection is notified to the trustee he shall hand over the selling price to the seller.

Where one or more objections are notified within the said period, the selling price shall be made available to the seller only on production of proof of withdrawal of all the objections.

Article 126

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

Article 127

Any creditor of a seller who lodges an objection shall notify it by extrajudicial act:

- 1) to the Notary or the bank designated as trustee;
- 2) to the buyer, at his address as mentioned in the bill of sale;
- 3) to the Registry of the court where the Trade and Personal Property Credit Register in which the seller is registered is kept; it shall be the responsibility of the Registry to enter the objection in the Trade and Personal Property Credit Register.

The document by which the objection is lodged shall state the amount and origins of the debt, and contain election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

The formalities imposed on the person lodging the objection by this article shall be enacted under penalty of his objection being declared null and void.

Article 128

The objection shall have a conservatory effect.

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

Article 129

For the seller to have the objections withdrawn and receive the available funds, he shall bring an action before the competent court.

The seller may also have the person lodging the objection withdraw it out of court, in this case, the withdrawal shall be notified by the lodger under the conditions of form referred to in Article 125 above.

Article 130

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

Article 131

Any creditor who has had a preferential right or a pledge entered in the Register or who has duly lodged objection may, within a period of one month following the publication of the sale in a newspaper empowered to publish legal notices, make a higher bid of one-sixth of the overall price of the business indicated in the bill of sale.

Where the business is the subject of a compulsory sale, the secured creditors and persons who have lodged objection shall enjoy the same higher bid right which shall be enforced within the same time limit following the auction.

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

Article 132

The specifications, articles and conditions of sale shall reproduce integrally the higher bid deed and shall also indicate at the instance of the Registry the pledges previously entered in the Register and the objections duly notified following the publication, after the voluntary sale, of the business or during the compulsory sale proceedings.

No new objection shall be lodged during the higher bid proceedings.

Article 133

The sale shall be at the bar of the competent court, in the form of auctions, after accomplishing the publicity formalities provided for the purpose.

Article 134

Where the price is not paid cash, the seller shall have a preferential right over the business sold.

To this end, he shall have his preferential right entered in the Register in the forms stipulated in this Uniform Act.

Article 135

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

Article 136

The seller who intends to institute a rescissory action shall notify such action by extrajudicial act or by any means in writing to the creditors entered against the business at the elected domicile in their entries.

He shall also enter his rescissory action in advance in the Register, in accordance with the provisions stipulated for this purpose in the Uniform Act on the organization of securities.

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

Any rescission agreement on the sale of a business reached out of court shall not be binding on creditors entered in the buyer's right.

BOOK IV

TRADE MIDDLEMEN

PART I

COMMON PROVISIONS

CHAPTER 1

DEFINITION AND SCOPE

Article 137

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

Article 138

A middleman shall be a trader; he shall fulfil the conditions provided for in Articles 6 to 12 of this Uniform Act.

The conditions of access to professions of middleman may in addition be supplemented by conditions specific to each category of middlemen referred to in this Book.

A middleman may be a natural person or a corporate body.

Article 139

The provisions of this Book shall govern not only the conclusion of contracts by the middleman, but also any transaction carried out by the latter in view of concluding or performing the said contract.

They shall apply to all relations between the principal, the middleman and the third party.

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

Article 140

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

- a) the middleman is registered in the Trade and Personal Property Credit Register of one of the Contracting States; or
- b) the middleman acts in the territory of one of the Contracting States; or
- c) rules of private international law allow for the implementation of this Uniform Act.

Article 141

The provisions of this Book shall not apply;

- a) to the representation resulting from a legal or judiciary authorization to act, with regard to persons who do not have the legal capacity to do so;
- b) to the agency by any person selling by auction or by authority of the administration or the judiciary;
- c) to legal agency in Family Law, Matrimonial Law and Law of Succession.

Article 142

The manager, the administrator or the partner of a company, an association or any other legal entity with or without a legal personality, shall not be considered as the middleman of the latter in so far as, in the performance of his duties, he acts in accordance with powers conferred by law or by legal instruments of that entity.

CHAPTER 2

ESTABLISHMENT AND SCOPE OF THE MIDDLEMAN'S POWER OF ATTORNEY

Article 143

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

Article 144

The middleman's power of attorney may be written or oral.

