

**Disclaimer:**

Please note that this document is an unofficial translation and consolidation and is provided for information purposes only. It confers no rights and imposes no obligations separate from those conferred or imposed by the legislation formally adopted and published in the Albanian language. EU4JUSTICE makes no guarantee of accuracy and waives responsibility for the use that might be made of the following information.

*Last verification date: March 2025*

**LAW**

**no. 7850, dated 29.7.1994**

**ON THE CIVIL CODE OF THE REPUBLIC OF ALBANIA<sup>1</sup>**

Pursuant to Article 16 of Law no. 7491, dated 29.4.1991 "On the fundamental constitutional provisions", on the proposal of the Council of Ministers,

THE PEOPLES ASSEMBLY  
OF THE REPUBLIC OF ALBANIA

DECIDED:

PART I  
GENERAL PART

TITLE I  
SUBJECTS OF CIVIL LAW

CHAPTER I  
NATURAL PERSONS

<sup>1</sup> Amended by Law no. 8536, dated 18.10.1999, published on the Official Journal no. 29, dated 21.11.1999.  
Amended by Law no. 8781, dated 03.05.2001, published on the Official Journal no. 24, dated 20.05.2001.  
Amended by Law no. 17/2012, dated 16.02.2012, published on the Official Journal no. 18, dated 14.03.2012.  
Amended by Law no. 121/2013, dated 18.04.2013, published on the Official Journal no. 67, dated 03.05.2013.  
Amended by Law no. 113/2016, dated 03.11.2016, published on the Official Journal no. 219, dated 15.11.2016.  
Article 377 of the Civil Code was declared incompatible with the Constitution by the decision no. 69, dated 27.12.2023 of the Constitutional Court, published on the Official Journal no. 23, dated 07.02.2024.

## **A. Legal Capacity**

### **Article 1**

All natural persons are entitled to full and equal capacity to enjoy civil rights and obligations within the limits defined by law.

### **Article 2**

The legal capacity begins with the birth of the person alive and ends with his death. The child when born alive shall enjoy legal capacity from the time of conception.

### **Article 3**

Foreigners are entitled to the same rights and obligations as those recognised to Albanian citizens, with the exceptions provided for by law.

### **Article 4**

The natural person shall not be limited of legal rights, except those provided for by law. The legal action limiting the legal capacity of a natural person is invalid.

## **B. RIGHT TO A NAME**

### **Article 5**

Any natural person has the right and obligation to have his forename and surname given to him in accordance with the law. The person, who is deprived of the right to use them, or is infringed by the unjust use that the others make to them, may request in the court the use of his forename or surname, the cessation of the infringement as well as the compensation of the relevant damage.

This request can be submitted even by persons, who although do not bear the infringed, or unjustly used forename or surname, have family interests worthy to be protected.

When the court accepts the lawsuit, it orders the publication of the decision in the Official Journal. At the request of the plaintiff, the court may order the publication of its decision in other newspapers, as well. The nickname used by the natural person enjoys the same protection.

## **C. CAPACITY TO ACT**

### **Article 6**

At the age of eighteen, a person acquires full capacity to assume rights and bear civil liability through his own actions.

A woman, who has not reached the age of eighteen, acquires full capacity to act through marriage. She does not lose this capacity even when the marriage is declared void or it is dissolved before she reaches the age of eighteen.

## Article 7

A minor child, who has reached the age of fourteen, can perform juridical acts only with prior consent of his legal representative. However, he can take part in social organisations, own what he earns with his work, deposit his savings and be in possession of these savings himself.

## Article 8

A minor child, who has not reached the age of fourteen, is incapable to act. He can perform juridical acts that fit his age, acts that are accomplished on the spot and acts of benefit to him without any compensation in return. Other juridical acts on his behalf are carried out by his legal representative.

## Article 9

By court order, a minor of the age of fourteen to the age of eighteen, who is unable to take care of his work due to mental illnesses or mental deficiency, may be deprived of the capacity to perform juridical acts. These acts can be carried out only through his legal representative.

## Article 10

By court order, an adult who due to mental illness or mental deficiency is wholly or partially unable to take care of his work, may be deprived of or limited to his capacity to perform juridical acts.

## Article 11

The juridical act that limits the capacity to act is void.

## Ç. DOMICILE AND RESIDENCE

### Article 12

Domicile is the country where the person due to work or permanent service, location of assets or realization of his own interests, normally or most of the time stays.

Every adult person has the right to freely determine his domicile.

A person may not have more than one domicile at the same time.

This provision shall not apply to the domicile of the trader's activity.

### Article 13

The minor child who has not reached the age of fourteen has the same domicile as that of his parents. When the parents have different domiciles, their child under fourteen years of age has the domicile of the parent he lives with.

The person who is deprived of the capacity to act and the children placed under guardianship have as domicile that of their legal representative.

## Article 14

The domicile of a person is the place where he is located to perform certain jobs or duties, to attend a certain school or course, to obtain medical care, to serve a criminal sentence, and for other cases of this nature.

## D. DECLARATION OF DISAPPEARANCE AND DEATH OF A PERSON

### Article 15

A person who is absent from his domicile and his last place of residence and for whom there is no news for more than two years, at the request of any interested person, he can be declared missing by court order.

When the day of the last news cannot be determined, the above-mentioned period begins from the first day of the following month on which the last news have been taken. When the month cannot be determined, the period begins from 1 January of the following year.

### Article 16

With the announcement of the disappearance of a person, a trustee is appointed for the administration of his assets.

The court decision, by which a person is declared missing, is published in the Official Journal and it is submitted for registration to the relevant civil registry office.

### Article 17

A person who is declared missing, at the request of any interested person, can be declared dead by a court order, when four years have passed without any notice from the day he has been declared missing.

### Article 18

A person, missing during military actions and this loss is verified by the competent military authorities, when two years have passed without any news from the date the peace agreement has entered into force or three years from the end of military actions, may be declared dead by a court order, with no need to have been previously declared missing.

### Article 19

A person, missing during a natural disaster or in circumstances that led to believe that he is dead, can be declared as such by a court order, when two years have passed without any news from the day the disaster has occurred, with no need to have been previously declared missing.

When the date on which the disaster has occurred is not determined, the period of two years starts from the first day of the month following that in which the disaster has occurred and, when the month cannot be determined, the period begins from the first day of January of the following year.

## Article 20

When two or more persons have died and it cannot be proved who of them died first, for legal purposes, it is considered that they have died at the same time.

## Article 21

When announcing the death of a missing person, the day when it has occurred is determined. When this day is not possible to be correctly verified, the court determines it according to the rules provided for in the articles of this Code.

At the request of any interested person, the court that issued the decision may change the date of death, when it is proved that the person has died in another day.

## Article 22

Death announced by court decision is equal in all legal consequences to the true death.

The decision of the court by which a person is declared dead, is published in the Official Journal and it is submitted for registration to the relevant civil registry office.

## Article 23

When the person declared dead appears to be alive, at his request or at the request of any interested person, the decision is revoked by the court that has issued it.

The person who appears to be alive has the right to seek his property and the assets acquired through it, even from third persons who have acquired it from those, whom the assets have passed to because of the declaration of his death, in the limits and conditions provided for by this Code and the Family Code.

## CHAPTER II LEGAL PERSONS

### A. GENERAL PROVISIONS

#### Substance of legal person

## Article 24

Legal persons are public legal persons and private legal persons.

## Article 25

Public legal persons are state institutions and enterprises, which are self-financing or financed by the state budget, as well as other public entities recognized by law as a legal person.

State institutions and entities that do not follow economic purposes, do not register.



## **Article 26**

Private legal persons are companies, associations, foundations and other entities of private character, which acquire legal personality in the manner prescribed by law.

## **The name of a legal person**

### **Article 27**

A legal person has its full name and its abbreviated name. The name of any other company or organization that conducts economic activities is the firm, which shall express the particular purpose of this activity.

## **The seat of a legal person**

### **Article 28**

The seat of a legal person is where its governing body is, unless it is provided otherwise in the statute or in the founding act.

## **The capacity of a legal person**

### **Article 29**

The legal person has the capacity to acquire rights and assume civil obligations from the moment it is founded and, when the law requires it to be registered, from the moment it is registered.

## **Article 30**

A legal person may conduct any legal activity permitted by law, in its founding act or statute.

## **Article 31**

A legal person acts through its bodies provided for by law, in its founding act or statute which express its will.

Legal actions performed by the legal persons' bodies within their competences are considered as legal actions performed by the legal person.

## **Liability of a legal person**

### **Article 32**

A legal person is liable for damages caused by its bodies in the performance of their duties.

The legal person is liable for its obligations within the limits of its property. Persons who have acted with the quality of the body of a legal person, are personally liable to compensate the damages caused by their fault.

## **Article 33**



State and the state legal persons are not liable for each other's obligations, unless it is accepted by them or it is expressly provided for by law.

## **Termination of a legal person**

### **Article 34**

A legal person shall terminate in the manner specified in the establishment act, in the statute or by law.

### **Article 35**

Upon termination, the legal person ceases its operations and is put into liquidation.

### **Article 36**

Transfer of rights and obligations in the event of termination of a legal person, for which registration is required, shall take effect from the time of registration.

When registration is not required, the transfer of rights and obligations in cases envisaged by the above-mentioned paragraph, shall take effect from the time of approval of the relevant balance sheet, in the manner provided for by law, by the appropriate body that has created it or by the statute.

## **Liquidation of a legal person**

### **Article 37**

Liquidation of a legal person that has terminated is done with the realization of rights and payment of obligations by the liquidators appointed by the body that has determined its termination.

The Commission makes liquidation under the relevant legal provisions, the statute or the founding act.

### **Article 38**

When a legal person terminates because of conducting illegal activity, assets remaining after liquidation pass to the state.

The liquidation of the bankrupt legal person is governed by law.

## **B. ASSOCIATIONS**

### **Establishment of associations**

#### **Article 39**

*(Amended by law no.8781, dated 03.05.2001, **Article 1**)*

The association is a legal person established by the free will of five or more natural persons or not less than two legal persons that follow a particular, lawful, purpose for the good and in the interest of the public or its members.

#### **Article 39/1**

*(Added by law no.8781, dated 03.05.2001, **Article 2**)*

An association has the right to ownership of movable and immovable property, to generate income through the management of these assets and to exercise other activities in accordance with the law and with the purpose and scope of activity of the association provided for in its statute.

Income generated from an association shall be used only for the activities provided in the purpose and scope of the activity provided for in its statute.

It is not allowed for an association to carry out any profit activity.

## **Article 40**

*(Amended by law no.8781, dated 03.05.2001, **Article 3**)*

The founding act of an association is registered in the court at the request of its founders.

Rules for the organization and functioning of an association are defined in its statute, which must be in writing and contain especially:

- a) Name and purpose of the association, its seat and the territory in which it will develop its activity;
- b) Conditions of admission and dismissal of its members as well as their rights and duties;
- c) Governing bodies of the association, the manner of establishment and their powers;
- ç) Terms, manner of calling and powers of general meetings and delegates;
- d) The sources of its material assets as well as contributions and dues that every member should give;
- dh) The manner of changing the statute and termination of association.

## **Article 41**

*(First paragraph amended by law no.8781, dated 03.05.2001, **Article 4**)*

The association is founded by a meeting its founders in which the statute is approved and its governing bodies are elected. An association, at its request, is registered in the court in the manner prescribed by law.

The court controls the conformity of the statute with the law.

## **Article 42**

*(Amended by law no.8781, dated 03.05.2001, **Article 5**)*

The association acquires the quality of a legal person from the date of its registration in the court. Until the day of registration, the founders of the association can perform actions that are necessary for establishing and meeting the conditions for its registration.

## **Article 43**

*(Amended by law no.8781, dated 03.05.2001, **Article 6**)*

An association has the right to establish its branches wherever it deems it reasonable to achieve the purpose and scope of activity of the association.





## **Article 43/1**

*(Added by law no.8781, dated 03.05.2001, **Article 7**)*

Cases and ways of monitoring the activity of associations by competent state authorities are expressly provided for by law.

## **Organization of an association**

### **Article 44**

The general meeting of members or their representatives, is the highest body of the association. It is called by the governing body under the relevant provisions of the statute and when one fifth of the members require it.

### **Article 45**

The general meeting decides on the admission or dismissal of the members and for any other matter that is not within the competence of another body of the association.

It supervises specifically the income and actions of the association as well as its property facilities.

### **Article 46**

*(Paragraph II is changed and paragraph III is added by law no.8781, dated 03.05.2001, **Article 8**)*

All members of an association have equal voting rights at the general meeting.

A member of the association does not participate in discussions and voting where he himself or his spouse, children, relatives or in-laws are in conflict of interest with the association regarding an issue on the agenda.

Decisions on amending the statute and dissolving the association are approved by a majority of all the members of the association, unless the statute provides for a higher voting majority.

### **Article 47**

The governing body has the right and duty to take care of the interests of the association, to protect them and to represent the association under powers conferred by statute.

## **Membership in an association**

### **Article 48**

Admission of new members, who fulfil the necessary conditions may be allowed at any time. The right to resign is guaranteed, but on condition that it be submitted at least six months before the end of the calendar year or within the period provided for in the statute.

### **Article 49**

The right of membership in an association cannot be transferred or assigned by inheritance.

## Article 50

*(First paragraph is changed by law no.8781, dated 03.05.2001, Article 9)*

A member who leaves or is expelled from the association is responsible for its obligations to third parties until the time of his leaving and has no rights over its movable and immovable property. They have the duty to pay dues for the time they have been part of the association.

## Article 51

Each member has the right to challenge in the competent court decisions of the association that come into conflict with the law or statute.

This objection can be made within one month from the day the member has received notification of the decision.

## Dissolution

### Article 52

*(Reformulated by law no.8781, dated 03.05.2001, Article 10)*

An association is dissolved:

- a) By decision of the general meeting of its members;
- b) When the number of its members is below the minimum required by this Code or the statute;
- c) When the purpose of the association is fulfilled or cannot be fulfilled;
- ç) When it is proved that the association has conducted illegal activities;
- d) In other cases provided for by law.

The court, in cases provided for by law, may decide on dissolving an association, at the request of any member of the association, its decision-making bodies and relevant state bodies.

## Article 53

*(Amended by law no. 8781, dated 03.05.2001, Article 11)*

When the dissolution of an association is decided, it is put in liquidation and is deregistered under the rules provided for in the law.

## Article 53/1

*(Added by law no. 8781, dated 03.05.2001, Article 12)*

The court, after taking the opinion of the entity that has sought dissolution of the association, decides on the destination of the assets that remain after its dissolution in accordance with the rules provided for in the statute, and considering their destination and the fundamental purpose for which the association was established.

## C. FOUNDATIONS

### Method of creation

#### Article 54

*(Amended by law no. 8781, dated 03.05.2001, Article 13)*

The Foundation is a legal person without membership, whose object is to achieve a legitimate aim by allocating assets to the benefit and interest of the public.

#### Article 55

*(First paragraph amended by law no. 8781, dated 03.05.2001, Article 14)*

Foundations are created by natural or legal persons with a notarial act or by testament.

The act for the creation of the foundation, at the request of the founders, is registered in the court. Names of the founders, purpose of the foundation, the assets (cash, securities, movable and immovable property), resources and financing, governing bodies, their powers and names of members of the administration are specifically determined in the act of creation.

#### Article 56

*(Amended by law no. 8781, dated 03.05.2001, Article 15)*

A foundation acquires the quality of a legal person from the date of registration in the court. Until the day of registration, the founders of the foundation or executor of the testament can perform actions that are necessary for the establishment and fulfilment of conditions for its registration.

#### Article 56/1

*(Added by law no. 8781, dated 03.05.2001, Article 16)*

A Foundation has the right to ownership of movable and immovable property, to generate income through the management of these assets, and to exercise other activities, in accordance with the law and the purpose and object of the activities provided for in the statute of the foundation.

The income generated by the foundation shall be used only for realisation of the activities prescribed in the purpose and object of the activity provided for in its statute.

A foundation is not permitted to perform profit activity.

#### Article 57

The act of creation of the foundation may be invalidated by the founders prior to the registration or when the relevant activity has not started.

The act of creation of the foundation may be challenged by the heirs or creditors of the founder.

### Activity of a foundation

#### Article 58



Bodies of a foundation, methods of creation and competencies are determined by the act of creation. Each foundation conducts its activities under the provisions of the legislation in force and its act of creation.

## **Article 59**

*(Amended by law no.8781, dated 03.05.2001, Article 17)*

Cases and ways of monitoring the activity of foundations by the competent state authorities is expressly provided for by law.

## **Article 60**

*(Repealed by law no.8781, dated 03.05.2001, Article 18)*

## **Article 61**

Property disputes, in which the foundation is a party are resolved by a competent court.

## **Article 62**

*(Amended by law no.8781, dated 03.05.2001, Article 19)*

A foundation is dissolved:

- a) By decision of its highest decision-making body;
- b) When the purpose for which it was created is fulfilled or when its purpose cannot be fulfilled;
- c) When it is proved that the foundation has begun to conduct illegal activities;
- ç) In other cases provided for by law.

The court, in cases provided for by law, may decide on dissolving the foundation at the request of its founder, the foundation's decision-making bodies and competent state bodies.

## **Article 63**

*(Amended by law no.8781, dated 03.05.2001, Article 20)*

The court, after taking the opinion of the entity that has sought dissolution of the foundation decides on the destination of the assets that remain after its dissolution in accordance with the rules provided for in the statute, and considering their destination and the fundamental purpose for which the foundation was established.

## **TITLE II REPRESENTATION**

### **CHAPTER I MEANING AND TYPES OF REPRESENTATION**



## **Meaning of representation**

### **Article 64**

By way of representation, a person (representative) conducts legal actions within the titles conferred by law, by Power of Attorney or by the court, in the name of and on behalf of any other natural or legal person (the represented person).

Representation is not allowed when the legal transaction must, by law, be carried out by that person. The person who has no full capacity to act cannot act as representative.

## **Limits and consequences of representation**

### **Article 65**

The powers of legal representation are determined by the provisions of the law that confer this quality, while the powers of the representative appointed by the represented person are determined by Power of Attorney.

The powers of representation may be determined by the circumstances in which concerned legal operations are performed.

### **Article 66**

Legal transactions carried out by a representative within the powers given to him, create direct consequences for the represented person.

### **Article 67**

The representative cannot perform legal transactions on behalf of the represented person neither by himself nor with other persons represented by him, unless the represented person has allowed this explicitly, or when the content of the legal transaction does not affect his interests.

### **Article 68**

When two or more representatives are assigned to conduct a legal transaction, each of them could conduct it without the participation of the other representatives, unless it is otherwise provided in the Power of Attorney.

### **Article 69**

The representative must act personally and may not appoint a substitute representative, unless it is permitted by the represented person, when the property referred to in the Power of Attorney is located outside the territory of the district where the representative lives, and when the appointment of the substitute representative is deemed necessary for protection of interests of the represented person.

The representative shall immediately notify the represented person for the substitute representative he has appointed, otherwise he is responsible for the actions of the substitute representative. The substitute representative may be revoked at any time by the represented person or by the representative who has appointed him.

## **Representation by Power of Attorney**

### **Article 70**

Power of Attorney is a document in which the principal (grantor), with his free will determines the character and scope of the titles he has given over to the attorney-in-fact.

### **Article 71**

The Power of Attorney is general when the principal has given over to the attorney-in-fact powers to carry out varied legal transactions, which have to do with a set of rights of the principal, except those expressly excluded by him.

The Power of Attorney is special when the principal has given over to the attorney-in-fact the power to conduct one or more certain legal transactions, which are characterized by a common goal.

### **Article 72**

The Power of Attorney is always done in writing.

Any Power of Attorney made for concluding a contract, which by law can only be made by a notarial act, shall be made in this form, otherwise it is invalid. Also the Power of Attorney made for performing actions before the courts and other state institutions must be made by a notarial act, unless by legal provisions it is allowed that it be made by a simple document.

The Power of Attorney on behalf of public and private legal persons may be made by just the signing of its executives and its relevant stamp, unless the law requires that the legal act be performed by a notarial act.

### **Article 73**

The Power of Attorney made for collecting postal delivery or money from post offices or banks up to a certain amount of them, the Power of Attorney made for collecting salaries and other remuneration derived from labour relations, as well as the Power of Attorney made for collecting pensions, assistance and scholarships can be attested by:

- a) Administrator of the city quarter or the village elder;
- b) The head of the legal entity or of its branch, where the principal is in employment relations or attending school;
- c) Director of the health institution where the principal is being treated;
- ç) Command of the military unit where the principal is serving;
- d) Director of the institution where the principal is detained or serving an imprisonment sentence.

### **Article 74**

Changes to the Power of Attorney must be made known to third parties by appropriate means. In the absence of such notices, these changes cannot be directed against third parties, unless it is proved that they were aware of those changes in the Power of Attorney at the time of the legal transaction.

## **Article 75**

The principal may revoke the Power of Attorney and the attorney-in-fact may resign at any time. Any agreement to the contrary is void.

## **Termination of Power of Attorney**

### **Article 76**

Power of Attorney terminates when:

- a) The attorney-in-fact has accomplished the legal acts for which it was granted;
- b) The period of time for which it was granted expires;
- c) The principal or the attorney-in-fact die, or when one of them has lost the capacity to act;
- ç) The representative legal person or the represented legal person terminate;
- d) The principal revokes the Power of Attorney or the attorney-in-fact resigns. Upon the termination of the Power of Attorney, the attorney-in-fact, at the request of the principal, shall turn back the Power of Attorney to the principal.

## **Representation after changes or termination of Power of Attorney**

### **Article 77**

Legal acts carried out by the attorney-in-fact, after changes made to the Power of Attorney or after its termination, are compulsory for the principal or his heirs, if the third parties with whom those legal transactions have been carried out have not been aware of the changes or the termination of the Power of Attorney.

## **Representation without rights**

### **Article 78**

When a natural or legal person acts as a representative without having this quality, as well as when the representative exceeds the rights conferred to him, the legal acts carried out in these conditions are not compulsory for the person on whose behalf they have been conducted, unless he has approved them later.

When approval is not given, the third party acting in good faith, has the right to request compensation of the damage from the representative.

## **TITLE III**

### **LEGAL TRANSACTION**

## **CHAPTER I**

### **GENERAL PROVISIONS**

## **Definition of legal transaction**

### **Article 79**



A legal transaction is the legal expression of the will of a natural or legal person, which aims to create, modify or extinguish rights or civil liability.

A legal transaction may be unilateral or bilateral.

## **Forms of legal transactions**

### **Article 80**

A legal transaction can be done in writing, orally and in any other undoubtable expression of the will. The document can be simple or a notarial act.

### **Article 81**

A written legal transaction must be signed by the person who conducts it.

### **Article 82**

The person who does not know to, or because of illness or physical handicap cannot sign, appoints another person for this purpose.

The signature of this person must be certified by a notary, explaining the reason for which the person who has conducted the legal transaction has not been able to sign it himself.

For transactions performed in banks and other credit institutions, in post offices or customs offices, the signature of this person is certified by an authorized official of these institutions.

### **Article 83**

The legal transaction made for the transfer of ownership of immovable assets and of the real rights over them, must be notarized and registered, otherwise it is not valid.

The legal transaction that is not made in the form expressly required by law is not valid. In other cases, the legal transaction is valid, but it cannot be proved by witnesses.

The Joint Colleges of the Supreme Court, in the unifying decision no. 1, dated 06.01.2009, have raised the following issues for unification:

1. What is the legal interpretation of Article 83 of the Civil Code, which states that "the juridical act for the transfer of ownership of immovable assets and real rights over them must be notarized act and registered, otherwise, it is not valid"?
2. Is the registration of the notarial act of sale of an immovable asset a prerequisite without which ownership of the asset cannot be acquired?
3. Can a lawsuit for real rights be filed by a person who claims to have a lawful title of ownership over immovable asset but has not registered it in the immovable property registration office?

The Joint Colleges of the Supreme Court, regarding the above-mentioned issues, have determined the following:

[...] The juridical act for the transfer of ownership of immovable assets is valid if it meets all the conditions stipulated in Articles 79, 663, and 659 of the Civil Code.



[...]

[...] Ownership of an immovable property is transferred at the moment the contract for the alienation of the asset is entered. The buyer or beneficiary of the asset becomes its lawful owner from the moment of signing the contract, acquiring all rights and obligations related to their status as the owner of the property.

[...]

The Joint Colleges of the Supreme Court assess that:

(i) The registration of the juridical act (contract) in the immovable property registers is very important for third parties, as only after registration does the contract become known to them and can be contested.

(ii) The failure to register the juridical (contract) for an immovable property in the immovable property registers does not affect the contract's validity, but it prevents the buyer from alienating the property to third parties and, at the same time, may pose risks and consequences for the buyer, because the seller acting in bad faith could transfer the property again. An immovable property can only be securely purchased if the property registers show a continuous series of transcriptions/registrations originating from the seller and preceding owners.

[...]

[...] The registration or transcription of a juridical act is not an element of its validity (contract). Failure to register the contract in the immovable property registers does not render the contract for the transfer of immovable property invalid, but it does prevent the buyer from transferring it to third parties. A contract that is not registered is perfected and valid and has its essential effects. Upon signing the contract for the transfer of immovable property, the beneficiary of the rights becomes the owner of the immovable property and is entitled to exercise their rights against third parties, except for the transfer of the immovable property in favor of third parties.

[...]

[...] The plaintiff is entitled to file a reivindicacion lawsuit if they prove that they are the owner of the immovable property through a contract, inheritance, etc.

## Conditional legal transactions

### Article 84

A legal transaction is conditional when the arising or termination of rights and obligations provided for in it depend on an event which is not known whether it is going to happen or not.

### Article 85

The condition is suspensive when the rights and obligations arise if the event occurs.

The condition is resolutive when the rights and obligations terminate if the event occurs.

### Article 86

When the verification of the condition is prevented in bad faith by the party that would benefit from the lack of verification, the condition is considered substantiated.

When the verification of the condition is caused in bad faith by the party that would benefit from its verification, the condition is considered unsubstantiated.

## Article 87

When the right that depends on verification of the condition is violated or lost because of the actions of the party obliged upon condition, the later must compensate the damage caused in case the condition is substantiated.

## Article 88

The consequences related to the verification of the condition begin from the moment the condition is verified, unless when by the content of the legal transaction it results that these consequences should start at an earlier time.

## Legal transactions under a deadline

### Article 89

The deadline of a legal transaction is the certain moment from which the legal power or some of its effects start or cease.

### Article 90

The deadline is suspensive when the legal transaction provides that its consequences start from a certain moment.

The deadline is resolvable when the legal transaction provides that its consequences cease at a certain moment.

## Calculation of deadlines of legal transactions

### Article 91

When the deadline is defined in days, the day on which the event takes place or the time from which it should start is not calculated.

The deadline defined in weeks, months or years, ends with the passage of that day of the last week or last month which has the same name or number with the day it started. When there is no such day in the last month, the period ends at the end of the last day of this month.

When the last day of a deadline falls on a holiday, the deadline expires on the working day following that holiday.

## CHAPTER II

## INVALIDITY OF LEGAL TRANSACTIONS

### Invalid legal transactions

#### Article 92

Invalid legal transactions do not create any legal consequences. As such are those which:

- a) Come in conflict with a mandatory provision of law;
- b) Are performed to deceive law;
- c) Are committed by minors under the age of fourteen;

- ç) Are made in agreements between the parties without aiming to bring legal consequences (fictitious or simulated).

The Joint Colleges of the Supreme Court, in the unifying decision no. 932, dated 22.06.2000, addressed the following question for resolution: When can a legal act be considered simulated, and what are the essential elements that make it so? Subsequently, the Joint Colleges of the Supreme Court determined that:

In cases of fictitiousness and simulation, the discrepancy between the will and its expression is intended by the parties to the legal transaction themselves. A juridical act is considered simulated when it is performed with the purpose of concealing another juridical act, whether valid or invalid, which the parties actually intended to carry out and which results from the counter-declaration as a secret agreement between them.

The Joint Colleges of the Supreme Court, in the unifying decision no. 13, dated 09.03.2006, addressed aspects of the absolute invalidity of juridical acts and their distinction from relatively invalid juridical acts, determining that:

A juridical act that is absolutely invalid does not produce the legal consequences intended by the parties; consequently, it does not have the legal power of a valid juridical act.

When the court, during the examination of the case, finds that a juridical act is absolutely invalid, it does not issue a decision declaring it invalid but is limited only to confirming its invalidity. Based on this, it resolves the dispute between the parties regarding the relevant legal relationship.

Absolute invalidity can be claimed by anyone with an interest. It can be invoked against the other party to the juridical act as well as to any third party. Absolute invalidity can also be considered by the court ex officio, without being requested by the interested party, or even against its will.

From the entirety of the provisions regulating the institute of invalidity of juridical acts, it appears that when a juridical act is absolutely invalid, the juridical act performed between one of the parties to the invalid juridical act and another person (third party with the plaintiffs) is also invalid, meaning it has no legal power. This is explained by the fact that the party to the invalid juridical act [...] does not have the right to transfer it to the plaintiffs.

[...]

The Albanian Civil Code makes two classifications of invalid juridical acts. The first group includes juridical acts that are found to be invalid, and the second group includes juridical acts that are declared invalid. Juridical acts found to be invalid form the group of acts traditionally considered in Albanian legal and judicial tradition as "absolutely invalid." Meanwhile, juridical acts declared invalid belong to the group known as "relatively invalid." There are differences between absolute and relative invalidity:

- Relatively invalid juridical acts can only be annulled by the court, while absolutely invalid juridical acts are such at the moment they are made, and it is not necessary for the court to annul them.
- Relatively invalid juridical acts have legal value until the moment they are declared invalid by the court, whereas absolutely invalid juridical acts have no legal value, either when they are concluded or at a later time.

- Absolutely invalid juridical acts do not create any legal consequences, while relatively invalid juridical acts create legal consequences until they are declared invalid. Only after being declared invalid do relatively invalid juridical acts are considered as such, but the consequences of their invalidity are resolved from the moment they were concluded.
- The annulment of relatively invalid juridical acts is always conditioned on the filing of a request with the court by the interested party. This situation is not observed with absolutely invalid juridical acts, as these acts are not declared invalid but are merely recognized to be invalid.

## Article 93

When a legal transaction is intended to cover another legal transaction, the latter is valid if it fulfils all the conditions necessary for its validity.

A fictitious or simulated legal transaction does not harm third parties that have acquired rights in good faith based on it.

### Legal transactions declared void

## Article 94

Legal transactions, which are valid until the court with the request of the interested party declares them invalid, are considered cancellable. As such are the legal transactions carried out by:

- a) Minors over fourteen years of age, when the legal transaction is carried out without the consent of a parent or guardian;
- b) Persons who, because of mental illness or mental deficiency have been deprived of or limited the capacity to act, when the legal transaction is performed without the consent of the guardian;
- c) Persons, who at the time of performance of the legal transaction, were not aware of the importance of their transactions, although at that time they were not deprived of the capacity to act;
- ç) The person who has carried out the legal transaction being defrauded, under duress, in error or because of the great need.

Cancellation of these transactions may be required even after the death of the person concerned, but only when the deprivation of its capacity to act is required before death.

## Article 95

Fraud can cause that a legal transaction be declared invalid when the lie used by one party to lead another party to the error is as such that without it the party would have not carried out the legal transaction.

When fraud is committed by a third party, the defrauded party may demand the invalidation of legal transaction only when at the time of its commission the other party was aware or should have been aware of the fraud.

## Article 96



Duress may cause that a legal transaction be declared invalid if it is such as to intimidate the person that he himself, his spouse, descendants or his predecessors will undergo an unjust and serious physical or material damage.

Duress can be committed by a third party that does not take part in the legal transaction.

## **Article 97**

Error can cause the legal transaction be declared invalid only if it is related to quality of the thing, identity or qualities of the other person, or circumstances so essential that without them the party would have not carried out the legal transaction.

## **Article 98**

An error in calculation does not lead to the declaration of the legal transaction as invalid, but only its rectification, unless the amount of error has been determining for the agreement.

## **Article 99**

A legal transaction can be declared invalid in the event that because of the great need, the obligations assumed by one party are negligible compared to the benefits received by the other party from the legal transaction.

## **Article 100**

A legal transaction carried out by the representative can be declared invalid at the request of the representee, when the will of the representative is flawed.

When the flaw is related to elements defined by the representee, a legal transaction can be declared invalid only if the will of the latter was flawed.

## **Article 101**

When the definition of good faith or bad faith, of knowledge or ignorance of certain circumstances that constitute valid or invalid determining conditions of a legal transaction are important in the legal transaction, the representative as a person is taken into account, except when it comes to circumstances determined by the represented person.

The represented person who acts in bad faith cannot benefit in any case from the ignorance or good faith of the representative.

## **Article 102**

A legal transaction carried out at the detriment of the represented person due to bad faith agreement between the representative and a third person can be declared invalid for the represented person.

## Lawsuit statute of limitation

### Article 103

A lawsuit seeking a legal transaction be declared invalid, lapses within five years.

### Article 104

The deadline to bring a lawsuit begins:

- a) For legal transactions carried out by people who have been deprived of or have had limited capacity to act, from the day they become adults or regain the capacity to act;
- b) For legal transactions carried out by fraud, duress or error, from the day the fraud or error are disclosed, or duress has ceased, but in any case not more than three years from the day the legal transaction is carried out;
- c) In other cases, from the day the legal transaction is carried out.

### Article 105

A legal transaction that is declared invalid is considered as such from the moment it was carried out.

## Consequences of invalidity of a legal transaction

### Article 106

When a legal transaction is invalid for the reason that it comes into conflict with the law, or is intended to defraud the law, anything that the parties have given to each other is taken and shall be passed to the state revenue and where it is not possible to take the same thing, it is required its value.

When one of the parties has acted in good faith, the court may decide that anything that this party has given be turned back to this party and where the return of the same thing is not possible, they must pay its value to the party.

The Joint Colleges of the Supreme Court, in the unifying decision no. 5, dated 30.10.2012, reached the conclusion that it is necessary to unify the case law regarding absolutely invalid juridical acts, the legal remedies in cases of such invalidity, the type and nature of the lawsuit that can be filed based on **Article 92** of the Civil Code, and the resolution of the consequences of invalidity. For this purpose, the Joint Colleges of the Supreme Court determined the following:

39.1. A juridical act that is invalid may be considered by the court ex officio, without being requested by the interested party, even against its will.

To consider a juridical act absolutely invalid, it is not necessary to present a specific request, whether it be a claim or counterclaim, as this type of invalidity is recognized regardless of whether a request is presented in court.

Absolute invalidity may be raised by any party to the litigation with an interest in the matter. The form of raising the issue may also be by way of rebuttal, as an absolutely invalid juridical act cannot be made valid through any previous action.

39.2. The request for the declaration of the absolute invalidity of a juridical act cannot be made as an independent request; it must always be made during the trial on the merits of the case by the court, or at least as a request accompanying the resolution of the consequences arising from its execution.

39.3. The consequences arising from the execution (performance) of an absolutely invalid juridical act are resolved only upon the request of the parties to the litigation, and when the court primarily determines the invalidity of the juridical act, it only resolves those consequences that are the subject of the claim or counterclaim, without addressing consequences for which there is no specific request from the parties. This does not prevent the same parties or third parties from seeking in a separate trial the resolution of consequences that were left unaddressed in the trial in which the juridical act was determined to be absolutely invalid.

## Article 107

When a legal transaction is declared invalid because it is carried out by fraud, duress, great necessity or because there is no form required by law, each party must return to the other party anything they have taken from the other party and, where the return of the same thing is not possible, they must pay its value to the other party.

## Article 108

When a legal transaction is found to be invalid for the reason that it has been carried out by a minor who has not attained the age of fourteen or it is declared invalid because it is carried out by a minor who has reached the age of fourteen, but without the consent of a parent or guardian, each party must return to the other party anything they have taken from the other party and where the return of the same thing is not possible, they must pay its value to the other party. In addition, the party that has had the capacity to act is obliged to compensate the minor for the damage he has suffered for the reason that the legal transaction is found or declared invalid.

## Article 109

When a legal transaction is declared invalid for the reason that it is carried out by a person who is totally deprived of the capacity to act or because it is carried out by a person whose capacity to act is limited and without the consent of his guardian, or for the reason that it is carried out by a person who at the time of executing the legal transaction was not aware of the importance of his transactions, each party must return to the other party anything they have taken from it and, where the return of the same thing is not possible, they must pay its value to the other party. In addition, the party that has had the capacity to act is obliged to compensate to the other party the damages that this party has suffered because of the legal transaction declared invalid, if they knew or should have known that the other party had not the capacity to act or was not aware of the importance of its transactions.

## Article 110

When a legal transaction is declared invalid for the reason that one of the parties was in error, each party must return to the other party anything they have taken from the other party and where the return of the same thing is not possible, they must pay its value to the other party. In addition, the

party that has requested the legal transaction be declared invalid is obliged to pay the other party the damage suffered by that party for the reason that the transaction is declared invalid, except the case where they prove it that it is not their fault that they have fallen into error or that the other party knew or should have known about the error.

## Article 111

When the cause of invalidity affects only a part of the legal transaction, it remains valid in its other parts, unless, according to the content of the legal transaction, these parts represent an indivisible relationship with the invalid part of the legal transaction.

## TITLE IV

### LAPSE OF LAWSUITS AND DECLINE OF RIGHTS

#### CHAPTER I

#### GENERAL PROVISIONS

## Content

## Article 112

The right of a lawsuit that is not filed within the period of time prescribed by law, is extinguished and cannot be realized by the court or other competent body.

The Joint Colleges of the Supreme Court, in the unifying decision no. 5, dated 31.05.2011, referring to the interpretation of Article 112 of the Civil Code, reasoned as follows:

[...] From the content of this provision, it is shown that the statute of limitations for filing a lawsuit always involves two essential conditions or elements: a) the passing of a specified period of time, and b) the failure of the right holder to exercise this right during this period. The first condition constitutes what is known as the statute of limitations period, and the second condition consists of the inaction of the right holder in cases where he could and should have acted.

19. The essential element of the statute of limitations is not the mere passage of time, but rather the inaction/passivity of the right holder in defending, within the period prescribed by law, his violated or denied right.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the interpretation of Article 112 of the Civil Code, also reasoned as follows [*references from the text of the decision are omitted*]:

99. The statute of limitations is a legal fact of the category of events, the verification of which brings consequences of a extinguishing nature, these consequences being related to the right to use one of the basic and most important means of protecting civil rights—the lawsuit. The law, while recognizing to individuals the subjective right to address the court through a lawsuit, at the same time limits the exercise of this right by setting certain time limits, deemed by the legislator to be reasonable and sufficient for the exercise of this right. The failure to exercise the right within these time limits causes the subject to lose



the right to address the court, thus losing the right to compel the other party to fulfill its obligation through a court decision.