It shall not be subject to any conditions of form.

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

Article 145

The principal and the middleman on the one hand, and the middleman and the third party involved on the other hand, shall be bound by customs they

knew or were supposed to know and which, in trade, are widely known and generally followed by parties involved in agency relations of the same nature in the given trade branch.

They shall also be bound by practices established between them.

Article 146

The scope of the middleman's authority shall be determined by the type of business it refers to, where this is not specifically spelt out in a contract.

The authority shall include in particular the power to do legal acts required for its fulfilment.

However, the middleman may not, without a special authority, institute legal proceedings, make concessions and compromises and subscribe to exchange commitments, transfer or mortgage realties, or make a donation.

Article 147

The middleman who has received specific instructions may not deviate from them, unless it is proved that circumstances did not permit him to seek the authorization of the principal, where it can be shown that the latter would have given that authorization had he been informed of the situation.

CHAPTER 3

LEGAL EFFECTS OF ACTS DONE BY THE MIDDLEMAN

Article 148

Where the middleman acts on behalf of the principal within the scope of his authority and third parties knew or were supposed to know his position as middleman, his acts shall directly bind the principal to the third party, unless it results from circumstances of the sort, namely through reference to a commission or brokerage contract, that the middleman only intended to bind himself.

Article 149

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

- the third party did not know or was not supposed to know the position of the middleman, or
- where circumstances of the sort, namely through reference to a commission contract, show that the middleman only intended to bind himself.

Article 150

The liability of the middleman shall generally be subject to the rules governing the power of attorney.

The middleman shall thus be answerable to the principal for the good and faithful execution of the power of attorney.

He shall be bound to execute it himself, unless he is empowered to transfer it to a third party, where he is forced by circumstances not to implement it himself, or where the custom allows a substitution of powers.

Article 151

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

However, when the behaviour of the principal leads the third party to believe reasonably and in good faith that the middleman has the authority to act on behalf of the principal, the latter cannot claim, with regard to the third party, that the middleman does not have authority.

Article 152

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

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

Article 153

A middleman who acts without authority or beyond the scope of his authority shall, in the absence of ratification, be bound to compensate the third party so that the latter could be put back to the situation which he would have found himself in, had the middleman acted under authority and within the scope of such authority.

The middleman shall however incur no liability where the third party knew or was supposed to know that the middleman had no authority or acted beyond the scope of his authority.

Article 154

The principal shall reimburse the middleman, both the principal and interest, advances paid and costs incurred by the latter in the regular fulfilment of the power of attorney, and shall release him from obligations entered into.

Article 155

The middleman shall be bound to give to the principal, at any time at his request, an account of his management.

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

CHAPTER 4

TERMINATION OF THE MIDDLEMAN'S POWER OF ATTORNEY

Article 156

The middleman's power of attorney shall end:

- upon an agreement between the principal and the middleman;

- upon the full performance of the transaction or transactions for which the authority was given;
- upon revocation on the initiative of the principal, or upon renunciation of the middleman.

However, the principal who abusively revokes the power of attorney given to the middleman shall compensate him for damages caused.

The middleman who abusively renounces the execution of his power of attorney shall compensate the principal for damages caused.

Article 157

The middleman's power of attorney shall also end in case of death, incapacity, or institution of collective proceedings in court, whether these events concern the principal or the middleman.

Article 158

The termination of the power of attorney given to the middleman shall have no effect on the third party unless the latter knew or was supposed to know about that termination.

Article 159

The termination of the power of attorney notwithstanding, the middleman shall still be empowered to accomplish, on behalf of the principal or of his rightful claimants, necessary and urgent acts in order to avoid any damage.

PART II

THE COMMISSION AGENT

Article 160

As far as selling or purchasing is concerned, the commission agent shall be a person who undertakes in his own name to carry out, but on behalf of a principal, the sale or purchase of goods, for a commission.

Article 161

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

Where the commission contract contains specific instructions, the commission agent shall strictly comply with them, except, where need be, he takes the initiative to cancel the contract in case the nature of the contract or the customs are against such instructions.

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

Where instructions are optional, or where specific instructions are not given, the commission agent shall act in a way to serve as best he can the interests of the principal, and with respect for customs.

Article 162

The commission agent shall act with fairness on behalf of the principal.

In particular, he may not buy on his own account goods entrusted to him to sell, or sell his own goods to the principal.

Article 163

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

Article 164

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

Article 165

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

Article 166

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

Article 167

Where goods forwarded under commission for sale are in an obviously poor condition, the commission agent shall have remedies against the carrier, have damages established, take necessary measures to conserve the damaged goods and inform the principal promptly.

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

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

Article 168

The commission agent who sells goods below the minimum price fixed by the principal shall have to pay the price differential to the latter, unless he proves that by selling the goods he spared the principal a damage and that circumstances did not allow him to seek his instructions.

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

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

Article 169

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

Article 170

The commission agent shall be liable for payment or performance of other obligations to be honoured by those he dealt with only where he has undertaken to do so, or if that is the trading practice at his place of business.

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

Article 171

The commission agent shall lose all rights to a commission where he acts mala fide vis-à-vis the principal, especially where he indicated to the principal a price higher than the purchase price or lower than the selling price.

In addition, in these two last cases, the principal shall have the right to consider the commission agent himself as the buyer or seller.

Article 172

The forwarding commission agent or forwarding agent who, for a remuneration and in his own name, undertakes to send or forward goods on behalf of his principal, shall be likened to commission agent, and equally subject to the provisions governing the transport contract with regard to the transportation of goods.

Article 173

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

Article 174

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

The customs commission agent who has paid, for a third party, duties, taxes or fines charged by customs services shall be subrogated in customs duties.

Article 175

The customs commission agent shall be answerable to his principal for any error in the customs declaration or in the implementation of customs tariffs, and for any tort likely to result from delay in the payment of duties, taxes or fines.

He shall be answerable to customs and Treasury services for customs operations he carried out himself.

PART III

THE BROKER

Article 176

The broker shall be an agent whose habitual occupation is to put people in contact in order to facilitate the successful conclusion of conventions, deals, agreements, or transactions between them.

Article 177

The broker shall be bound to remain independent of the parties and shall limit his activities to arranging contacts between persons who wish to enter into contracts and to taking all necessary steps to facilitate an agreement between them.

He shall therefore not intervene personally in a transaction, unless the parties so agree.

Article 178

The broker shall:

- take all necessary steps to ensure the conclusion of a contract;
- give the parties all relevant information enabling them to carry out transactions with full knowledge of the facts.

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

Article 179

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

Article 180

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

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

Where the buyer alone is the only principal, he shall bear the commission, in addition to the price paid to the seller.

Article 181

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

Where the contract is concluded under a condition precedent, the remuneration of the broker shall be paid only after that condition has been met.

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

Article 182

Remuneration that is not agreed upon by the parties shall be paid on the basis of the tariff, where there is one; where there is none, remuneration shall be fixed in accordance with the established trade practices.

In the absence of established trade practices, the broker shall be entitled to a remuneration which takes into account all the components of the transaction.

Article 183

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

PART IV

COMMERCIAL AGENTS

Article 184

The commercial agent shall be an authorized agent whose occupation, in a freelance capacity, shall be to permanently negotiate and eventually conclude contracts of sale, purchase, hire, or provision of services on behalf of, and on the account of producers, industrialists, traders or other

commercial agents, without being bound to them by a contract of employment.

Article 185

Contracts entered into between commercial agents and their principals shall be concluded in the common interest of the parties.

Relations between the commercial agent and the principal shall be governed by an obligation of fairness and a reciprocal duty of disclosure of information.

The commercial agent shall execute his power of attorney as a diligent professional; the principal shall take all necessary steps to enable the commercial agent execute his power of attorney.

Article 186

The commercial agent may agree without authorization to act as agent for other principals, unless otherwise provided for by a written agreement.

He shall not agree to act as agent for a company competing with that of one of his principals, without the agreement of the latter.

Article 187

The commercial agent shall not, even at the end of the contract, use or disclose information given to him confidentially by the principal, or which came to his knowledge in his capacity as agent owing to the contract.

Where an agreement on the prohibition of competition is concluded between the commercial agent and his principal, the commercial agent shall be entitled to a special allowance at the end of the contract.