100. The constituent elements of the statute of limitations are two: the inaction of the entitled (*holder*) of the subjective right and the passing of the period within which he should have exercised this right. Thus, the statute of limitations is the loss of the right to file a lawsuit due to the expiration of the time limits set by law. [...] The reason why the legal regulation relates with the unreasonable causes of the holder the extinguishment of the subjective right lies in the need for certainty in legal relationships. When a subjective right is not exercised, people form the belief that it does not exist or has been abandoned.

## **Lawsuits that do not lapse**

### **Article 113**

Do not lapse:

- a) The lawsuit for reinstatement or protection of a personal non-property right, besides the exceptions as provided by law;
- b) Recognition claims;
- c) The lawsuit of division between the co-owners;
- ç) The lawsuit for return of the amount deposited in the bank;
- d) Other lawsuits prescribed in special legal provisions.

Requirements for the mandatory execution of the decisions that are related to lawsuits, for which the statute of limitation does not apply.

## **Time limits for statute of limitations**

### **Article 114**

When it is not otherwise provided in the law, all lawsuits between legal persons, between them and natural persons and between natural persons themselves lapse within ten years.

### **Article 115**

*(Letter "e" is added by law no.17/2012, dated 16.2.2012, Article 1)*

Lapse within the time limits of:

- a) six months, lawsuits for the payment of penal evaluating conditions;
- b) one year, lawsuits arising from contracts of delivery;
- c) six months, lawsuits arising from direct transportation of goods and passengers by rail, vehicle or aircraft and one year for the same lawsuits arising from maritime or mixed transports;
- ç) two years, lawsuits for payment of compensation under the contract of insurance and reinsurance, as well as the respective amount deriving from compulsory insurance;
- d) three years, lawsuits for payment of rent of apartments, shops, bars and other real estate;
- dh) three years, lawsuits for compensation of non-contractual damage and lawsuits for the restitution of property benefits gained without a title.
- e) one year, lawsuits for compensation of non-property damage, for violation of honour, personality or reputation.

Other lawsuits lapse within certain specific time limits defined in this Code or other laws.

## Article 116

The agreement of the parties to amend the time limits of the statute of limitations and any provisions of this chapter is invalid.

## Article 117

The limitation period starts from the date when the subject acquires the right to sue.

## Article 118

In the contractual obligations concluded with an execution deadline, the statute of limitation to file a lawsuit starts from the day when this deadline is met.

When the obligation consists of periodical payments, for each of them the limitation period shall start separately.

For contractual obligations concluded without a deadline and for obligations executed at the creditor's request, the limitation period starts from the day the obligation arises.

## Article 119

For the revendication of a thing, the limitation period to file a lawsuit starts from the date when the owner has been or should have been aware of the infringement and the infringer of his right.

The Joint Colleges of the Supreme Court, in the unifying decision no. 5, dated 31.05.2011, have raised the issue for unification as follows: "Given the nature of the action for reclaiming property and the specific characteristics of the right of ownership, is the action for reclaiming property subject to prescription or not?" In this regard, the Joint Colleges of the Supreme Court decided that:

The action for reclaiming, property as stipulated by Article 296 of the Civil Code, is by its nature an action that is not subject to prescription.

In this decision, the Joint Colleges of the Supreme Court reasoned for the reached conclusion, among others, as follows:

[...] Ownership, as an absolute relationship, is erga omnes, and in this relationship, there is no "counter-interested" party (except in the case of acquisitive prescription), a subject that could benefit from prescription.

If we were to accept that the reclamation action is subject to prescription, we would be faced with a situation where the owner (recognized as such) would not have the possibility to exercise his rights over the item due to the expiration of the deadline, while the possessor of the item (unlawful and even in bad faith) would be allowed to enjoy the item peacefully, undisturbed by the owner, who, as we said, would be unable to act due to the passage of the extinguishing prescription period. Moreover, in this way, the

unlawful possessor would absurdly be granted the possibility of becoming the owner of the item through the passing of acquisitive prescription without title (Article 169 of the Civil Code).

Such an interpretation of the law would go against its purpose and would lead to consequences that contradict its very function.

It is clear, therefore, that the interpretation of the law (provision, principle, institution, etc.) must be made in accordance with the purpose of the law and to fulfill its basic functions [such as security and justice].

[...]

[...] The Joint Colleges consider that the non-prescription of the reclamation action arises from the permanent and stable nature of ownership, which means that ownership remains such even when it is in the possession of any third party, who has not acquired ownership through juridical acts of alienation or by any other lawful means.

[...]

30.1. The ways of acquiring ownership are simultaneously the ways of losing ownership. This situation should not be confused with the situation when the extinguishing prescription period for certain claims has passed.

30.2. Acquisitive prescription (with or without title) is one of the ways of acquiring ownership, as foreseen in Articles 168 and 169 of the Civil Code. If the conditions set forth in these provisions are met, the action for reclamation is dismissed, not because of the extinguishing prescription, but because this way of acquiring ownership constitutes the legal cause for the previous owner's loss of ownership rights over the item.

30.3. Even in cases where a person does not use the item for a period exceeding 20 years and ownership over this item is acquired by another person because of the fulfillment of the conditions set in Article 169 of the Civil Code, the first person loses ownership not due to the extinguishing prescription, or due to non-use of the item for over 20 years, but because the other person acquired ownership through acquisitive prescription.

31. In the reasoning above, the Joint Colleges consider that in such cases, it is not the prescription of the reclamation action that causes the dismissal of the lawsuit, but the fact that the plaintiff has lost the right to ownership because the defendant acquired ownership over the item through acquisitive prescription.

[...]

[...] The Joint Colleges reiterate:

(i) The right of ownership is an absolute right, unlimited in time, and may be exercised by the holder at any time. Accepting that the right of ownership is lost through extinguishing prescription would mean imposing time limits on the exercise of this right, thus restricting the owner's right with specific time limits, which would be in contradiction with the very concept of the right of ownership.

(ii) The right of ownership is a right with permanent and continuous character, meaning it exists at all times, and the failure to enjoy the item by the owner or the failure to exercise this right for a certain

period by the owner, regardless of the period, does not lead to the extinguishment of the right of ownership.

(iii) A valuable argument that ownership is not extinguished through extinguishing prescription is the distinction between this institution, as a legal fact of the category of events, which causes the loss of the right of action, and acquisitive prescription as a means of acquiring ownership. Acquisitive prescription under the conditions prescribed by law may lead to the emergence or acquisition of ownership rights, while extinguishing prescription, for no reason, can never lead to the loss of ownership rights, as it is closely related (in the field of civil law) to the loss of the right of action, not to the loss of ownership rights (as a subjective right).

37. As mentioned above, the Joint Colleges consider that the non-prescription of the reclamation action means that it can be raised at any time, regardless of the period that has passed since the moment when the owner of the item did not exercise possession over it, and as long as the ownership right over this item has not been transferred to another subject for some other legal reason, as in the case of acquisitive prescription. [...]

## Article 120

Regarding the request for the compensation of non-contractual damage, the limitation period to file a lawsuit starts from the date when the injured party has been or should have been aware of the damage suffered and of the person who has caused it.

## Article 121

For the restitution of the amount of money or the thing that is earned or saved without cause, the limitation period to file a lawsuit starts from the date when the injured party has been or should have been aware of the profit or savings without cause that the person concerned has realized.

## Article 122

To request an inheritance, the limitation period to file a lawsuit starts from the date of opening of the inheritance.

## Article 123

Regarding lawsuits for restitution, the limitation period to file a lawsuit starts from the date when the plaintiff has paid voluntarily, based on a legal or contractual obligation, the third party, for the guilt of the defendant, the amount of money or the thing that is requested through this lawsuit, or from the day the decision of the court or relevant arbitration is given from which the lawsuit of regression arises.

## Article 124

A statute of limitations for the main request of the lawsuit causes the statute of limitations even for requirements derived from the main request, although the relevant deadline for them is not met.

## **Request of the interested party**

### **Article 125**

The expired statute of limitations cannot be considered by the court or other competent authority on its own initiative, but only at the request of the interested party.

## **Waiver of statute of limitations**

### **Article 126**

Waiver of statute of limitations is allowed only after its limitation period has expired.

### **Article 127**

The claim that the limitation period has expired can be exerted by the creditors and by anyone who has an interest, in cases where the concerned party has exerted it itself.

## **Fulfilling the obligation after the limitation period has expired**

### **Article 128**

The debtor who has fulfilled his obligation after the statute of limitations had expired, cannot request the restitution of the amount of money or the thing given voluntarily even if he was not aware that the limitation period had expired.

## **CHAPTER II**

### **SUSPENSION AND TERMINATION OF THE STATUTE OF LIMITATIONS**

#### **A. Suspension of the statute of limitations**

##### **Article 129**

The statute of limitations is suspended:

- a) Between spouses until the day the judicial decision on the dissolution of marriage is final;
- b) Between children and parents while they exercise parental rights;
- c) Between persons who are under guardianship and their guardians until the guardianship continues;
- ç) For the claims of persons whose property has been put into administration, against the respective administrators appointed by the court or other competent state authority, until the final accounts report is approved;
- d) For claims of minors and other persons who do not have the capacity to act, until their representative is appointed or they acquire this capacity and for six months after their representative is appointed or they have acquired the capacity to act;
- dh) For claims of a legal person against its administrators, while they continue this task at it;

- e) For claims with object the relevant compensation stemming from injury or by causing death, suspension of the limitation continues from the day the request is submitted to the state social security body and up to the day the pension is assigned or that request is rejected;
- ë) Due to force majeure.

## **Article 130**

The period of suspension is not counted in the period of limitation. When, after the disappearance of the cause of suspension, the time left for the period of limitation to expire is shorter than six months, it shall be extended up to six months.

## **B. Interruption of the statute of limitations**

### **Article 131**

The statute of limitations is interrupted:

- a) By every obligatory transaction of a natural or legal person that expresses the recognition of accurate and complete right of the creditor;
- b) By presentation of the claim, counterclaim or objection, even in a court or arbitration that is not competent from material or territorial perspective to review the case;
- c) By any transaction that puts the debtor in behind time;
- ç) By submitting a request for mandatory execution of the judicial decision or concerned arbitration and any other executive title.

### **Article 132**

Interrupted statute of limitation against one of the solidary debtors, or one of the spouses in an indivisible obligation, extends even to each of these other debtors.

### **Article 133**

The interrupted statute of limitation against the principal debtor extends to the respective trustee.

### **Article 134**

The time elapsed before verification of the cause of interruption is not counted and after the disappearance of this cause, a new period of limitation begins.

### **Article 135**

When the statute of limitations is interrupted due to submission of a claim or counterclaim, the new period of limitation begins from the day that the decision by which the case has been settled on its merits becomes final.

When the claim is rejected without the case being solved on the merits, or the case is suspended, the statute of limitation is not considered as interrupted.

## Calculation of limitation periods

### Article 136

The limitation period of the claim, which is set in weeks, months or years expires with the passing of that day of the last week or last month that has the same name or number with that of the day on which the limitation period has started and when there is no such a day in the last month, the period ends at the end of the last day of this month.

When the last day of the limitation period falls on a holiday, the working day following that holiday is called as the last day.

## CHAPTER III PRECLUSIVITY

### Article 137

When a right must be exercised within a preclusive period, the provisions governing the termination of the statute of limitations do not apply. Also, causes of suspension do not apply, aside from exceptional cases, when the law itself allows the suspension of the preclusive period.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the interpretation of **Article 137** of the Civil Code, reasoned, among other things, as follows [*references from the text of the decision are omitted*]:

[...] Unlike the expiration of the extinguishing prescription period, when the preclusive period lapses, in the cases provided by law, the subjective right is extinguished in itself. In this case, the passivity of the right holder does not only result in the loss of the right to file a lawsuit in court, but it also leads to a more severe consequence, which is the complete loss of the subjective right. Therefore, by operation of law, the holder of the right is no longer considered to possess that right.

### Article 138

Any agreement, wherewith preclusive periods are determined, that make it extremely difficult for one of the parties to exercise its respective rights, is invalid.

### Article 139

The parties cannot change the legal precepts governing preclusivity, nor can they waive completed preclusive period when this period is defined by specific legal provisions.

### Article 140

Completed preclusive period is taken into consideration by the court or competent arbitration on its own initiative, even without being asked by the interested party.

## PART II THINGS AND OWNERSHIP

### TITLE I THINGS

#### **Legal definition of a thing**

##### **Article 141**

A thing is any object within the scope of the right of ownership or other real right.

The Joint Colleges of the Supreme Court, in their unifying decision no. 23, dated 01.04.2002, regarding the types of real rights, have determined that:

[...] the pre-emption right of the former owner (or his heir), as provided by Article 21 of Law No. 7698 dated 15.04.1993, being a real right, and as such, according to Article 761 of the Civil Code, can be disposed of by transferring it to third parties through a donation.

[...]

[...] even the right to compensation for former owners, according to Law No. 7698 dated 15.04.1993, should also be considered a real right established by law. Being such, it can be disposed of by donation from its holder.

#### **Types of things**

##### **Article 142**

Things are movable and immovable.

Immovable things are land, water sources and flows, trees, buildings, other floating constructions connected to the land and anything that is embodied steadily and continuously to the land or building.

All other things, including any other natural energy, are movable things

##### **Article 143**

The provisions dealing with immovable things shall also apply to the real rights that have as their object immovable things, as well as related claims, unless otherwise provided by law.

The provisions dealing with movable things apply to all other rights.

#### **Registration of things**

##### **Article 144**

Immovable things and real rights over them are recorded in the real estate registers.

Those movable things, the registration of which is expressly required by law, are also registered.

#### **Fruits of the thing**

##### **Article 145**





Natural fruits of a thing are the products derived from it. While not separated from the thing, they are part of it.

Civil fruits are derived from things as a result of the enjoyment of rights that people have on them.

Civil fruits are obtained on the basis of duration of rights and when they become claimable.

## **Components of the thing**

### **Article 146**

Everything that is attached to the thing and cannot be separated from it without causing substantial damage is a component of this thing.

## **Accessories**

### **Article 147**

Accessories are those movable things that are intended to serve a principal thing consistently or to decorate it.

This designation is made by the owner of the principal thing or the person who has a real right over it.

### **Article 148**

Any ownership over the principal thing includes also its accessories, unless it is otherwise provided.

Accessories can also be the subject of a separate ownership.

Accessories do not lose this quality when they are temporarily separated from the principal thing.

## **TITLE II**

## **OWNERSHIP**

## **CHAPTER I**

## **GENERAL PROVISIONS**

## **Content of ownership**

### **Article 149**

Ownership is the right to enjoy and possess things freely, within the limits defined by law.

The Joint Colleges of the Supreme Court in the unifying decision no. 5, dated 31.05.2011, regarding the legal concept of ownership, reasoned as follows:

10. The character and content of the right of ownership in the civil-legal sense is sanctioned in Article 149 of the Civil Code, according to which "*Ownership is the right to enjoy and freely dispose of things, within the limits set by law.*" From this provision, as well as from the content of Articles 296, 302, and 304 of the Civil Code, it results that possession, enjoyment, and disposal are the three main powers of the owner.

11. The law obliges all third parties not to carry out actions that violate the powers of the owner, i.e., actions that prevent the owner from exercising the free possession, enjoyment, and disposal of his things.

12. Ownership, as a subjective right, has the following characteristics: patrimonial, absolute, real, stable, and continuous. The object of the right of ownership is things. The holder of the right of ownership has an unlimited number of persons as obligated parties and exercises his right without the mediation of other persons. He has the right to demand the thing from any possessor or illegal holder, even if they act in good faith. The right of ownership has no expiration in time; it does not end with the passing of a certain period. The owner continuously and permanently exercises his right of ownership over the thing by enjoying and disposing of it freely, within the limits set by law. Furthermore, the right of ownership of the owner over the thing is independent of third parties. The will of third parties is not significant for the owner.

13. When the powers that the owner has over the thing are opposed or infringed upon by third parties, wholly or partially, the law recognizes the owner's right to use legal remedies, among which the main one is litigation.

The Civil College of the Supreme Court in the unifying decision no. 00-2022-4596 (393), dated 26.10.2022, regarding the understanding of the right of ownership, reasoned among other things as follows [*references from the text of the decision are omitted*]:

41. The right to property in general and the right of ownership in particular form the basis of the economic system in our Republic. It is a fundamental constitutional right of every individual. The constitutional and legal regulation takes into consideration its dual function, both private and social, which the right of ownership carries within itself. The private function has its impact on the normal enjoyment of individual liberties and rights. The historical and current understanding of guaranteeing property is the understanding of a fundamental right that is inextricably linked to individual freedom. Property also has a distinctive social character, as its use should serve public welfare. As long as the function of property is a means of preserving personal freedom, it enjoys special protection. On the other hand, the legislator may impose restrictions on property the greater its social function. In accordance with the considerations of the jurisprudence of the Constitutional Court over the years, the constitutional guarantee of property cannot accept disproportionate restrictions, i.e., restrictions that cannot be justified by social considerations.

## **Ownership on components of the thing**

### **Article 150**

The ownership of the components of a thing belongs to the owner of the thing.

## **Ownership on the fruits of the thing**

### **Article 151**

The natural fruits produced by the thing belong to the owner of the thing, unless their ownership is passed to others. In this case, the ownership is acquired after the fruits are separated from the thing.

The person who gets the fruits shall, within their value, compensate the expenses made for their production and gathering.

## **Affiliation of things**

### **Article 152**

The things belong to natural persons, legal persons and the state.

Types of public property are defined by law.

## **The rights and obligations of the owner**

### **Article 153**

*(Amended by law no.8781, dated 03.05.2001, Article 21)*

No one may be expropriated or restricted to the right to exercise the right to property which is equivalent to expropriation, unless this is required in the public interest and always against fair compensation.

### **Article 154**

The land ownership rights extend to such heights and depths that are useful for the exercise of such ownership, under the conditions defined by law.

### **Article 155**

The landowner, after first asking the neighbour to cut the branches and roots of trees that extend into his land, has the right to cut them himself, if they cause harm, as well as collect fruits and use them for himself.

Fruits that fall from the trees on the land, belong to the owner of the land where they have fallen.

### **Article 156**

The owner of a land that is located near streaming waters or a public water source has the right to use them to the extent that it does not harm the interests of other landowners, unless the use is regulated by specific provisions.

### **Article 157**

The owner of a land may request the owner of the adjoining land at any time, to place at common expenses visible marks at common boundaries of their lands or fix them when they are damaged.

When the boundary between the two lands is unclear, and the owners do not define it themselves, each of them may require its correction by the court.

### **Article 158**

When trees and shrubs are planted in borders of the properties, the owners are required to keep the distances defined by specific provisions, and when there are no such provisions, defined by the customs of the country, unless the neighboring owner has allowed it himself or when the boundary line is a road or public water stream.

In the absence of such rules, the distances are: three meters for high body trees and two meters for other trees.

These distances do not apply to trees and bushes, whose height does not exceed the height of the parting wall between the properties.

## Article 159

The owner is free in using the thing, without prejudice to the rights of others and within the limits set by law or by good customs. He cannot create disturbances to neighbors such as noise, vibration, intake of smoke, heat, steam, or other similar disturbances that impair their enjoyment of property by changing the courses, amount or quality of the water flowing in his land or groundwater, as well as to use waters which communicate freely with the land of others, unless those disturbances do not exceed their usual level.

The owner in the exercise of his rights, is forced to take action to preserve and protect the environment around.

The Joint Colleges of the Supreme Court, in the unifying decision no. 5, dated May 31, 2011, analyzed the rights of the owner, including the use of the property, determining that:

25. The Joint Colleges evaluate that the failure to file a lawsuit to protect a right should not be equated with the failure to exercise the right of use of the property. The absence of exercising the right of use by the owner may create circumstances in which another person acquires original ownership of the property, but it does not bring about the extinction of the right to sue.

25.1. The failure to use the property by the owner is an expression of the freedom granted to them, and it is a manifestation of the extent of the rights belonging to the owner.

25.2. Even if the property object of ownership is not used, this non-use is a manifestation of the owner's will. Therefore, even the non-use of the property is part of the owner's rights.

[...]

[...] The right of ownership cannot be lost due to absence of use, even if the owner has not used their property for a long period of time. The owner does not lose the right to exercise the lawsuit for the recovery of ownership as long as the defendant has not acquired ownership through adverse possession.

## Article 160

Owners must adhere to the rules defined in regulatory plans or specific provisions for the construction of new buildings, their reconstruction or change, for the distances between buildings, for opening the windows, wells, holes in the ground and other works of this kind.

## Article 161

The owner is obliged to collect the water pouring off the roofs of his buildings, so that they do not drip on the land of others. Spills in a public water stream can be done when not prohibited by the rules defined by the competent authorities.

The owner is obliged to ensure that water and debris coming from his land do not flow into the channel or the land of another, unless an agreement in the contrary exists between them.

## CHAPTER II ACQUISITION AND LOSS OF OWNERSHIP

### Transfer of ownership

#### Article 162

The right to ownership and other rights to things are transferable, unless prohibited by law or by the nature of the right itself.

### Methods of acquiring ownership of property

#### Article 163

Ownership of property is acquired through manners defined in this Code and other manners defined by specific law.

The Civil College of the Supreme Court, in the unifying decision no. 00-2022-4596 (393), dated 26.10.2022, regarding the understanding of the ways of acquiring ownership, reasoned that:  
[...] the ways of acquiring ownership are not competitive but they exclude each other.

The Joint Colleges of the Supreme Court, in the unifying decision no. 24, dated 13.3.2002, addressed the issue of whether the law on the restitution and compensation of properties to former owners and the law on politically persecuted individuals constitute modes of acquiring ownership. In this decision, the Joint College of the Supreme Court determined that:

Law No. 7514, dated 30.9.1991, "On the Acquittal, Amnesty, and Rehabilitation of Former Politically Persecuted Persons," and Law No. 7698, dated 15.04.1993, "On the Restitution and Compensation of Properties to Former Owners," do not constitute new modes of acquiring ownership but rather serve as a correction of past injustices, and for this purpose, they abrogate *ipso lege* all previous legal acts through which properties were unjustly taken from their rightful owners. These laws do not create a new legal situation (i.e., they do not have a constitutive effect) but instead restore legality and justice.

The abrogation of the aforementioned acts results in the restoration of the parties to their previous state, correcting, to the greatest extent possible, the illegality concerning the most fundamental real right—the right of ownership (but not other real rights, let alone obligations). From this perspective, the return to the previous state is not complete but partial (*restitutio in parte*).

Through these normative acts, former owners or their heirs are recognized as rightful owners, and the modalities for the effective enjoyment of this right are defined. Due to the prolonged period of illegality and the objective impossibility of physically returning all confiscated properties, the law provides for compensation as an alternative in cases where physical restitution is not feasible.

### Acquisition of ownership of property by contract

#### Article 164



Ownership of property is acquired by means of a contract, without having to hand over the thing. For things defined in numbers, weight of measure, the handover is required.

## **Acquisition of ownership of property by inheritance**

### **Article 165**

Acquisition of ownership of property by inheritance is done in accordance with the conditions provided for in the provisions of part three of this Code.

## **A bona fide acquisition of movable things**

### **Article 166**

The person who on the basis of a legal transaction for the transfer of ownership has acquired against compensation in good faith a movable thing, becomes the owner of the thing, even if the alienator was not the owner.

However, the acquirer, even in good faith, does not become the owner of the thing, if it is stolen.

The acquirer in good faith becomes the owner of money and securities to the bearer, even if they were stolen to or lost by the owner or the public legal person.

The above provisions do not apply to movable things which are listed in public registers.

Property may be acquired free of the rights of others over the thing, if these rights are not derived from the title and the good faith of the acquirer.

### **Article 167**

If the ownership over a movable thing passes to several people through contracts, the owner becomes the person who has gained possession of the thing in good faith, even if the contract is of a later date.

## **Adverse possession**

### **Article 168**

A person, who has acquired a thing in good faith, based on a legal transaction to transfer ownership and which is not prohibited by law, becomes the owner of this thing, after continuous possession for five years when the thing is movable and ten years when it is immovable.

When possession is not in good faith, the terms of uninterrupted possession double. Possession is considered uninterrupted even when the acquirer of the thing has given the possession to another person.

A thing which is an inalienable public property cannot be acquired by adverse possession.

The Civil College of the Supreme Court, in its unifying decision no. 00-2022-4596 (393), dated 26.10.2022, regarding the interpretation of Article 168 of the Civil Code, has raised the following issues for unification:

- 1) Should the term “juridical act for the transfer of ownership,” as referred to in Article 168 of the Civil Code, be understood narrowly, encompassing only juridical acts as defined in Article 79 of the Civil Code,

or should it be interpreted broadly to include any other lawful act serving as a valid title for the transfer of ownership?

2) What is the meaning of the juridical act that is “...not prohibited by law”? Which violations of legal norms fall under this category? How does Article 168 of the Civil Code operate concerning legal acts that violate provisions causing either relative or absolute invalidity?

Regarding the issues raised for resolution, the Civil College of the Supreme Court, in this unifying decision, has established the following rule of law:

- 1) The term “juridical act intended for the transfer of ownership” used in Article 168 of the Civil Code shall be understood as referring only to juridical acts as defined in Article 79 of the Civil Code, thereby excluding from the scope of this provision any other different title containing the acquisition of ownership rights.
- 2) As a general rule, violations that, according to the Civil Code, result in the relative invalidity of a juridical act are excluded from the scope of Article 168.
- 3) Not every legal violation that causes absolute invalidity of a juridical act falls within the concept of an act “prohibited by law” under Article 168 of the Civil Code. This concept includes only those absolutely invalid juridical acts that contravene a mandatory or prohibitive legal norm protecting a public interest, in accordance with the criteria set forth in Articles 92 and 677 of the Civil Code.

In the above-mentioned unifying decision, several legal concepts derived from the wording of Article 168 of the Civil Code have been addressed. Below is a selection of the theoretical analyses provided by the Civil College of the Supreme Court:

57. A title is the legal cause capable of transferring ownership, proving and justifying possession as an owner, or even the good faith of the beneficiary in this mode of acquiring ownership. A title may be considered capable of transferring ownership only when the object identified within it sufficiently corresponds to the property over which possession has actually been exercised, in terms of quantity and the legal requirements.

58. Therefore, there must be a sufficient compliance between the factual and legal identity of the possessed object and the one claimed to be acquired through acquisitive prescription based on title. [...]

59. The acquirer of an object becomes its owner from the moment the prescriptive period is completed, meaning that regardless of how late the claim of the new owner is brought, the court’s decision under Article 170 of the Civil Code has a declarative rather than a constitutive nature. In other words, it confirms an existing legal relationship rather than creating a new one. The date marking the completion of the legally prescribed period constitutes the final legal moment for the transfer of ownership from the former owner to the new owner. [...]

[...]

73. From the content of Article 168 of the Civil Code, it is clear that this provision, as a title upon which ownership acquisition may be claimed, refers only to juridical acts while excluding all other ownership titles as part of the category of legal facts, which serve as the basis for acquiring ownership through title based acquisitive prescription.

## **Article 169**

The person who quietly and continuously possessed by behaving as if he owned an immovable property for twenty years becomes its owner.

## **Registration of the thing acquired by adverse possession**

### **Article 170**

A person who has acquired an immovable thing by adverse possession has the right to file a lawsuit against the former person or his heirs for recognition of his ownership and, according to the relevant court decision, to request the registration of the thing by the competent state body.

## **Suspension and termination of adverse possession**

### **Article 171**

Suspension and termination provisions for the limitation of lawsuit also apply to adverse possession.

Adverse possession is interrupted by loss of possession. It is not called an interruption when the possessor comes back in possession within six months or later through a lawsuit filed within six months.

## **Ownerless things**

### **Article 172**

Ownerless things are those things that have no owner or their owner has abandoned the right of ownership.

Ownerless things fall to the state. Passage of ownership to the state is made by decision of the competent court.

## **Acquisition of ownership by connection and mixture**

### **Article 173**

Crops, buildings and any other object that is on or under the surface of the land belongs to the land owner, unless otherwise provided in this Code and other legal provisions.

### **Article 174**

The owner of the land who has made constructions and other works and planting with material belonging to another person is obliged to pay their value, unless their separation and return is not required and when it can be done without causing substantial damage to the buildings or planting performed.

When the separation of materials is possible and when the owner of the land has acted in bad faith, he must compensate the owner of the material for the damage suffered.

### **Article 175**





When buildings and other works and plantings are made by a third person with his own materials on the land of another person, the respective owner has the right to retain them or require the obligation of the other person to take them away at his own expenses, and, where appropriate, to compensate the damage.

When the owner of the land agrees to retain them, he is obliged to pay the value of the materials and labour or the increase in value of the property.

The owner of the land cannot require the removal of buildings and plantings when they are done at his knowledge or good faith by a third person, and when six months have passed since the day when the owner received notice of these buildings and plants.

When a building is constructed in good faith on the land of another person and its value is greater than the value of the land, the person who constructed the building can be recognized as owner of the land by decision of the competent court.

## **Article 176**

When two or more movable things belonging to different owners have been connected or mixed into a single thing that cannot be separated without causing great harm to each other, or when such separation requires work and excessive costs, the owners of each thing become co-owners of that new thing in proportion with the value that the parts of the thing had at the time of their connection or mixture.

When a movable thing is connected to or mixed with another thing in such a way as it seems to be an accessory part of it, the new thing belongs to the owner of the principal part, who is obliged to pay the respective value and, when appropriate, to compensate the damage caused.

## **Acquisition of ownership by processing**

### **Article 177**

A person who creates a new movable thing through his work using materials belonging to another person, regardless of whether the material can take its first form or not, becomes the owner of the new thing, if the value of the work is greater than that of the material, provided that he pays the value of the material.

Otherwise, the new thing is acquired by the owner of the material, by paying the value of work.

When the creator has acted in bad faith, the new thing passes to the owner of the material by court decision, even if the value of the work is greater than that of the material, but by paying the value of the latter.

## **Addition to land by alluvium**

### **Article 178**

Addition to land by deposition and addition of soil through the operation of natural causes over the banks of rivers and watercourses belong to the riparian owner, unless otherwise provided by law.

## **Relicted lands**

### **Article 179**



The dry land uncovered by a watercourse which withdraws through the operation of natural causes from one bank to the other bank of the watercourse belongs to the owner of the land from which the watercourse is withdrawn.

## **Relicted lands arising from river beds**

### **Article 180**

Islands and relicted lands arising from river beds are public property.

### **Article 181**

When a river or water stream changes its bed and leaves the old channel, the dry land uncovered is owned by the riparian owners of both banks of the river or water stream, who own it to the centre of the dry stream bed.

## **LOST OR FOUND THINGS**

### **Reporting found things**

#### **Article 182**

Any person who has found a thing lost including livestock separated from the bunch is obliged to immediately inform the owner or the person who has lost it and, if the owner is unknown, turn it over to the municipality of commune in the territory of which the thing was found.

The municipality or commune is obliged to announce immediately the thing found.

### **Claiming the thing and compensation of costs**

#### **Article 183**

The owner or the person who has lost the thing has the right to claim it within six months from the day the respective municipality or commune has announced the finding, after having paid the expenses incurred for the preservation of the thing and a reward for the person who found the thing at the extent of 10% of the value of the thing, or of the price obtained, when because of the circumstances presented, selling it was necessary.

If there are objections for the value of the thing, the dispute is resolved by the court. The municipality or commune may permit the person who found the thing to temporarily keep it, who is compensated for the expenses incurred for the preservation of the thing.

The things lost must be stored and maintained with proper care.

### **Acquisition of ownership by the finder**

#### **Article 184**

When the owner or the person who has lost the thing do not appear to receive it within the period prescribed in Article 183, the thing or the sale price passes under the ownership of the person who found it, who compensates costs of preservation.

## **Things found in a premises**

### **Article 185**

Things found in a public and private premises as well as in a means of transportation, must be immediately handed over to the administrators of the premises where they were found, who save it for three days. When the owner or the person who lost the thing do not appear, the administrators submit it to the relevant municipality or commune.

## **Treasure**

### **Article 186**

Any precious thing, which seems clearly to have been in the ground or hidden for a long time and the owner cannot be traced back is called a treasure.

The treasure belongs to the owner of the moveable or immovable thing where it was found, except from the things of scientific, cultural, archaeological value as provided by **Article 187** of this Code.

The person who finds the treasure has the right to a reasonable compensation that should not exceed half of its value.

## **State ownership on a category of movable things**

### **Article 187**

Movable things with cultural, historical, archaeological, ethnographic value and rare natural objects of scientific importance that are discovered, break or extracted from the ground or water, are transferred into state ownership.

The owner, in whose property such items have been discovered, is obliged to allow the excavation being compensated for damages suffered.

The person who discovered or found such things is entitled to receive a reasonable reward from the state.

## **Acquisition of property by occupancy**

### **Article 188**

Ownership of abandoned movable things and ownership over wild animals, birds, fish, wild fruits and the other movable things of nature is acquired by occupancy under the terms defined by law or in specific provisions.

## **Swarm of honey bees**

### **Article 189**

The owner of a swarm of honey bees has the right to track and take it from the land of another, awarding the damages caused.

When the owner of the swarming honey bees did not track it within three days, or when it has entered into another beehive, the ownership on the swarming honey bees is transferred respectively to the owner of the land where the swarming honey bees stayed or to the owner of the beehive.

## **Acquisition of property through expropriation**

### **Article 190**

*(The first sentence is amended by law no. 8781, dated 03.05.2001, Article 22)*

Things may be expropriated only in the public interest recognized by law and only against a fair compensation. They become the property of the state or other public entities in favor of which the expropriation is done.

## **Loss of ownership**

### **Article 191**

Ownership is lost when it is acquired by another or when it is renounced.

Renunciation of ownership of immovable property in favor of another is valid when it is done by a notarial act and registered.

## **CHAPTER III**

### **REGISTRATION OF IMMOVABLE PROPERTY**

### **Article 192**

Immovable things and facts relating to their legal status are recorded in the real estate registry. Registration is based on a public act, a decision of a court or other competent state body, as well as in other cases provided by law.

### **Article 193**

In the real estate registry must be registered:

- a) Contracts for the transfer of ownership of immovable things and acts to their voluntary division;
- b) Contracts by which ownership rights are created, recognized, modified or terminated over immovable things, the rights of usufruct, use and lodging, emphyteusis and servitude and other real rights;
- c) Acts by which the above ownership rights be relinquished;
- ç) Court decisions by which the quality of heir is recognized and the inherited property is acquired;
- d) Acts by which is created a corporation or another entity of law that owns real estate or enjoys other rights in rem over them;
- dh) Decisions of courts or competent state bodies that respectively contain the acquisition or recognition of ownership over immovable property, the division of immovable property or that declare legal transactions invalid for the transfer of ownership previously duly registered, as well as acts of judicial bailiffs for seizure of immovable property or selling them at auction.

The court verification of the fact of ownership is not registered.

## **Article 194**

In the contract of donation of immovable property, registration takes the date on which the receipt is recorded, if this is contained in a separate act.

## **Article 195**

Immovable property and real rights over them which are acquired or recognized under the provisions of this Code shall not be alienated and, where appropriate, be charged with burden, if they are not registered in public registers.

## **Article 196**

The courts, notaries, judicial bailiffs and other state bodies are obliged to send for registration to the registration office that administers the immovable property register, a copy of the decision or act that contains acquisition, recognition, modification, termination of an immovable property right or a real right over it, or which declare legal transactions invalid for the transfer of ownership previously registered.

## **Article 197**

The following must also be registered:

- a) Leasing contracts for immovable things for a time over nine years;
- b) Lawsuits for acquisition, recognition, modification or termination of property rights or other rights in rem over immovable property;
- c) Lawsuits for division of common immovable property.

## **Article 198**

The Ministry of Justice administers the activities of the public registry for immovable property.

Conditions, manner of registration and organization, as well as any procedure relating to this activity is regulated by a special law.

## **TITLE III CO-OWNERSHIP**

### **CHAPTER I SHARED CO-OWNERSHIP**

#### **Definition and content**

## **Article 199**

There is co-ownership whenever one or more things and other real rights belong commonly to two or more persons.



The portions belonging to the co-owners shall be equal, unless the contrary is proved.

The rights and obligations of the co-owners shall be determined in proportion with their respective portions.

## **Rights of co-owners**

### **Article 200**

Each co-owner shall have the following rights:

- a) To benefit from the income coming from the thing owned in common in proportion to his/her portion;
- b) To use the thing owned in common in accordance with the purpose for which it is intended and in such a way not to prevent the other co-owners from using it according to their rights;
- c) To alienate or dispose of in any other way his/her part in the thing owned in common, but when it is an immovable thing, he/she may sell his/her part only by respecting the right to pre-emption that the other co-owners have under **Article 204** of this Code;
- ç) To demand the partition of the thing owned in common, even if there is an agreement to the contrary, unless this division hurts the respective purpose or it is prohibited by law;
- d) To demand the restitution not only of his/her part, but all the thing owned in common provided that it be delivered to all co-owners.

## **Obligations of co-owners**

### **Article 201**

Each co-owner is obliged that in proportion to his/her part to pay the necessary expenses for the preservation and enjoyment of the thing owned in common.

### **Article 202**

When the thing owned in common is used for their own benefits by one or several co-owners, they are obliged to pay compensation to the other co-owners for the use of their share from the date the request for this compensation was notified in writing to them, or from the date of filing the lawsuit in the competent court.

## **Administration of the thing owned in common**

### **Article 203**

All co-owners, regardless of the value of their respective share, have the right to take part in the administration of the thing owned in common.

The thing owned in common shall be administered in accordance with the way approved by agreement of all co-owners, and when this agreement has not been reached, in accordance with the way defined by decision of the co-owners that own more than half of its value. The resolutions of the majority of the co-owners shall be binding even for the co-owners that will remain a minority.

This majority may decide to mortgage or leave in pawn the thing owned in common when this is necessary to ensure the return of the sums borrowed for its maintenance or reconstruction.

When this majority is not reached, or when its resolution is prejudicial to the thing owned in common, the competent court at the request of any of the co-owners shall order such measures as it may deem proper and, where appropriate, appoint a guardian for the administration of the thing.

## **Pre-emption right**

### **Article 204**

A co-owner, before selling his share in the immovable thing to a person who is not a co-owner, is obliged to notify the other co-owners in writing whether they want to buy the share under the same conditions that he would sell it to a third person. If they do not respond within three months that they want to buy the share, the co-owner is free to sell his share to a third party.