Article 188

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

Where no provision is made in the contract, the commercial agent shall be entitled to a commission in conformity with established customs in the branch covered by his power of attorney.

Where there is no established custom, the commercial agent shall be entitled to a remuneration which takes into account all the components of the transaction.

Article 189

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

Article 190

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

Article 191

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

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

Article 192

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

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

Article 193

The right to a commission shall lapse only where it is established that the contract between the third party and the principal shall not be performed, and where the non-performance of the contract is not due to circumstances that can be imputed on the principal.

Article 194

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

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

Article 195

The agency contract for a specified duration shall end at the expiry of the specified period, without necessarily resorting to any formality to terminate it.

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

Article 196

Where the contract is for an unspecified duration, either party may terminate it subject to notification.

The period of notice shall be one month for the first year of the contract, two months for the second year started, three months for the third year started and subsequent years.

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

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

The parties shall not agree on shorter periods of notice.

Where they agree on longer periods, the periods of notice must be identical for the principal and the agent.

These provisions shall not apply where the contract is terminated by a serious misconduct on the part of one of the parties, or due to an act of God.

Article 197

Where relations between the principal and the commercial agent come to an abrupt end, the commercial agent shall be entitled to a compensatory allowance, without prejudice to possible damages.

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

The rightful claimants of the commercial agent shall also be entitled to a compensatory allowance where the termination of the contract is due to the death of the agent.

Article 198

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

1. in the event of termination of the contract caused by a serious misconduct on the part of the commercial agent, or;
2. in the event of termination of the contract on the agent's initiative, unless such termination is justified by circumstances attributable to the principal, or is due to the age, disability or illness of the commercial agent, and more generally, by all circumstances beyond the agent's control as a result of which the continuation of his activity can no longer be reasonably demanded, or,
3. when, in agreement with the principal, the commercial agent transfers to a third party the rights and obligations he holds by virtue of the agency contract.

Article 199

The compensatory allowance shall, at the very least, be equal to:

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

The compensatory allowance shall be freely fixed between the commercial agent and his principal for the period after the third completely performed contract year.

The monthly payment to be considered for the calculation of the allowance shall be that of the average of the last twelve months of performance of the power of attorney.

These provisions shall not apply where the contract is terminated by a serious misconduct on the part of one of the parties, or due to an act of God.

Article 200

Any clause or agreement in derogation from the provisions of Articles 196 to 199 above to the detriment of the commercial agent shall be deemed to be unwritten.

Article 201

At the end of the contract, each party shall be bound to return anything given to him for the duration of the contract either by the other party, or by third parties on behalf of the other party, but without prejudice to either party's possessory lien.

BOOK V

COMMERCIAL SALE

PART I

SCOPE AND GENERAL PROVISIONS

CHAPTER 1

SCOPE

Article 202

The provisions of this Book shall apply to contracts of sale of goods between traders, be they natural persons or corporate bodies.

Article 203

The provisions of this Book shall not govern:

1. sales to consumers, that is to say any person acting for purposes outside his occupational activity;
2. sales after seizure, sales by order of the court and sales by auction;
3. sales of chattels, negotiable instruments, currencies or foreign exchange and transfers of debts.

Article 204

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

Article 205

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

CHAPTER 2

GENERAL PROVISIONS

Article 206

In matters of commercial sale, the will and conduct of one party must be interpreted in accordance with the latter's intention, where the other party knew or could not ignore such intention.

The will and conduct of one party shall be interpreted in accordance with the meaning a reasonable person having the same status as the other party, and placed in the same situation would have given them.

To determine the intention of one party or of a reasonable person, it is necessary to take into account factual circumstances, particularly negotiations which might have occurred between the parties, the practices established between them, and even practices in force in the profession concerned.

Article 207

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

Except where there are agreements between the parties to the contrary, they are supposed, in the commercial sales contract, to have tacitly referred to the professional practices they knew or ought to have known, and which, in trade, are widely known and generally observed by parties to contracts of the same type in the commercial sector concerned.

Article 208

The commercial sales contract may be written or oral; it shall not be subject to any condition of form.

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

Article 209

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

PART II

ESTABLISHMENT OF A CONTRACT OF SALE

Article 210

A proposal to conclude a contract sent to one or more well defined persons shall constitute an offer where it is sufficiently specific and indicates the intentions of the offeror to be bound in case of acceptance.

A proposal shall be sufficiently specific where it spells out the goods, and expressly or implicitly determines the quantity and price of the goods or provides guidelines which help in fixing them.

Article 211

An offer shall become effective when it reaches the offeree.

An offer may be revoked, where the revocation reaches the offeree before the latter has communicated his acceptance.

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

An offer, though irrevocable, shall cease when the offeror receives its rejection.

Article 212

A statement or any other attitude of the offeree indicating that he assents to an offer shall constitute an acceptance.

Silence or lack of action shall not alone constitute an acceptance.

Article 213

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

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

An oral offer shall be accepted immediately, unless circumstances imply the contrary.

Article 214

A reply that tends to indicate acceptance of an offer, but that contains additional or different facts which do not substantially alter the terms of the offer shall constitute an acceptance.

A reply that tends to indicate acceptance of an offer, but which contains additions, restrictions or other amendments, shall be considered as a rejection of the offer, and shall constitute a counter-offer.

Article 215

The time limit for acceptance set by the offeror in a telegram or a letter shall begin to run from the day the offer is made, as testified by the Postal Services Stamp.

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

Article 216

Acceptance may be withdrawn where the offeror receives the withdrawal notice before the time when the acceptance would have become effective.

Article 217

The contract shall be concluded from the moment when the acceptance of an offer takes effect, in accordance with the provisions of this Book

Article 218

An offer, an acceptance statement or any other sign of intention shall be considered as having reached its offeree when it was made orally, or when it was delivered by any other means to the offeree himself, to his principal place of business or to his postal address.

PART III

OBLIGATIONS OF THE PARTIES

CHAPTER 1

THE SELLER'S OBLIGATIONS

Article 219

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

Section 1

Delivery

Article 220

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

- a) handing over the goods to a carrier for delivery to the buyer, where the contract of sale provides for such transportation;
- b) making the goods available to the buyer where they were manufactured, or where they are stored, or at the place where the seller has his principal business, with respect to all other cases.

Article 221

Where the seller is bound to ensure the transportation of goods, he shall conclude the relevant contracts to ensure that the goods are transported to the place agreed upon with the buyer by appropriate means of transport and under the trade practices.

Where the seller is not bound to take out a transport insurance policy himself, he shall, at the buyer's request, give him any available information necessary for the conclusion of the insurance contract.

Article 222

The seller shall deliver the goods:

- a) where a date is specified in the contract or may be determined in reference to the contract, on that date;
- b) where a period of time is specified in the contract, or may be determined in reference to the contract, at any time during that period;
- c) and in any other case, within a reasonable period from the time the contract is concluded.

Article 223

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

Section 2 Merchantability

Article 224

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

Except where there is agreement between the parties to the contrary, the goods shall conform to the contract only where:

1. they are fit for purposes for which goods of that nature are generally put;
2. they are fit for any special purpose which was brought to the knowledge of the seller at the time of conclusion of the contract;
3. they match the sample or model which was given to the buyer by the seller;
4. they are packaged according to the usual method of packaging goods of the same nature, or failing which, in a manner to ensure their conservation and protection.

Article 225

In accordance with the contract and these provisions, the seller shall be liable for any defect of merchantability that exists at the time risks are transferred to the buyer, even where such defect only appears subsequently.

Article 226

In case of early delivery, the seller shall have the right until the fixed delivery date, either to deliver a part or a missing quantity or new goods in replacement of goods that do not conform to the contract, or to remedy any defect of merchantability provided the exercise of such right causes neither damage nor expenses to the buyer.

Article 227

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

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

Where the goods are deviated or redispached by the buyer without him having the reasonable possibility to inspect the goods, and where, at the time of the conclusion of the contract, the seller knew or ought to have known the possibility of such deviation or redispachment, the inspection exercise may be delayed until the goods reach their new destination.

Article 228

The buyer shall be deprived of the right to claim redress of a defect of merchantability, where he does not report it to the seller, indicating the kind of defect, within a reasonable period from the time he noticed it or ought to have noticed it.

Article 229

In any case, the buyer shall be deprived of the right to claim redress of a defect of merchantability, where he does not report it no later than a one year from the date the goods were effectively delivered to him, unless this time limit is incompatible with the duration of a contractual guarantee.