He should make the new co-owner known to the other co-owners.

## **Creditor's right on the share of the co-owner**

### **Article 205**

Each creditor has the right to realize his credit on the portion belonging to the co-owner in the thing owned in common.

### **Article 206**

Creditors and heirs of any of the co-owners may at their own expense take part in the division of the thing owned in common, but they cannot impugn any partition already executed, unless they have announced their impugnement before the division.

In the division of immovable property, notification for the impugnments mentioned in the preceding paragraph shall be registered before the registration of the request for division. Also, all the creditors, who have registered their claims or have acquired rights to the property that is being divided, should be called in such a division prior to the registration of the act of partition or the registration of the request for division.

## **Division of the thing owned in common**

### **Article 207**

Partition of the thing owned in common shall be made by agreement of all co-owners. When it is an immovable thing, the agreement shall be made by a notarial act. When this agreement is not reached, the partition shall be made by the court, calling all the co-owners in the trial. Partition of the thing owned in common is made with its physical division in accordance with the parts belonging to the co-owners, if such a division is possible and does not prejudice the relevant purpose of the thing. Inequality of the shares resulting from the physical division of the thing is compensated by a reward in cash.

When the thing owned in common cannot be physically divided, the court orders that it be sold at auction and its value be divided between co-owners according to the relevant parts, calculating the amounts they have to pay each other because of co-ownership relations.

However, instead of selling it at auction, the court, when some of the co-owners require it, orders that the thing be left with them, forcing them to pay the co-owner who requires the division the value of his share in the manner and within the time periods specified in the court decision.

When the thing that cannot be physically divided is a dwelling house, the court leaves it under the above mentioned conditions to the part of the co-owner who lives there or is in need of this residential area more than others.

The Joint Colleges of the Supreme Court, in its unifying decision no. 22, dated 13.03.2002, addressed the issue of the judicial division of an illegal construction, determining the following:

[...] Since this construction is illegal, it cannot be accepted that it generates legitimate interests. An unlawful act cannot be claimed to result in legal consequences.

[...] extensions or construction that has been carried out in violation of the regulation in force and has not been registered in the immovable property register cannot be the subject of judicial partition, and the interested person, since they do not represent a legitimate interest in this case, cannot be granted standing to file a lawsuit for the partition of the property.

## **Alienation of the thing owned in common**

### **Article 208**

Alienation of the thing owned in common can be made only at the consent of all co-owners.

## **CHAPTER II**

### **CO-OWNERSHIP IN GENERAL**

#### **A. OBLIGATORY CO-OWNERSHIP**

### **Shared facilities in buildings**

#### **Article 209**

On the floors or separate units of the floors of a building that are owned separately to different owners, the following facilities, unless stated otherwise in the ownership act, shall be in their obligatory co-ownership:

- a) The land on which the building is built, foundations, main walls, internal partition walls, stairs, halls, roof or terrace, chimneys, as well as all objects of the building that have such character and serve for shared use;
- b) Wells, installation of water, electrical, gas, telephone and central heating installations, including pipelines and related lines, as well as various channels to the point of the branches inside separate units of floors.

#### **Article 210**

The right of each co-owner on the objects mentioned in the Article above is in proportion to the value of the floor or parts of the floor that belong to him, unless the title provides otherwise.

Relinquishment of the right on the objects above does not relieve the co-owner from the obligation to contribute to the costs of maintaining them.



## **Inseparability of shared facilities**

### **Article 211**

It is not allowed to divide shared facilities of the building, unless the division of any of them can be carried out without causing any difficulties in its use to any of the co-owners.

## **Composition of the Assembly and election of chairmanship**

### **Article 212**

The Assembly is composed of the owners of each floor or separated units of each floor, who own in common the shared facilities of the building.

At the first meeting of the Assembly, the members elect the chairmanship from among their ranks, which is charged to perform, in the name and on their behalf, all necessary actions for the ordinary administration and maintenance of shared facilities, except the actions that are only under the authority of the assembly, and to represent them in competent judicial bodies and in arbitration.

## **Meetings of the Assembly and the validity of decisions**

### **Article 213**

After the first organizational meeting, the meetings of the Assembly are convened once a year. Other meetings can be called by its chairmanship or on the initiative of not less than 20% of its members.

Assembly can be opened and make decisions when the co-owners who have at least two thirds of the total shares are present in person or represented by proxy. When this number is not present, the meeting shall be adjourned and the next meeting will be held if the common majority of the co-owners participate.

Assembly decisions are made by a simple majority vote of the co-owners, unless a qualified majority is required in the provisions of this chapter or by specific provisions. When the number of votes is equal, the vote of the chairman is decisive.

## **Core competences of the Assembly**

### **Article 214**

The Assembly has the following core competences:

1. Approves regulations governing the apartment house, which is compiled by the model regulation approved by the Council of Ministers.
2. Creates the reserve fund for common expenses, setting the annual amount thereof.
3. Approves the expenditure estimates decided to be spent during the year, and the allocation of the amount between the co-owners.

Common expenses for ordinary maintenance, repairs and upgrades to these facilities are approved by the Assembly with a simple majority vote, while expenditures for major improvements or qualitative renovations are approved by a qualified majority of the co-owners that reaches at least 75% of the shares.

4. Appoints, when deemed necessary, the custodian of the building, setting his powers and salary.
5. Authorizes the chairmanship to insure, within reasonable limits, the facilities owned in common as well as to enter into other necessary contracts for maintenance, repairs and ordinary renovations, or, where appropriate, for major improvements or renovations of these facilities.

## **Article 215**

Decisions made by the Assembly in accordance with the aforementioned provisions are obligatory for all co-owners.

### **The lawsuit against decisions of the Assembly**

## **Article 216**

When a decision of the Assembly is unlawful or prejudicial to the interests of any of the co-owners of these apartment houses, each co-owner has the right to file a lawsuit before the competent court for the invalidation of that decision within thirty days of its issuance. The filing of the lawsuit does not suspend implementation of the decision of the Assembly, unless the court has decided otherwise.

### **Obligations of the co-owners**

## **Article 217**

Each co-owner has the following obligations:

1. To pay the expenses for the preservation and enjoyment of the shared facilities of the building, for the rendering of services to joint benefit and for the changes imposed by the majority of co-owners in proportion to their share, unless otherwise agreed.  
For facilities that serve the co-owners at different extent, the costs are borne to the proportion that everyone is using them.
2. Not to do constructions on the floor or the separation unit of the floor owned separately, which can cause damage to the shared facilities of the building.
3. To repair the damage to any of the shared facilities or pay the cost of its replacement that he or a member of his family has caused with guilt.
4. Not to do additions or modifications without the prior permission of the Assembly on the floor or separated unit of the floor owned separately, that could adversely affect the external appearance of the building.

### **Extensions on the top floor**

## **Article 218**

Construction of other floors or extensions on the top floor of a building can be realised by decision of a majority of 3/4 of the co-owners of the building.

## **Article 219**



Awarding permission to make extensions or such constructions on the top floor is forbidden if the static conditions of the building do not allow it.

The co-owners may oppose the permission issued by the competent state authority for making extensions or such constructions on the top floor even when it is proved that they reduce the air or light for the lower floors or violate architectural appearance of the building.

## **Article 220**

Those who are allowed to make extensions or other constructions on the top floor are forced to rebuild the terrace, which all or a part of the co-owners had the right to use.

### **Total or partial collapse of the building**

## **Article 221**

When the building collapses completely or in part that constitutes not less than three-quarters of its value, each co-owner may request that the land and materials be sold at auction, unless otherwise agreed.

When the building is damaged to a smaller extent, the Assembly decides on reconstruction of shared facilities of the building and each co-owner is obliged to contribute in proportion to its rights on those facilities.

Co-owner who does not want to participate in the reconstruction of the building, must sell the facilities owned only by him to the other co-owners or to one of them, according to the assessment to be made.

## **B. CO-OWNERSHIP BETWEEN FARM FAMILY MEMBERS**

## **Article 222**

Ownership on the property of the farm family members shall belong as a whole to its members, who through work or other rights acquired have contributed to the development and preservation of the agricultural economy.

## **Article 223**

The farm family consists of persons who are related between them by gender, marriage, adoption or acceptance as its member.

## **Article 224**

The farm family is represented in property relationships with third parties by the head of the family, who is elected by its members.

## **Article 225**

Personal use items of the members as well as items which the member has earned through his personal income, by gift or inheritance are not included in the farm family property.



## Article 226

The farm family member cannot alienate any part of the farm family property while it has not been divided.

## Article 227

Each member of the farm family can request his/her own portion of the farm family property. It shall be determined by taking into account in particular:

- a) The property that belongs to the whole family;
- b) The number of family members;
- c) His/her contribution to the creation or increase of the family's property, given the amount or effectiveness of this contribution, as well as the work and equipment given for the creation and maintenance of agricultural economy.

## Article 228

Partition of the farm family property is made according to the rules specified in **Article 207** of this Code.

When particular members request their own portion, it shall be evaluated and given in cash.

When the partition is required by more members of the farm family, in order to create another farm family, the portion can be given in kind, provided that agricultural land remaining with the separated families, must not be below the minimum of the unit's minimum for cultivation. Minimum unit for cultivation means the agricultural land which is necessary for maintaining an agricultural economy according to the natural conditions of the respective area or region.

## Article 229

The farm family shall be held responsible for illegal actions carried out by its members in the exercise of duties resulting from the economic activity of the farm family itself.

## Article 230

The farm family shall not be held responsible for the personal economic obligations of its members, including the head of the family. Creditors have the right to be paid by the share in the farm family income belonging to the debtor member and the part that belongs to him/her in the farm family property.

## C. CO-OWNERSHIP BETWEEN SPOUSES

## Article 231

Co-ownership between spouses is governed by Family Code provisions.



The Joint Colleges of the Supreme Court in unification decision no. 3, dated 03.02.2006, have considered, among other issues, the following questions:

*What value does a donation contract between spouses have in relation to the co-ownership? Is the donated thing considered the exclusive property of one spouse, or does it mean that the other spouse gives full consent to any action the benefiting spouse takes with that property, including its transfer, or is this a fictitious juridical act that brings no consequence regarding the status of co-ownership, regardless of any disposition one spouse makes in favor of the other?*

In regard to the above, the Joint Colleges of the Supreme Court have determined the following:

In the case of a donation between spouses of personal property of the donating spouse or property that is part of co-ownership, the donated item will pass to the exclusive property of the benefiting spouse. In these circumstances, these items do not belong to the community property (co-ownership) between the spouses. If the object of the donation contract is the transfer of ownership of an item, the other spouse becomes the beneficiary of the entire item, which passes into their exclusive property. In cases where the object of the donation consists of items that are part of the community property between spouses, it will be considered that the object of the donation is the ideal share of the property in co-ownership, which, after the donation contract is concluded, merges with the existing share that the benefiting spouse had in the property, thus becoming exclusive property of the benefiting spouse. The owner of the donated item is solely the benefiting spouse. The item obtained does not belong to the community property and, as such, the owning spouse may dispose of it alone, without needing the consent of the donating spouse.

## TITLE IV USUFRUCT

### CHAPTER I GENERAL PROVISIONS

#### **The content of usufruct** **Article 232**

Usufruct is the right of a person (usufructuary) to enjoy a thing that is owned by another with the obligation to preserve and maintain it.

#### **Creation of usufruct** **Article 233**

Usufruct is created by law or by a legal transaction. It can also be created by adverse possession.

#### **Duration of usufruct** **Article 234**



Usufruct can be with or without terms, but in any case it cannot exceed the life of the usufructuary. When the right of usufruct is enjoyed by a legal person, it cannot last more than thirty years.

## **Modes of creating usufruct**

### **Article 235**

Usufruct that is created by legal act must be notarized, but when it is acquired by testament, there shall be acted according to the relevant provisions.

Usufruct over an immovable thing must be registered in the immovable property registry.

## **Joint usufruct**

### **Article 236**

Usufruct may be in favour of more than one person. When the right of one of them ends, the share will be added to the remaining usufructuaries in proportion with their shares. It shall be acted in this way until the right of the last remaining usufructuary has ended.

## **CHAPTER II**

### **RIGHTS ARISING FROM USUFRUCT**

## **Limits of enjoyment of the property in usufruct**

### **Article 237**

The usufructuary enjoys the property put in usufruct, but cannot change the economic destination it has had at the beginning of usufruct without consent of the owner or without the authorization of the district court, when the owner and usufructuary do not agree.

During the course of usufruct or at the end of it, the usufructuary may remove the additions made to the thing, in terms of the first paragraph of this article, which can be separated without damaging it, turning it in its initial state, unless it is otherwise provided in the act of creation.

## **Improvements of property in usufruct**

### **Article 238**

The usufructuary, at the end of usufruct, has no right to seek compensation for improvements made to the thing during use even if its value is increased, unless it is otherwise provided in the act of creation of the usufruct.

The addition of value can be compensated for damages that may have been caused to the thing through no fault of the usufructuary.

When there is no room for compensation, the usufructuary may remove the additions made without damaging the thing, unless the owner agrees to pay their value, as if they were separated from the thing.

## **Belonging of fruits**

### **Article 239**



The usufructuary is entitled to natural and civil fruits that are produced by the thing during the usufruct.

Natural fruits that are not separated from the thing at commencement of the usufruct belong to the usufructuary and conversely, when they are not separated from the thing at the termination of the usufruct, belonging to the owner.

## **The transfer of the right of usufruct**

### **Article 240**

The Usufructuary can transfer this right to another for a time or all the time of its existence, unless it is otherwise provided in the act of its creation.

The transfer must be notified in writing to the owner, otherwise the previous usufructuary and a person who has acquired such rights are jointly responsible to the owner.

## **The right of alienation**

### **Article 241**

The usufructuary has the right to alienate things subject to usufruct to the extent that they are intended to be alienated in accordance with their nature.

In other cases, the usufructuary cannot alienate things subject to usufruct without consent of the owner, or without the authorization of the district court, unless it is otherwise provided in the act of its creation.

The authorization shall not be granted when the interests of the owner, the usufructuary or third parties are affected.

## **Replacement of the thing subject to usufruct**

### **Article 242**

When things subject to usufruct are alienated or replaced with other things, they belong to the owner and at the same time are subject to usufruct.

The above rule applies to everything that is collected from the debt-claim subject to usufruct, from compensation for reimbursement of damages or from depreciation of assets, when replacing or improving assets that are subject to usufruct.

All advantages, derived in the course of the usufruct other than its fruits, are also subject to usufruct.

## **Investments**

### **Article 243**

The owner and the usufructuary must agree that money subject to usufruct be productively invested, or be spent on the interest of other property subject to usufruct.

## **Lease**

### **Article 244**

The usufructuary has the right to lease things subject to usufruct, unless otherwise provided in the act of its creation.

When the usufruct expires, the owner must respect the lease normally started earlier, unless its extension has been done without his consent. When the usufructuary or tenant have requested consent of the owner for the lease and the latter has not replied within the deadline, the consent is deemed granted.

When the usufruct expires, leases for a term of five years are valid only for five years from the day the lease has started.

## **Enjoyment of servitudes**

### **Article 245**

The usufructuary enjoys the rights of servitudes related to the property over which he/she has the usufruct and to other real rights to be enjoyed by the owner, except the limitations provided for in the act of creation or the law.

## **CHAPTER III**

### **OBLIGATIONS ARISING FROM USUFRUCT**

## **Replacement of damages**

### **Article 246**

The usufructuary is obligated to compensate the value of the thing lost or of the damages caused to it, unless proves that they are not caused because of his fault.

He is obliged to replace the things that, according to usufruct, had no right to consume.

## **Inventories**

### **Article 247**

The usufructuary receives the things in the condition they were before commencement of the usufruct.

Things subject to usufruct shall be taken over inventory made by notarial act in the presence of the owner, after having been notified at an appropriate time. It is the right of parties that all the details relating to the definition and condition of the things subject to usufruct be listed in the inventory.

The inventory can also be performed by private act, when both parties, who are present during its performance, come into agreement. The cost of the inventory are borne by the usufructuary, unless otherwise provided in the act of creation.

## **Periodic reports**

### **Article 248**

The usufructuary shall be obligated to send the owner at the end of each year a detailed written notice signed by him about the things that no longer exist or for the things that have replaced them, as well as for other benefits from the things subject to usufruct that do not fall under the category of fruits.

The cost of the annual notice are borne by the usufructuary, unless otherwise provided in the act of creation.





## **Providing a guarantee**

### **Article 249**

The usufructuary shall be obligated to give the owner a written guarantee for the fulfilment of obligations deriving from the usufruct, unless he/she is discharged by such obligation in the act of creation, or where the interests of the owner over the things subject to usufruct are adequately secured by an institution charged with this job.

Parents who have the legal usufruct over the things owned by their children are exempted from the provision of such a guarantee.

When the usufructuary is discharged from the obligation to provide a guarantee, the owner shall be entitled to ask the usufructuary to tell him every year the things given in usufruct, or get acquainted with the notification of a credit institution for the money or securities deposited.

The usufructuary cannot acquire possession of the things given in usufruct, without fulfilling the obligations arising from this article.

## **Consequences of the failure to provide a guarantee**

### **Article 250**

When the usufructuary does provide a guarantee, measures are being taken for the administration of the things subject to usufruct.

Immovable things shall be leased or entrusted to an administrator selected by agreement between the owner and administrator and when such an agreement is not reached, the administrator shall be appointed by the district court.

The usufructuary has the right to keep an apartment (a house) subject to usufruct as a residence for himself and his family.

The money involved in usufruct shall be invested with interest.

Movable things that wear out or get damaged because of use or foodstuffs likely to decay, shall be sold and their value is given with interest or is used for things subject to usufruct.

The usufructuary may require that sufficient movable things be left with him for personal use.

## **Maintenance costs**

### **Article 251**

The expenses necessary for the preservation, maintenance and administration of the thing are borne by the usufructuary. Expenses for non-common repairs, when they are the result of failure to fulfil his obligations to the thing subject to usufruct are also borne by him.

Extraordinary repairs are borne by the owner. If the owner refuses to conduct these repairs or other repairs that have been imposed on him, or unreasonably is delaying their commission, the usufructuary conducts them with his own expense, which shall be reimbursed until the end of the usufruct. The usufructuary has the right to keep the repaired thing till the repayment of expenses.

## **Securing usufruct**

### **Article 252**



The usufructuary must secure the things subject to usufruct in favour of the owner for the risks that usually they must be secured or that are required by law. In case of damage, the usufruct lies on remuneration paid.

When the usufructuary does not meet such an obligation, the owner has the right to secure the property and the usufructuary is obliged to pay the relevant costs.

## **Expropriation of things in usufruct**

### **Article 253**

When the thing is expropriated for reasons of public interest, the usufruct shall pass over on to the corresponding remuneration.

## **Payment of taxes and other obligations**

### **Article 254**

Taxes, fees, compensations, land rents and other annual obligations relating to revenues in the course of the usufruct are borne by the usufructuary.

Taxes, fees and other obligations relating to the property in the course of the usufruct, are borne by the owner.

## **CHAPTER IV**

## **EXTINGUISHMENT OF USUFRUCT**

### **Article 255**

Usufruct is extinguished:

- By the death of the usufructuary or the dissolution of that legal person;
- By the expiration of the period set in the act of creation;
- By the merger of the qualities of the owner and the usufructuary in a single person;
- By the total destruction or loss of the thing subject to usufruct;
- By the failure to use the usufruct for twenty consecutive years.

## **Cessation of usufruct**

### **Article 256**

The usufruct may cease when the usufructuary abuses the rights or does not fulfil the obligations arising from the usufruct.

However, the court, under circumstances that will result, may order the usufructuary to provide a guarantee, in case he has been discharged from such obligation, or at the request of the owner to leave the administration of the thing subject to usufruct to the owner or to another person or order the renting of the property.

## **Renunciation of the usufruct**

### **Article 257**

The usufructuary may require, at his own expense, to renounce the usufruct because of the encumbrance and obligations arising from it.

## **Return of the things subject to usufruct**

### **Article 258**

After the usufruct has ended, the usufructuary or his heirs are compelled to place the things subject to usufruct at the disposal of the owner.

## **TITLE V USE AND INHABITATION**

### **Article 259**

A person who is only entitled to use a thing, shall use it and enjoy its fruits to the extent he needs them for himself and for his family.

When the subject of the right of use is an apartment (house), the person has the right to live there according to his and his family needs. The thing or apartment that is used under this provision may not be alienated, encumbered or used by other persons.

### **Article 260**

Provisions relating to the usufruct shall apply to the right of use and the right of inhabitation, to the extent consistent with these rights.

## **TITLE VI SERVITUDES**

### **CHAPTER I GENERAL PROVISIONS**

### **Article 261**

A servitude is an encumbrance imposed upon a property for the use and benefit of a property belonging to a different owner.

### **Article 262**

A servitude is established by law or by the will of man.

## Article 263

The owner of the servient estate is not obliged to perform any action to enable the exercise of servitude, unless provided otherwise by the law or the title.

## Article 264

The owner, in whose favor the servitude is established, shall be obliged to pay the owner of the servient estate the damage caused by establishment of the servitude.

## CHAPTER II COMPULSORY EASEMENTS

## Article 265

The owner of an estate, who under the law, has the right to require the owner of another estate the establishment of an easement, in the absence of an agreement, may request the court.

Compulsory easements may be established by an act of the state body, in cases provided by law.

The decision must define the rules of the exercise of easement and compensation of the damage concerned.

## Flowing waters

## Article 266

The owner is obliged to receive in his estate the waters coming from rain, snow or unused resources, which flow naturally from the higher estates. The owner cannot change the natural flow at the expense of another.

Water flowing over a lower estate can be held by the owner of the higher estate only to the extent that is necessary for that estate.

## Article 267

In cases where the banks and slopes of an estate serving to stop the waters are destroyed or damaged and because of the water it becomes necessary to build a barrier, but the owner of that estate refuses to build or to repair them, the owners of the estates that are damaged or are likely to get damaged, may build or repair them at their own expense.

These constructions and repairs must be carried out without causing the owner of the servient estate any damage, by respecting special rules, if there are any. When the owner of the servient estate has objections, the dispute shall be resolved by the court.

## Article 268

The provisions of the preceding article shall also apply when it is necessary to remove a barrier materials formed in another estate or in a ditch, water flow or drainage, which affect neighboring estates.

## **Article 269**

An owner who has a water source on his estate is free on its use, but without prejudice to the rights that may be acquired by the owner of the lower estate under a title or by prescription.

## **Article 270**

If a watercourse prevents owners of contiguous estates from accessing these estates or continuous irrigation or drainage, those who use this watercourse shall be obliged, in proportion to profits earned from it (water), to construct and maintain bridges and other crossing means so conveniently and safe, as well as underground pipes or other works of this nature for continuous drainage and irrigation.

## **Article 271**

The owner of an estate is obligated to accept without any compensation the drainage water coming from a higher estate when they flow naturally on his estate.

When this flow causes damages, he has the right to request compensation for the damage caused and measures to be taken to avoid it in the future.

### **Easements arising from construction works**

## **Article 272**

Rules for the construction of houses and other buildings, the distance between them, admission of light and view, construction of balconies and other construction works of this nature are governed by a special law considering the owner's rights provided in this Code and special laws.

### **Easements arising from the right to draw water**

## **Article 273**

The passage of waters through another's estate should be carried out in the most affordable and convenient way, with less damage, but without hindering the normal exercise of the servitude.

## **Article 274**

When the passage of waters is required for a period of no longer than nine years, the payment of value and compensation of damages mentioned in the above provision is made at half of this value, with the obligation that at the expiry of the period, everything should be returned to the previous state.

This easement can become permanent if it is requested before the expiry of the period, through the payment of the other half, the value together with legal interest, from the date that the conversion started.

When the request is made after the expiry of the period, the payments made for the temporary establishment of this right shall not be taken into account.



## **Article 275**

When the passage of waters should be carried out through public streets or rivers and other public buildings, the rules laid down in specific provisions shall apply.

## **Article 276**

When in a house or its other facilities lacks the water necessary for the human life and livestock and when it cannot be provided otherwise, or large expenditures are required, the owner of the neighboring estate must allow that a quantity of surplus water be used in the extent necessary for the purposes above, and the other party shall pay the water value and costs required to be made for this purpose, and where appropriate, compensate the damage that can be caused.

## **Easement of the right of way**

### **Article 277**

The owner, without outlet to a public road, who cannot provide it except at great expense and with difficulty, is entitled to have the right of way through the neighboring estate for the appropriate use of his property.

The passage should constitute the shortest way to the public road and with less damage to the servient estate.

This provision shall apply even when the owner, who was given the right of way through the estate of another, requires a reasonable expansion of the pathway for vehicles, including the passage of mechanical means.

### **Article 278**

The owner must permit the neighbor to enter and pass on his estate whenever there is a need to build or repair a wall or any other building. He should permit the person to search and receive the livestock and everything else belonging to him that happen to be there by chance or as a result of wind, water, avalanches and other major forces, which are located on his estate or merged together with his stuff.

The owner may not permit entry when he undertakes to deliver himself the item located on his estate. Where appropriate, the owner is compensated for the damage caused.

### **Article 279**

The person who is entitled the right of way through the estate of another must pay the value of the occupied estate, without deducting taxes and other encumbrances related to the estate, and compensate for the damage caused, including the damage arising from the division of land, non- use of land, deposition of materials generated and the dumping of waste. The owner of the servient estate has the right to remove the latter and use the soil's surface, but without damaging the normal exercise of servitude.

## **Easement for the placement of pipes, cables and wires**

### **Article 280**

The owner must permit others to build on his estate channels or put pipes for water or gas, and telegraphic or electric cables and wires and other installations of this nature, but only when there are no other possibilities to make these works otherwise or without making large expenditures. The owner, when damage is caused, has the right to be compensated.

## **CHAPTER III**

### **VOLUNTARY SERVITUDES**

#### **Article 281**

The owner can establish any servitude on his estate or in the favor of his estate provided that it is not contrary to the legal order.

Voluntary servitudes are established by contract or by will.

#### **Article 282**

Easements are continuous when the use of which is done without the need for occasional acts of man, such as water lines, water falling from roofs and other acts of this nature.

Easements are discontinuous when the use of which requires the performance of current acts of man, such as the right to draw water, to graze livestock and other acts of this nature.

Easements can be apparent and non-apparent.

Non apparent are easements for which no apparent or permanent works are required, which are necessary for their exercise.

#### **Article 283**

Continuous and apparent easements are established by title or by prescription of ten years.

Continuous non apparent easements and discontinuous easements, apparent or non-apparent can be established only by title.

#### **Article 284**

When two properties cease to be in possession of one person, the servitude shall exist actively or passively in favour or against each separated property, unless there is a contrary agreement.

## **CHAPTER IV**

### **MODES OF EXERCISING SERVITUDES**

#### **Article 285**

The right of servitude extends to all that is necessary for its exercise.

#### **Article 286**



The owner, without the consent of the usufructuary cannot charge the property with servitudes that infringe the rights of the usufructuary.

## **Article 287**

Servitude on a property that belongs to several people in joint ownership can be established only with the consent of all co-owners. The servitude established by only one or several co-owners takes effect when the other co-owners together or separately have consented to its establishment.

## **Article 288**

A person who has a right of servitude must use it according to his title or possession thereof. When there are doubts about the scope and manner of the exercise of servitudes, it is considered that the servitude is established in such a way as to meet the needs of the dominant estate, causing the least burden on the servient estate.

## **Article 289**

The right of servitude shall be exercised at the time and in a manner that brings less difficulties and concerns for the owner of the servient estate.

## **Article 290**

When the property for the benefit of which a servitude is established shall be divided, the servitude will serve each portion, provided that the burden of the servient estate is not increased.

## **Article 291**

The owner, with his actions or omissions should not reduce the use of servitude or make it more difficult.

Despite this, if the conditions have changed and the owner of the servient estate is burdened or impeded in the exercise of property rights, he may ask the owner in the benefit of whom the easement has been to change the venue of the servitude.

The owner of the other estate has the same right when proved that this change will bring benefits and does not damage the servient estate.

## **Protection of servitude**

### **Article 292**

A person who exercises a servitude has the right to demand judicially by anyone who opposes this right, demanding as appropriate the full restoration of this right, the termination of infringement, as well as compensation for damages caused.



## CHAPTER V EXTINGUISHMENT OF EASEMENTS

### Article 293

Easements are extinguished:

- a) When the ownership of the dominant and servient estates merge in the same person.
- b) When it is not used for more than ten years.  
The limitation period for discontinuous easements starts from the day on which the servitude ceased to be used, while for continuous easements it starts from the day on which an act took place or a fact that prevents the exercise of easement was verified. To the effect of extinguishment of easement, the time that it has been exercised by the previous holder is also computed.
- c) When the things are damaged or deteriorated to a degree that they cannot be used for their purpose.

The return of these things to a state that they can be used again brings consequently the revival of easements, unless this right is prescribed.

### Article 294

When the dominant estate is under joint ownership, the use of the easement from one of the co-owners, prevents prescription with respect to the other co-owners.

### Article 295

Suspension or interruption of prescription in favour of one of the co-owners, has also effects in favour of the others.

## TITLE VII PROTECTION OF ASSETS

### Legal claim to demand the asset

#### Article 296

The owner has the right to file a lawsuit to demand his property from any possessor or holder. This applies also to any co-owner for the joint property, so that it be delivered to all co-owners.

The Joint Colleges of the Supreme Court in unifying decision no. 5, dated 31.05.2011, regarding the meaning of a lawsuit for the recovery of an item, have reasoned as follows:

16.1. Essentially, a lawsuit for revendication is a lawsuit of a non-possessing owner against a non-owner possessor. This lawsuit aims to: a) recognize the plaintiff's right of ownership over the reclaimed item, and b) obligate the defendant to return the reclaimed item to the plaintiff.

16.2. The recognition of the plaintiff's ownership is an essential condition for the acceptance of the plaintiff's claim. The declaratory character of this lawsuit stems from its very nature. This character corresponds to the declaratory (positive) lawsuit, which, according to **Article 113/b** of the Civil Code, is not subject to prescription.

16.3. A lawsuit for revendication is a real action, and it protects the right of ownership over individually defined items, whether immovable or movable.

## **Right of the possessor in respect to revenues**

### **Article 297**

The separated natural fruits and obtained civil fruits that have become acquirable belong to the possessor in good faith until the day he was informed that he is an illegal possessor, or was notified of the lawsuit of the owner for the return of the asset. He is not obliged to compensate the owner for the loss, damage or impossibility of returning the asset for any other reason, but after this day, he is responsible for the fruits obtained or that he should have obtained, acting with care until the time of returning the asset, for the compensation for the use of the asset, as well as for the loss, damage or impossibility of returning because of his fault.

### **Article 298**

The possessor in bad faith, for the entire time of his possession, is obliged towards the owner to return the asset together with the separated natural fruits and obtained civil fruits or those that have become acquirable, and other revenues he should have obtained, and compensate the owner for the use of the asset and for the loss, damage or impossibility of returning the asset even without his fault. He is discharged of the liability when he proves that the damage would have been caused even if the asset had been returned at the right time, unless it was obtained unlawfully.

## **Right of the possessor in respect to expenses**

### **Article 299**

The possessor in good faith has the right to demand the payment of necessary and useful costs made in regard to the asset to the extent that these have increased its value, if it continues to exist at the time of returning the asset.

The possessor in good faith is entitled to deduct from the proceeds of the asset, the expenses recognized under this provision. He has the right to hold the asset, until the necessary and useful expenses are paid back to him.

### **Article 300**

The possessor in bad faith is entitled to demand only the payment of necessary expenses made in regard to the asset.

## Article 301

The possessor in good faith and the possessor in bad faith, except the expenses recognized under the articles of this Code, are not entitled to demand payment of other expenses made in regard to the asset, but they have the right to remove from the asset what they have added and what can be separated without damaging the asset, unless the owner agrees to repay their value.

## Negating lawsuit

### Article 302

The owner has the right to demand from anyone who disturbs him in his possession, but without being deprived of his possession, to cease the disturbance and not to repeat it in the future, and where appropriate, to compensate damages he might have caused to the owner.

## Claims against new constructions and potential damages

### Article 303

The owner, the person who enjoys another real right or the possessor, who have reason to worry that because of new constructions begun by others on their own land or on another's land may cause damage to the asset in his ownership or possession, might address the court provided that this construction is not completed or not a full year have passed since its inception.

The court, as the case may be, decides to ban the construction, demolish or reduce it and, where appropriate, order compensation for the damage, or refute the claim ordering compensation of the damage when it turns out that the construction was unjustly banned.

## TITLE VIII

## POSSESSION

### CHAPTER I

### GENERAL PROVISIONS

## Meaning of possession

### Article 304

Possession is the effective domination of a person over an asset and other real rights over it. Possession may be exercised directly or by a person holding the thing.

## Kinds of Possession

### Article 305

Possession by a person who is not the owner can be legal or illegal.

Possession is legal when the holder has got possession from the owner on the basis of a legal transaction, under the law, or an administrative act.

In all other cases, possession is illegal.



## **Article 306**

Illegal possession can be in good faith or in bad faith.

Possession is in good faith when the owner is not aware or is not obliged to be aware of his possession being illegal.

Good faith is presumed and it is sufficient to have been at the time of acquisition of possession.

## **Presumption of possession**

### **Article 307**

The current possessor, having had possession at an earlier time, is presumed to have held possession also during intermediate time.

## **Article 308**

The current possession does not presume the previous possession, unless the possessor has a title that is the basis of his possession.

In this case, the possessor is presumed to have been possessed by the date of the title.

## **Acquisition of possession**

### **Article 309**

Possession is acquired by legal transactions, by inheritance and by occupation.

A person who has acquired possession in good faith can add in his possession the time of possession in good faith of the person from whom he has obtained the asset.

## **CHAPTER II**

### **PROTECTION OF POSSESSION AND KEEPERSHIP**

## **Immediate protection**

### **Article 310**

The possessor has the right to object immediately, using appropriate protection, any action that is intended to affect or deprive him of possession. When the asset is taken forcibly or secretly, the possessor has the right to take it back straightway or while giving chase, but avoiding acts of violence that are not compatible with the circumstances of the event.

## **Article 311**

The holder of the asset is also entitled to the right to protect the possession against any person other than the one from whom these rights come.

## **Cessation of disturbance in possession**

### **Article 312**



The person who is disturbed in his possession of an asset, may request within six months the cessation of disturbance in possession and no repetition of it in the future.

When the possession is gained by force or secretly, the claim can be filed within six months from the day the violence or secrecy have ceased.

The cessation of disturbance in possession cannot be claimed by the person who has acquired the possession by force or secretly.

## **Restoration of possession**

### **Article 313**

The possessor, who illegally is deprived of possession, has the right to demand, within six months, restoration of his possession.

The possessor who has acquired possession by force or secretly is not entitled to this right.

When the deprivation has taken place secretly, the deadline for demanding restoration of possession begins from the date the deprivation is identified.

### **Article 314**

Restoration can be claimed against a person who has acquired possession through a title, but had been aware of the deprivation occurred.

### **Article 315**

During the consideration of the claim for cessation of disturbance or restoration of possession, the defendant cannot claim that he is the owner or that he has a better title than the possessor.

## **PART III**

### **TITLE I**

#### **GENERAL PROVISIONS**

### **Meaning of inheritance**

#### **Article 316**

Inheritance is a transfer by law or by will of property (inheritance) of a deceased person to one or more persons (heirs) according to the rules set out in this Code.

#### **Article 317**

Inheritance by operation of law applies when the decedent has not left a will, or has made a will only for a portion of his property, or when such will is fully or partially invalid.

#### **Article 318**

#### **Time of opening of an inheritance**

*(Amended by law no. 121/2013, dated 18.4.2013)*



An inheritance is opened when the testator dies.

In case of declaration of the death, the inheritance is opened on the day when, according to the court decision, the person is considered dead.

## **Article 318/1**

### **Place of opening of an inheritance**

*(Added by law no.121/2013, dated 18.4.2013)*

An inheritance shall be opened in the last place of residence of the decedent. When the decedent's last place of residence is unknown, the inheritance shall be opened in the place where all his property or the major part thereof is located.

## **Article 318/2**

### **Applicable law**

*(Added by law no.121/2013, dated 18.4.2013)*

An inheritance shall be regulated in conformity with the law of the time when it is opened.

The Joint Colleges of the Supreme Court in unification decision no. 24, dated 13.03.2002, have determined the following:

Inheritance opens at the moment of the death of the decedent, physically confirmed or determined by the judicial decision of the declaration of death. The determination of this moment is of particular practical importance because, based on it, the circle of heirs entitled to inherit is established, along with their rights and the moment of the transfer of the right of inheritance. It is this moment that also determines the applicable law regarding the effects that follow the opening of the inheritance.

## **Article 319**

Any agreement by means of which are acquired or used the rights arising from a succession that has not yet been opened is invalid.

## **Capacity to inherit**

### **Article 320**

A person has capacity to inherit when at the time of opening of the inheritance he is alive, or has been conceived before the death of the decedent and born alive.

A person who is born within 300 days after the death of the testator shall be presumed to have been conceived at the time of opening of the inheritance.

## **Article 321**

When two or more persons are called to inherit from each other and it cannot be proved whom of them died first, they are deemed to have died at the same time and no rights can be transferred from one to another.

## **Unworthiness**

### **Article 322**

Unworthy to inherit is:

- A person who has intentionally killed or attempted to kill the decedent, his/her spouse, children and parents;
- a person who has made a false accusation or testimony against the decedent for committing a criminal offense punishable by death or imprisonment over 10 years, when the accusation or testimony are declared false in a criminal trial;
- A person who by fraud, intimidation and violence has forced the decedent to make, amend or revoke a will, or has drafted himself a false will, or has used it to his interests or to the interest of others;
- A person who has behaved in a humiliating manner towards the decedent and has mistreated him.

### **Article 323**

Unworthiness of a parent or ascendants does not exclude children or their descendants, when they inherit themselves or when they come to inheritance by substitution. In such a case, the unworthy parent cannot enjoy the rights of usufruct and administration in the inherited share that comes to his children, which the law recognizes parents on their children's assets.

## **Pardon of unworthiness**

### **Article 324**

A testator has the right to pardon an unworthy person to inherit, provided that the pardon is granted expressly by notarial act or by will, or when the pardon, although it is not granted expressly, the testator has noted in the will that he/she has recognized the unworthiness and yet designates him as heir.

## **Obligations of an unworthy heir**

### **Article 325**

A person excluded from inheritance as unworthy must return the fruits and any other income received from property inheritance after the opening of the inheritance.

## **Substitution**

### **Article 326**

Substitution allows the substituents to be put in the place, degree and the rights of the person they substitute.