Section 3

Guarantee

Article 230

The seller shall deliver the goods with the assurance that no third party has a right or claim to them, unless the buyer accepts to collect the goods under such conditions.

Article 231

The guarantee shall be due by the seller when the hidden defect of the goods sold reduces their use to the extent that the buyer would not have bought or would have bought them at a lower price, had he been aware of it.

The guarantee shall be claimed by both the buyer against the seller, and the sub-buyer against the manufacturer or an intermediary seller, to cover a hidden defect affecting the goods sold from the time they were manufactured.

Article 232

Any clause limiting the guarantee shall be interpreted narrowly.

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

CHAPTER 2

THE BUYER'S OBLIGATIONS

Article 233

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

Section 1 Payment of price

Article 234

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

Article 235

A sale may not be validly concluded without a specification of the price in the contract of sale, unless the parties referred to the price generally charged at the time of conclusion of the contract in the commercial sector considered for the same goods sold under similar circumstances.

Article 236

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

Article 237

Where the buyer is not bound to pay the price in another specific place, he shall pay the seller:

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

Article 238

Where the buyer is not bound to pay the price at some other time stipulated in the contract, he shall pay it when the seller makes available to him either the goods or the documents representing the goods.

The seller may condition delivery of the goods or handing over of the documents on payment of the purchase price.

Where the contract implies the transportation of the goods, the seller may forward the goods, provided that the goods or the documents representing the goods are handed over to the buyer only on payment of the purchase price.

However, the parties may expressly stipulate in the contract that the buyer shall be bound to pay the purchase price only after he has had the possibility of inspecting the goods.

Article 239

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

Section 2

Taking delivery

Article 240

A buyer's obligation to take delivery shall consist in:

- taking any action which may reasonably be expected of him to enable the seller make the delivery, and
- taking out the goods.

Article 241

Where the buyer is slow in taking delivery of the goods or does not pay the purchase price, whereas payment of the price and delivery should be done simultaneously, the seller shall, where the goods are in his possession or under his control, take reasonable measures, under the circumstances, to ensure their safety.

He shall be entitled to keep the goods until the buyer reimburses the expenses he incurred for their safety.

Article 242

Where the buyer has received the goods and wants to refuse them, he shall take reasonable steps, under the circumstances, to ensure their safety.

He shall be entitled to keep them until the seller reimburses the expenses he incurred for their safety.

Article 243

The party who is bound to take steps to ensure the safety of the goods, may store them in the warehouses of a third party at the expense of the other party, provided the accruing costs are not unreasonable.

Article 244

The party responsible for the safety of the goods may sell them by all appropriate means where the other party delays in recovering them, in paying the purchase price, or in paying costs related to their safety, subject to notifying the other party of his intention to sell them.

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

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

CHAPTER 3

PENALTIES FOR THE NON-RESPECT OF CONTRACTUAL OBLIGATIONS

Section 1

General Provisions

Article 245

A party may bring an action before the competent court for authorization to defer the fulfilment of his obligations where it appears, after conclusion of the contract, that the other party shall not fulfil an essential part of his obligations due to:

- 1) a serious lack of capacity to perform the contract, or
- 2) his insolvency, or
- 3) the manner in which he is preparing to perform or is performing the contract.

Article 246

Where, before the date of performance of the contract, it is clear that one of the parties will fail to fulfil an essential part of his obligations, the other party may bring an action before the competent court for termination of the contract.

Article 247

Where, in contracts of successive delivery, the failure by one of the parties to meet an obligation relating to a delivery constitutes an essential breach of the contract, the other party may bring an action before the competent court for termination of the contract.

He may also petition the court for the deliveries already received, or for future deliveries where, by virtue of their relationship, these deliveries may not be used for the purposes intended by the parties at the time of conclusion of the contract.

Article 248

A breach of a contract of sale by one of the parties shall be deemed essential when it causes damage to the other party to the extent of substantially depriving him of what he rightfully expected from the contract, except where such breach was due to an act of a third party or to circumstances beyond the party's control.

Section 2

Penalties against the seller

Article 249

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

- exercise the rights provided for in this Section;
- claim damages

Article 250

The buyer may demand that the seller fulfils all his obligations.