### **Article 327**

Substitution in the straight line descendants is without limits and in all cases, be it when the child of the decedent competes with the descendants of another child died earlier, or when the children

of the decedent have died before him and their descendants be or not on the same degree, or by their number according to birth.

## **Article 328**

To straight-line ascendants there is no substitution; the closest exclude others.

## **Article 329**

In indirect line, the substitution is accepted in favour of children and descendants, brothers and sisters of the decedent, even if they compete with their uncles or aunts or their descendants to the same degree or not.

## **Acquiring inheritance**

### **Article 330**

Inheritance is acquired after the death of the testator.

### **Article 331**

With the opening of inheritance, the decedent's possession of the estate passes to the heir, without the need to lay hands on it.

### **Article 332**

The heir can acquire all the decedent's property or a part thereof, or only a specific thing or another property right.

### **Article 333**

#### **Renunciation of inheritance**

*(Amended by law no. 121/2013, dated 18.4.2013)*

Renunciation of inheritance shall be done with a written statement, which is registered to the notary of the local government unit where the inheritance is opened, or by a notarized declaration edited by a notary.

The renunciation may also be done by a representative with special power of attorney. After recording the renunciation of inheritance, the notary ex officio issues a new certificate of inheritance, which reflects the change in the circle of heirs, as well as the parts belonging to them, which he sends to the person who has requested the issuance of the initial certificate of inheritance.

### **Article 334**

A person who has renounced the inheritance, is deemed as never to have been called to inherit. Renunciation of inheritance does not exclude the heir from the right to seek legacies.

### **Article 335**

Renunciation of inheritance can be made within 3 months from the opening of the inheritance and, when the heir is abroad, no later than 6 months.



For the heir who was not born at the time of opening of the inheritance, the period for renunciation of inheritance begins from the date of birth.

The period for renunciation of inheritance is suspended for reasons that are valid for the prescription of the claim.

## **Article 336**

*(Amended by law no.121/2013, dated 18.4.2013)*

When it is not known whether there are heirs, or when the heirs are missing and there is no news about them, the notary of the local government unit where the inheritance is opened, ex officio or at the request of any interested person shall set a time, not less than six months from the opening of the inheritance, within which they must declare whether they are renouncing the inheritance. If within this period no such a statement is made, it is presumed that the decedent has left no heirs.

## **Article 337**

The renunciation of inheritance, made before the opening of the inheritance, or when done on condition, with a deadline, or for a part of the inheritance, or in favour of one of the other heirs, is invalid.

## **Article 338**

Renunciation of inheritance cannot take place when during the three-month period the heir by his actions has behaved as heir.

Actions performed only to preserve the inheritance, are not considered behaviour as heir. Heirs who have removed or hidden things from the inheritance, lose the right to renunciation and remain heirs even if they have declared renunciation of inheritance.

## **Article 339**

The heir who has correctly declared the wish to renounce inheritance or not, cannot annul the declaration later.

## **Article 340**

When the heir dies before the period for renunciation of inheritance expires, the right to renounce is transferred to his heirs.

## **Payment of debts**

### **Article 341**

Heirs are liable for debts encumbering the inheritance in proportion to their shares, up to the value of the property they have inherited.

The decedent's debts, burial costs and expenses necessary for the preservation and administration of the inheritance are counted as debts encumbering the inheritance, until it is transferred to the respective heirs.



**Article 342**

When in an inheritance, one or several immovable assets are encumbered with a mortgage, each heir is entitled to require that these assets be exempted from mortgage before the formation of inheritance parts.

However, the heir who has paid the debt arising from a mortgage encumbered on an immovable asset in his inheritance part, is entitled to return it to the other heirs, in proportion to their shares.

**Article 343****Measures securing inheritance**

*(Amended by law no. 121/2013, dated 18.4.2013)*

When deemed necessary to protect the interests of the heirs, of persons who can benefit from dispositions by will, of creditors of the decedent or the state, the notary of the local government unit, where the inheritance is opened, ex officio, or at the request of any interested person, makes an inventory of the inheritance.

The notary who makes the inventory may appoint a person as a trustee of the inheritance. As long as the measures above remain, the heir who could have commenced with the administration of the inheritance, cannot alienate it without prior permission of the court.

**Article 344**

*(Amended by law no.121/2013, dated 18.4.2013)*

When it is not known whether there are heirs, or when the heirs are missing and there is no news about them, or when the legal or testamentary heirs have renounced the inheritance and their heirs are not known, the notary of the local government unit, where the inheritance is opened, ex officio, or at the request of any interested person, shall appoint a custodian of the inheritance.

A summary of the notarial act of appointment of the guardian is published in the Official Journal.

**Article 345**

The custodian shall require that an inventory of the inheritance be carried out, takes measures to administer the property, exercises the right to sue and answers charges in connection with this property, deposits in bank the inheritance money or the money derived from it, performs other actions of this nature and shall be accountable at the end of administration.

**Article 346**

With the approval of the court, the custodian shall pay the obligations encumbering the property, perform liabilities related to legacies and burdens and, where necessary, alienate even inheritance property.

**Article 347**

A custodian's duty shall cease with the appearance of an heir.

## **Article 348**

### **Certificate of inheritance**

*(Amended by law no.121/2013, dated 18.4.2013)*

Quality as heir and inheritance shares are determined in a certificate of inheritance issued by a notary, after the presentation of the decedent's death certificate, according to the rules set out in this Code and the law on notary.

The certificate of legal inheritance shall be issued by the notary of the local government unit where the decedent resided last. When the decedent's last place of residence is not known, the certificate of legal inheritance shall be issued by the notary who operates at the local unit where all his property or most of it is located.

The certificate of testamentary inheritance shall be issued by the notary, with whom the testament was edited by a notarial act, or the holographic will or the special testament were deposited for safekeeping. If the same testator has left more than one testament, the certificate of testamentary inheritance shall be issued by the notary, with whom the last testament was edited or deposited for safekeeping. The certificate of testamentary inheritance, in cases where the holographic will or the special testament are not sent to the notary for safekeeping, shall be issued by the notary who operates at the local unit where the decedent resided last. When the decedent's last place of residence is not known, the certificate of testamentary inheritance, in cases where the holographic will and the special testament are not sent to the notary for safekeeping, shall be issued by the notary who operates at the local unit where all his property or the main part of it is located.

The certificate of inheritance shall be edited in a number equal to the number of heirs defined in it. The notary, at the time of editing, shall issue the certificate of inheritance in a number equal to the number of applicants, while the other edited copies shall be stored by the notary and may be taken from the other heirs, upon their request.

More detailed rules for the issuance of a certificate of inheritance and registration of wills are defined in the law on notary.

### **Lawsuit to demand an inheritance**

## **Article 349**

An heir may demand in a lawsuit from anyone who possesses wholly or partly the inheritance property, his recognition as an heir and the delivery of inheritance property and the assets acquired by it, under the rules of possession in good faith and bad faith.

## **Article 350**

The lawsuit to demand the inheritance may be brought against the person who holds the inheritance property according to a certificate of inheritance, even when it is the state. A person, who has acquired a thing of the inheritance property in good faith by such an heir, shall not be obliged to return the thing, even if it was acquired against payment.

The possessor in good faith who has also in good faith alienated things from the inheritance, shall only be obliged to refund the price of the things to the plaintiff accompanied by the relevant invoice. When the latter has not been paid, he is entitled to demand their payment.

## Article 351

The lawsuit to demand the inheritance shall not prescribe, except the effects of adverse possession on separate things.

## Article 352

Provisions relating to possession shall also apply to possession of inherited things in terms of demanding the fruits, or expenses incurred for improvements and additions made.

## Division of inheritance

## Article 353

Each of the co-heirs have the right to request the division of inheritance at any time, even if the testator has ordered otherwise.

The Joint Colleges of the Supreme Court, in unifying decision no. 6, dated 24.01.2007, addressed several aspects of the partition of inherited property in the context of the property restitution and compensation process, reasoning as follows:

Pursuant to Article 353 of the Civil Code, any heir has the right to request the partition of the inherited property at any time, even if the decedent has ordered otherwise. It is not the duty of the Property Restitution and Compensation Commission to partition the property of former owners and return it separately to each heir.

[...]

The Joint Colleges of the Supreme Court conclude that with the second decision of the Property Restitution and Compensation Commission, which compensated one of the heirs (the defendant), the state fulfilled its legal obligation toward all creditors (heirs), as compensation cannot be granted solely to one heir when the property and respective shares have not been divided by the court.

Since, in this case, compensation was granted to one of the heirs, specifically the defendant [...], the other heirs, including the plaintiff [...], may claim their share of the inherited property through legal action.

[...]

The land subject to dispute, with an area of [...], granted as compensation, belongs to all legal heirs of the former owner and not solely to one of them.

The position taken by the first-instance and appellate courts contradicts not only the above conclusions of the Joint Colleges but also the very legal basis of the claim raised by the plaintiff. Both the court of fact and the appellate court based their conclusions on the reasoning that the property used for in-kind compensation to the defendant [...] was not derived from inheritance but rather from a legal obligation of the state to compensate former owners or their heirs.

However, the legal relationship established between the litigating parties is one of inheritance, not an obligation, as assumed by the courts in their reasoning. The obligation relationship exists between the state (debtor) and the former owners or their heirs (creditors).

## **Article 354**

*(Amended by law no. 121/2013, dated 18.4.2013)*

Division of the inheritance property is done by agreement among the heirs, which is approved by notarial act.

If the heirs do not agree on the division of inheritance, the notary, on the basis of the principle of impartiality and taking into account the rules of the division of property under this Code, shall provide the heirs with legal options for the division of the inheritance to achieve an agreement among themselves. In this case, the notary shall explain them their rights and duties, and shall warn them of the consequences that come from the signing of the agreement, so that their interests are not harmed because of their ignorance of the law.

When the heirs do not agree even with the solutions offered by the notary, the division of the inheritance is made by a court competent to deal with claims arising from inheritance.

## **Article 355**

Division of the inheritance is done according to the rules provided for in **Article 207** of this Code and other provisions of this chapter.

## **Article 356**

In the creation of respective shares there should, as far as possible, be in each of them parts from the same quantity of movable or immovable property, rights in rem or credits, which have the same nature and value.

## **Article 357**

When creditors have sequestered the movable assets of the inheritance, or have opposed the division of inheritance under **Article 206** of this Code, or the majority of the co-heirs consider it necessary to pay the debts encumbering the inheritance, the movable assets shall be sold at auction.

## **Article 358**

The spouse of the decedent has the right to demand the portion belonging to him/her from the joint property obtained by work by the spouses during the marriage.

The co-heirs, who by their work or incomes have helped to increase the inheritance, have the right to demand their share of the increased property, according to the contribution made.

## **Article 359**

The portion of a deceased member of the farm family's property shall be transferred to his heirs, regardless of their membership or not in the agricultural economy.

When the last member of the agricultural economy dies, the property shall be transferred to his/her heirs according to the rules set out in this Code.



## TITLE II SUCCESSION BY OPERATION OF LAW

### **Article 360**

Legal heirs are the children, grandchildren, spouse, parents, siblings and children of the siblings who have died earlier, grandparents and other ascendants, disabled persons dependent on the decedent, other relatives up the sixth degree, and the state. They are called to inherit in the order specified in this Code.

### **Article 361**

*(Third paragraph amended by law no.8781, dated 3.5.2001)*

In the first row shall be called to inherit the children and the spouse able or unable to work, each inheriting in equal parts.

When one of the children had died before the decedent, has become unworthy to inherit, has renounced the inheritance, or has been exempted from inheritance, his children shall be called in his place to inherit by substitution and when because of the reasons above they cannot be heirs, their descendants shall be called to inherit without limitation. In this case, the portion of the parent who does not inherit shall be divided into equal parts among his descendants.

When besides the spouse, there are no other heirs of the first degree, the heirs of the following degree shall be called to inherit as provided for in **Article 363** of this Code and when there are no such heirs, the heirs of the next degree shall be called to inherit as provided for in **Article 364** of this Code.

In any case, the spouse receives half of the inheritance.

When there are no heirs of the degrees above, the inheritance passes to the surviving spouse.

### **Article 362**

*(First paragraph amended by law no. 8781, dated 3.5.2001)*

Children born out of wedlock, when the fatherhood or motherhood is duly recognized and children adopted are equivalent to children born in wedlock.

A child adopted does not inherit from his family of origin and neither does the family of origin inherit from him.

### **Article 363**

In the second row shall be called to inherit the decedent's parents and disabled persons, who at least 1 year prior to the decedent's death, have lived together with him as family members and as his dependents.

### **Article 364**

In the third row shall be called to inherit the disabled persons dependent on the decedent referred to in Article 363 of this Code, when there are no other heirs of the second degree, grandparents, siblings, and children of the siblings who had died earlier. The heirs above inherit in equal parts,

without making distinction between the brothers and sisters of a father or only of a mother, or between grandparents from the father's or mother's side.

## **Article 365**

When the testator has left no descendants, no parents or other ascendants, no brothers or sisters or descendants of the latter, the property of the testator passes to the relatives nearest to him, without making a distinction between paternal or maternal line, however no further than the sixth degree.

## **Article 366**

When the testator has left no heirs to the extent of the sixth degree, the State shall be called to inherit.

## **Article 367**

The State shall not be liable for the obligations of the testator beyond the value of the property acquired.

## **The right to add household items**

### **Article 368**

Heirs who lived together with the testator at the time of his death, when called to inherit, in addition to the portion of the inheritance that belongs to them, they get the household items of common use, unless the testator has provided otherwise in the testament.

## **Inheritance according to the degree of inheritance**

### **Article 369**

Heirs of a lower degree shall be called to inherit only when there are no heirs of a higher degree, or when they all have become unworthy or have renounced the inheritance or is exempted from inheritance, unless when from heirs of the second degree shall remain the heirs unable to work and heirs of the third degree.

## **Right to additions**

### **Article 370**

When one of the co-heirs called to inherit has died before the testator, or has become unworthy, or has renounced the inheritance, or is exempted from inheritance and there are no persons to inherit by substitution, the share belonging to him shall be added to the shares of co-heirs of that degree.

## **Heirs unable to work**

### **Article 371**

Heirs unable to work are those who at the time of the decedent's death have not attained the age of 16, or the age of 18 if they continue studies, the men who have reached the age of 60 and women

who have reached the age of 55 and, regardless of age, those who are invalids of the first group and second group.

## TITLE III TESTAMENTARY SUCCESSION

### Meaning of testament

#### Article 372

Testament is a legal unilateral transaction carried out by the testator, by which he disposes of his property for the time after his death.

The testament cannot be done by two or more persons in the same document, nor to the benefit of a third party, or by reciprocal dispositions.

The Joint Colleges of the Supreme Court, in unification decision no. 1, dated 24.03.2005, addressed the following issues for unification:

1. Can the status of a testamentary heir extend to assets (or rights) that were not part of the decedent's estate at the time the will was drafted but existed in the estate's assets at the time of the opening of the inheritance?
2. In testamentary succession, when the testator has designated specific assets (or rights), should the existence and value of these assets be determined at the time the will was drafted or at the time of the testator's death?

The Joint Colleges of the Supreme Court reasoned as follows:

Only universal heirs or heirs with a universal title have the legal capacity to inherit assets that were not expressly foreseen in the will by the decedent. Only they acquire rights (assets) that were obtained after the drafting of the will and that exist in the estate at the time of the opening of the inheritance. At the same time, they are also obliged to fulfill, **intra vires hereditatis**—within the limits of the inherited estate—the obligations that burden the estate.

This leads to the logical conclusion that only in cases of universal succession or succession with a universal title are included legal relationships whose existence was not known by the testator.

Conversely, a special-title heir (legatee) has a limited right, which is confined to the specific assets or rights explicitly designated in the will—**ut singuli**—and, as a result, changes in the inherited estate observed at the time of the opening of the inheritance will not be reflected in their title.

[...]

A testamentary heir will be subject to all changes that the decedent's estate has undergone from the date the will was drafted until the opening of the inheritance, as a will is a **mortis causa** juridical act—taking effect upon death—and, unlike **inter vivos** juridical acts (between living persons), it produces effects only from the moment of the testator's death.



To assess the existence of a title over a specific asset disposed of by the testator in the will, the relevant date will be the **date of the decedent's death**, i.e., the opening of the inheritance, rather than the date of the will's drafting.

Just as the determination of the beneficiary of the will, the existence of the assets disposed of in the will, and their value must also be evaluated **at the moment of the opening of the inheritance** rather than at the date of the will's drafting.

It is understood that the call to testamentary succession will be effective **only if the assets designated by the testator are present in the estate at the time of the opening of the inheritance**. The **material nonexistence** of these assets—due to amortization or destruction—or their **legal nonexistence**—due to alienation—would render the testamentary dispositions concerning these assets or rights invalid.

## Capacity to dispose by testament

### Article 373

Any person who has reached the age of 18, and a woman under this age when she is married may make a testament.

A minor from 14 to 18 years of age can make a testament only to the property acquired through his work.

The person, who by a court decision is deprived of the ability to act, and the one who at the time of making the testament is not able to understand the significance of his action, cannot make a testament (will).

## Capacity for succession under testament

### Article 374

Persons who are incapacitated by law to succeed are incapable for succession under testament except the non-direct children of a certain and alive person at the time of death of the testator, even if those children were not yet conceived.

### Article 375

In no case can the custodian benefit from the testamentary dispositions of the person in custody when they are made before the approval of the final account, even if the testator had died after the approval of the account.

Dispositions made in favour of the custodian are valid, when the custodian is an ascendant, descendant, brother, sister or spouse of the testator.

### Article 376

Testamentary disposition in favour of incapable persons referred to in **Articles 374 and 375** of this Code shall be void even if it is hidden under the form of a contract award or be made under the name of an interposed person.

Shall be interposed persons: father, mother, descendants and spouse of the incapable person.

## Institution of heir

### Article 377

*(Declared not compatible with the Constitution because of the legal gap, by decision no. 69, dated 27.12.2023 of the Constitutional Court)*

The decedent who leaves no descendants or ascendants, or no siblings, has the right to dispose of his property by testament in favour of any natural or legal person.

**The Constitutional Court of the Republic of Albania in its decision No. 69, dated 27.12.2023, has ruled as follows:**

1. *To accept the request.*
2. *Article 377 of the Civil Code is found to be incompatible with the Constitution due to a legislative gap, as reasoned in this decision.*
3. *The Albanian Parliament is required to fill the legislative gap within one year from the date this decision enters into force.*  
*This decision is final and enters into force on the date of its publication in the Official Gazette.*

In its decision the Constitutional Court, among other things has reasoned that:

[...] The Court finds that the provision of **Article 377** of the Civil Code constitutes a restriction on the right of the testator to freely dispose of their property upon death, not only in favor of persons outside the circle of legal heirs but also within this group. Furthermore, the right to inheritance, which is explicitly mentioned in **Article 41** of the Constitution as a means of acquiring ownership, complements and is intertwined with ownership itself, forming the foundation of the private property system. As a result, the Court considers that the constitutional guarantees of **Article 41** of the Constitution also apply to the right to dispose of property by will, as part of the right of inheritance. Therefore, the Court will assess whether the restriction on the right to dispose of property by will meets the criteria set out in **Article 17** of the Constitution.

#### *i. Compliance with the requirement of legal restriction*

42. The first criterion to be analyzed is that rights and freedoms may be limited “only by law,” which is accepted as fulfilled by the referring courts and interested parties. The Court also finds that since the restriction is provided by the content of **Article 377** of the Civil Code, in accordance with **Article 17** of the Constitution, this criterion is respected both formally and substantively.

#### *ii. The existence of public interest*

[...] The Court finds that the restrictions on the right to property regarding the freedom to dispose of it by will, as set forth in **Article 377** of the Civil Code, aim to protect the rights of a specific group of legal heirs within family relationships, given the special protection granted to the family by **Article 53** of the Constitution. The stability of the family forms the basic unit of the social organization of the country. In this case, the interests of a wider family circle with blood ties are weighed against those of a smaller group characterized by a closer emotional connection with the testator. Special protection is also afforded to children under **Article 54** of the Constitution, which imposes a duty of support on parents not only until they reach adulthood but also until the age of 25 if they continue their studies (**Article 197** of the Family Code). Therefore, the Court finds that by determining the

manner of disposing of property after death, this provision aims to protect the immediate family circle and ensure legal order and stability in social relations.

51. Under this analysis, the Court concludes that the intervention in the manner of disposing of private property by the testator serves the public interest, thereby fulfilling the second criterion set forth in **Article 17** of the Constitution.

### *iii. Proportionality criterion*

[...]

64. In this context, the Court notes that since, *de jure*, inheritance entails the legal transfer of ownership of an estate and, although the legislator may reasonably restrict its disposition to a group of heirs with a blood relationship, a fair regulation in line with present-day conditions cannot exclude individuals who *de facto* are family members. Therefore, the legislator must protect the traditional essence of the inheritance institution while adapting the law to social conditions—a fundamental principle of the rule of law—and maintaining a reasonable balance between legal heirs and testamentary heirs. The Court emphasizes that the mere obsolescence of a legal norm does not, in itself, make it unconstitutional unless it no longer aligns with social, cultural, economic, and moral developments to the extent that it fails to respect the essence of human rights and freedoms.

65. Based on the above, the Court finds that while the legislator has included the surviving spouse in **Article 361** of the Civil Code as a first-degree legal heir—demonstrating the special position foreseen for this family member—it has not included them in the circle of testamentary heirs. The Court notes that the surviving spouse holds a special place in family relationships, not only due to their close familial ties with the deceased but also because of their contribution to accumulating and safeguarding the family’s wealth. The absence of their inclusion in the category of testamentary heirs creates the possibility that they may become a burden on society. For this reason, the surviving spouse was recognized as a testamentary heir in the 1929 Civil Code, and the current Family Code also includes specific provisions concerning the spouse (**Article 54** – contributions of spouses; **Article 57** – spouse’s consent; **Article 63** – disposal of income; **Article 67** – inalienable rights; **Article 76** – presumption of joint property; **Articles 81, 84–86** – obligations regarding shared property, etc.). Therefore, the Court finds that the surviving spouse should be placed in the category of testamentary heirs, equal to children. Consequently, the inability to provide for the spouse through a will contradicts the legislator’s aim of ensuring and safeguarding family interests. The need to include the surviving spouse as a testamentary heir constitutes a necessary measure to provide more effective protection and strengthen family stability after the testator’s death.

66. In the same vein, the Court, in relation to European legislative practices, notes that the protection of the right to dispose of property by will can be achieved through the establishment of a reserved portion of the estate, which the testator may freely allocate according to their wishes. This means that the intended restriction on testamentary freedom can be achieved through other, less restrictive means, which would not make it an absolute limitation. In this perspective, defining a portion of the estate that the testator may freely dispose of is considered an acceptable and balanced approach regarding the interests of other family members involved in testamentary inheritance.

67. Based on the above, the Court concludes that the challenged provision, by failing to include the surviving spouse as a testamentary heir, restricts the scope of testamentary heirs and does not allow the testator to freely dispose of any part of their estate. The Court considers that the absence of such provisions is unfair and based on illogical considerations. Even though the restriction serves a public interest, it is not proportionate under the criteria set forth in **Article 17** of the Constitution. Consequently, the provision contains a legislative gap that has negative consequences for the

testator's rights, disproportionately infringing on their right to dispose of property mortis causa. Therefore, the Court finds that the referring courts' claim of a violation of the right to property, in connection with the principle of legal certainty, is well-founded.

## **Exemption from succession**

### **Article 378**

A testator even without instituting any heirs in the testament, may exclude from legal succession one or more of his heirs.

## **Legal reservation**

### **Article 379**

A testator cannot exclude his children from legal succession, who are minors or other minor heirs inheriting by substitution (Article 361, second paragraph), as well as his other heirs unable to work if called to inherit, nor can he undermine by testament in any way whatsoever, the share belonging to these heirs on the basis of legal succession, unless they have become unworthy to inherit.

### **Article 380**

When a testator disposes a usufruct or a life tenancy by testament, the proceeds of which exceed those of the disposable part, the heirs entitled to legal reservation may execute this disposition or renounce the right to disposable part.

Persons who benefit from the legal reservation have the same right of choice, if the testator has disposed of the bare ownership of a portion that exceeds the disposable share.

## **Substitution**

### **Article 381**

The testator may designate in the testament, if the heir should die before him or should become unworthy, or should renounce the inheritance, one of the other heirs as indicated in articles 361, 363 and 364 of this Code to receive the inheritance and, when there is none of these, another person to receive it.

But the testator cannot compel the heir to safeguard and, after his death, to deliver all or a part of the inheritance received to another person.

## **Right to additions**

### **Article 382**

If the testator has left all his property to the heirs designated in the testament and one of those heirs should die before him, or should become unworthy, or should renounce the inheritance and the testator has not designated another substitute heir for these cases, and when an heir is exempt from succession, the portion belonging to him shall be added to the shares of the other co-heirs designated by testament in proportion to their hereditary shares.

If some of the heirs are jointly designated in a piece of property, the addition is made only to those co-heirs.

## **Article 383**

If the testator has disposed of by testament only a part of his property, even if he had jointly designated several heirs in this part, the share of those who for reasons stated in the preceding article cannot or will not inherit, passes to the legal heirs of the testator.

## **Legacy and burden**

### **Article 384**

The testator may charge the heir or heirs designated in the testament, from those indicated in articles 361, 363 and 364 of this Code, to provide one or more legal heirs with a profit from the inheritance, without making them heirs (legacy).

If the testator, who has no heirs from those indicated in articles 361, 363, 364, has designated in the testament other persons as heirs, he may charge them with legacies for the benefit of everyone. Dispositions for capacity to inherit apply also to the legatee.

### **Article 385**

A legatee has the right to demand fruits or interest resulting from the legacy from the date he has been designated to the delivery of legacy and, at its absence, from the date of notification of the claim.

They can be demanded from the testator's date of death, if the testator has disposed of expressly or if the legacy is a cash deposit.

### **Article 386**

The testator may charge the heir or heirs designated in the testament to carry out any action beneficial to society or any other action without giving the right to a specific person on this action (burden).

When the testator disposes of the property by testament to the State, its organs, or different entities, he has the right to specify the purpose for which the property must be used.

### **Article 387**

If the heir charged with a legacy or burden should die before the testator, or should become unworthy, or should renounce the inheritance, and the testator has not designated another heir in his place, the co-heirs or the legal heirs, who were added or transferred the part thereof and for the reasons above cannot or will not inherit, shall be charged for the execution of the obligations related to the legacy or burden.

If the performance of obligations related to the legacy or the burden is closely connected to this person, who for the reasons above cannot or will not inherit, the legacy or burden shall not take effect.

### **Article 388**



If among the heirs, none of them has been charged by the testator to settle legacy, each heir shall be obliged to contribute to its settlement in accordance with their share.

## **Article 389**

When the thing given by way of legacy is shown only as a kind or as a measure, the right of choice belongs to the inheritor, but the things cannot be below average quality.

## **Article 390**

If the legatee should die before the testator or should become unworthy, or should renounce the legacy and the testator has not designated another person in his place, the legacy goes in favour of the heir charged with that legacy.

But if the legacy is left to more persons jointly, the share of those who cannot or will not get the legacy shall be added to partakers thereof in proportion to their shares.

## **Article 391**

The legatee has the right to demand the execution of the obligation related to the legacy from the heir charged thereof.

Execution of the heir's obligation regarding the burden may be demanded by the executor of the testament, the co-heirs, the relevant state or private organizations.

Obligations related to the legacy and burden shall be executed after obligations encumbering the property.

## **Form of testaments**

### **Article 392**

Testaments are in two forms: holographic or by notarial act.

## **Holographic testament**

### **Article 393**

A holographic testament is entirely written by the hand of the testator, including the date and his signature.

Date of the testament must indicate the day, month and year.

The signature is placed at the end of dispositions.

### **Article 394**

The person who is not capable to read his own handwriting cannot make holographic testament.

### **Article 395**

Persons who cannot hear (deaf) or who cannot hear and speak (deaf and dumb), can dispose of by holographic testament or by testament received from the notary, according to the rules stipulated in the Law "On Notary".

## **Article 396**

The holographic testament may be deposited with a notary for safekeeping in accordance with provisions for storage of documents at the notary.

## **Testament by notarial act**

### **Article 397**

Testament by notarial act shall be edited by a notary and signed by the testator in the presence of a notary.

If the testator does not know how to, or because of illness or physical handicap cannot sign, the testament shall be signed in accordance with the rules stipulated in the Law "On Notary".

## **Special testaments**

### **Article 398**

*(Words "or the secretary" are repealed by law no.8781, dated 3.5.2001)*

In places where there is no notary, the testament may be certified by the mayor or the head of commune.

### **Article 399**

The testament of a person in military service may be certified by the commander of the military unit which he is part of and, when hospitalized for treatment, by the director of the hospital.

### **Article 400**

The testament of a person on board of an Albanian ship navigating or that had arrived at a foreign port, may be certified by the captain of the ship.

### **Article 401**

Testamentary disposition made by a suspense condition shall take no effect, if the person in whose favour it was made should die before the testator.

## **Revocation of testaments**

### **Article 402**

The testament of a later date shall revoke a testament of an earlier date in whole or only the part that is incompatible with the new one.

The testament shall also be revoked by a statement made by the testator to the notary.

## Invalidity of testaments

### Article 403

The testament shall be void if made by a person who cannot make a testament (**Article 373**).

### Article 404

The testament shall be void if it is not made in the form required by law.

### Article 405

The testament shall be void if the testamentary disposition is made to the benefit of persons who cannot inherit (articles 374, 375).

### Article 406

The testament shall be void if the testamentary disposition is contrary to **Articles 377 and 384** of this Code.

### Article 407

The testament shall be void if the testamentary disposition made by the testator, excludes his minor heirs or heirs unable to work from legal succession, or prejudices their legal share.

### Article 408

The testament shall be void if the testamentary disposition is made contrary to the law or by fraud.

### Article 409

The testament shall be void if the testamentary disposition is made under the influence of fraud, intimidation or violence, or because of a mistake, without which the testator would not have made this disposition.

### Article 410

When the testament is declared void by the court, legal heirs shall be called to inherit, unless it is the case of adding in the benefit of the heirs designated in the testament under Article 381.

When only some of the testamentary dispositions are declared void, the other dispositions take effect.

### Article 411

A claim for invalidity of a testament or testamentary disposition can be filed by an heir or any other interested person within three years from the opening of the inheritance.

### Article 412





If the testamentary disposition is void for the reason that the disposition made by the testator excludes his minor heirs or heirs unable to work from legal succession, or infringes their legal share (Article 407), the heir, who is excluded from succession or infringed in his legal share has the right to demand from the other heirs, as appropriate, the delivery or completion of the portion attributable to him under the legal inheritance.

## **Article 413**

For the assignment of this share, all assets of the testator at the time of his death shall be gathered, by subtracting liabilities encumbering the inheritance and it shall be divided by the number of heirs who would be called to inherit, if the testator would not have made a testament.

## **Executor of the testament**

### **Article 414**

The testator can appoint one or more persons to execute the testament.

The appointment as executor must be accepted by the person himself in the testament or with a separate declaration attached to the testament.

If the testator does not appoint an executor of the testament, the execution of the testament is charged with the heirs designated in it.

### **Article 415**

The executor of a testament must make the inventory of the hereditary property, inviting the heirs and other persons who benefit from the testament to attend.

The executor of a testament shall administer the hereditary property, carrying out actions that are necessary for the execution of the testamentary dispositions, but he cannot alienate the hereditary property, unless the need arises and with the permission of the court, which decides after having heard the heirs first.

### **Article 416**

The district court, at the request of the heirs or persons who have an interest, may dismiss from duty the executor of a testament for serious violations of his duty or incompetence in administering the hereditary property.

### **Article 417**

The powers of the testamentary executor shall not be transmitted to his heirs.

### **Article 418**

When there are several testamentary executors, in the absence of others, even one of them can act, but they are all solidary liable for the assets entrusted to them, unless the testator has divided duties among them.

## **PART IV OBLIGATIONS**



## TITLE I GENERAL PROVISIONS

### CHAPTER I MEANING AND ARISING OF OBLIGATIONS

#### **Meaning of obligation** **Article 419**

An obligation is a legal relationship through which one person (the debtor) is obliged to give something or to perform or not to perform a specific action to the benefit of another person (the creditor), who has also the right to demand to be given something, or the action be performed or not performed.

#### **Arising of obligations** **Article 420**

Obligations arise from contracts or by law.

#### **Economic nature of obligations** **Article 421**

The object of the obligation must have an economic assessment and must respond to the interests of the creditor, even to his interests not related to property.

#### **Correctness of participants in obligation** **Article 422**

The creditor and the debtor should act towards one another correctly, impartially and according to reason.

### CHAPTER II SOLIDARY OBLIGATIONS

#### **Article 423**

Solidary liability is when a creditor or each of the creditors has the right to demand the execution of the same obligation completely or partly by the debtors together and by each of them separately.

#### **Article 424**

There is a solidary liability when the obligation comes from the will of the parties or when provided by law.

#### **Article 425**



There is a solidary liability even when the debtors are bound each in a different manner or when the joint debtor is bound to each creditor in a different manner.

## **Article 426**

Execution of the liability by one of the solidary debtors shall discharge all other debtors.

The solidary debtors shall be discharged of the obligation even by providing an object in the execution of the liability or by compensation of the credit from one of the solidary debtors to the creditor.

## **Article 427**

The tardiness of a creditor against one of the solidary debtors shall extend the effect to all other debtors.

A solidary debtor cannot compensate his obligation with the credits that the other debtors have to the creditor.

A solidary debtor cannot claim against the creditor the personal objections of other debtors.

Each one of the solidary debtors should not encumber the position of others with his actions, unless otherwise provided by law.

## **Article 428**

The debtor has the right to choose to pay one or another solidarity creditor, unless previously prevented by written notice from any of them.

There is a solidarity of solidary creditors when each of them has the right to demand payment of all obligations and, the payment made to one of them releases the debtor from all creditors.

## **Article 429**

Renewal of the obligation made by the debtor with one of the creditors shall release all other debtors, unless the creditor has retained the rights to them.

Remission of the obligation made to one of the solidary debtors shall release all other debtors.

When remission is made only to the share which affects one of the debtors, the obligation of other debtors is reduced to the extent of the remitted share.

Merger of qualities of creditor and solidary debtor in a single person, extinguishes the obligation of the other debtors, for the share of this debtor.

## **Article 430**

In their relations, the solidarity debtors participate in settlement of the obligation each according to his share.

The debtor, who has executed a solidary obligation, has the right to demand from other debtors the payment in equal parts of the obligation executed by him, unless the law or the contract provides otherwise.

When the solidary debtor, who has executed the obligation, could not be reimbursed by a debtor for his share of liability, such share shall be borne by all his co-debtors as appropriate in equal parts or proportionally among the other debtors, including him.

## Article 431

Solidary debtors are bound to cover in proportion to their shares all the expenses proven to have been necessary to perform by the debtors who have executed the obligation.

## Article 432

A solidary debtor, who executes the obligation, should claim against the creditor the common objections of all debtors, otherwise he shall lose the right to demand from the other debtors the share they are entitled for settlement of the obligation. Also, he shall lose this right even if he has not notified the other debtors that he has executed the obligation and, as a consequence one of the other debtors has executed it separately.

## Article 433

Interruption of prescription through the actions of the creditor towards one of the solidary debtors, as well as interruption of the prescription by one of the solidary creditors towards the mutual debtor, shall affect other debtors as well as other creditors.

Suspension of prescription towards one solidary debtor or towards one solidary creditor, shall not affect the others.

Renunciation of prescription in accordance with **Article 126** of the Code made by one of the solidary debtors, shall not affect the others, while the renunciation of prescription by one of the solidary creditors, shall affect the others.

## Article 434

A solidary debtor, who is requested to pay his share of the obligation, cannot claim the prescription of the creditor's claim against the debtor who paid it, unless he himself and the debtor who demands the share had had the opportunity to claim the prescription completed.

This paragraph shall not apply where by agreement the solidary debtors have decided otherwise.

## Article 435

If execution of the obligation has become impossible for the fault or continuing delay of one or more solidary debtors, the other debtors shall not be released of the obligation to complete it.

The creditor may seek compensation for damages caused to such a cause only from the solidary debtors or by each of them, for whose fault the execution of the obligation has become impossible, or from those who have been in delay. The other debtors remain as solidary debtors only to the first obligation.

Delays of one of the solidary debtors shall not bring any legal consequences for other debtors.

## CHAPTER III

### ALTERNATIVE OBLIGATIONS

## Article 436



An alternative obligation is one wherein the debtor is released from the obligation, by completing one of the kinds of the obligation to the creditor or to a third party as mentioned separately according to his desire. The debtor cannot demand from the creditor to accept the completion of the obligation partly from one kind and partly from the other kind.

## **Article 437**

The right to choice belongs to the debtor, unless provided for by law or contract to be left to the creditor or a third party.

The choice becomes irrevocable upon the completion of one of the kinds of obligation, or upon notice of the declaration of choice to the other party or both parties, if the right of choice belongs to a third party.

When the right of choice belongs to many people and they cannot agree, the court assigns them a deadline. When the choice is not made in due time, then it is made by the court.

## **Article 438**

If in an alternative obligation, the debtor does not execute any of the kinds of obligations in due time, the right of choice passes to the creditor.

If the right of choice is left to the creditor and he fails to exercise it within the deadline specified in the agreement or by the debtor, the choice passes to the latter.

If the right of choice is left to a third party and he does not exercise it within the deadline set, the choice shall be made by the court.

If this right is left to several persons, the court assigns them a deadline. If the choice is not made within the deadline set, it is made by the court.

## **Article 439**

The alternative obligation is simple when one of the two kinds of obligation cannot be subject to the obligation, or when its completion has become impossible through no fault of either party.

## **Article 440**

If the right of choice is left to the debtor, the alternative obligation shall become simple if one of the two kinds of obligation becomes impossible even for his fault. If this impossibility occurred because of the fault of the creditor, the debtor is released from liability if he refuses the other obligation be applied and claim compensation for the damage.

If the choice is left to the creditor, the debtor is released from liability if the impossibility to complete one of the two kinds of obligation occurred through the fault of the creditor and he does not accept the other kind of obligation be executed and claim compensation for the damage. If the choice is left to the creditor and the impossibility is charged to the debtor, the creditor may choose the other obligation or claim compensation of the damage.

## **Article 441**



If the two kinds of obligation have become impossible and the debtor is held responsible to one of them, he must pay the value of the obligation that is made impossible the last, if the choice is left to him.