Where the goods are not of merchantable quality, the buyer may require that the seller supplies goods in replacement where the defect in merchantability constitutes an essential breach of the contract and where such delivery is requested at the time of denunciation of the defect in merchantability, or within a reasonable period following such denunciation.

Where the goods are not of merchantable quality, the buyer may require that the seller redresses the defect in merchantability. The redress shall be required at the time of denunciation of the defect in merchantability, or within a reasonable period following such denunciation.

Article 251

The buyer may grant the seller an additional reasonable time limit to fulfil his obligations.

The buyer shall not, before the expiry of such time limit, claim any of the grounds available to him in case of breach of the contract, unless he has received notification from the seller informing him that the latter may not meet up with his obligations within the time limit so fixed.

However, the buyer shall not on that account lose the right to claim damages for delay in fulfilment of the seller's obligations.

Article 252

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

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

Article 253

Where the seller requests the buyer to inform him if he accepts the deadline for the fulfilment of his obligations and where the buyer fails to reply within a reasonable period of time, the seller may fulfil his obligations within the time limit he has indicated in his request.

The buyer shall not, before the expiry of the said time limit, rely on a ground incompatible with the fulfilment of the seller's obligations.

Article 254

The buyer may petition the competent court to terminate the contract:

- 1) where failure by the seller to comply with any of his obligations or these provisions constitutes an essential breach of the contract, or
- 2) in case of default in delivery, where the seller does not deliver the goods within the additional time limit that had been granted him.

However, where the seller has delivered the goods, the buyer's right to consider the contract terminated shall be forfeited where he fails to do so within a reasonable period:

in case of delay in delivery, from the time when he knew that the delivery had been made;

in case of a breach other than delay in delivery.

Article 255

Where the seller delivers only part of the goods or where only part of the goods delivered is of merchantable quality, the provisions of Articles 251 to 254 shall apply regarding the part that is lacking or that is not merchantable.

The contract shall be completely terminated only where the partial non-fulfilment or the defect in merchantability constitutes an essential breach of the contract.

Section 3

Penalties against the buyer

Article 256

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

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

Article 257

The seller may grant the buyer an additional reasonable time limit to fulfil his obligations.

The seller shall not, before the expiry of such time limit, rely on any of the grounds available to him in case of breach of the contract, unless he has

received notification from the buyer informing him that the latter may not meet up with his obligations within the time limit so fixed.

However, the seller shall not on that account lose the right to claim damages for delay in the fulfilment of the buyer's obligations.

Article 258

The buyer may, even after the date of delivery, redress at his expense any default in his obligations, provided that such redress does not entail an unreasonable delay and does not cause the seller either unreasonable inconvenience or doubt as to the payment of the purchase price.

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

Where the buyer requests the seller to inform him if he accepts the deadline for the fulfilment of his obligations and where the seller fails to reply within a reasonable period of time, the buyer may fulfil his obligations within the time limit he has indicated in his request.

The seller shall not, before the expiry of the said time limit, rely on a ground incompatible with the fulfilment of the buyer's obligations.

Article 259

The seller may petition the competent court to terminate the contract:

1) where failure by the buyer to comply with any of his obligations under the contract or these provisions constitutes an essential breach of the contract, or

2) in case of default in taking delivery, where the buyer does not take delivery of the goods within the additional time limit proposed by the seller.

Article 260

Where the goods are not of merchantable quality and whether or not the purchase price has already been paid, the buyer may reduce the price proportionately to the difference between the value that the goods effectively delivered had at the time of delivery and the value goods of merchantable quality would have had at that time.

Article 261

Where the seller delivers only part of the goods or where only part of the goods delivered is of merchantable quality, the provisions of Articles 258 to 260 above shall apply regarding the part that is lacking or that is not merchantable.

The buyer shall declare the contract completely terminated only where the partial non-fulfilment or the defect in merchantability constitutes an essential breach of the contract.

Article 262

Where the seller delivers the goods before the date fixed, the buyer may take or refuse to take delivery thereof.

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

Where the buyer takes full or partial delivery of the goods, he shall pay for the delivery at the contract price.