If the right of choice is left to the creditor, he has the right to claim the value of one or the other kind of obligation.

## CHAPTER IV DIVISIBLE AND INDIVISIBLE OBLIGATIONS

### **Divisible obligations**

#### **Article 442**

When many debtors or creditors take part in the same obligation and the obligation is divisible, each debtor is bound to execute and each creditor has the right to demand an equal share of the liability, unless the contract or the law provides otherwise.

### **Indivisible obligations**

#### **Article 443**

When there are many debtors in the same obligation that is indivisible, all the debtors are called solidary debtors.

The obligation is indivisible by its nature and as such even by the intention of the parties to the contract. In such cases, the obligation remains indivisible even to the heirs of the debtors.

#### **Article 444**

Indivisible obligations are governed by the provisions relating to solidarity obligations, except as provided in this chapter.

## CHAPTER V MONETARY OBLIGATIONS

#### **Article 445**

Obligation to deliver a sum of money is paid to its nominal value, unless otherwise provided by law or by contract.

#### **Article 446**

Monetary obligation is fulfilled in the currency that is in circulation in the country where payment is made or in the currency stipulated in the contract.

#### **Article 447**



If the creditor has a current account in the country where the obligation should or could be paid, the debtor may discharge his obligation by crediting the respective amount in this account, unless the creditor has excluded payment on this account.

Payment is considered complete at the time it is credited to the account.

## **Article 448**

Payment is made at the residence of the creditor at the date of payment. The creditor may designate another place within the borders of the state where he resides at the time of payment or at the time the obligation arises.

## **Article 449**

If the payment must be made in a place other than the residence of the creditor at the time the obligation arises and the fulfilment of this obligation would become exceedingly difficult, the debtor may suspend payment until the creditor has assigned another country which would avoid surplus costs.

## **Article 450**

Compensation for any damage caused as a result of the delay in the payment of a sum of money, consists of matured interests from the date of commencement of the debtor's delay in the official currency of the country where the payment is made. The rate of interest is determined by law.

At the end of each year, matured interests are added to the sum of the obligation on the basis of which their calculation is made.

Legal interest is paid without the creditor being obliged to prove any damage. When the creditor proves that he has suffered a greater loss than the legal interest, the debtor is obliged to pay him the rest of the damage.

## **Article 451**

When the obligation is related to the payment of a sum of money in a currency for which there is no official exchange rate in the country where payment is made, the debtor is entitled to execute the obligation in the currency that there is an official exchange rate in the country where payment is made, unless the law or the contract provides otherwise.

## **Article 452**

When the obligation is related to the payment of a sum of money in a currency different from that of the country where payment must be made and the debtor claims that he is unable to pay the debt in that currency, the creditor may accept payment in the currency of the country where payment must be made.

The above rule also applies when the debtor is obliged to pay in the currency initially accepted.

## **Article 453**

If the obligation must be executed in a currency other than the one initially accepted, the conversion should be done with the official exchange rate of the day of payment.

## **Article 454**

Article 450 of this Code does not deprive the creditor of the right to seek compensation for damage incurred from the fact that from the date of default by the debtor the exchange rate of the currency defined in the obligation has changed.

## **TITLE II**

### **EXECUTION AND EXTINGUISHMENT OF OBLIGATIONS**

#### **CHAPTER I**

#### **EXECUTION OF OBLIGATIONS**

## **Article 455**

The debtor and creditor must exercise due diligence and be punctual in fulfilling the obligation in accordance with its content.

## **Article 456**

Obligation to deliver a specific thing contains even the care that must be taken to preserve it until its delivery.

## **Article 457**

When the object of the obligation is the delivery of the thing specified as to its kind, they cannot be of lower quality than average quality.

## **Article 458**

Delivery of things is conducted in the manner specified in the contract and when it is not defined, it is conducted:

- a) By handing the thing over to the person who has acquired ownership of it or the person who has acquired rights over it;
- b) By giving it to the carrier or post office to deliver it to the winner, at the place indicated by him;
- c) By handing it over to the winner or sending the documents by mail (charge sheet, certificates of deposit) that give him the right to dispose of the goods.

## **Article 459**

The debtor cannot execute the obligation in parts even if it is divisible, without the consent of the creditor.

## **Article 460**





The obligation can also be performed by a third person who is not a debtor, unless the creditor is concerned that the execution be done by the debtor, or when the creditor has been notified to the debtor's opposition.

## **Place of compulsory execution**

### **Article 461**

If the place where the obligation should be performed is not defined by the contract, by law or is not understood by the nature of the obligation, the performance is done:

- a) For the delivery of an immovable thing, it is performed in the place where it is;
- b) For things that are defined individually, it shall be performed at the place where the thing was at the time the obligation arose;
- c) For the delivery of a thing determined as by kind and quantity, it is performed at the place where the debtor carries out his professional activity or at his residence;
- ç) For obligations in cash, it is performed according to rules set out in Chapter V of Part IV of this Code.

### **Article 462**

The creditor cannot be obliged to accept a thing different from those defined in the scope of the obligation even if the value of the thing offered be greater.

## **Time of performance of the obligation**

### **Article 463**

Execution of the obligation must be done within the time specified in the contract. When the contract does not specify the time, or execution of the obligation is left at the request of the creditor, he may require the execution of the obligation at any time and the debtor must execute it within fifteen days from the day the creditor has requested it.

### **Article 464**

The time defined in the contract is presumed to have been set to the benefit of the debtor, unless from the will of the parties or the nature of the obligation it appears otherwise. Execution of the obligation before the deadline shall not be considered invalid, unless the deadline is set in favour of the creditor.

### **Article 465**

The debtor cannot claim the right of time when:

- a) He has gone bankrupt;
- b) He has not given the promised guarantees;
- c) Guarantees that provide credit insurance have been reduced due to his fault, unless they remain and still constitute a sufficient insurance for the execution of the obligation.

## **Execution for the benefit of the creditor**

### **Article 466**

Execution of the obligation must be made to the creditor himself, or to his representative, or to a person authorized by the creditor, by law or by the court.

Execution of the obligation made to a person not authorized to accept it, shall release the debtor only if the creditor has accepted the execution later, or it is evidenced that he has benefited from it.

## **Execution for the benefit of a third party**

### **Article 467**

The debtor, who executes an obligation for the benefit of a person, who under unmistakable circumstances seems to be authorized to accept it, shall be released from the obligation if he proves that he has been in good faith.

The person who has accepted the execution of the obligation, is obliged to return what he has taken from the execution of the obligation to the real creditor.

## **Execution for the benefit of the creditor unable to act**

### **Article 468**

If the execution of the obligation is made to a creditor who is unable to act, it shall release the debtor as much as it has gone in favour of the creditor, or of his legal representative.

## **Execution on behalf of many obligations**

### **Article 469**

When the execution is carried out on behalf of many obligations and to the same creditor, the debtor may determine at the time of execution which of the obligations he is executing.

If the debtor does not determine the order of execution, the obligation that has expired shall be executed first, if there are more such obligations, execution starts with the obligation having the highest value and, if there are more such obligations, it starts with the oldest and when they have the same seniority, the execution is done proportionally.

### **Article 470**

Execution in cash on behalf of a specific obligation firstly contains payment of expenses, then payment of matured interest rates and then payment of the obligation itself and common interest to it. The creditor may refuse payment if the debtor during the execution assigns a different order or may not accept full payment of the value of the obligation; without receiving matured interests, ongoing interests as well as related expenses.

### **Article 471**

The creditor may refuse execution of the obligation for the delivery of a thing different from what is stipulated in the contract even if the value of the thing being offered is equal to or greater.

## **Costs of execution and relevant certificates**

### **Article 472**

The costs are borne by the person who executes the obligation, while costs of the certificate are borne by the person in favour of whom it is issued.

### **Article 473**

For every payment done in execution of the obligation, the creditor gives a receipt, unless otherwise defined by the contract.

If the creditor has a document from the contents of which results the obligation, the debtor who has executed it may request the return or destruction of that document, unless the creditor has reasonable interests to maintain it, provided that he notes execution of the obligation in the document.

If the creditor refuses to comply with the obligation under the preceding paragraph, the debtor may suspend the execution of the obligation. If the creditor claims to have lost the document, he is obligated to give the debtor a written statement in which the execution of the obligation is accepted. The declaration must be notarized if required by law.

### **Article 474**

When identical payments to settle the obligation should be done periodically, the receipts issued for two consecutive payments presume the previous payments.

The receipt issued by the creditor for the main obligation, presumes that interest rates and the costs of this obligation are also paid.

## **Release of things from guarantees**

### **Article 475**

A creditor who has accepted the execution of the obligation, should release the things from real guarantees provided for the execution of the obligation and from any other obstacle that may limit the use of property.

## **CHAPTER II**

## **EFFECTS OF NON-PERFORMANCE OF OBLIGATIONS**

### **GENERAL PROVISIONS**

### **Article 476**

Any shortcomings in the execution of obligations oblige the debtor to compensate the creditor for the damages incurred, unless he proves that the failure to perform the obligation has not come because of his fault.

In this case, the creditor is entitled:

- a) To demand the execution in kind of the obligation, particularly the delivery of a thing or the execution of works, as well as compensation for the damage caused by delay of the execution;  
or
- b) The compensation for damage incurred by non-execution of the obligation.

## **Article 477**

The debtor who is using the work of third parties for the execution of the obligation shall be held responsible for their actions, committed with guilt, as if they were his own.

## **Article 478**

When the obligation is related to actions that can also be performed by other persons and the debtor does not execute the obligation, the creditor is entitled to request to conduct these actions himself on behalf of the debtor.

## **Article 479**

Any agreement that excludes or restricts the parties from the liability for non-execution of obligations is void.

## **Article 480**

If execution of the obligation is made impossible for the fault of the debtor, the creditor is entitled to request from him compensation for the damage incurred.

The debtor is guilty when, intentionally or negligently, has created circumstances that made the execution impossible, or when he has not taken measures to stop it.

## **Delay of the debtor**

### **Article 481**

If the debtor fails to fulfil an obligation within the time set, it is deemed to be in default (*morè*) unless the non-execution is the result of circumstances not related to the fault of the debtor.

The debtor gets in default by a notice in writing. It is not necessary to put the debtor in default if:

- a) The debtor has declared in writing that he does not wish to exercise the obligation;
- b) The time within which the obligation would be executed has expired.  
If the debtor dies and the deadline set for execution of the obligation ends after his death, his heirs are deemed to be in default at the end of 15 days after a written notice from the creditor.
- c) If the obligation is derived from an illegal act.

## **Article 482**

The debtor in default shall not be released of by the unexpected impossibility of performance of the obligation, even though it should not be caused through his or the creditor's fault, unless he proves

that the object of the obligation would be destroyed or damaged even if it was under the auspices of the creditor.

Loss or damage of the thing taken illegally, does not discharge the person who received it from the obligation to return its value.

## **Article 483**

The provisions on delays do not apply to obligations containing omissions. Any action contrary to them constitutes a breach of the obligation.

## **Article 484**

The creditor may not accept the offer of the debtor in default for the execution of the obligation, if it does not include the compensation of the damage incurred and expenses incurred during the delay, or when the creditor due to default of the debtor has no interest for the execution of the obligation.

## **Article 485**

The debtor who has a credit payable by his creditor, may suspend the execution of the obligation up to the payment of the credit, provided that there are sufficient connections between the loan and the obligation, such as could be among others, the existence of a single legal report, or relationships that the parties have had on a regular basis.

The suspension of the execution of the obligation cannot be required when:

- a) The execution of the obligation by the other party becomes impossible due to the delay of the creditor, or it is impossible on a permanent basis;
- b) The credit of the other party is non-seizable.

## **Article 486**

Damages to be compensated by the debtor for non-execution of the obligation consist of all losses incurred by reduction of the property and the profit to be drawn in terms of the common market (missing profit). As a part of the compensation for damages repair are also the reasonable and necessary costs to prevent or reduce the damage, which are related to the circumstances which the liability of the party is based on, reasonable and necessary costs to determine the damage and liability, and those that are needed to find a solution out of the court for the fulfilment of the obligation.

## **Article 487**

In a contract with mutual obligations, the parties must execute their obligations at the same time, unless the contract or the nature of the obligation states that one party must execute its obligation before the other.

## **Article 488**



If in a contract of mutual obligations, the execution of the obligation of a party is made impossible through no fault of either party, none of them has the right to demand from the other party to execute the obligation or compensate the damages, unless the law or contract provides otherwise. Each party has the right to demand from the other party to return what was given for the execution of the obligation.

#### **Article 489**

If in a contract with mutual obligations, the execution of the obligation of one party is made impossible, because the other party has fallen into insolvency or bankruptcy, or for any other circumstances occurring for its fault, the other party has the right not to execute its obligations until the execution of the obligation to its benefit is ensured, or seek compensation for the damage incurred by the failure to execute the contract.

#### **Article 490**

If it is decided that the compensation for non-execution of the obligation or its delayed execution must be paid to the creditor, the court taking into account the property status of the debtor, can set a different deadline for payment of this compensation, or allow it to be paid in instalments.

#### **Delay of the creditor**

#### **Article 491**

The creditor is in default when by no legal reason refuses the execution of the obligation by the debtor, or due to circumstances created by the fault of his own, does not fulfil the obligation to the debtor, without which the latter cannot execute his obligation.

#### **Article 492**

When the creditor is in default, the debtor has the right to demand compensation for the damage incurred by it and shall be released from the obligation, if later on the execution of his obligation becomes impossible, unless the impossibility of execution of the obligation is due to his fault. In cash obligations, if the creditor is in default, the debtor does not pay interest.

#### **Article 493**

When the damage incurred by the non-execution of the obligation is also caused or increased by acts or omissions due to the fault of the creditor, or if the latter has not shown due diligence to reduce this damage, the court, as appropriate, may reduce the amount of compensation or completely discharge the debtor from his obligation to pay.

#### **Article 494**

The creditor in default cannot demand undertaking of actions for a forced execution.

## Article 495

If the creditor is in default or is not found, the debtor is entitled to execute the obligation by depositing the thing with a person who carries out deposit activities or in a place determined by the court of the district of the execution of the obligation. When the object of the obligation is money, securities or valuable documents, or precious items, they must be deposited in the bank.

Making the deposit suspends the running of the interest.

In cases where depositing requires large expenses, is hard to do, or the item put on deposit is perishable, or due to its nature cannot be left on deposit, the debtor, after having informed the creditor, requires the court to be allowed to sell the preceding item and to deposit the value obtained from the sale to the State bank on behalf of the creditor.

If the debtor draws the deposited item before it is accepted by the creditor, the deposit is deemed as not made.

The depositor delivers the item to the creditor only after the latter has paid all the expenses for the execution of the obligation.

## CHAPTER III

### SUBSTITUTION AND TRANSFER OF CREDIT

#### Substitution of debtor

##### Article 496

Substitution of the debtor for another person, who assumes the obligation, can be done only with the consent of the creditor. The substituted debtor shall be discharged from his obligation to the creditor.

Guarantees provided by third parties to the obligation shall extinguish, if the latter have not given consent for the guarantees to remain with the new debtor. The pledge or mortgage given by the previous debtor remains in force.

##### Article 497

The new debtor may claim against the creditor all the objections arising from the obligation he has undertaken and which could also be claimed by the previous debtor, other than those associated with the latter as a person.

##### Article 498

The agreement, by which the debtor and a third person become co-debtors in an obligation, when the consent of the creditor has been received, cannot be annulled or amended without the consent of the creditor. Both co-debtors are jointly liable.

#### Transfer of credits

##### Article 499

*(Third paragraph added by law no.8536, dated 18.10.1999)*



The creditor may transfer his credit to another person without the consent of the debtor, provided that the credit does not have close personal character and the transfer is not prohibited by the law. Especially, the transfer of credit to another person is not allowed, when derived from causing death or injury to health, as well as from credits that cannot be sequestrated.

The parties to an agreement may exclude the transfer of the credit, but the agreement cannot be claimed against the person the credit is transferred to, unless it is proven that he was aware of that at the time of transfer.

Provisions for credit transfer do not apply to credits related to financial transactions encumbered by insurance, according to criteria established by a separate law.

## **Article 500**

The credit is transferred along with the rights, guarantees and other accessories, including interest on the passed time, unless the contract provides otherwise. The person making the transfer of credit cannot transfer the other person the possession of the pledged property without the approval of the other party (the pledger). Otherwise, the creditor remains the guardian of the pledge.

## **Article 501**

Transfer of credit must be made in writing, otherwise it is not valid.

## **Article 502**

The transfer of credit shall have effect on the debtor and on third parties from the date that the debtor has admitted or has been notified by the former creditor or the new creditor.

The debtor who has performed his obligation, before he was notified of the transfer of credit, shall be released from the obligation.

## **Article 503**

When the credit has been transferred to some specific persons, the transfer notified earlier to the debtor, or admitted earlier by the debtor, with a document (requisition) with the correct date, even if the date could be a later date, shall be preferably for the settlement.

## **Article 504**

Transfer of credit does not affect the debtor's protective remedies.

The debtor may claim against the new creditor objections that may be claimed against the previous creditor, at the time he will be notified about the transfer of credit.

He may seek to be compensated for a credit towards the first creditor, even if still not due at that time, provided that it does not become due after cessation of credit.

## **Article 505**





When the transfer of credit is made when the title is encumbered, the creditor guarantees the existence of the credit at the time of its transfer.

When the transfer is free of charge, the creditor does not guarantee the existence of the credit.

## **Article 506**

The creditor who transfers the credit is not responsible for the insolvency of the debtor, unless he has assumed warranty.

In this case, he shall be responsible for what he has assumed. In addition to that, he shall be responsible for the interests, the costs of transfer, and those that the person, whom the credit has been transferred to, has made for the prosecutions against the debtor and to compensate the damage.

The agreement that intends to aggravate the responsibility of the person who transfers the credit shall be void. When the creditor who transfers the credit has guaranteed the solvency of the debtor, the guarantee ceases, if the non-execution of the credit because of the insolvency of the debtor has come from the negligence of the new creditor to pursue the case against the debtor.

## **Article 507**

A creditor who makes the transfer of credit must submit the other creditor documents proving the credit, which are in his possession.

When only a portion of the credit is transferred, the creditor is obliged to submit an authentic copy of the documents to the other creditor.

## **CHAPTER IV EXTINGUISHMENT OF OBLIGATIONS**

### **Renewal Article 508**

Obligations are extinguished by renewal when the parties will replace the original obligation with an obligation other than the first one.

### **Article 509**

Bailment, pledge and mortgage of the original credit shall be extinguished, unless the parties explicitly have agreed to preserve them for the new credit.

### **Article 510**

Renewal is void if the initial obligation is void.

When the initial obligation results from a nullifying title, the renewal is valid if the debtor has assumed the new obligation recognizing defects of the initial title.

## **Remission of the obligation**

### **Article 511**

The written statement of the creditor for the remission of the obligation shall extinguish the obligation when it is notified to the debtor, unless the latter declares within a specified deadline that he does not want to benefit from the remission.

### **Article 512**

If the debtor has the private document that proves the obligation, it is presumed that the obligation is extinguished by remission, unless it is proved that the document was not willingly returned by the creditor.

### **Article 513**

Removing the guarantee to the obligation, does not presume his remission.

## **Compensation**

### **Article 514**

When two persons owe each other money or things of a kind that are substitutable and their obligations are demandable, accurate and determined in amount or quantity, the obligations of both parties are extinguished by making the compensation between them. The obligations are extinguished up to the sum or the amount of the smallest obligation.

### **Article 515**

Compensation extinguishes the two obligations from the date of their merger.

When for one of the credits or both of them are paid interests, the compensation is made up to the last time on which interests are paid.

Prescription does not prevent compensation if it is not completed on the day of the merger of the two obligations.

### **Article 516**

The compensation is made by means of a statement that one of the parties sends to the other party.

The statement cannot set deadlines or conditions.

When the compensation does not cover the entire credit or when the creditor needs to hold the title of credit in order to exercise his other rights, he may hold it on condition that he notes in the title the content of the statement and delivers a copy of the title of credit to the other party.

### **Article 517**



If the compensation statement sent by one party is not admitted by the other party, the latter shall be obliged to immediately notify the party that has sent the declaration, explaining the causes of refusal.

## **Article 518**

Without the consent of the creditor, cannot be compensated:

- a) Credits arising from death or harm of health;
- b) Credits that cannot be sequestrated;
- c) Credits arising from taxes and fees.

## **Article 519**

Compensation cannot be performed if it is to the detriment of third parties who have acquired the right of usufruct or pledge on the credit.

## **Article 520**

The guarantor may claim compensation of the creditor's obligation against the principal debtor. The principal debtor cannot claim compensation of the creditor's obligation against the guarantor.

## **Article 521**

If two obligations are not payable at the same place, the compensation cannot take place, unless the costs required to transfer them to the place of payment are taken into account.

## **Article 522**

If credits and monetary obligations are included in a single account, they shall be compensated immediately in the order that the parties have agreed in the agreement and in its absence according to the rules stipulated in **Articles 469 and 470** of this Code.

The party that administers the account, after closing it through the compensation made, shall notify the other party what is the balance, the exact date of the calculation, and the items that make up the account and which are not yet communicated to the other party.

If the other party does not reject it within a reasonable time, the balance notified shall be regarded as accepted by the parties.

## **Article 523**

If a compensation statement does not adequately show the obligations contained in the compensation, the rules provided for in Article 470 of the Code shall apply.

Each party may immediately object the compensation made, if the calculation of obligation, expenses and interest costs is not carried out according to the rules mentioned above.

## **Merger of qualities of creditor and debtor in the same person**

## **Article 524**



The obligation is extinguished from the time the qualities of creditor and debtor are merged in the same person.

When this merger terminates, the obligation arises again.

## **Article 525**

Merger cannot take place when performed to the detriment of third parties who have acquired the rights of usufruct or pledge on the credit.

## **Extinction due to impossibility of execution**

### **Article 526**

The obligation is extinguished when its execution becomes impossible without the fault of the debtor and before he has been put in default.

The obligation is also extinguished when the debtor, though in default, proves that the impossibility would exist even if the creditor was in his place.

In these cases, the debtor must return what he has won without cause to the creditor.

### **Article 527**

If the impossibility to execute the obligation is temporary, the debtor shall not be responsible for the delay of execution for the time it lasts.

But, the obligation is extinguished even when the impossibility lasts for as long as under the title of obligation and its nature, the debtor cannot be obliged to accomplish it, or the creditor has no longer interest.

### **Article 528**

If execution of the obligation becomes impossible only partially, the obligation is executed on the part that it can be executed.

### **Article 529**

If the object of the obligation is the delivery of a thing and it will be completely damaged, or lost through no fault of the debtor and before he is put in default, the creditor takes the rights of the debtor regarding this thing, depending on the fact that has caused the impossibility of execution of the obligation. The creditor has the right to demand from the debtor what he has received as a result of compensation.

## **TITLE III**

### **MEANS TO ENSURE THE EXECUTION OF OBLIGATIONS**

#### **CHAPTER I**

#### **GENERAL PROVISIONS**



## Article 530

The creditor may be compensated with all the present and future property of his debtor, unless otherwise provided by law.

A property can be encumbered by its owner, in order to ensure payment of an obligation.

The Joint Colleges of the Supreme Court, in the unifying decision no. 932, dated 22.06.2000, reasoned regarding the means of securing the execution of obligations, stating that:

The means that ensure the execution of obligations, as provided in the Civil Code, are in themselves special subsidiary (supplementary) contracts to the main obligation they secure. As such, they have no impact on the main obligation, and their invalidity, even if it exists, does not affect the existence or validity of the main obligation.

## Article 531

Creditors have equal rights to be compensated with the property of the debtor, except for legitimate reasons of preference.

Legitimate reasons of preference are privileges, pledges and mortgages.

## Article 532

Pledge and mortgage may be imposed only for an effective obligation.

Pledge and mortgage may be imposed as an obligation of the owner of the thing pledged or mortgaged, as well as to an obligation of another person.

## Article 533

Pledge or mortgage may guarantee an existing credit or a future credit. The credit for which the guarantee is given must be clearly defined.

The pledge or mortgage can also be imposed on a conditional obligation.

## Article 534

The pledge or mortgage shall extend respectively on all the works that increase the value to the property, the credits and bonuses that are added to or substitute the encumbered property, including what is compensated from depreciation.

## Article 535

Should the things pledged or mortgaged lose or depreciate, the payment of the amounts for which insurers or third parties liable for compensation are obliged to, shall be extracted from the payment of credits associated with the pledge or mortgage, except for the case where they are used for the repair of loss or depreciation of the things.

## Article 536



Should the thing pledged or mortgaged lose or damage even due to chance, in order to preserve the rights of the creditor, the latter may demand that he be given a full guarantee on other things and, in its absence, may demand the immediate payment of his credit.

## **Article 537**

Pledge and mortgage are indivisible even if the obligation is divisible.

## **Article 538**

If a pledge or mortgage is imposed to secure an obligation of another person, the owner of the thing pledged or mortgaged may claim against the creditor all the objections that the debtor could claim and seek the compensation of obligation by the credits that the debtor owes to the creditor.

## **Article 539**

Should the creditor not be paid entirely by the thing pledged or mortgaged, he is entitled to receive the outstanding credit from any other property of the debtor, but without the right of preference over other creditors, which he had to the thing pledged or mortgaged.

## **Article 540**

It is void any agreement according to which it is established that in the failure to pay the credit in due time, the ownership over the thing mortgaged or pledged is transferred to the creditor.

## **CHAPTER II PENALTY CLAUSE**

## **Article 541**

For non-execution or non-adequate execution of obligations, the parties may provide for in the contract the payment of a sum of money or the performance of another liability, to repair the damage or to promote the execution of the obligation.

## **Article 542**

The creditor cannot demand at the same time the payment of the penalty clause and the execution of the obligation.

## **Article 543**

When a penalty clause is assigned to the case of non-execution of the obligation and the debtor does not perform his obligation, the creditor is entitled to demand payment of the penalty clause, and compensation for the portion of the damage exceeding the penalty clause.

When a penalty clause is assigned to the case of non-adequate execution of the obligation and the debtor has not executed his obligation properly, the creditor has the right to demand the execution of the obligation and the payment of the penalty clause, as well as compensation of the portion of the damage exceeding the penalty clause.

## **Article 544**

When a penalty clause is too large compared to the damage incurred by the creditor, the court at the request of the debtor can reduce the penalty clause to the level of the damage incurred.

## **Article 545**

Agreement on the penalty clause should be made in writing, regardless of its size and the form required for the main contract.

## **CHAPTER III**

### **LIEN**

#### **Definition**

#### **Article 546**

*(Second paragraph added by law no 8536, dated 18/10/1999; Sentence added at the end of the second paragraph, by law no 121/2013)*

Lien may be granted over a movable property item, over a right to the holder, upon order or over the usufruct over this property or tight. The lien shall emerge by granting to the creditor or to a third party, determined upon mutual agreement of parties, possession over the property item or title.

The provisions regulating the lien do not apply to the credits connected to financial transactions, whereon security interest has been granted, under the criteria set out by specific law. The provisions regulating the lien shall not apply even in the instances of financial collateral agreements, which are regulated by specific laws.

#### **Form of contract**

#### **Article 547**

The lien contract shall be documented by the notary, otherwise it is invalid. It shall also include a description of the property item whereon lien has been granted. In the event of lien over the parties, it shall be registered in the book of the members of the company. In the event of lien over the shares, it shall be registered in the book of shares, regarding the shares whereon lien has been granted. Lien can be granted over the whole or a part of the property items being used in an enterprise acting as an operational corporation. In such an instance the lien shall be effective upon the property items being

entrusted to a third party or to a creditor, the latter, on his behalf, managing them as a unified acting corporation.

## **Protection of creditor**

### **Article 548**

The creditor having lost the possession of the property item whereon lien has been granted, he may, in addition to the possession lawsuit, he may also assume the revendication lawsuit, as long as this belongs to the lienee.

## **Rights and obligations of parties**

### **Article 549**

The creditor shall be bound to safekeep the property item whereon lien has been granted and he shall be liable under the general rules regarding its loss and harm.

The lienee shall be bound to pay the expenses incurred for safekeeping and maintaining the property item.

### **Article 550**

Upon the property item, whereon lien has been granted, yielding fruits or income, the creditor shall be entitled to appropriate them, by way of initially making use of them for the expenses and interest and then for the credit, unless it has been provided for differently in the contract.

### **Article 551**

The creditor may not make use of the property item whereon lien has been granted, unless the use is necessary for safekeeping and maintaining it.

He may not grant lien over the property item or give it over to others for use.

### **Article 552**

Upon the creditor abusing with the property item whereon lien has been granted, the lienee may seek imposing attachment over the property item.

### **Article 553**

The person having granted lien cannot seek the return of the property item, as long as the credit, interests and expenses related to the obligation and the lien have not been paid in full.

Where the lien has been granted by a debtor, the latter being liable to the same creditor regarding another obligation emerging after granting the lien and becoming due prior to the previous obligation, the creditor shall only be entitled to keep the property item until both credits are repaid in full.

### **Article 554**

Where the property item whereon lien has been granted gets harmed or its worth reduces to such an extent that it is doubtful whether it is going to be sufficient as security to the creditor, the latter may, after notifying the lienee, seek authorisation from the court to sell the item.



The court granting authorisation for sale shall also decide on the depositing of the purchase proceeds as a security for the credit.

The lienee may avoid the sale and seek from the court to return the item, by way of providing another real security, which the court holds sufficient.

Where the harm or the reduction of worth of the property item whereon lien has been granted, the lienee may request an authorisation from the court to sell the item, as long as he encounters a favourable opportunity.

The court granting the authorisation for sale shall also determine the conditions for the sale and depositing the purchase proceeds.

## **Article 555**

Upon the property items whereon lien has been granted being spoiled, harmed or expropriated in public interest, the creditors being secured by way of lien shall be entitled to being reimbursed with preference, referring to the preference ranking of their credit, out of the proceeds of reimbursement of the item or out of the expropriation proceeds.

## **Sale procedure**

### **Article 556**

Prior to proceeding with the sale, the creditor shall, through the court, submit to the debtor the request for the payment of the obligation and its accessories, by way of warning that the sale shall occur on the contrary. This notification shall be addressed also to the third party having granted the lien, as long as this party exists.

Where the request is not objected within five days, the creditor may sell the property item in auction or, upon the item having a market value, may even sell it at this price, by way of a person authorized for such sales.

Upon lien extending over many items, the court shall, referring to the objection of the lienee, restrict the sale only to the item, the worth of which compared to other items is sufficient for paying the debt.

The parties may, regarding the sale of the property item whereon lien has been granted, agree to make use of other forms.

### **Article 557**

The creditor lien taker, at the end of the term, is obliged to collect the rights arising from the lien loan and when this is for money or other equivalent items, he must deposit them himself or at the request of the debtor in the place specified in the agreement and, in the absence thereof, in the place specified by the court. When the term of the loan secured by the lien has expired, the creditor retains from the amount received the amount necessary to fulfill his rights and returns the remainder to the lien giver.

### **Article 558**

The creditor may ask the court to leave the property item with him against charge until the obligation has been performed, referring to the assessment made by the experts or market price, as long as the property item has a market price.

## **Article 559**

Upon the credit whereon lien has been granted emerging out of a document, the lienee shall be bound to give this document to the creditor.

## **CHAPTER IV MORTGAGE**

### **Definition of mortgage**

#### **Article 560**

Mortgage is a real right being put on the property of the debtor or a third party, to the benefit of the creditor to secure the performance of an obligation.

### **Mortgage eligible property items**

#### **Article 561**

Mortgage eligible shall be:

1. Immovable property items;
2. Usufructs over these property items, except the legal usufruct of parents, as well as the emphyteusis related rights over these items.

### **Types of mortgages**

#### **Article 562**

Mortgage shall be imposed based on the contract or the law and upon its registration. The contract shall be documented by the notary.

### **Legal mortgage**

#### **Article 563**

Mortgage based on the law shall be granted to:

- a) seller and any other alienator over the immovable property items being alienated for performing the obligations emerging out of the alienation;
- b) co-heirs, members of the companies of economic activities and other partners over the joint immovable properties, to the shares belonging to them for the payment of certain amounts for equalizing and fulfilling their shares.

#### **Article 564**

Servitudes being registered following the registration of a mortgage cannot be referred to towards the mortgage creditor.

The above paragraph shall apply even to the right to usufruct, usage and residence.



## **Judicial mortgage**

### **Article 565**

The court decision regarding the payment of an amount of money to the effect of performing the estimated obligations or for reimbursing the damages due to emerge subsequently shall consist a title for obtaining the mortgage granted over the debtor property.

Mortgage can be granted even based on an arbitration decision consisting an executive title.

### **Article 566**

Upon the mortgage being granted by a person not being the owner of the property item, its registration shall be considered to be valid upon the item being acquired by him.

## **Mortgage on upcoming property items**

### **Article 567**

Mortgage over an upcoming property item may be registered upon the existence of the item.

## **Mortgage extension**

### **Article 568**

Mortgage secures the credit as long as it is on its repayment duration, including the interests, reimbursement of the damage incurred due to the enforcement delay, as well as the expenses sustained for the issue of the credit.

### **Article 569**

Mortgage put on the own part by one of the members in co-ownership shall yield effects with regard to that property item or part of the item which will be acquired by him after the division.

If during the division one member is awarded another property item and not encumbered by mortgage by him, the mortgage shall be assigned to this item at the same registration scale as the original and within the worth of the property being encumbered by mortgage earlier, provided that the mortgage be registered again within 90 days of the registration of the same division.

## **Venue of registration**

### **Article 570**

Mortgage shall be registered at the office of immovable property registration office of the venue where this property is located.

### **Article 571**

The obligations stemming from the titles upon order or of the holder may be secured by mortgage.

**Effect of the inaccuracies of the act****Article 572**

Mortgage shall be invalid if, in the mortgage contract or in the basic act of granting mortgage or in the request of granting under the law, irregularities exist concerning the person of the creditor, debtor, owner of the property item encumbered with mortgage, for the property item or amount of credit secured by mortgage.

**Registration expenses****Article 573**

Mortgage registration expenses are to be defrayed by the debtor, unless it has been provided for differently, however, they have to be prepaid by the requesting party.

**Preference of mortgages****Article 574**

Mortgage shall yield effects and obtain preference on the date of its registration even if the title refers to an upcoming or conditional credit.

**Article 575**

The serial number of registrations sets out their preference.

Where concurrently many persons lodge a request for registering a mortgage referring to the same person and over the same property items, the registration shall occur with the same number and this fact shall be noted down in the certificate that the registrar gives to each of the requesting persons.

**Article 576**

Mortgages being registered with the same number and over the same property items shall compete with each-other, proportional to their respective worth.

**Article 577**

The registration of a credit serves to put the expenses of the act, registration and renewal, as well as other expenses needed for the executive procedures at the same preferential scale.

The registration of a credit in cash yielding interest has the effect of the interest standing at the same preference scale, provide that the interest be set out at registration.

The interest in such an instance shall be restricted to two preceding years, as well as to the current year, to the day that it has been disposed of until the day of completion of proceedings of foreclosure.

**Mortgage impact****Article 578**

Mortgage registration shall be of effect for a period of 20 years since the date of its accomplishment. The effect shall cease if it is not renewed prior to the expiry of the deadline. Following the expiry in indicated above, the creditor may affect a new registration, however, the mortgage in such an instance shall be ranked and be of effect towards the third parties referring to the new date of registration.

## **Article 579**

The assignment of the credit secured by mortgage to another person and imposing the attachment on this credit shall be of effect following the entering of the respective note at the mortgage registration.

## **Article 580**

Where the creditor holding mortgage over one or more property items incurs damages since their proceeds were used to pay in full or in part a previous creditor, whose mortgage extended over other property items of the same debtor, may be subrogated to the mortgage registered to the benefit of the paid creditor, in order for him to assume the mortgage lawsuit over those properties, being of preference to the other creditors following him in succession. The creditors sustaining harm due to the subrogation referred to above shall be entitled to the same right.

## **Reduction of mortgage**

### **Article 581**

Mortgage reduction shall occur by way of restricting it to the part of the property indicated in the registration or by reducing the amount whereon the registration has been entered.

### **Article 582**

The request for the re-education of mortgages according to the above articles shall not be admitted, as long as the entirety of assets or amount was determined by way of agreement or court decision.

However, upon partial payments being made, thus lapsing at least one fifth of the initial obligation, a proportional reduction of the amount may be requested.

Upon a building being encumbered by mortgage, the mortgagor may, following the registration having made additional constructions, request that the mortgage be reduced so that additional constructions be exempted.

## **Lapse of mortgage**

### **Article 583**

The mortgage shall lapse:

- a) upon the lapse of the obligation;
- b) upon the loss of the property item encumbered by mortgage, abiding by the rights provided for in Article 536 of this Code;
- c) upon the relinquishment of the creditor;

- ç) upon the payment of the sale price by way of foreclosure to the creditors secured by mortgage, referring to their rank preference;
- d) upon the expiry of the period to which mortgage was restricted.

## **Deletion of registration of mortgage**

### **Article 584**

The registration of mortgage shall be deleted:

- a) upon the consent of the creditor granted by notarial act;
- b) upon a final court decision ordering the deletion.

The deletion of registration shall lapse mortgage. Where the cause of the lapse of obligation is declared invalid, mortgage shall emerge and be registered again, however, with a new serial number.

## **CHAPTER V**

### **SURETY**

#### **Contents**

### **Article 585**

Surety is a legal transaction wherewith a person (guarantor) shall be obliged to secure the performance of an obligation of a third person (main debtor) to the creditor. Surety shall be valid even where the debtor is not aware of it.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, reasoned the following regarding the legal concept of suretyship [*references from the decision text have been omitted*]:

[...] Through suretyship, a third party in the creditor-debtor relationship, the guarantor, guarantees the fulfillment of the obligation by the latter (the debtor) and undertakes to fulfill it personally in the event of the debtor's "failure." As a legal obligation relationship, it may originate from law, an agreement between the parties, or a court decision.

[...] Suretyship, as a legal act and expression of will, is a bilateral contract concluded between the guarantor and the creditor, while the debtor, as a rule, remains unbound by this relationship. The debtor's consent is not required for the perfection and constitution of the suretyship relationship. The purpose of suretyship is not to guarantee the debtor but to secure the creditor.

40. Suretyship is categorized as a personal and subjective security instrument because the guarantor guarantees the fulfillment of the main debtor's obligation with all their present and future assets unless otherwise provided in the surety contract. The guarantor guarantees the creditor regarding the debtor's personal qualities, reliability, and ability to fulfill the obligation. Furthermore, the guarantor assumes the risk by securing the execution of the obligation with their assets without pledging a specific asset as collateral.

This characteristic differentiates suretyship from real security instruments such as pledges or mortgages, which are inextricably linked to the respective asset that individualizes the parties in the contract. As a

personal security instrument, suretyship is not tied to a specific asset but rather to the guarantors overall assets.

41. Suretyship always has the nature of an accessory legal relationship concerning the primary legal relationship between the creditor and the debtor. It exists only for an actual obligation and may be provided for a future obligation and/or a conditional obligation. As such, it is functionally and integrally connected to the main legal act (*accessorium sequitur principale*).

This connection always influences how it arises, develops, and terminates. Such a characteristic distinguishes the legal relationship of suretyship from joint and several liability in general.

[...]

43. Suretyship is a subsidiary and conditional legal relationship, meaning it is activated only when the primary debtor fails to fulfill the obligation. This means that the verification of the condition, the debtor's delay, or their default in fulfilling the obligation triggers the guarantor's civil liability towards the creditor. This characteristic is another distinguishing feature of suretyship compared to joint and several liability.

## Article 586

Surety shall be in place just for an effective obligation.

Surety may be granted for an upcoming obligation, as well as for a conditional obligation.

## Form and validity

### Article 587

Surety shall be documented.

### Article 588

Surety shall not be valid as long as the main obligation is not valid. It can be granted for the main debtor, as well as for his guarantor.

## Effects of surety and obligations of parties

### Article 589

The guarantor shall be liable to the extent of the obligation of the main debtor, including the payment of the interests, damages incurred due to the delays in enforcement and other expenses that the contractor has sustained to collect his credit, unless it has been accepted in the agreement that the surety is granted even for one part of the obligation, or with milder or less strict conditions than the main obligation.

The surety subrogating the obligation or granted at more severe conditions than the main obligation shall be valid to the limits of the latter.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the effects of suretyship, has determined that *[references from the decision text have been omitted]*:

[...] The College concludes that the suretyship contract begins to produce the effects provided by law from the moment it is concluded, and the status of the debtor and the guarantor becomes equal when the

obligation becomes due. At that moment, as a rule, the creditor may address either the debtor or the guarantor.

Referring to Articles 589, 590, and 591 of the Civil Code, the status of the guarantor is equated with that of the debtor only concerning the portion of the obligation, the order of execution and the division of the obligation among multiple guarantors, as the parties may have specified in the suretyship contract.

## Article 590

The guarantor shall be jointly liable above the main debtor for performing the obligation, unless it has been provided for differently in the agreement.

Parties may agree that the guarantor shall not be liable to make any payments prior to undertaking all the necessary arrangements binding the debtor to perform the obligation. Where the guarantor is sued and he seeks to refer to such an entitlement, he shall indicate the assets of the main debtor due to be subject to enforcement. The guarantor shall be bound to prepay the necessary expenses, as long as the parties have been agreed otherwise.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the interpretation of Article 590 of the Civil Code, has reasoned as follows [*references from the decision text have been omitted*]:

[...] This provision, at the moment when the principal obligation becomes due and there is no different agreement between the parties for a subsidiary suretyship, makes the principal obligation equally enforceable against both the primary debtor and the guarantor. From this moment, the guarantor is considered a joint debtor or co-debtor.

This means that an interpretation consistent with Article 590 of the Civil Code would be one that makes the principal obligation simultaneously enforceable against both the primary debtor and the guarantor, granting the creditor the right to choose between the two jointly liable debtors.

[...]

Subsidiary suretyship applies when, in order to activate the financial liability of the guarantor, the creditor must first pursue and exhaust all legal means of recovering the debt from the primary debtor. Only when it is determined that the debt cannot be recovered from the primary debtor's assets does the creditor gain the right to turn to the guarantor. At that point, the guarantor's financial liability toward the creditor arises for fulfilling the debtor's obligation.

[...]

[...] Joint suretyship places the creditor in a much more favorable position than subsidiary suretyship for debt recovery, as it grants the creditor the discretion to choose which assets will be used to satisfy the debt—whether from the guarantor, the primary debtor, or both simultaneously.

[...]

[...] as a rule, unless the parties have agreed otherwise, from the moment the primary debtor defaults, both the debtor and the guarantor become jointly liable to the creditor for fulfilling the obligation. The creditor may choose any of the legal avenues available to enforce the obligation against either the debtor or the guarantor, who from that moment is treated as a jointly liable co-debtor.

## Article 591

Upon many persons becoming guarantors for the same debtor and to secure the same obligation, each one of them shall be liable for the entire obligation, unless there is an agreement for the division.



## Article 592

The guarantor shall be entitled to refer to all the demurrers to the creditor that the debtor would be entitled to refer to and seek the reimbursement of all that the creditor owes to the debtor, even if the latter has relinquished these rights or assumed the obligation.

## Article 593

The guarantor having performed the obligation instead of the debtor shall assume the position of the creditor regarding all his rights to the debtor.

## Article 594

Upon many main debtors being jointly bound by the same obligation, the guarantor having granted security for all of them shall be entitled to the lawsuit of reinstatement to each of them for collecting the amount he has paid.

## Article 595

The guarantor having performed the obligation of the debtor while not being sued and falling short of giving notice to the main debtor, the latter may refer to the guarantor the entire demurrers, which he would do to the creditor at the time of performing the obligation.

The guarantor having performed the obligation of the debtor shall not be entitled to take legal action against the debtor regarding what he has enforced, as long as the debtor has performed his obligations since the guarantor did not give notice to him regarding the performance of the obligation he has affected.

The guarantor shall, in both cases, be entitled to take legal action against the creditor and seek what he has performed for the main debtor.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the interpretation of **Article 595** of the Civil Code, has reasoned as follows [*references from the decision text have been omitted*]:

The Ratio Legis behind this provision is that the guarantor fulfills the obligation in cases where the creditor addresses them by notifying them that the debtor has not fulfilled the obligation according to the contract. In this case, the creditor does not initiate a lawsuit against the guarantor but informs them in another way, through a different legal action or instrument.

Furthermore, the guarantor who fulfills the obligation in place of the primary debtor has the right to raise all objections against the creditor that the debtor themselves could have risen. The guarantor can also demand any compensation that the creditor owes to the debtor, even if the debtor has waived their rights or has accepted the obligation.

In continuation of this reasoning, the College assesses that the surety contract begins to produce the effects provided by law from the moment it is concluded. The legal standing of the debtor and the guarantor becomes equal at the moment the obligation becomes due. At this point, as a rule, the creditor may address either the debtor or the guarantor unless the parties have agreed otherwise in the surety contract.

## Article 596

The debtor having performed the obligation shall forthwith give notice to the guarantor. Otherwise, the guarantor having enforced the obligation of the debtor does not forfeit his right to seek from the debtor what he has performed for him. The debtor shall, in such a case, be bound to perform his obligation for the second time, however, he shall be entitled to take legal action against creditor for all what he has benefited unjustly.

## Lapse of surety

### Article 597

Surety shall lapse with the lapse of the main obligation.

### Article 598

The guarantor shall be relieved of his liability as long as the creditor has relinquished his privileges, lien or mortgage securing the credit and, due to this ground, the guarantor cannot be subrogated to his position regarding these rights.

### Article 599

Upon the creditor accepting voluntarily any property items or any other assets against the performance of the main obligation, the guarantor shall be relieved of his liability even if an instance of foreclosure emerges to the creditor.

### Article 600

The surety shall lapse if the creditor fails to take legal action against the guarantor within six months of the date of expiry of the time period for performing the obligation.

The time period for performing the obligation not having been set out either in the surety contract nor in any other agreement, the surety shall lapse with the expiry of one year since the date of entering into the surety contract.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the legal concept of the termination of suretyship, has reasoned as follows [references from the decision text have been removed]:

The key issue under discussion by the Chamber is whether the term "lawsuit" for the purposes of Article 600 of the Civil Code should be understood strictly as a statement of claim that initiates a contentious civil judicial process or more broadly as the creditor's claim against the guarantor for non-fulfillment of the obligation, regardless of how this claim is articulated, including a request for the initiation of compulsory enforcement.

[...] Suretyship should not, a priori, be more difficult to enforce than the principal obligation itself, which it is legally intended to guarantee.

[...] Article 600 of the Civil Code does not define a lawsuit (padi) as a statement of claim in the procedural sense (i.e., a tool for initiating court proceedings) but rather in the substantive sense, meaning the legally recognized possibility of addressing the court to ensure the enforcement of rights and legitimate interests. The right to petition the court through a request for compulsory enforcement falls within the material concept of a lawsuit since the purpose of such a legal tool is to fulfill a right and legitimate interest—namely, the creditor’s right to seek fulfillment of the obligation from the guarantor.

Only when the suretyship constitutes an executive title does a request for an execution order equate to a lawsuit under Article 600. In cases where the suretyship does not constitute an executive title, the creditor may use Article 600 to file a substantive claim against the guarantor, respecting the deadlines established by this provision.

[...] The six-month (6-month) deadline specified in Article 600 of the Civil Code relates to the expiration of the right to use the procedural tool (i.e., the lawsuit) for enforcing the right, rather than the loss of the subjective right itself. As such, this is a prescription limit and not a preclusive term.

[...]

[...] The contract of suretyship is a consensual contract, meaning that it becomes effective upon signing and completion in accordance with the law. However, the guarantor's joint responsibility towards the creditor, alongside the principal debtor, depends on the fulfillment of a suspensive condition, meaning the maturity of the obligation or the default of the principal debtor. This is also the moment when the prescription periods stipulated in the two paragraphs of **Article 600** of the Civil Code begin to run.

## CHAPTER VI DOWNPAYMENT AND PRIVILEGES

### A. DOWN PAYMENT

#### **Contents** **Article 601**

Down payment is the pecuniary amount that one of the parties gives to the other on the account of which shall be paid under the contract, to the effect of establishing the conclusion of the contract and ensuring its enforcement.

#### **Legal effects** **Article 602**

Where the contract is not enforced due to the culpable conduct of the party having made the down payment, the same party shall forfeit the down payment; where the contract is not enforced due to the culpable conduct of the party having received the down payment, the same party shall be obliged to pay back the double amount of down payment. The party being culpable for the nonenforcement of the contract shall be obliged to indemnify the other party, calculating within this indemnification also the downpayment amount, unless the contract has provided for differently.



## B. Preferences (Privileges)

### Article 603

Preference is an entitlement granted by law taking account of the credit basis. The credits being assigned as preferred shall prevail over all other credits.

In the event of many preferred credits, the priority in enforcement is set out by law, according to the type of preference.

### Article 604

The credits being of the same preference shall compete among each other proportionally in terms of the amount of each credit.

### Ranking of preference

#### Article 605

*(Amended by law no 8536, dated 18/10/1999; amended by Law No. 113/2016, dated 03.11.2016)*

Paid by way of preference, referring to their ranking, the following credits:

- a) credits emerging out of the financial transactions being insured by encumbrance concerning the purchase price of a specific asset;
- b) credits emerging out of the salaries in employment or service relations and alimonies, however, no longer than 12 months;
- c) credits of social insurance regarding the unpaid contributions along with the interests, as well as credits of employees regarding the damages sustained due to the failure of the employer to pay the above mentioned contributions;
- ç) credits emerging out of the remunerations due to death or health impairment;
- d) credits of authors or their heirs concerning the remunerations emerging out the full or partial alienation of their rights in the intellectual field concerning the obligations emerging during the two recent years;
- dh) state credits emerging out of the liabilities to the budget and the credits of the state insurance institute for the mandatory insurance, set out by law;
- e) credits emerging out of financial transactions, insured by encumbrance, under the criteria set out by law;
- ë) credits, emerging from wages in employment or service relationships and maintenance obligations beyond the limit set in letter “b” of this article;
- f) mediation remuneration emerging out of the agency contract, where it emerges during the last year of remuneration;
- g) credits secured by mortgage or lien not amounting to encumbrance, according to law, from the value of the things in mortgage or lien.
- gj) credits emerging out of the judicial proceedings expenses for preserving the asset and those for the executive arrangements, undertaken to the joint benefit of creditors, out of the proceeds of the sales of assets;
- h) credits granted by banks not falling under letter ‘e’ and the credits emerging out of voluntary insurances;

- i) credits for supplying seeds, fertilizers, insecticides, water for irrigation and for the works for cultivating and harvesting the agricultural products, on the annual agricultural products (yields), where for the credits have been applied.

Upon the existence of many credits under letter 'a' and 'e' of this **Article**, the preference ranking shall be determined under the criteria set out by specific law. Where the specific law does not provide to a credit preference ranking above letter 'e', the credit under letter 'a' shall be assigned a preference under letter 'e'.

Exempt from the preference ranking under this article shall be the credits under letter 'e' having been currently granted, which shall be assigned a higher preference than letter 'dh', in the following cases:

- credit under letter 'e' was registered under the law, while the credit under letter 'dh' was not registered;
- credit under letter 'e' was registered under the law, prior to the registration of the credit under letter 'dh'.

The order of preference, provided in this article, does not apply to the procedure of bankruptcy, as provided by special law.

## **Article 606**

The creditor may withhold the asset being subject to the privilege until he is reimbursed for his credit and he may sell it under the rules set out for selling the pledge.

### **Contesting the legal transactions of the debtor**

## **Article 607**

*(Amended by Law No. 113/2016, dated 03.11.2016)*

The creditor is entitled to seek declaring the legal transactions performed by the debtor to the effect of reducing the quantity or value of the property to the detriment of the creditor invalid, provided that the credit has emerged prior to the legal transactions being performed.

Where the legal transactions have been carried out against reimbursement, the person that the debtor has performed this transaction with shall have to know the intention of the debtor to cause damage. However, where this person is a spouse, parent, grandfather, child, grandchild, brother or sister of the debtor, the knowledge on the impairment intention shall be presumed, as long as the opposite is not established.

Upon the legal transaction being declared invalid, the rights benefitted by third persons by way of reimbursement in good faith prior to filing the lawsuit for declaring the invalidity of the legal transaction shall not be impaired.

This article does not apply to the procedure of bankruptcy, as provided by special law.

## **TITLE IV**

### **LIABILITY IN TORTS**

## **CHAPTER I**

### **GENERAL PROVISIONS**



## Tort liability Article 608

The person culpably and illegally causing damage to another in person or in rem shall be obliged to indemnify the caused damage.

The person having caused the damage shall not be liable upon proving that he is not culpable.

The damage shall be illegal where ever it emerges out of the breach of impairment of the interests of rights of others, being protected by the legal order or good customs.

The Joint Colleges of the Supreme Court, in the unifying decision no. 12, dated 14.09.2007, addressed aspects of the interpretation of Article 608 of the Civil Code, reasoning as follows:

[...] Essentially, with the provision of Article 608 of the Civil Code and **Article** 18 of Decree no. 295, dated 15.09.1992, the legislator foresees protection against the illegal act of a third party in relation to human rights, particularly the subjective rights (both absolute and relative) of personality and property (real rights), such as the right to life, health, personality, dignity, family, private life, property, etc. In case of violation of these rights by an illegal act, the injured party has the relative subjective right to claim compensation for non-contractual damages.

[...] In support of Articles 608 and 643/a of the Civil Code, the surviving family members, in a close and lasting relationship with the deceased minor who lost their life due to an illegal act, have the right to claim compensation for the financial damage suffered in the form of lost profits. This loss is seen as an inability to benefit from the normal course of life, the solidarity, and reciprocal support from the deceased minor, not only in terms of care in general but also as economic support for the family in the future. The fact that, at the time of the minor's death, the parents and other family members may or may not have sufficient income for food and living expenses does not affect their legal standing to claim compensation for damages.

## Article 609

The damage shall be direct and immediate consequence of the action or omission of the person.

Failure to avoid an occurrence by a person being legally obliged to avoid it shall render him liable in torts.

The Joint Colleges of the Supreme Court, in the unifying decision no. 12, dated 14.09.2007, addressed aspects of the interpretation of Article 609 of the Civil Code, reasoning as follows:

[...] In the application of Article 609 of the Civil Code for the acceptance of non-contractual civil liability, it must be established that there is a causal link between the illegal act (or omission) committed with fault and the damage caused. Furthermore, in determining the specific damages (violations) arising from this illegal act and determining the corresponding compensation, the legal causal link between the damage and the illegal act must also be established.

## Article 610

The agreement excluding or restricting in advance the liability of the person having culpably caused damage shall be invalid.



## **Article 611**

The person causing damage to another due to his own necessary protection or of a third person shall not be held liable.

## **Article 612**

The person having caused the damage while being forced by the need to rescue himself or others against an imminent danger of a severe damage, which danger was not caused and could not be avoided by him, shall be obliged to indemnify the damage. The court may, by way of taking account of the specific circumstances of the case, relieve this person in part or in full from the obligation to indemnify the damage.

## **Torts by minors or persons without capacity to act**

### **Article 613**

The minor not having reached the age of fourteen and other persons being fully incapacitated to act shall not be held liable in torts.

The parents, custodians and those being entrusted with or warding persons incapacitated to act shall be liable for the damage incurred due to the illegal conduct of children under fourteen, of persons under their custody and those overseen by and living with them, but being incapacitated to act, unless they prove that they could not manage to avoid the occurrence of the damage.

### **Article 614**

The minor having reached the age of fourteen shall be liable in torts.

The parents or custody shall be liable for the above damage, as long as the minor does not generate income out of his own occupation or does not possess property, unless they prove that they could not manage to avoid the occurrence of damage.

## **Damage by persons under ward**

### **Article 615**

The teachers and other persons warding minors or the persons teaching others a handcraft or profession shall be liable for the illegal damage caused to others by the students or persons warded by them, or by the persons being trained in this handicraft or profession with them, incurred during the time period they were directly warded by them, unless they prove that they could not manage to avoid the occurrence of damage.

### **Article 616**

Liable for the damage shall be also the person having incurred it while, at the same moment, he was not conscious of his conduct.

The court may reduce the amount of indemnification, taking account of the age, degree of awareness for the committed acts, as well as the economic situation of the parties, except when he has culpably brought himself to this situation.

## **Fraudulent or inaccurate publications**

### **Article 617**

Upon being established that a person is liable towards another person because he has published inaccurate, incomplete or fraudulent data, the court shall, upon the request of the impaired person, force the other person to publish a repudiation, in the way it would deem appropriate.

The court may rule the publication of this repudiation even upon being established that the publication of the data is not illegal and carried out culpably, since the author was not aware about the inaccurate or incomplete character of these data.

## **Liability of employer**

### **Article 618**

The employer shall be liable for the damages caused to third parties due to the guilt of employees being in his service, in the course of performing the tasks assigned to them by him.

The legal entity shall be liable for the damages caused by his structural bodies in the course of performing their tasks.

### **Article 619**

Where a person is carrying out an activity in the framework of the task of another and sticking to the latter's instructions, not being his employee, shall be liable for the damage caused to third parties in the course of this activity.

The other person is also liable to the third party.

## **Liable of representative**

### **Article 620**

Where the activity of the representative in the course of assuming the powers assigned to him incurs culpable liability to a third party, the represented person shall also be liable to this third party.

## **Liability due to the use of animals**

### **Article 621**

The owner of an animal or the one using it shall be liable to the damage caused by it, unless he proves that he had controlled the conduct of the animal having caused the damage and could not manage to avoid it.

## **Liability due to carrying out a hazardous activity**

### **Article 622**

The person carrying out a hazardous activity, regarding its very nature or the nature of items applied, and causing damage to third parties, shall be obliged to indemnify the damage, unless he establishes that he has made use of all the appropriate and necessary arrangements for avoiding the damage.



## Article 623

The owner of a building or construction shall be liable for the damages caused due to the deficiencies and any other flaw in connection with the building or maintenance.

The owner of the building or construction shall be entitled to seek the indemnification of the damage sustained from the persons liable to him.

## Liability for the environment

### Article 624

The person having culpably affected the environment by way of deteriorating, changing or impairing it, in full or in part, shall be obliged to indemnify the sustained damage.

### Article 625

*(Amended by law no 17/2012, dated 16/02/2012)*

The person sustaining a non-pecuniary damage shall be entitled to indemnification upon:

- a) sustaining a health, physical or psychical integrity damage;
- b) his honor, personality or reputation being impaired;
- c) his right to his name being impaired;
- ç) his privacy observation being impaired;
- ç) the remembrance of a deceased person being impaired. The spouse or the relatives of the deceased up to the second degree may seek the indemnification of the non- pecuniary damage.

The Joint Colleges of the Supreme Court in the unifying decision no. 12, dated 14.09.2007, have addressed aspects of the interpretation of Article 625 of the Civil Code, specifically in the context of accidents involving motor vehicles, which are governed by the provisions of both the special laws and the Civil Code. The Joint Colleges of the Supreme Court have raised the following issues for resolution:

1. In the case of a traffic accident where the injured party is a minor with no other dependents, does the compensation for the damages include the expenses for the maintenance and livelihood of their family members, considering the wording of Article 643, letter "a" of the Civil Code?
2. Do the family members of the victims benefit from compensation for non-pecuniary damages as defined by Article 625 of the Civil Code, in relation to Decree No. 295, dated 15.09.1992, and Article 44 of the Constitution?
3. What constitutes non-pecuniary damage, and what are the criteria for its determination in such cases, also referring to the legislation in the field of motor vehicle insurance?

The following are some key reasoning excerpts from the reasoning part of the unifying decision of the Joint Colleges of the Supreme Court, which interprets important elements related to the application of various provisions of the Civil Code, particularly Article 625. Specifically, the Joint Colleges of the Supreme Court reasoned as follows:

[...] non-pecuniary damage, as stipulated in Article 625 of the Civil Code, is a broad and inclusive category of non-contractual damages, covering any type of harm suffered from the infringement of non-patrimonial rights and interests that belong to human values and cannot be directly valued economically in the market. Essentially, this provision recognizes the right to compensation for any form of non-patrimonial damage suffered due to an unlawful act, which is "distinct from patrimonial damage." The listing of "cases" of non-patrimonial damage in paragraphs "a" and "b" does not aim to limit, but to regulate explicitly, for the sake of distinguishing infringements, the right to appropriate compensation and the scope of subjects entitled to active legitimacy.

[...] Health damage (biological damage) essentially constitutes the infringement of the right to health, to the physical and/or psychological integrity of the individual. This non-patrimonial damage, as defined by letter "a" of Article 625 of the Civil Code, is the subject of a claim for compensation independent of other patrimonial or non-patrimonial damages suffered by the injured party due to the same unlawful act.

[...] Since life and health have no price, and in compliance with the fundamental constitutional principle of equality before the law and the prohibition of discrimination under Article 18 of the Constitution, the court must ensure uniform judgment and equal evaluation of the degree and extent of compensation for biological damage for each specific form and level of permanent or temporary impairment to the physical or psychological integrity of the injured party, as long as the age is the same and the type of health damage (whether physical or psychological) is the same.

[...] Compensation for health damage under Article 625/a of the Civil Code is sought independently from the claim for patrimonial damage arising from the loss or reduction of the ability to work, as stipulated by Article 641 of the Civil Code. According to this provision, the patrimonial interest affected temporarily or permanently due to health damage resulting from an unlawful act is the human right, as defined in Article 49 of the Constitution, to earn a living, and thus also to guarantee and increase wealth through lawful work chosen by the individual's free will. Additionally, it constitutes a legitimate interest that is also harmed by the depletion of the injured party's wealth in the form of expenses incurred for care and, particularly, for the treatment of health damage continuously caused by the same unlawful act.

[...] Moral damage (*pretium doloris* or *pecunia doloris*) is an internal, temporary manifestation of unjust disruption (*non iure perturbatio*) of the mental state of the individual, pain and mental suffering, or psychological distress resulting from an unlawful act. Anyone who suffers infringements on their health and personal integrity from unlawful acts or omissions by a third party with fault has the right to seek compensation for the moral damage suffered. This right, as the injured party, belongs individually (*ius proprius*) to each of the close family members of the person who has lost their life or whose health has been damaged by the unlawful act, if the specific family, emotional, and cohabitation link is proven. Moral damage suffered by close relatives is considered a consequence, a direct and immediate result of the same unlawful act.

[...] Existential damage caused by the unlawful act of a third party infringes the personal rights of the individual by permanently damaging the expression and realization of the injured party as a person, the external manifestation of their personality, disrupting their daily life and ordinary activities, resulting in a deterioration of the quality of life due to the change and disruption of their balance, behavior, and life habits, as well as personal and family relationships. Due to this psycho-physical state, the injured party may no longer perform certain activities that positively characterized their existence or could have characterized it positively in the future, thus forcing them to resort to different life solutions than those desired and expected or to abandon such solutions due to the proven unlawful act. Existential damage, not having merely subjective or internal characteristics, is objectively verifiable.

## **Joint liability**

### **Article 626**

Where the damage is caused by a number of persons jointly, they shall be jointly liable to the impaired person.

## **Action for recourse**

### **Article 627**

The person having indemnified the damage shall be entitled to seek from everyone having caused the damage their respective share proportional to the degree of guilt of everyone and the entirety of the ensuing consequences. Where this cannot be defined, it is assumed that the degree of guilt is equal.

The parents or custodians having defrayed the damages caused by the minors or persons having been deprived of their capacity to act shall not be entitled to seek from the latter the recovery of the damages they have defrayed.

## **CHAPTER II**

### **LIABILITY STEMMING FROM THE PRODUCTS**

#### **A. PRODUCER LIABILITY**

### **Article 628**

The producer shall be liable for the damage being caused due to the defects of his products, unless:

- a) the producer has not put the products in the market;
- b) referring to the established circumstances, it is deemed that the defects having caused the damage could not exist at the time of putting the product in the market, or they have emerged later;
- c) the product has not been designated for sale or any other form of distribution, for a certain commercial purpose of the producer, neither produced or distributed in the context of a undertaking or professional activity;
- d) the defects relate to the fact that the product has been in compliance with the rules set out by the public bodies;
- e) the scientific or technical knowledge did not manage to detect the defects at the time of putting the product in the market;
- ë) it is about the production of raw material or manufacturing a constituent part of a product, which turn put flawed within the composition of the product, or as a consequence of the erroneous instructions provided by the producer of the product.

### **Article 629**



The liability of the producer shall be reduced or lifted, where, under circumstances, the damage has been caused due to the defects of the products, as well as due to the guilt of the impaired person or of another person, whereof the impaired person is responsible.

The liability of the producer shall not be reduced as long as the damage is a consequence jointly of the defects of the product and conduct of a third party.

## **Article 630**

A property item is defective as long as it does not provide the assurance expected thereof, taking account of the circumstances jointly and severally:

- a) appearance of the product;
- b) reasonable use going with the product;
- c) time of putting the product in the market.

The product cannot be said to be defective referring to the fact that a more sophisticated product has been put in the market subsequently.

## **Article 631**

“Product” in the sense of this Code shall be any movable property item, even if it is incorporated into a movable or immovable property item, as well as electricity, excluding the agricultural products and the products emerging out of hunting.

Agricultural products shall be the land, livestock and fishing products, unless they have gone through a preliminary processing.

“Producer” in the sense of this Code shall be the producer of a manufactured product, of a raw material, or manufacturer of a constituent part of a product, as well as any other person appearing as such (manufacturer), putting his name, trademark or another distinguishing mark on the product.

Notwithstanding the liability of the producer, ‘producer’ shall be referred to any person importing a product intending its sale, rent, leasing, or any other distribution form, in the context of his commercial activity. His liability in such a case shall be the same as that of the producer.

## **Article 632**

Where the producer cannot be identified, every supplier shall be a producer, unless within a reasonable time period he shows to the impaired person the identity of the producer or the person having supplied the product.

## **Article 633**

Where, under the first paragraph of Article 628 of this Code, many persons are liable for the same damage, each of them shall be liable for the entire damage.

## **Article 634**

The lawsuit regarding the indemnification of the damage filed against the producer under the first paragraph of Article 628 of this Code shall lapse upon the expiry of three years, starting from the day

that the impaired person has been informed or should have been informed about the damage, deficiencies and identity of the producer.

The right of the impaired person against the producer regarding the indemnification of the damage under the first paragraph of Article 628 of this code shall forfeit upon the expiry of ten years, since the day that the producer has put the product having caused the damage in the market.

## B. FRAUDULENT PUBLICATION

### Article 635

The person publishing or makes arrangements for making a notification public regarding the products or services he offers himself in the event of a professional activity or of an enterprise or of a person on whose behalf he is acting carries out an illegal conduct as long as the notification is fraudulent in one or some of the following respects:

- a) nature, composition, quantity, quality, characteristics or eventual uses;
- b) origin, fashion or date of production;
- c) size of its stock production;
- ç) price or method of calculation;
- d) reason or purpose of special offers;
- dh) qualities assigned, other certificates or evaluations made by third parties, or declarations issued by them, applied professional or scientific terminology, electronic or statistical data;
- e) circumstances of circulating the products, providing services or making of payment;
- f) extension, contents and duration of guarantee;
- g) identity, qualities, powers or competences of the one manufacturing or having manufactured the products, offering them to the one providing the service, managing, supervising or assisting these activities;
- gj) compares to other products and services.

### Article 636

The person having conducted himself illegally according to the above provision is responsible for the caused damage, unless he establishes that he is not culpably involved with its emergence.

### Article 637

Where the fraudulent publication, being provided for in **Article 635** of this Code, has caused or endangers causing a damage to a person, the court shall, upon his request, order its immediate ban and the obligation of the liable person for making a public impugment, in the fashion that the court finds it appropriate.

## C. UNFAIR COMPETITION

### Article 638



Pursuant to the provisions connected to the protection of the trademarks and patent rights, the unfair competition conduct is affected by everyone:

1. making use of the names or trademarks which might be mixed up with the names or trademarks used legitimately by others or imitate the products of a competitor or affects conduct which may cause them appear like the products and the activity of a competitor;
2. considering the qualities of the products or enterprises of a competitor like his own;
3. making use directly or indirectly of any other means which does not coincide with the principles of professional fairness and may impair the activity of others.

## **Article 639**

The decision establishing the conduct of unfair competition shall prohibit their duration and set out the necessary measures to the effect of eliminating the consequences.

Where this conduct has been affected culpably, the person having done this shall indemnify the damage.

## **CHAPTER III INDEMNITY**

## **Article 640**

The property damage being indemnified shall consist of the incurred damage and the lost profit.

Indemnified shall also be the expenses incurred reasonably to avoid or to diminish the damage, those being necessary for setting out the liability and the damages, as well as the reasonable expenses incurred to ensure indemnification in extra-judicial proceedings.

## **Article 641**

The person having inflicted harm to the health of another person shall be obliged to indemnify the damage, taking account of the loss or restriction of the ability of the impaired person to work, expenses having been made for his medication, as well as other expenditure bearing a connection to the incurred damage.

## **Article 642**

The extent of damages may change in the future, depending on the improvement or worsening of the health or improving or aggravation of the ability of the impaired person to work, as compared to the time of setting out the indemnity and the changes, which the salary of the impaired person might have gone through.

## **Article 643**

Upon the death of a person being caused, the damages due to be indemnified shall consist of:

- a) living expenses of the minor children, spouse and parents being incapable to work, having been dependants of the deceased, in full or in part, as well as of the persons having lived with the family of the deceased and being entitled to the right of alimony from him;

- b) appropriate expenses for the internment of the deceased, to the extent that they are proportional to the personal and family circumstances of the deceased.

The person having inflicted the damage may make use of the same legal remedies that he could have applied to the deceased.

The court may, taking account of the entire circumstances of the case, decide for the indemnity to be granted in kind, in pecuniary means or in instalments.

## Article 644

Where the person having affected the illegal act or omission has had, along with the incurred damage, an evident benefit, the court may, upon the request of the impaired party and taking account of the nature of the damage, the degree of guilt as well as other circumstances of the case, calculate into the damages also this benefit, in full or in part.

## Article 645

Upon the death or harm to the health of a person benefiting social insurance being caused, the damages shall be indemnified in the fashion set out by law.

## Article 646

The extent of damages stemming from the death or harm to the health of a person not having been in employment or insurance relations, shall be set out by the court, based on the salary that an employee of that category is obtaining, wherewith the work done or which might have been done by the impaired person is equated.

## Article 647

Upon the impaired minor reaching the age of 16 and receiving no salary out of his employment, the same shall be entitled to seek indemnification in connection with his loss of ability to work referring to the average salary of an employee, under the criteria of **Article 646** of this Code, instead of the allowance he is receiving for his living.

Upon reaching the age of eighteen years, he shall be entitled to seek, instead of the allowance he is receiving, to be indemnified referring to the average salary of an employee of the category that he would obtain or should have obtained, in the event the harm to the health had not occurred.

## Article 647/a

### **Ways and criteria of setting out civil liability and extent of non-property damage**

*(Added by Law no 17/2012, dated 16/02/2012)*

The indemnification of the non-property damage in connection with the impairment of the honour, personality or reputation of a person aims at reinstating the impaired right, proportional to the incurred damage, and it shall be set out based on the circumstances of the case. In connection with setting out the civil liability and the extent of non-property damage, the court shall take account of:

- a) way, form or time of distribution of the statements or commission of actions;
- b) degree of abiding by the rules of the professional ethics by the perpetrator of the statements;
- c) forms and degree of guilt;
- ç) the fact whether the statements have been quoted or referred accurately to the statements of a third person;
- d) the fact whether the statements are false, specifically in the event of impairing reputation;
- dh) the fact whether the statements pertain to the privacy issues of the impaired person and their relationship to the public interest;
- e) the fact whether the statements consist in opinions or assertions containing only insignificant factual inaccuracies;
- ë) the fact whether the statements are hear a connection to the public interest or persons in state offices or being candidates in elections;
- f) conduct of actions to prevent or reduce the extent of damage, such as expressing a dementia for the false statements, as well as any other measure applied by the perpetrator of the statements to the effect of reinstatement of the honor, personality and reputation of the impaired person;
- g) the fact whether the perpetrator of the false statements has benefitted due to their dissemination, as well as the extent of this benefit;
- gj) the fact whether the indemnification aggravates the financial situation of the perpetrator of the damage significantly.

## TITLE V AGENCY OF NECESSITY

### **Article 648**

The person, despite being under no obligation, consciously and for a reasonable purpose undertaking to attend to the affairs or interests of others shall be obliged to continue this until the interested person becomes able to attend to on his own.

### **Article 649**

The interested person shall perform the obligations that the agent of necessity has assumed on the behalf of the former, exempt the agent of necessity from the obligations he has assumed on his own behalf and reimburse him for the necessary and useful expenses since the day they have been incurred and, as appropriate, reimburse him for the damage that he might have sustained as a consequence of the agency, provided that the actions performed by the agent should not have been banned by the interested person.

Where the agent of necessity was, in addition to attending to the affairs, in need of practicing a profession to this effect, he shall be entitled to reimbursement in compliance with the prices and fees set for such activities.

### **Article 650**

The agent of necessity shall be entitled to perform legal transactions on behalf of the interested person, to the extent that the interest of the latter is met in the most appropriate way.





## Article 651

The agent of necessity shall be subject to the same obligations stemming from an order contract.

The court may, by way of taking account of the circumstances having had an impact on the agent of necessity to undertake agency by necessity, reduce the damages in connection with the damage, which has been culpably incurred by him.

## Article 652

The interested person may, by way of consenting to the activity of the agent of necessity, withdraw his right to seek damages from the agent of necessity under the above provision. The interested person shall, to this effect, be granted a reasonable time.

## TITLE VI UNWARRANTED PAYMENT

## Article 653

Anyone having made an unwarranted payment shall be entitled to seek the restitution of what he has paid, as well as to enjoy the yields and interests accruing as of the date of payment, if the person having benefited the payment is in bad faith, and as of the restitution request, if that person is in good faith.

## Article 654

The person having paid for the obligation of another by way of believing that he is a debtor, due to being in error and without guilt, may get what he already paid restituted, provided that the creditor has not been deprived of the credit title and guarantees in good faith.

The restitution of payment shall be associated with the yields and interests, under the conditions provided for in the above provisions.

## TITLE VII UNJUST ENRICHMENT

## Article 655

The person having benefited or saved something in absence of legal grounds and to the detriment of another shall be obliged to reimburse the latter in connection with the property- related losses he has sustained, within the limits of enrichment.

## Article 656

Where the unjust enrichment pertains to a certain property article, the person having obtained it should restitute it in kind, along with the income currently or supposed to have yielded, and he shall

be entitled to seek the reimbursement of expenses he has made, under the provisions regulating seeking the property article from the illegal possessor.

## **Article 657**

All what a person has given voluntarily for the purposes of performing an obligation, which, despite not being reclaimable, is not invalid, cannot be sought back.

## **Article 658**

The lawsuit in connection with the unjust enrichment cannot be filed, as long as the impaired person can file another type of lawsuit for seeking the indemnification of the sustained damage.

## **PART V CONTRACTS**

### **TITLE I CONTRACTS IN GENERAL**

#### **CHAPTER I PRELIMINARY PROVISIONS**

#### **Contents of contract**

### **Article 659**

The contract is a legal transaction by way thereof one or more parties create, change or end legal relationships.

### **Article 660**

The parties to the contract dispose freely of its contents, within the limits set out by the legislation in effect.

#### **Contracts of unilateral and bilateral obligations**

### **Article 661**

The contract is of unilateral obligations, as long as one party assumes obligations towards the other party, while the latter having no obligations to the former.

### **Article 662**

The contract is of bilateral obligations, as long as the parties mutually assume obligations to each other.

## **Necessary conditions for concluding and validity of the contract**

### **Article 663**

The conditions necessary for the existence of a contract are: consent of a party assuming the obligation, legal grounds whereon the obligation is building, scope making up the contents of the contract and its form required by law.

## **Conclusion of contract**

### **Article 664**

Where the contract contains just the obligation of the bidder, the recipient may refuse the proposal within a specified time period or emerging from the nature of the agreement. In absence of such a refusal, the contract shall be deemed concluded.

### **Article 665**

The person proposing the conclusion of the contract shall be bound by the proposal, unless this relationship is excluded. Where the proposal is rejected or it is not admitted within the specified period, it shall be considered to be rejected.

Where no such time period has been set out, the bidder shall be bound by the proposal as long as it is necessary to receive the answer of the other party, normally or under the circumstances.

### **Article 666**

The proposal made to a person being present to conclude a contract, whereby falling short of setting out a deadline for the acceptance, shall lapse, as long as the person being present does not accept the proposal immediately.

### **Article 667**

Upon the proposing party setting out a deadline for the acceptance, it is necessary for the response to be received within by the deadline.

The proposing party may consider the delayed acceptance valid, however, he shall forthwith notify the other party.

Upon the acceptance being sent in time, however, being received by the proposing beyond the deadline and the latter not wanting to be bound by it, he shall notify the accepting party instantly.