Section 4

Interest and Damages

Article 263

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

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

Article 264

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

Article 265

Where the contract is terminated and the buyer has made a purchase in replacement of the goods or the seller has resold the goods, the party who claims damages shall obtain the difference between the contract price and the price of the replacement purchase or the resale, as well as all other damages to which he may be entitled.

Article 266

The party relying on an essential breach of the contract shall take all reasonable measures, under the circumstances, to minimise the loss, including the profit lost due to such breach.

Where he fails to do so, the party in default may request a reduction in damages equal to the amount of the loss that would have been avoided.

Section 5

Exoneration from liability

Article 267

A party shall not be liable for failure to comply with any of his obligations where he proves that such failure is due to an impediment beyond his control, such as the act of a third party or cases of force majeure.

Article 268

Where failure by one of the parties is due to an act of a third party mandated by him to perform all or part of the contract, he shall not be exonerated from his liability.

Section 6

Effects of termination of contract

Article 269

The termination of a contract shall release both parties from their obligations, but for damages that may be due. The termination of the contract shall not have effect on the contract provisions relating to the settlement of disputes or to the rights and obligations of the parties in case of termination.

Article 270

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

Article 271

The buyer shall not obtain termination of the contract or demand delivery of replacement goods where he cannot refund the goods in the state in which he received them.

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

Article 272

The buyer who has lost the right to declare the contract terminated or to demand of the seller delivery of replacement goods by virtue of the preceding article, shall retain the right to rely on all the other grounds to which he is entitled under the contract.

Article 273

Where the seller is bound to refund the purchase price, he shall equally pay interest on the price from the day of payment thereof.

Where the buyer shall refund the goods in whole or in part, he shall also pay the seller the equivalent of any profit which he has earned from the goods or part of the goods.

Section 7

Barring by limitation

Article 274

The period of limitation for commercial sales shall be two years.

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

Article 275

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

An action on grounds of a defect in merchantability of the goods sold may be instituted from the date on which the defect was discovered, or would have reasonably been discovered by the buyer, or the offer to refund the goods refused by the buyer.

An action on grounds of a misrepresentation before conclusion of the contract of sale or at the time of conclusion, or resulting from subsequent fraudulent acts may be instituted from the date on which the fact was or would have reasonably been discovered.

Article 276

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

Article 277

The period of limitation shall stop running when the creditor does any act which, in the eyes of the law of the court seised, is considered as an interruption of the period of limitation.

Article 278

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

Article 279

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

Article 280

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

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

Article 281

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

Article 282

The expiry of the period of limitation shall be taken into consideration in any proceedings only where it is invoked by the party concerned.

PART IV

EFFECTS OF CONTRACT

CHAPTER 1

TRANSFER OF OWNERSHIP

Article 283

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

Article 284

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

The ownership reserve clause shall have effect between the parties only where the buyer has knowledge of it by the indication of it in the contract of sale, the order form, or the delivery note no later than on the day of such indication.

The ownership reserve clause shall be binding on third parties, subject to its validity, only where it was duly registered in the Trade and Personal Property Credit Register, in accordance with the provisions of Book II of this Uniform Act.

CHAPTER 2

TRANSFER OF RISKS

Article 285

The transfer of ownership shall entail the transfer of risks.

However, the loss or deterioration of goods incurred after the transfer of risks to the buyer shall not relieve him of his obligation to pay the purchase price, except where such loss or deterioration is an act of the seller.

Article 286

Where the contract of sale involves the transportation of goods, the risks shall be transferred to the buyer as soon as the goods are handed over to the first carrier.

The fact that the seller is authorized to keep the documents representing the goods shall not affect the transfer of risks.

Article 287

The risks shall be transferred to the buyer from the moment the contract is concluded in the case of goods sold in the course of transportation.

Nevertheless, where at the moment of conclusion of the contract of sale, the seller had knowledge or would have had knowledge of the fact that the goods had perished or had deteriorated and has not informed the buyer of the fact, the loss or deterioration shall be borne by the seller.

Article 288

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

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

BOOK VI

FINAL PROVISION

Article 289

After consideration, the Council of Ministers of the Contracting States present and voting in accordance with the provisions of the Treaty of 17 October 1993 on the Organization for the Harmonization of Business Law in Africa, hereby adopts unanimously this Uniform Act.

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

Done at Cotonou, on 17 April 1997