### **Article 668**

The proposal to conclude a contract shall lapse as long as the proposing party notifies the other party that he has withdrawn it, prior to the proposal being received.

This rule is valid also for the withdrawal of the acceptance by the other party.

### **Article 669**

Where upon the request of the proposing party, or taking account of the nature of the agreement and the circumstances bearing a connection to it, it emerges that it was not necessary to wait for the

confirmed acceptance of the proposal, or the obligation would be performed regardless of whether a preliminary response was received, the contract shall be considered to be concluded at the time and venue where its implementation has started.

The party performing the obligation shall notify the other party forthwith about the institution of the enforcement of the contract, otherwise he shall be bound to indemnify the damage.

## **Article 670**

The acceptance of the proposal not matching its contents shall be considered a non-acceptance and simultaneously a new proposal.

## **Article 671**

The bid shall be considered as a proposal where it contains the essential elements of the contract being sought to be concluded, unless it emerges differently out of the circumstances of the case.

## **Article 672**

The contracting party may abandon the contract within seven days since its conclusion, not indicating any grounds, where:

- the contract has been concluded at the work station or residence of one party, in the course of an excursion organised in public premises, or under such circumstances not accommodating a normal situation of negotiations;
- the seller shall, in the contract with the scope granting a credit for purchasing consumption items, notify the purchaser in writing about the right to abandon the contract entered into under the above circumstances, or the time period for abandoning it shall be one year.

## **Article 673**

An enterprise assuming a dominant position in the market shall be bound to contract with anyone seeking an obligation, falling under the scope of its activity, in compliance with the laws and good commercial customs.

The conclusion of a contract cannot be denied in absence of legitimate grounds.

## **Article 674**

The parties shall, in the course of negotiations for drafting the contract, conduct themselves in good faith to each-other.

The party knowing or who should have known the grounds for the invalidity of the contract and falling short of disclosing it to the other party shall be bound to pay the damages being sustained by the latter due to the fact that it innocently relied on the validity of the contract

## **Article 675**



Where a contracting party disposes of professional knowledge and the other party induces full trust with them, the former shall be bound to the latter information and instructions in good faith.

## **Article 676**

The contract shall be considered to be concluded where the parties have mutually expressed their will, agreeing on all its essential conditions.

The expression of the will may be explicit or implicit.

## **Unlawful grounds**

### **Article 677**

The legal grounds of a contract shall be unlawful where they are at variance with the law, public order or where the contract becomes an instrument to avoid the implementation of a norm.

## **Scope of contract**

### **Article 678**

The scope of the contract shall be possible, lawful, defined or definable.

## **Article 679**

The contract being concluded upon a suspending condition or connected to a deadline shall be valid as long as the obligation, being initially not possible, becomes possible prior to the condition being met or deadline expiring.

## **Article 680**

The contract may provide for the accomplishment of transactions over property items in the future, unless explicitly prohibited by law.

## **CHAPTER II**

### **INTERPRETATION OF CONTRACT**

## **Article 681**

While interpreting a contract, there needs to be explained which was the real and joint intention of the parties, while not focusing on the literal meaning of the words, and assessing their conduct in general, prior to and following the conclusion of the contract.

## **Article 682**

The conditions of the contract shall be interpreted in their relationships, while assigning to each of them the meaning stemming from the entirety of the act.

The contract shall be interpreted by the parties in good faith.

## **Article 683**

In a situation of suspicion, the contract and its conditions shall be interpreted in the meaning which might yield any effects and not in the one having no effects at all.

## **Article 684**

The conditions of the contract which may be considered to have two meanings shall be interpreted taking account of the place where the contract has been concluded.

Where one of the parties is an entrepreneur, the conditions with two meanings shall be interpreted taking account of the practice of the place where the seat of the enterprise is located.

## **Article 685**

The words and phrases, which may have two meanings, shall be considered to have the meaning being most appropriate to the nature of contract.

## **General Conditions**

### **Article 686**

The general conditions of the contract being drafted by one contracting party shall have effect towards the other party, as long as the latter has acknowledged them or should have acknowledged at the moment of concluding the contract, by way of demonstrating a normal care.

Invalid shall be the general conditions of the contract incurring a disproportionate loss or damage of the interests of the contracting party, specifically where they essentially diverge from the principles of equality and impartiality spelled out in the provisions of this Code regulating the contractual relationships.

The conditions providing for to the benefit of the party having drafted them in advance, shall yield no legal effects, limitations to liability, possibility to abandon the contract, to suspend its implementation or set out expiry deadlines to the other party or restrictions to the right to file a defence, to the contractual freedom in relations with third parties, arbitration conditions or circumventing the powers of the judicial authorities, unless they have been specifically approved in writing by the other party.

### **Article 687**

With regard to contracts being concluded by way of signing up to the modules or forms aiming at streamlining certain contractual relations uniformly, the conditions added up to these modules or forms shall have a priority to the initial conditions of the modules or forms referred to above, as long as they do not comply with them, although they have not been repealed.

### **Article 688**



The conditions being inserted into the general conditions of the contract or in modules or forms, being handed out by one of the contracting parties shall, in a situation of doubt, be always interpreted to the benefit of the other party.

## **Article 689**

Where the contract remains clear, despite the application of the norms contained in this chapter, it shall be considered to be at the less aggravated meaning for the debtor, as long as it is free of charge, and in the meaning being instrumental to meeting the interests of parties impartially, as long as it is subject to charge.

## **CHAPTER III EFFECTS OF CONTRACTS**

## **Article 690**

The normally concluded contract shall have the effect of the law on the parties. It can be terminated or amended subject to the mutual consent of the parties or due to causes provided for by law.

## **Article 691**

The contract shall be of effect to the third parties in the events provided for by law.

## **Article 692**

The legal effects of the contract shall extend over to the heirs with universal title, unless the contract provides for differently.

## **Article 693**

The contract binds the parties not only with regard of its contents, but also to all the consequences stemming from the implementation of the law.

## **Contract to the benefit of a third party**

## **Article 694**

The contract to the benefit of a third party shall be valid where the person concluding it is interested therein.

The person having accepted the promise to the benefit of the third party or the latter, or other persons assuming the latter's rights shall be entitled to seek the enforcement of the contract, unless another agreement exists.

The contract cannot be terminated or amended next to the moment that the third party has declared their consent to benefit out of the conclusion of the contract, unless the proposing party has made a reservation of this right.

In the event of the revocation of the conclusion of the contract, or refusal of the third party to benefit thereof, the obligation shall remain to the benefit of the proposing party, unless it emerges differently from the will of parties or nature of contract.

The Joint Colleges of the Supreme Court in the unifying decision no. 932, dated 22.06.2000, reasoned regarding a contract for the benefit of a third party, where they determined that:

[...] In such a contract, the third party can only be a beneficiary without compensation (beneficiary) and, as such, does not bear any potential risk. [...] A contract cannot make a third person a debtor or creditor without their consent.

## **Article 695**

The party having made the promise to the benefit of a third party may recourse to remedies towards them stemming from the contract, however not those stemming from the relations with the other party.

### **Right to abandon the contract**

## **Article 696**

Where the right to abandon the contract has been granted to one of the parties, this right may be assumed for as long as the contract has not started to be implemented.

With regard to the contract of continuous or periodic performance, this right may be assumed even beyond this limit, however, this shall not have any impact on the completed or pending performance. Where the payment of an indemnity has been provided for in the contract for the withdrawal, it shall enter into effect upon the payment being made, unless a different agreement exists.

### **Promise for performing an obligation**

## **Article 697**

The person having promised to another that a third person shall perform an obligation or shall accomplish a transaction to his benefit, shall be obliged to indemnify the other party, as long as the third person does not consent to perform the obligation or accomplish the promised transaction.

### **Termination of contract**

## **Article 698**

In the event of contracts with mutual obligations, where one of the contracting parties does not meet his own obligations, the other contracting party may, as appropriate, seek the performance of the obligation or termination of the contract in addition to the indemnification.

## **Article 699**

The contract cannot be terminated, as long as the failure of one of the parties to perform the obligation is of insignificant importance for the interests of the other party.

## **Article 700**

The contracting party may give notice to the other party having failed to perform the obligation to perform it within an appropriate deadline, declaring that upon the failure to enforce the contract within this deadline, it shall be definitely considered to be terminated.





## Article 701

Where the deadline set out for the performance of the obligation by one of the parties is considered to be essential for the interest of the other party, the latter shall, if they wish to seek the performance despite the expiry of the deadline, give notice to the other party within three days, unless a different agreement exists.

## Article 702

The parties may provide for in the contract to have it terminated as long as a certain obligation is not performed under the foreseen conditions.

The contract shall, in such a situation, be terminated, as long as the interested party declares to the other party that it is going to recourse to the pertinent condition for terminating the contract.

## Article 703

The termination of the contract due to the failure to perform the obligations shall have retroactive effect between the parties, except the contracts of continuous or periodic enforcement, whereof the termination effect shall not extend over the previously accomplished transactions.

The termination of the contract, be it even by way of the mutual consent of parties, does not affect the rights obtained by third parties, except the effects of registering the request for terminating the contract.

## Article 704

The provisions of the general part of the obligations shall apply for the purposes of terminating the contract, in addition to the provisions regulating the special contracts.

## TITLE II SPECIAL CONTRACTS

### CHAPTER I SALE

#### GENERAL PROVISIONS

## Article 705

The scope of the sale contract is the transfer of ownership over a property item or the transfer of a title against the payment of a price.

## Article 706

The acquisition of ownership in the event of a sale, the scope whereof is the acquisition of a property item or title in the future, shall occur as soon as the property item or title are accepted to exist.

Except where the parties wanted to conclude a contract conditional on a suspending ground, the sale shall be ineffective as long as the property item is not accepted to exist.

## **Article 707**

Where the parties have set no price and they did not agree on a way to set it, it shall, in absence of any act of public competent authorities, be assumed that the parties intended to refer to the price applied normally by the seller at the time of concluding the contract.

Where it is about property items having a stock exchange or market value, the price shall be set based on the market lists of the place where the delivery shall occur, or of the place being closest to it.

Where the price has been set based on the weight of property items, it shall, to the effect of avoiding any doubt, be set based on its net weight.

The party may entrust setting the price to a third party, being nominated in the contract or eventually being nominated later.

## **Article 708**

The expenses of the sale contract and the other related expenses shall be incumbent on the purchaser, unless the agreement provides for differently.

### **Specific bans to purchase**

## **Article 709**

Banned to purchase directly, through a third party or in auction shall be:

- a) the persons administering or guarding foreign property items based on the law or on the appointment by the state, the property items they administer or guard;
- b) official persons being assigned to affect the sale by way of foreclosure, the property items that they sell;
- c) judges, prosecutors, bailiffs, notaries and advocates, the property items being under scope of conflicts before the court, wherein they are involved or assume their functions, unless they are co-owners thereon.

### **Obligations of the seller regarding the sale of the immovable property**

## **Article 710**

The main obligations of the seller are:

1. handing the property item over to the purchaser;
2. where the acquisition of the ownership over the property item or of real rights thereon is not an immediate consequence of the contract, he shall hand over the entire pertinent documentation regarding the acquisition of the ownership thereon, under the conditions contained in the contracts or in the law;

3. guarantee the purchaser against deprivation, flaws or inconsistency concerning the qualities of the property item under the contract.

## Article 711

The property items shall be delivered as they stand at the moment of concluding the contract. The property items shall be delivered along with their accessories, additional parts and yields since the day of concluding the contract, unless the parties have provided for differently in the contract.

Where the seller is not bound to deliver the property items at another specific place, he shall satisfy his obligation to surrender by way of handing the property items over to the first transporter to carry them over to the purchaser, as long as the sale contract includes the transport of property items. Where the contract does not include the transport of the property items and it refers to property items defined individually, or in type or quantity, due to be taken from a certain quantity or to be manufactured or produced, and as long as, at the moment of concluding the contract, the parties knew that the property items were situated or they had to be manufactured or produced in a certain place, the seller shall be bound to make the property items available at that place.

In other instances, the seller shall be bound to make the property items available at the purchaser at the place they were situated at the moment of sale or, where such a place cannot be defined, at the place where the seller had his residence or the seat of his activity.

## Article 712

The seller shall deliver the property items:

1. on the date set out in the contract or which is determinable based on the contract;
2. at any moment of the time period being set out or being determinable under the contract, unless it emerges from the circumstances that it is incumbent on the purchaser to choose the date;
3. under any circumstances, within a reasonable deadline since concluding the contract.

## Article 713

The seller being bound to issue the documents pertaining to the property items, he shall do so at the time, venue and form foreseen in the contract. Upon issuing the documents prior to this moment, he may rectify any shortcomings in them up to the moment foreseen for their issue, as long as the assumption of such a right does not inflict any distress or unreasonable expenditure to the purchaser. He shall in such instances, maintain the right to seek indemnity.

## Article 714

Regarding the document-based sales, the seller shall be relieved of his obligation to hand over to the purchaser the sold property items, by way of handing over the sales and other documents set out in the contract or law.

## Article 715

The seller shall deliver the property items in the quality, quantity and type set out in the contract, as well as put and wrapped up in the way set out in the contract.

The property items shall be deemed not to be in compliance with the contract as long as they are not appropriate for the specific use set out in the contract, unless a different agreement exists. Such a determination not being possible to be made, the property items shall be deemed to be inconsistent with the contract, as long as they are not appropriate to the use that property items of the same type normally are. The sale being affected based on a model or sample, the seller shall deliver property items being of the same quality as the model or sample.

The contract falling short of mentioning the rules of putting or wrapping up the property items, these property items shall be deemed to be inconsistent with the contract as long as they are not put or wrapped up in the ordinary fashion for property items of the same type or, in absence of such an ordinary fashion, in such a fashion that it is appropriate to preserve and to protect the property items.

The seller shall not be held liable for the flaws of property items, whereof, at the moment of concluding the contract, the purchaser was knowledgeable or he was not informed due to his own fault, unless the flaws affect the quality that the property items should have under the contract or referring to the notification of the seller.

## Article 716

The seller shall be liable for any flaw or inconsistency, which existed at the moment of cession of risk over to the purchaser, even if the flaw appears subsequent to this moment.

The seller shall be held liable even for the inconsistency being established after the moment indicated in the above paragraph and emerging due to the failure to meet any obligation of his, including the guarantee, whereunder the property items shall, for a period of time, remain appropriate for their normal use or for any specific use, or shall maintain the quality or certain characteristics.

## Article 717

The purchaser shall forfeit his right to demur regarding the flaws of the property item, as long as he does not complain with the seller, by way of specifying their nature, within ten days of the detection, unless the parties or the law has set out another deadline.

The purchaser shall, under any circumstances, forfeit his right to demur concerning the flaws of the property item, as long as he does not assume this right within two years of the date when the property items have been delivered, as long as this deadline is not at variance with the duration of a contractual guarantee.

## Article 718

The rules contained in the above **Article** shall be of no avail to the seller, as long as the flaws pertain to facts whereof he is knowledgeable or should be knowledgeable and failing to inform thereof the purchaser.

## Article 719



The seller shall deliver the property items, released of any title or claim of third parties, unless it has been foreseen differently in the contract.

## Article 720

The purchaser shall inform the seller of the titles or claims of the third parties on the property item, by way of specifying their nature, within a reasonable time period of the moment he becomes knowledgeable or should become knowledgeable, otherwise he shall forfeit the rights provided for in the above Article.

The seller can also not refer to the provisions of the above paragraph, as long as he was knowledgeable of the titles or claims of the third parties, or their nature.

## Article 721

The purchaser can suspend the payment of the price, as long as there is reason to fear that the property item or parts thereof may be reclaimed by third parties, unless the seller provides respective guarantees.

The payment cannot be suspended, as long as the risk was known to the purchaser at the moment of the sale.

## Article 722

Where the delivery of flawed property items consists of an essential failure to perform contractual obligations, the purchaser shall be entitled to seek:

1. at the moment of complaining, provided for in Article 717 of this Code or within a reasonable time period of that denunciation, the delivery of property items, being additional or replacement;
2. eliminating the flaws by way of amends, as long as this can be reasonably considered referring to the concrete circumstances. The request for amends shall be made at the moment of complaining under Article 717 or within a reasonable time period of this complaining;
3. price reduction;
4. declare termination of contract.

The purchaser may set a reasonable time period for the seller to meet these obligations. Depending on the deadline, the purchaser can avail himself of no legal remedies concerning the failure to perform, unless being notified by the seller that the latter shall not meet the obligation within the deadline being set out.

The purchaser shall under any circumstances not forfeit his right to seek indemnity.

## Article 723

The delivery of the flawed property items consisting of an insignificant failure to perform the contract, the purchaser may seek:



1. eliminating or amending the flaws in delivered property items;
- or
2. price reduction.

The purchaser may set for the seller a reasonable time period to meet these obligations. Depending on the deadline, the purchaser may avail of no legal remedies due to this failure to perform, unless being notified by the seller that the latter shall not perform his obligation within the deadline been set.

The seller failing to meet the requirement set out in point 1 of this **Article** by a deadline set out by the purchaser, the latter may seek the reduction of the price for the above property items. The purchaser shall, under no circumstances, forfeit his right to seek indemnity.

## **Article 724**

In addition to the termination of the contract on grounds of law as a consequence of the deadline being an essential condition in the contract, the purchaser may, as long as the delivery of the property item has not occurred, declare the contract terminated, as long as the seller does not deliver the property items within the additional deadline set by the purchaser or he declares that he shall not affect the delivery by this deadline.

## **Article 725**

The seller having delivered the property items, the purchaser shall forfeit the right to declare the contract terminated, where:

1. in the event of a delayed delivery, the purchaser has not sought the termination of the contract within a reasonable time period, however, not later than 15 days of his being informed that the delivery has occurred;
2. in the event of failure to perform, other than the delayed delivery, within a reasonable time period, however no longer than 15 days:
  - a) of his being informed or which ought to have been informed of this performance failure;
  - b) following the expiry of the additional time period eventually set out by him under **Article 717** of this Code.

## **Article 726**

Where the seller delivers only a part of the property items, or where only a part of delivered property items are in compliance with the contract, Articles 717, 720 shall apply with regard to the missing or non-compliant part.

The purchaser may only declare the contract entirely terminated, where the partial delivery, or being incompliant with its conditions, consists a performance failure of specific or essential significance.

## **Article 727**



Where the purchaser has been deprived of the property item as a consequence of the titles of a third party being asserted thereon, the seller shall be obliged to indemnify under **Article 744**.

Where the purchaser has been deprived of the property item only partially and under such circumstances he would terminate the contract, the above paragraph shall apply.

## **Article 728**

The purchaser, being sued by a third party claiming titles over the sold property item, shall invite the seller in proceedings. Upon failure to do so while a final decision has been rendered to his disadvantage, he shall forfeit his right of guarantee for eviction, as long as the seller establishes that sufficient grounds existed to reject the request.

The purchaser having voluntarily acknowledged the right of the third party shall forfeit his right to eviction, as long as he fails to establish that no sufficient grounds existed for hindering the acquisition of the property item.

## **Article 729**

Where the purchaser has avoided the acquisition of the property item by way of paying a certain amount of money, the seller may be relieved by way of reimbursing this paid amount, its interest, as well as the entire expenses.

## **OBLIGATIONS OF THE PURCHASER IN THE SALE OF THE MOVABLE PROPERTY**

### **Article 730**

The obligation of the purchaser to pay the price shall include making arrangements for abiding by the formal requirements of the contracts or specific provisions for making the payment.

### **Article 731**

Where the purchaser is not bound to pay the price in another specified place, he shall pay it at the residence or official seat of the seller, or, where the payment shall occur concurrently with the delivery of the property items or documents, at the delivery place.

### **Article 732**

Where the purchaser is not bound to pay the price at another specified moment, he shall pay it upon the seller making the property items or documents representing them available to him. Where the contract includes the transport of property items, the seller may accomplish the haulage, provided that the property items or documents representing them, be delivered to the purchaser prior to the payment of the price.

### **Article 733**



The purchaser shall pay the price on the date being determined or determinable based on the contract or the law, notwithstanding the request of the seller.

## **Article 734**

The obligation of the purchaser to take over shall be the accomplishment of any act expected of him reasonably to the effect of enabling the seller to do the delivery and the purchaser take over the property items.

## **Article 735**

Where contractually provided for the purchaser to determine the form, size or other characteristics of property items, and upon him failing to make such a determination on the specified date or within a reasonable time period of receiving the request of the seller, the latter may do this determination on his own in compliance with the requirements of the purchaser, whereof he may be knowledgeable.

Where the seller does this determination on his own, he shall notify the purchaser regarding the rules of this determination and set out a reasonable deadline within which the purchaser may make another determination. Where upon receiving this notice, the purchaser does not utilize this possibility within the deadline being set out, the determination made by the seller shall be binding.

## **Article 736**

The seller may set out an additional reasonable deadline for the purchaser to meet his own obligations. Other than the situation where the seller did not receive any notification from the purchaser that the latter will meet his obligation within the deadline being set out during this period, the seller may not avail himself of any legal remedies for meeting the obligations. However, the seller shall not forfeit his right to seek indemnity for the delays in performance.

## **Article 737**

The seller may declare the contract terminated:

1. upon the failure of the purchaser to perform an obligation stemming from the contract or the law consisting an incompliance of specific or essential significance;
2. upon the purchaser not meeting his own obligations to pay the price or take over the property items within the additional time period set out by the seller, or declaring that he will not do this by the deadline.

Where the purchaser has paid the price, the seller shall forfeit his right to declare the contract terminated, as long as this is not asserted:

1. in the event of a delayed performance of the obligations of the purchaser, prior to being notified on the enforcement of the obligation;
2. in the event of a different failure to perform than the delayed performance, within a reasonable time:



- a) of the moment of being notified or which ought to have been notified of such a failure to perform;
- b) following the expiry of the additional deadline being set out by him, or following the purchaser declaring that he will not meet his own obligations within this additional deadline.

## **Article 738**

Notwithstanding divergent agreements or commercial customs, where the sold property items need to be conveyed from one location to another and the seller is not bound to do the delivery at a location specified in the contract, the risk shall be assigned to the purchaser upon the property items being handed over to the first transporter bound for the purchaser, even if the property items have been loaded falling short of being wrapped up.

Where the seller is bound to hand the property items over to the transporter at a certain location specified in the contract, the risk shall be assigned to the purchaser upon the property items being handed over to the transporter at the specified location. The fact that the seller is authorised to retain the pertinent documents of the property items does not have any impact on the assignment of the risk.

## **Article 739**

Upon the seller incurring an essential failure in performing the contract, the provisions of the previous Article do not hinder the legal remedies available to the purchaser to the effect of performing the contractual obligations.

## **Joint provisions pertaining the obligations of seller and purchaser**

### **Article 740**

One party may suspend the performance of their own obligations as long as, following the termination of the contract, it becomes clear that the other party will not perform the essential share of their obligations, as a consequence of:

1. a serious incapacity to perform or of its insolvency;
2. the fashion they prepare to initiate or continue with the performance of the contract.

Where the seller sells the property items prior to the conditions referred to in the above paragraph appearing, he may demur the delivery of the property items to the purchaser even if the latter is in possession of a document legitimizing him to get hold of them.

Such a demurrer shall be of exclusive impact on the relationship between the purchaser and the seller.

The party suspending the performance shall forthwith inform thereof the other party and shall resume performance, upon the other party offering appropriate guarantees in connection with their own obligations.

### **Article 741**

In the event of a sale contract containing partial deliveries, one party may, where the failure of the other contracting party to perform any of the obligations regarding a delivery consists an overall

performance failure of specific importance of the contract connected to this delivery, declare the contract terminated regarding the same delivery.

Where the performance failure of one of the contracting parties regarding their obligations pertaining to a delivery gives the other party reasonable grounds to hold that an essential performance failure will occur regarding the upcoming deliveries, they may declare the contract terminated, provided they do this within a reasonable time period.

The purchaser declaring the contract terminated in connection with a delivery may, concurrently, declare the termination even for the deliveries having occurred earlier or for the upcoming deliveries, as long as these deliveries could not, due to their interconnection, be used for the purpose designated in the contract by the parties.

## **Article 742**

In the event of termination of contract, the seller shall give back the price and pay to the purchaser the expenses and payments made legally.

The purchaser has to hand the property item back, as long as the latter did not get lost or destroyed as a consequence of its flaws.

## **Article 743**

Where one party delays the payment of the price or any other amount, the other party shall be entitled to seek the interest on these amounts in addition to the indemnity.

## **Article 744**

The has to give the paid price back to the purchaser, even if the value of the property item has reduced or it has been harmed. Where the value reduction or harm emerge as a consequence of the conduct of the purchaser, the above amounts shall be deducted from the profit that the purchaser has acquired, in addition to the provisions of **Article 640**.

## **Article 745**

Where the contract has been terminated and as long as, reasonably and within a reasonable time of such termination, the purchaser has made a replacement purchase or the seller has resold the property items, the party seeking the indemnity may acquire the difference between the price foreseen in the contract and the price of the replacement purchase, as well as any other indemnity which might be sought under the above Article.

## **Sale of property item with reservation**

### **Article 746**

Where the sale price is paid in instalments, the purchaser shall acquire the ownership over the property item upon the payment of the last instalment of the price, assuming the risks at the moment of handover. The transfer of ownership with the reservation of the above condition shall be reflected in the contract.

## Article 747

The ownership transfer under the above provision may be referred to towards the creditors of the purchaser, as long as it emerges out of a written act containing the specific date prior to the measure of security interest.

Where the sale scope is composed of immovable or registered movable property items, the provisions on registration shall apply.

## Article 748

The failure to pay one instalment, not surpassing one eighth of the price, shall not bring about the termination of the contract and the purchaser shall maintain his right to the deadline regarding the subsequent instalments, regardless of any other different agreement.

## Article 749

Where the termination of the contract is a consequence of the failure of the purchaser to meet his commitments, the seller shall give back the payments already made, notwithstanding his right to a reward regarding the use of the property item, or any indemnity.

Where contractually foreseen that the payments having been made shall remain with the seller upon an indemnity title, the court may, depending on the circumstances of the case, reduce such indemnity.

### Article 749/a

*(Added up by Law no 8536, dated 18/10/1999, Article 4)*

The rules contained in Articles 746, 747, 748 and 749 shall not apply to the sales of property items with reservation, regarding financial transactions secured by lien, whereof the rules contained in specific laws shall apply.

## Sale of immovable property items

### Article 750

The sale of immovable property shall occur in the way foreseen in Article 83 of this Code, otherwise it shall be invalid.

### Article 751

The conditional sale of immovable property items shall be entered into the registers of immovable property, upon the condition being established.

### Article 752

Where an immovable property item is being sold by way of identifying the measurements and a price set on the basis of a payment for every measurement unit, the purchaser shall be entitled to a price reduction, as long as the actual size of the immovable property item is smaller than the one indicated in the contract.

Where the measurements of the property item turn out larger than the ones indicated in the contract, the purchaser has to pay the price excess, however, he shall be entitled to withdraw from the contract, as long as the excess exceeds one twentieth of the declared size.

## **Article 753**

Where the price is set in connection with the immovable property item as such and not in connection with its size, even if this is indicated, no price reduction or increase is done, unless the real size is smaller or larger in excess of one twentieth of the size indicated in the contract.

Where an additional price has to be paid, the purchaser may choose between the withdrawal from the contract or the payment of the excess.

## **Article 754**

Where two or more immovable property items have been sold based on the same contract for a single and same price, by indicating the size of each of them, and it emerges that the size of one is smaller and of the other bigger, the compensation to the appropriate amount shall be made; the right to the excess or reduction of prices shall be regulated by the provisions contained above.

## **Article 755**

The right of the seller to the excess and of the purchaser to the reduction of the price or withdrawal from the contract shall lapse two years following the delivery of the immovable property.

## **Article 756**

The right of the purchaser to demur regarding the flaws of the immovable property item shall lapse upon the expiry of five years since the moment of the delivery of the property item.

## **CHAPTER II SWOPPING**

## **Article 757**

Swopping is the contract the scope whereof is the mutual transfer of ownership over the property items or other titles from one contracting party to the other.

## **Article 758**

The swopping party having sustained the acquisition of the property item and not intending to re-acquire it shall be entitled to acquire its value, under the specific provisions of sale, as well as the indemnity.

## **Article 759**



The swopping and further additional expenses shall be imposed on both parties in equal shares, unless a different agreement exists.

## Article 760

The rules contained in the sales contract shall also apply to the swopping contract, as long as they are in compliance with it.

## CHAPTER III ENDOWMENT

## Article 761

Endowment is a contract by way thereof one party transfers the ownership over a certain property item or over a real right free of charge to the other party, which the latter accepts.

Waiver of a title prior to being acquired or waiver of succession shall not consist an endowment.

The Joint Chambers of the Supreme Court in the unifying decision no. 23, dated 01.04.2002, regarding the types of rights that can be disposed of by donation or sale, as well as the nature of these contracts, determined the following:

1. Article 761 of the Civil Code explicitly stipulates that the object of a donation contract can be goods or real rights. The preemption right of the ex-owner (his heirs), recognized in **Article 21** of the Law "On the Return and Compensation of Properties to Former Owners," is considered a real right and, as such, can be disposed of through a donation contract. The right to compensation for properties belonging to the former owner but which cannot be returned, according to the provisions of the law on the return and compensation of properties to former owners, is also considered a real right. The right to compensation for the former owner (his heirs) can also be freely disposed of by donation.

The preemption right and the compensation right of the former owner (his heirs) are included in the concept of a person's property, which encompasses a broad range of rights, not only real but also personal (obligatory).

2. Article 761 of the Civil Code explicitly stipulates that the object of a donation contract can be goods or real rights over goods. Meanwhile, according to Article 705 of the Civil Code, the object of a sale contract is the transfer of ownership of a good or the transfer of a right in exchange for payment of a price. Putting aside the element of compensation, which constitutes a fundamental difference between these two contracts, and comparing them regarding their object, it is observed that while a donation contract, by its nature, is a contract for the transfer of ownership of a good or other real rights from the donor to the recipient, the object of a sale contract today is much broader. It includes not only the transfer of ownership of certain goods or other real rights to the buyer but also the transfer of other rights belonging to the seller, as long as these rights are freely available and are not restricted by any legal prohibition or the inherent nature of these rights, especially those of a personal nature.

3. While the sale contract is consensual in nature, the donation contract is considered a real contract, meaning it is considered concluded at the moment of delivery of the movable or immovable good that constitutes its object (Article 764 of the Civil Code). However, when the object of the donation contract is not goods but other rights over goods, such as ideal shares (quotas) in co-ownership or other real rights

over the goods of others, then the donation contract takes on a consensual character. In conclusion, the donation contract of the preemption right of the former owner (his heirs) and the donation of the right to compensation for properties that cannot be returned, under the conditions of the Law "On the Return and Compensation of Properties to Former Owners," is considered a consensual contract, meaning that it is considered concluded as soon as the donor expresses, in the form required by law, his intent to make the donation, and the recipient of the donation, in the same form, expresses his intent to accept the donation.

## **Article 762**

Endowment can only contain the current property of the endowing party. Upon including the upcoming property, the endowment shall be invalid concerning this share.

## **Article 763**

The endowment being restricted to recurrent commitments shall lapse upon the death of the endowing party, unless the contract provides for differently.

## **Article 764**

The endowment of immovable property items shall occur by way of public act and registration, otherwise it shall be invalid.

The acceptance may occur in the same act or in a subsequent act. Endowment in such a case shall be considered completed since the moment when the acceptance act has been notified to the endowing party.

Upon movable property items falling under its scope, it shall be valid upon them being specified by way of indicating their value in the endowment contract.

The contract is considered concluded from the moment of delivery of the thing.

The endowing and accepting party may revoke their declaration prior to the conclusion of the contract.

## **Article 765**

The endowment may be demurred on the error of grounds, as long as the latter is connected to the fact or the right and the grounds emerge from the act and having induced the endowing party to make the endowment.

## **Article 766**

The endowing party shall, in connection with the failure to perform or the delay in endowment, be liable only for conducts affected intentionally or gross negligence.

## **Article 767**

The endowing party may put the restitution of the endowed property items as a condition, on the grounds of the previous death of the party accepting the endowment or of the previous death of his descendants.

Restitution may only occur to the benefit of the endowing party. The agreement to the benefit of others shall be considered as not concluded.

## Article 768

Endowment may be dependant on a condition or encumbrance. The endowing party shall be bound to perform the encumbrance obligation within the limit of the worth of the endowed property item.

Any interested party, in addition to the endowing party, may act to the effect of performing the encumbrance obligation.

The termination of the endowment contract due to the failure to perform the encumbrance obligation may be sought by the endowing party or their heirs, as long as this is foreseen in the endowment act.

The illegal or infeasible encumbrance shall be held non-existent, however, it makes the endowment inexistent as long as it consisted the only decisive grounds in the contract.

## Article 769

The endowing party shall be bound to provide security to the accepting party regarding the belonging of the endowed property item and the expropriation, which they might sustain from others regarding the endowed property items, in the following cases:

1. if they have promised the security explicitly;
2. where taking over the property item depends on the fraud or their personal attitudes;
3. where the endowment imposes an encumbrance on the accepting party or the endowment is made on grounds of remuneration, these being instances where the security is imposed up to the worth of the encumbrance or the entirety of promises obtained from the endowing party.

## Article 770

The security provided by the endowing party does not extend over the flaws of what has been endowed, unless the endowing party has acted fraudulently, or where a specific agreement exists.

## Article 771

The endowing party may, with regard to the endowing acts not being ordinary or not being made against remuneration, seek the revocation of the endowment, as long as the accepting party:

- a) has intentionally murdered or tried to murder the endowing party, their spouse or children, or parents;
- b) unfairly refuses to provide alimony to the endowing party, upon legally being bound to do so.

The lawsuit for revoking the endowment shall be brought within one year since the date that the endowing party was notified on the grounds entitling them to seek the revocation of the endowment.

The lawsuit being brought may be pursued even by the heirs of the endowing party or may be brought by the former, as long as the endowing party has died within one year, since the day when the grounds for bringing the lawsuit emerged.

An earlier waiver to bring the lawsuit shall be invalid.

The revocation of the endowment shall not affect the rights being acquired by the third parties over the endowed property item before the lawsuit being brought.

## CHAPTER IV SUPPLYING

### **Article 772**

Supplying contract is a contract wherewith one party shall, against the payment of a price, be bound to perform recurrent or continuous supplying of property items to the benefit of the other party.

The supplied property items maybe movable or immovable, while they may be in the form of energy or credit titles.

### **Article 773**

Upon the quantity of the supplies not being determined, it is implied that the agreement refers to the quantity for meeting the normal needs of the party being supplied with up to the moment of the performance of the contract.

Upon the parties setting out just the upper and lower limit for the supplies or for specific services, it shall be incumbent on the party entitled to supplies to determine the appropriate quantity within the limits set.

Where the quantity of supplies shall be set out according to the needs beyond a minimum quantity set out in the contract, the party being supplied with shall respond regarding the respective quantity according to the needs as long as the minimum quantity is surpassed.

### **Article 774**

Where the price regarding the recurrent supplying shall be set out under Article 707 of this Code, the ending time of the specific supplies and the venue where they have to occur shall be taken into account.

### **Article 775**

The price regarding recurrent supplying shall coincide with the document of specific supplies. The price regarding continuous supplying shall defrayed abiding by ordinary timing.

### **Article 776**

The time period being set out in the contract regarding specific supplies shall be presumed to be set out to the benefit of both parties.





Where one party being supplied with has been granted the right to set out the timing for specific supplies, they shall inform of such a date the supplying party by way of an early notice at a reasonable stage.

## **Article 777**

In the event of the failure by one party to perform their specific obligations, the other party may seek termination of the contract, as long as this failure is of specific significance and capable of harming the trust in the security of the upcoming performances.

## **Article 778**

Where the party being entitled to be supplied with has not performed their obligation and this failure is of insignificant importance, the supplying party may not suspend the performance of the contract in absence of a reasonable advance warning.

## **Article 779**

Where the condition of exclusiveness has been foreseen to the benefit of the supplying party, the other party cannot obtain supplies of the same kind from third parties, nor can they affect, of their own resources, the production of property items consisting the scope of the contract, as long as no different agreement is in effect or the law does not dispose of differently.

## **Article 780**

Where the condition of exclusiveness has been imposed to the benefit of the party being entitled to supplies, the supplying party may not, directly or indirectly, provide supplies of the same kind and consisting of the scope of the contract, in the zone wherein the exclusiveness has been granted and within the contract period.

The exclusiveness condition being contained in a supply contract shall consist an encumbrance condition requiring specific written consent.

## **Article 781**

The party being entitled to supplies shall, upon assuming the obligation to expand the sales of property items whereof it enjoys exclusiveness, be liable for damages being incurred due to the failure meet this obligation in the zone assigned to them, even if they have performed the contract for the minimum quantity being set.

## **Article 782**

Where the duration of supplying has not been set out, each of the parties may withdraw from the contract, by way of notifying the supplying party in advance within the time period being set out by them and, in lieu thereof, within a reasonable time period, taking account of the nature of supplying.

## **Article 783**

The provisions regulating the contract of specific supplies shall also apply to the supply contract, as long as they are not at variance with the above provisions.

## **CHAPTER V EMPHYTEUSIS**

### **Meaning of emphyteusis**

## **Article 784**

Emphyteusis is a contract, whereof one person is granted the right to use and improve an immovable property, against a recurrent, in cash or in kind, remuneration.

## **Article 785**

The duration of emphyteusis shall be set out in the contract.

## **Article 786**

The emphyteusis contract shall be drafted in the form required for the transfer of ownership over immovable properties.

### **Rights and obligations of the owner and emphyteusis lessee**

## **Article 787**

The emphyteusis lessee shall have full use of the property item as the owner, except the constraints provided for in the contract for the creation of emphyteusis.

However, they may not, in absence of the consent of the owner, use the property item in another designation.

## **Article 788**

Belonging to the emphyteusis lessee shall be the fructus naturales being separated, fructus civiles where ever becoming due and the titles to use the soil within the bounds set out by law, unless foreseen differently in the contract.

## **Article 789**

Where the property being under emphyteusis gets entirely lost, the emphyteusis shall forfeit while the emphyteusis shall be relieved of the respective obligation for the future.

Where the property gets lost or harmed in obvious and significant parts thereof to the extent that no sufficient income can be obtained to defray the remuneration set out in the contract, a reduction or termination of the contract maybe sought, with the parties performing their mutual obligations.

The request shall be made within one year of the day of the occurrence of the loss or harm of property under emphyteusis.

The emphyteusis lessee shall not seek his release from the obligation to pay the remuneration or its reduction due to non-production or loss of yields, be it even casually.

## **Article 790**

Granting the property to under-emphyteusis shall be forbidden.

## **Article 791**

The emphyteusis lessee may, at any time, seek the termination of the contract and end of emphyteusis, unless provided for differently in the contract.

The emphyteusis lessor may seek the termination of the contract and end of emphyteusis, upon the emphyteusis lessee failing to defray the respective duties for two periods in succession, or harming or failing to maintain and improve the property and evidently failing to meet the obligations stemming from the contract.

## **Article 792**

The taxes and other duties charging on the property shall be imposed on the emphyteusis lessee, unless the law provides for differently.

Where these obligations have contractually been imposed on the owner, they cannot exceed the remuneration set out for the emphyteusis.

## **Article 793**

In the event of alienation of the emphyteusis, the new emphyteusis lessee and the previous one shall jointly be bound to defray the residue of the emphyteusis remuneration, unless the previous emphyteusis lessee has been given notice of the alienation act of emphyteusis.

In the event of alienation of such an entitlement by the owner, the acquiring party may not seek the performance of obligations from the previous emphyteusis lessee, prior to the latter being given notice of the alienation act.

## **Article 794**

Where the contract does not provide for differently, the emphyteusis lessee shall, in the course of duration of emphyteusis or upon its end, be entitled to remove the constructions, further works or cultivated plants being beyond the emphyteusis terms, or which have been bought from the owner, however, always not harming the property and reinstating it in the former situation.

## **Article 795**

Upon the contract being terminated, the emphyteusis lessee shall be entitled to the improvements being affected at the extent of the worth increase of the property, as long as it exists at the time of return.

## Article 796

The emphyteusis lessee shall be entitled to the retention of the property item granted under emphyteusis up to the defrayment of credits stemming thereof. Any contrary agreement shall be invalid.

The owner shall be entitled to retain the property items belonging to the emphyteusis lessee until the defrayment of the obligations due to him.

## Article 797

Upon the emergence of the need to affect extraordinary renovations to the property granted to emphyteusis the emphyteusis lessee shall be bound to notify thereof the owner and provide to him the opportunity to accomplish them.

The emphyteusis lessor shall not be liable to perform the ordinary reparations.

## Article 798

The persons enjoying jointly the emphyteusis title shall be jointly liable for the payment of the remuneration of emphyteusis.

Where the property granted under emphyteusis is divided and they enjoy parts thereof, each of them shall be liable for the obligations stemming from emphyteusis, proportional to the worth of the part each one is enjoying.

## Article 799

The provisions of this chapter shall apply even if emphyteusis is enjoyed by one or more legal entities, unless this is prohibited by law.

## Article 800

The emphyteusis lessee may, to the use of the property, acquire active easements, as well as encumber it with passive easements, for a duration foreseen in the contract, under all circumstances giving written notice to the emphyteusis lessor.

## CHAPTER VI

### LEASE

#### GENERAL PROVISIONS

## Article 801

Lease is the contract where one party (landlord) is bound to make available to the other party a certain property item, to temporary enjoyment against a certain remuneration.

## Article 802

The landlord shall:



1. hand over the property item to the tenant at the specified time and in such a situation as to allow the use whereon they have agreed;
2. take care for maintaining the property item in the same situation;
3. guarantee the peaceful enjoyment during the lease period.

## **Article 803**

The lease contract shall not be entered into for a longer period than thirty years, unless provided for differently by law. Where it has been entered into for a longer period or for an indefinite period, it shall be valid only for the period referred to above.

The lease contract for the buildings as residual tenure shall not be entered into for a longer period than five years.

The time period for the chattels made available as equipment for an immovable property item shall be equal to the lease duration of the latter.

The lease contract for a longer period than one year shall be made in writing.

## **Article 804**

The tenant having performed the obligations stemming from the contract appropriately shall be entitled to a preference against other persons, as long as, upon the expiry of the lease period, a renewed contract shall be entered into.

## **Rights and obligations of the landlord**

### **Article 805**

The landlord shall, during the lease period, accomplish the entire repairing works, with the exception of works for the everyday maintenance, being incumbent on the tenant.

The expenses for guarding and the ordinary maintenance of the chattels shall be incumbent on the tenant, unless the agreement provides for differently.

Where the rented property item needs repairing not being incumbent on the tenant, the latter shall be bound to notify the landlord.

In the event of repairs being urgent, the tenant may accomplish them immediately against the reimbursement of expenses, provided that he notifies thereof forthwith the landlord.

### **Article 806**

Where at the time of handover the rented property item is impaired by flaws diminishing the contracted usage worth evidently, the tenant may seek the termination of the contract or reduction of the lease price, unless he was knowledgeable about the flaws or it was easily discernable.

The landlord shall be bound to pay to the tenant for the damages incurred due to the flaws of the property item, as long as he does not establish that he was, not culpably, not knowledgeable about these flaws at the moment of handover.

Where the flaws of the property item pose a significant risk for the health of the tenant, of his family members or his dependants, the tenant may seek the termination of the contract, even if he had been aware of the flaws.

## **Article 807**

The agreement, wherewith the liability of the landlord concerning the flaws of the property item is excluded or restricted, shall be of no effect, as long as the landlord has concealed them in bad faith to the tenant, or where the flaws are such as they hinder the enjoyment of the property item.

## **Article 808**

The provisions of the above articles are applicable also in the instances of flaws of the property item occurring in the course of the rent.

## **Article 809**

Where in the course of the rent the rented property item needs urgent repair, the tenant shall allow the accomplishment. Where the property item is not repaired within a reasonable time, the tenant shall be entitled to a proportional reduction of the rent amount.

## **Article 810**

The landlord shall be bound to guarantee the tenant against the intrusions diminishing the usage worth and enjoyment of the property item, caused by third parties asserting titles over the same property item.

The landlord shall not be bound to guarantee the tenant against the intrusions of third parties not asserting titles over the property item. The tenant shall in such a case reserve his right to sue against the third parties on his own account.

## **Article 811**

Where the intrusive third parties assert having titles over the rented property item, tenant shall be bound to give immediate notice thereof to the landlord, or he will be bound to pay the damages. Where the third parties take legal action, the landlord shall be bound to participate in proceedings, if summoned.

## **Rights and obligations of the tenant**

### **Article 812**

The tenant shall:

1. take over the property item and use it for the destination designed in the contract and, in lieu of such provisions, according to the destination emerging out of the nature of property item;
2. make payments within the determined timing.

## Article 813

The tenant shall be held liable for the loss or damage to the property item occurring in the course of the lease contract.

## Article 814

The tenant shall hand the property item back to the landlord in the same situation, in compliance with the description made by parties in the contract, notwithstanding the ordinary harm or consumption due to the usage of the property item in compliance with the contract.

In lieu of the description in the contract, it is assumed that the tenant has taken over the property item in a good usage situation.

The tenant shall not be liable for the loss or inflicted harm as a consequence of depreciation. The chattels shall be return back where they were taken over.

## Article 815

The tenant being in default for handing the property item back shall be bound to defray the payment determined until the hand-back moment to the landlord, in addition to the liability to pay respective damages.

## Article 816

Unless provided for differently in the law, the tenant shall not be entitled to remuneration with regard to the improvements made to the rented property item. However, if he had the consent of the landlord granted, the latter shall be bound to pay a reimbursement equal to the smallest amount between the amount of expenditure and the value of the useful increased worth at the moment of delivery. Where the tenant is not entitled to reimbursement, the worth of improvements may indemnify the damage having occurred due to the grave carelessness of the tenant.

## Article 817

The tenant having added parts to the rented property item shall be entitled to remove them upon the expiry of the lease period, as long as this is feasible without damaging the property item, unless the landlord agrees to keep these additional parts. The latter shall, in such a case, pay to the tenant an indemnification amount equal to the smallest amount between the amount of expenditure and the value of the additional parts at the moment of delivery.

Where the additional parts cannot be removed without damaging the property item and they consist an improvement of the latter, the rules provided for in **Article 810** shall apply.

## Article 818

Unless there is a contrary agreement, the tenant shall be entitled to sublease the rented property item, however, he shall not assign the contract to another person in lieu of the consent of the landlord. With regard to chattels, subleasing shall be subject of the consent of the landlord.

## Article 819

Sparing his rights to the tenant, the landlord may take legal action against the sublease tenant to seek the sublease price, where of the latter is still owing at the moment of filing the lawsuit and to bind him to meet the entire obligations stemming from the sublease contract.

Declaring the lease contract invalid or its termination shall extend its effects even on the sublease tenants and the decision made between the landlord and the tenant shall extend its effects even on them.

## Ending of lease contract

### Article 820

The rent limited to a time period set out by parties shall cease upon the expiry of this time period, while declaration of its expiry not being necessary.

The rent not being limited to a time period shall not cease, as long as one of the parties gives notice to the other party that they withdraw from the rent prior to the time period set out under **Article 803** of this Code.

## Renewal of lease contract

### Article 821

The rent shall be renewed as long as, upon its duration expiry, the tenant is granted the use of the rented property item in lieu of the objection of the landlord.

The new rent shall be regulated under the same conditions as the previous one, however, the duration shall be determined similarly to the rents limited to a time period.

## Relations to third parties

### Article 822

The lease contract may be referred to against the third parties having acquired the rented property item, provided that the contract have a specified date prior to the alienation of the property item.

The provisions of the above paragraph shall not apply to the rent of chattels not registered in public registers, as long as the acquiring party has ensured the possession in good faith.

The rent of unregistered chattels shall not be referred to against the third parties having acquired them, provided within the 9-year period since the effectiveness of the rent.

The acquiring party shall always observe the lease relationship if he has taken over the obligation towards the alienator.

### Article 823

Where the lease relationship does not contain any specified date, however, the possession by the tenant in terms of time falls prior to the transfer of ownership, the acquiring party shall not be bound to observe the lease relationship, except the duration pertaining to the lease relationship of indefinite period.

### Article 824

Where the tenant is excluded by the acquiring party, since the lease contract did not contain any specified date prior to the transfer of ownership, the landlord shall be bound to pay the damages.



## **Article 825**

The acquiring party shall, regarding the rights and obligations stemming from the lease contract, be bound to observe the lease contract since the acquisition date.

### **A. LEASE OVER IMMOVABLE PROPERTY ITEMS OF ARABLE NATURE GENERAL PROVISIONS**

## **Article 826**

The lease contract over the immovable properties being used for arable cultivation for a time period in excess of nine years shall be subject to notarial certification and it shall be registered with the public register.

## **Article 827**

The landlord shall, by way of an inventory, hand over the immovable property, such as arable land, pasture grounds, residing or accessory buildings auxiliary to the arable or livestock activity, as well as the chattels auxiliary to such activity, to the tenant. The right to object the contents of the inventory and the presumption of its accuracy shall be regulated under the provisions of this chapter.

## **Article 828**

The landlord shall defray the financial duties and taxes charging on the immovable property.

## **Article 829**

The landlord shall permanently be entitled to check the rented property in order to establish whether the tenant is abiding by the agreement referring to the obligations inserted in the contract and to agro-technical nature and rules.

## **Article 830**

The tenant shall defray the lease price in the time and the fashion set out in the contract. The lease price may be in kind or in pecuniary payment.

### **Right to cultivation**

## **Article 831**

The right to cultivation implies the right of one contracting party to decide what is going to be cultivated from one period to the other. This right shall be regulated upon the agreement of the parties.

Where the lease price consists entirely or overwhelmingly out of the arable products, being the products cultivated in the rented immovable property, the right to cultivation shall be vested with the

landlord, as long as the contract or the local customs do not provide for differently. Where the lease price consists entirely or partially out of a pecuniary amount to be given to the landlord, the right to cultivation shall be vested with the tenant, as long as the contract or the local customs do not provide for differently.

## **Article 832**

Where the party having the right to cultivation fails to notify the other party of the cultivation plan at the right time and waiting further for such notice could bring about grave consequences in the arable cultivation, this right shall be transferred to the other party.

## **Time and expenses of cultivation**

### **Article 833**

The tenant shall, under his own responsibility, decide about the time of making the cultivation arrangements, as well as for the agro-technical ways and novelties he is to apply. The tenant may just make recommendations in this regard.

### **Article 834**

The expenditure needed for the cultivation shall be defrayed by the tenant. Where the lease price consists entirely or overwhelmingly of the product being cultivated, the landlord shall pay in advance and free of any interest those expenses which might be needed for the cultivation to the tenant, as long as the latter cannot afford them on their own.

The advance payment shall be repaid to the landlord out of the upcoming harvest.

## **Defrayment of the lease price**

### **Article 835**

The lease price shall be defrayed according to the timing set out in the contract. In absence of such a provision, it shall be defrayed at the end of each contract year, if the price has been set out in pecuniary amount.

The lease contract year shall start on the day when the rented property item is delivered to the tenant.

### **Article 836**

Where the lease price consists of a part of the agricultural products or proportional to it, the pertinent part shall be handed over to the landlord upon his request, after the harvest has been collected.

In lieu of such an agreement, the local customs shall be abided by.

### **Article 837**

The tenant may seek the lease price reduction or adjournment of payment, if unforeseeable circumstances or extraordinary events have slowed down production of one year to at least a half compared to the normal production.

## Article 838

The tenant may seek the revision of the lease price to his advantage, taking account of the ordinary production, significance of the sustained loss, profits he already had in previous years and those, which he could ensure during the duration of the contract.

## Article 839

In the event of the termination of the contract, the tenant is not bound to make available the seeds for the upcoming cultivation, unless the contract or the local customs foresee differently.

## Article 840

The tenant does not enjoy the right to acquire the harvest, which at the time of the contract duration expiry, were not collected yet. However, the court may admit that the tenant be reimbursed the expenses which he might have incurred for cultivating the harvest. This reimbursement shall, however, not exceed the worth of the harvest benefitted by the tenant.

## B. LEASE OF PRODUCTIVE PROPERTY ITEMS

## Article 841

Where the scope of the rent is the enjoyment of a productive, movable or immovable, property item, the tenant shall arrange for its administration in compliance with the economic designation of the property item.

## Article 842

Upon the parties not determining the lease duration, each of them may withdraw from the contract by way of giving prior notice to the other at an appropriate time.

## Article 843

The landlord shall:

1. hand over the property item along with the accessories at an appropriate situation for the usage and production whereto it has been designated;
2. accomplish, on its own expenses, the extraordinary repair that the property item needs in the course of the lease duration.

## Article 844

The landlord may seek the termination of the contract, as long as the tenant does not make available the necessary resources for the administration of the property item, as long as the technical rules are not applied, or the economic designation of the property item changes steadily.

## Article 845

The tenant may launch initiatives for boosting the productiveness of the rented property item, suffice they do not incur obligations to the landlord, or not encroach upon his titles.

## Article 846

Where, as a consequence of a law or a mandatory decision regarding the productive administration of the property item the contractual relationship changes essentially, to the advantage of one and the disadvantage of the other party, a lease price increase or reduction, or, as appropriate, the termination of the contract may be sought, unless the law provides for differently.

## Article 847

The tenant cannot sublease the property item in lieu of the consent of the landlord.

Where the tenant breaches such an obligation, the landlord may seek the termination of the contract.

The right to assign the lease contract to another shall include the sublease, unless parties have disposed of differently in the contract.

## Article 848

The lease contract provisions shall apply even to the lease of the productive property items, to the extent they are compatible therewith.

## C. LEASING

## Article 849

Based on a lease agreement, one of the parties shall be bound to make available to the other party, for a certain period, a movable or immovable property, against a payment on recurrent periods, set out in connection with the worth of the property item, contract duration and eventually with other elements referring to the agreement of the parties.

The property item shall be acquired or constructed by the landlord in response to the wish and description of the tenant and the latter shall, upon the expiry of the contract duration, be entitled to acquire ownership over it, against the payment of predetermined amount.

The landlord shall be liable to the tenant under the general rules regulating the failure to hand over the property item or the delay in handing over the property item, as well as the flaws of the property item.

It may be provided for in the agreement that the tenant shall, prior to seeking his rights from the landlord, approach the person making the delivery (supplier) regarding his own rights or the rights assigned to him.

## CHAPTER VIII

### CONTRACTS FOR WORKS AND SERVICES



## **Contents**

### **Article 850**

Contracts for works and services are the contracts where one party (entrepreneur) is, out of their own resources and assuming the risk, bound to accomplish a work or provide a service or an independent accomplishment of works, while the other party is bound to accept it against a price set out in the contract.

### **Setting out the price**

#### **Article 851**

Where the parties did not set out any price for the contract of works and services, neither determined the way for setting it out, it shall be calculated based on the existing fees or based on the local customs. In the event of a dispute, it shall be set out by the court.

### **Making materials available**

#### **Article 852**

The materials being necessary for accomplishing the work shall be made available by the entrepreneur, as long as the agreement does not provide for differently.

### **Rights and obligations of the entrepreneur**

#### **Article 853**

The entrepreneur shall warn the ordering party at the appropriate time of:

- a) the material being made available by the ordering party and not being of good quality, as long as this is detected in the course of works and harms the quality of the works;
- b) instructions of the ordering party not being possible to be applied or their application renders the works to be unstable or inappropriate;
- c) circumstances, being out of the entrepreneur's reach, rendering the work to be unstable or inappropriate.

The entrepreneur shall be liable for the damage sustained by the ordering party, as long as he does not warn him as above.

#### **Article 854**

The entrepreneur shall be entitled to relinquish the implementation of the contract and seek damages regarding the damage he has sustained, as long as the ordering party does not replace the materials being of inappropriate or bad quality, or where the instructions for the accomplishment of the work are not changed, despite being warned by him at the right time.

#### **Article 855**

The entrepreneur shall be liable for the loss or harm to the material made available to him by the ordering party, unless it is established that the loss or harm has occurred of the material being of bad

or inappropriate quality, or due to the implementation of the instructions of the ordering party for the accomplishment of the work, despite the entrepreneur warning the ordering party at the right time.

## **Article 856**

The entrepreneur shall be entitled to seek the remuneration of his labour, where the work, prior to being handed over to the ordering party, gets lost or harmed due to the material being of a bad or inappropriate quality, or due to the implementation of the instructions of the ordering party for the accomplishment of the work, despite the entrepreneur warning the ordering party at the right time.

## **Article 857**

The entrepreneur cannot subcontract the work or services further, in absence of the consent of the ordering party.

## **Article 858**

The entrepreneur may not, in lieu of the consent of the ordering party, change the modes of operation set out in the contract with regard to accomplishing the work.

Even if the consent has been granted, the entrepreneur shall not, as long as the overall price of the work has been set out, be entitled to reimbursement regarding the changes and addenda, unless a different agreement exists.

## **Article 859**

Where to the effect of accomplishing the work according the standards it is necessary for the project to be changed and the parties do not agree thereon, the dispute shall be resolved by the court.

Where the price differences exceed the amount of the respective price by one-sixth, the entrepreneur may seek the termination of the contract and, as appropriate, an appropriate reimbursement of the damages.

Where the changes are significant, the ordering party may withdraw from the contract by way of paying an appropriate indemnification.

## **Rights and obligations of the ordering party**

### **Article 860**

The ordering party may undertake changes to the project, provided that their size does not exceed one-sixth of the respective total price. The entrepreneur shall be entitled to be reimbursed for the main pieces of work having been carried out, even if the price of the work has been set out as a flat price.

The above paragraph does not apply to the changes to the project which, although they abide by the limits set out above, bring about considerable changes to the nature of the work or in terms of quantity of separate categories of pieces of work, provided for in the contract for the accomplishment of the same work.

### **Article 861**



The ordering party shall be entitled to check the accomplishment of pieces of works and their compliance to his own expenses.

Where, in the course of the activity, it is detected that the accomplishment is not continuing in line with the terms set out in the contract and with the standards, the ordering party may set out a reasonable time limit, within which the entrepreneur shall agree to those terms. Where the deadline expires without any positive changes, the contract shall be terminated, while not impairing the right of the ordering party to damages.

## **Article 862**

Where, as a consequence of contingent circumstances, increases or reductions of the cost of materials or labour have occurred, thus determining an increase or reduction of the respective total price in excess of one-tenth, the entrepreneur or the ordering party may seek the revision of the price. This revision may be set out just for the extent of the difference exceeding one-tenth. Where in the course of the works, difficulties of geological, hydric or other nature are encountered, not foreseen by the parties, and making the task of the entrepreneur very difficult, the latter shall be entitled to an appropriate compensation.

## **Article 863**

The ordering party shall be entitled to check the accomplished work before taking it over.

The check shall be carried out by the ordering party, once the entrepreneur has made the appropriate arrangements for the check. Where, despite the invitation extended by the entrepreneur, the ordering party does not carry out the check in absence of reasonable grounds or he fails to notify the outcome of the check within a short time period, the work shall be considered to have been accepted.

Where the ordering party takes over the work without raising any reserves, it shall be considered to be accepted even if the check has not been carried out.

The entrepreneur shall be entitled to seek remuneration at the respective amount, if the work is accepted by the ordering party, unless a different agreement is in place.

## **Guarantee and denouncing the flaws of the work**

### **Article 864**

The entrepreneur shall be bound to offer a guarantee regarding the distortions and flaws of the work. The guarantee shall not be required where the ordering party has accepted the work and the distortions or flaws were known to him or were evident, unless they have been concealed in bad faith by the entrepreneur.

The ordering party shall notify the entrepreneur of the distortions and flaws within 60 days of their detection restricted to a forfeiture term, thus bringing about the lapse of the right. The notification is not indispensable where the entrepreneur has recognised the distortions and flaws or where he has concealed them.

The lawsuit against the entrepreneur shall lapse within two years of the date of delivery of the work. The ordering party being sued due to failure to pay may always make use of the guarantee, provided that the distortions and flaws be notified within 60 days of the date of detection and prior to the expiry of two year-period of the delivery date.



## **Article 865**

The ordering party may seek that the distortions or flaws be eliminated upon the expenses of the entrepreneur or the price to be reduced proportionally, maintaining the right to indemnification in the event the entrepreneur has acted culpably.

Where the distortions or flaws of the work are such as to make it inappropriate for its designation, the ordering party may seek the termination of the contract.

## **Article 866**

Where the scope of the contracts of works and services are buildings or other immovable property items, which of their nature, have a long-term designation and during a time period of ten years since the completion the work collapses in full or in part due to the land or shortcomings in construction or poses evident risk of collapsing or other grave shortcomings, the entrepreneur shall be liable to the ordering and other parties obtaining titles over it, provided that the denunciation be made within one year of discovery.

The right of the ordering party shall lapse within one year of denunciation.

## **Article 867**

The entrepreneur shall, to the effect of assuming the action of recourse against the sub-entrepreneurs, shall give notice to them of the denunciation within sixty days of being informed and being restricted to a forfeiture term, thus bringing about the lapse of such right.

## **Termination of contract and legal consequences**

### **Article 868**

The ordering party may withdraw from the contract even if the implementation of the work or providing of the service has started, provided that they shall reimburse the entrepreneur for the incurred expenses regarding the works done and the lost profit.

### **Article 869**

Where the contract is terminated since the implementation of the work has become impossible due to a cause out of the reach of each of the parties, the ordering party shall defray for accomplished part of the work within the limits, which is useful for them, proportional to the price set out for the entire work.

### **Article 870**

Where the material made available to the entrepreneur by the ordering party or the work accomplished with this material gets lost or harmed, as well as where the completion of the work becomes impossible for reasons beyond the reach of each of them, however, where the entrepreneur is always in default for delivering the work, the latter shall be bound to reimburse the ordering party



for the value of the material and he shall not be entitled to seek payment from him for the works accomplished.

## **Article 871**

Where the work prepared with the material of the entrepreneur gets lost or harmed, as well as where the completion becomes impossible prior to the expiry of the period for the delivery of the work, always for reasons beyond the reach of each of them, the entrepreneur shall not be entitled to seek from the ordering party to pay for the value of the material and the work accomplished.

## **Article 872**

Where the work prepared with the material of the entrepreneur gets lost or harmed, as well as where the completion becomes impossible due to reasons beyond the reach of the entrepreneur or ordering party, however, the ordering party being in default for taking over the work, the latter shall be bound to pay to the entrepreneur the value of the material and work done.

## **Article 873**

The contract for works and services shall not be terminated upon the death of the entrepreneur, unless the person of the entrepreneur was considered to be indispensable for the accomplishment of the work. The ordering party may always withdraw from the contract, as long as the heirs of the entrepreneurs cannot be trusted to accomplish the works or services appropriately.

## **Article 874**

In the event of the termination of the contract due to the death of the entrepreneur, the ordering party shall be bound to pay to the heirs the value of the performed works, building on the specified price, as well as the expenses incurred for enforcing the remaining parts, however, within the limits that the accomplished works and incurred expenses are useful to them. The ordering party shall be entitled to seek the delivery against an appropriate reimbursement for the value of the prepared materials and the pending plans, to the extent that the provisions regulating the protection of inventions and intellectual property permit.

## **Article 875**

The persons being under the authority of the entrepreneur and having carried out their activity for the accomplishment of the work or provision of the service may take legal action directly against the ordering party to acquire all what belongs to them at the time they file the lawsuit until the ordering party fulfils his obligation towards the entrepreneur.

## **Referring provision**

## **Article 876**



Where the scope of the contract for works and services is providing continuous or recurrent services, the provisions of this title shall apply to the extent that they are compatible with those regarding the supply contract.

## CHAPTER VIII TRANSPORT

### A. TRANSPORT OF PERSONS

#### **Article 877**

The transporter shall, upon a transport contract for persons, undertake to transport persons from one location to another.

#### **Article 878**

In addition to the liability for delays and failure to perform the transport, the transport shall be liable for the entire calamities affecting the person in the course of the journey and for the loss or harm to the persons of the traveller, as long as he does not establish that he has made appropriate arrangements for avoiding the damage, referring to the specific circumstances of the case.

The conditions restricting the liability of the transporter regarding the risks affecting the traveller shall be invalid.

This provision shall apply also the transport contracts being free of charge.

#### **Article 879**

Regarding the transport containing interconnected itineraries, each transporter shall be liable for their own transport.

However, the damage due to the delay or interruption of travel shall be calculated taking account of the entire distance.

### B. TRANSPORT OF PROPERTY ITEMS

#### **Article 880**

The transporter shall, upon the transport contract for property items, undertake to transport property items from one location to another.

#### **Article 881**

The transporter shall make the transported property items available to the recipient at the location, by the deadline and ways indicated in the contract.

Where the delivery shall not occur at the premises of the recipient, the transporter shall notify him of the arrival of transported property items immediately.

The sender having issued a bill of loading, the transporter shall show it to the recipient.

## Article 882

The sender shall indicate to the transporter accurately the name of recipient and location of destination, type, weight, quantity and number of property items, to be transported, and other data being necessary for accomplishing the transport.

Where specific documents are needed for the accomplishment of the transport, the sender shall hand them over to the transporter at the moment handing over the property items to be transported.

The damages stemming from the missing or inaccurate data or due to the failure to handover or inappropriateness of documents shall be imposed on the sender.

## Article 883

Upon the request of the transporter, the sender shall issue a bill of loading upon his own signature, the latter containing their own name, residing or employment location, venue and date of issue, the data referred to in the above Article and the conditions set out for the transport.

Where the bill of loading is issued in many counterparts, the number of counterparts has to be indicated in each counterpart. The remaining copies shall lose their validity once the property items are handed over to the owner of the title.

These data shall be reliable as long as the opposite is not established towards the transporter, the latter being bound to check them out, applying the professional diligence.

Upon the request of the sender, the transporter shall issue a second counterpart of the bill of loading upon their own signature, or, as long as the bill of loading has not been issued, a receipt counterpart, containing the same data.

## Article 884

The transport contract shall be considered to be concluded of the moment the bill of loading has been compiled and the sender of freight has defrayed the transport payment, unless the contract or law provides for differently.

## Article 885

Where the initiation or continuation of the transport is hindered or delayed significantly due to causes not attributable to the transporter, the latter shall immediately ask for instructions of the sender, making arrangements for preserving the property items being handed over to him.

The transporter retains his right to reimbursement of expenses.

Upon the transport being initiated, he shall be entitled to the payment of a price proportional to the distance performed, unless the interruption of transport has occurred due to the full loss of property items as a consequence of casual occurrence.

Upon the circumstances making reception of instructions from the sender impossible, or upon such instructions being inapplicable, the transporter may deposit the property items or, if endangered to be harmed, or upon consisting a considerable risk for the security of the premises where they are stored, he may make arrangements for their sale at the best price.



The transporter shall notify of the storage or sale immediately the sender.

The above rules shall apply even where the recipient is not located or upon refusing or delaying asking to take the property items over, even where a conflict emerges among many recipients or regarding the right of the recipient to take over or to accomplish it.

## **Article 886**

The sender may suspend transporting and ask for having the property items given back, or may order the delivery to another recipient, being different from the one indicated at the outset, or may dispose of differently, always abiding by his obligation to reimburse the expenses and indemnifying the damages emerging out of the second order.

Where the transporter issued a counterpart of the bill of loading, the supplier cannot dispose of the property items handed over for transport as long as he does not submit to the transporter the counterpart or the voucher indicating the new data. These have to be signed up even by the transporter.

The sender cannot dispose of the transported property items once they have been made available to the recipient.

## **Article 887**

The rights emerging from the transport contract to the transporter shall be assigned to the recipient, if, after the property items have reached the destination or the deadline for their arrival has expired, the recipient seeks to take them over from the transporter. The recipient may assume the rights stemming from the contract, provided he pays to the transporter the credits stemming from the transport as well as the vouchers associating the transported property items. In the event of a dispute over the amount due, the recipient shall deposit the difference falling in the scope of the dispute with a third party.

## **Article 888**

The transporter handing the property items over to the recipient while falling short of collecting their own credits or amounts of vouchers associating the transported property items, or falling short of seeking the depositing of the amount falling in the scope of conflict, shall be liable to the sender regarding the amount he owes him and he cannot seek the latter to pay his credits. However, the right to sue the recipient shall be in place.

## **Liability for the loss or harm to property items during transport**

### **Article 889**

The transporter shall be liable for the loss or harm to the property items handed over to him since the moment he takes them over to the moment he hands them over to the recipient, unless he establishes that the loss or harm has been as a consequence of a casual occurrence, conduct of sender, recipient or owner of the property items being sent, or due to shrinkage or type or flaws of the property items themselves.

Where the transporter accepts the property items due to be transported without any reserve, it shall be assumed that the property items do not demonstrate any evident wrap-up shortcoming.

The transporter shall, upon the request of the recipient, be bound to take down minutes concerning the loss or harm to the property items being handed over for transport.

## **Article 890**

The transporter shall inform the recipient of the harm that the property items may have sustained immediately and prior to the delivery of the property items.

## **Article 891**

Where the property items have got lost or been harmed, the damage shall, unless there is a different agreement, be calculated referring to the price at the time of loading by the transporter. If the property items are harmed, the transporter shall indemnify the damage at the extent of the difference between the value of property items at the moment of loading and the value at the moment of the delivery.

## **Article 892**

The recipient shall, upon their own expenses, be entitled be ensured about the identity and situation of the transported property items prior to taking them over.

## **Article 893**

Taking over the transported property items without any reserve by way of paying the transporter for his due precludes the possibility of filing a lawsuit which stems from the contract, other than in the event of fraud or grave negligence of the transporter. The rights to seek the partial loss or further harms which cannot be discerned at the moment of take-over shall be upheld, provided that the transporter be immediately notified once the damages is detected and no later than 20 days of the date of take-over.

## **Article 894**

Where the transporter is bound to transmit the transporter property items beyond their lines through other transporters and falling short of taking from the sender a direct bill of loading for the designated location, it shall be assumed that, with regard to the transport beyond his own lines, he assumes the obligations of a forwarding firm.

## **Transport performed by many transporters**

### **Article 895**

Regarding the transport of property items being jointly performed by many subsequent transporters based on a single contract, the transporters shall be jointly liable for fulfilling the contract from the starting to the designated location.

The transporter being sued in connection with a conduct he is not liable to shall be entitled to take legal action against the other transporters, be it severally or jointly. Where it emerges that the conduct having caused the harm has occurred within the distance of one of the transporters, the latter shall

be bound to pay full damages; or otherwise, the other transporters shall be obliged to pay damages proportionally to their distance, excluding those transporters establishing that the harm has not occurred within their own distance.

## **Article 896**

The subsequent transporters shall be entitled to declare, either in the bill of loading or in a separate act, the situation of the property items to be transported at the moment when they were handed over to them. In lieu of such statement, it is assumed that they have taken them over in a good condition and in compliance with the bill of loading.

## **Liability of the sender and of transporter for delays**

### **Article 897**

Where the delivery of the property items or the delivery of the property items to the recipient does not occur by the deadline set out in the contract, the party being in default shall pay for the respective damages.

### **Article 898**

The claims emerging out of the transport may be satisfied over the transported property items, as long as these remain with the transporter. The transporter may retain the property item being subject to lien, until the claim is satisfied and he may even sell it according to the rules for selling the pawned items.

## **Liability of last transporter**

### **Article 899**

The last transporter shall represent the previous transporters in collecting the respective claims emerging from the transport contract and for assuming the lien over the transported property items. Upon failing to collect the claims or assume the lien, he shall be liable to the previous creditors regarding the amounts due, except the right to take legal action against the recipient.

## **Reference provision**

### **Article 900**

Regarding the water and airway transports as well as the railway and postal transports, the provisions of this contract shall apply, as long as the specific legislation is not in place.

## **CHAPTER IX USER CONTRACT**

### **Article 901**



Based on a user contract, one party (lender) lends the other party (borrower) free of charge a certain property item to temporal use and this latter party shall be bound to bring the same property item back by the deadline set out in the contract. Where no such deadline has been set out, the property item shall be returned upon the request of the party having lent it.

## **Article 902**

The user contract shall be considered concluded the moment that the property item has been delivered.

## **Article 903**

The borrower shall be bound to possess and maintain the property item diligently. He may not use it differently from the use set out in the contract or emerging out of the nature of property item. The borrower cannot, in lieu of the consent of the lender, make available the property item to the use of a third party.

Where the borrower does not meet the obligations referred to above, the lender may, in addition to the damages, seek the immediate return of the property item.

## **Article 904**

The borrower shall be liable for the loss or harm to the property item, unless he establishes that the loss or harm to the property item would occur even if it were not given out to the user agreement.

## **Article 905**

Where the borrower uses the property item by way of diverging from the designation of the contract or its nature and for a longer period than appropriate, he shall be liable for the loss having occurred even due to the casual incidence, unless he establishes that the property item would equally get lost, despite being used differently or having been returned by the deadline set out in the contract.

## **Article 906**

The borrower cannot seek the reimbursement of expenses he has made for using the property item.

## **Article 907**

Where during the specified period or prior to the borrower having ceased using the property item under the contract the lender is encountering an emergent and unpredictable need of the property item, he may seek the termination of the contract and the immediate return of the property item.

## **Article 908**

In the event of the death of the borrower, the lender may, even if a deadline having been set out, seek from the heirs the immediate return of the property item.

## Article 909

The borrower shall be bound to affect the ordinary repair to the property item received in user agreement upon his own expenses, unless the contract has been provided for differently, while the other repair shall be made by the lender.

## Article 910

Where in the course of the user agreement the borrower is, to the effect of maintaining the property item, bound to sustain extraordinary, necessary and emergent expenses and he could not thereof notify the lender, the latter shall reimburse thereof the borrower.

## Article 911

Where the property item given out in user agreement contained such flaws as to harm the one using it, the lender shall be bound to indemnify for the damage as long as, although he was aware of the flaws of the property item, he did not notify thereof the borrower.

## Article 912

Upon the expiry of the duration of the user agreement or upon the agreement being terminated ahead of time, the borrower shall be bound to return the property item to the lender in the same condition as it was taken over, with the ordinary changes incurred due to the usage, or in the condition foreseen in the contract. As long as the contrary is not established, it is assumed that the property item has been taken over in a good condition.

## CHAPTER X ORDERING

### GENERAL PROVISIONS

## Article 913

Ordering is a contract whereon one party shall be bound to perform one or more legal transactions on the account of the other party.

## Article 914

Where the contractor has been granted the power to act on behalf of the contracting authority, the agency provisions shall be applied.

## Article 915





The contractor acting on his own behalf shall acquire rights and assume obligations emerging from the conduct applied by the third parties, even if the latter were knowledgeable about the ordering relationship.

Third parties have no connection to the contracting authority. However, the contracting authority may, by way of replacing the contractor, may assume the rights of the credit emerging out of the implementation of the order, unless it may affect the rights enjoyed by the contractor based on the following provisions.

## **Article 916**

The contractor shall be bound to accomplish the tasks or legal transactions having been assigned under the instructions of the contracting authority. He may derogate from these instructions, only if this is indispensable for protecting the interests of the contracting authority and where it is not possible to agree with him in advance.

## **Article 917**

Ordering encompasses not only the arrangements whereof it has been made, but also those measures, which are necessary for their accomplishment.  
The general ordering does not exclude those measures, which exceed the ordinary administration of the work, as long as they are not explicitly named.

## **Article 918**

The contracting authority may revendicate the movable property items acquired on his own behalf by the contractor having acted on his own behalf, however not affecting the rights that third parties have acquired regarding the impacts of possession in good faith.

Where the property items acquired by the contractor are immovable properties or movable properties registered in public registers, the contractor shall be bound to return them to the contracting authority.

## **Article 919**

The creditors of the contractor may not assume their rights over the property items that the ordering authority has, in the course of performance of ordering contract, appropriated in their name, provided that whenever it is about movable properties or credits, the ordering has to be established through a documentary evidence containing an accurate date prior to the appropriation, or where it is about immovable properties or movable properties registered in public registers, the registration of the act of revendication or of judicial request intending the revendication referred to above contain a date prior to the appropriation.

## **Article 920**

It is assumed that ordering is based on payment. The extent of payment shall, as long as it is not set out by the parties, be set out based on the professional or customary fees and, in lieu thereof, by the court.

## **Article 921**

The contractor shall be bound to accomplish the order with loyalty and diligently. He shall give to the contracting authority notice of circumstances being created and which might bring about its revocation.

The contractor shall also be bound to accomplish the order personally, unless he has been commissioned to assign it to a third party, as long as he is forced to do so under the circumstances or representing the interests of the contracting authority.

## **Article 922**

The contractor shall make arrangements for preserving the property items sent on behalf of the contracting authority and protect the rights of the latter towards the transporter, as long as the property items pose harming signs or upon arriving late.

## **Article 923**

Unless it has been provided for differently in the agreement, the contracting authority shall be bound to supply the contractor with the necessary means for accomplishing the order and for performing the obligations that the contractor has, to this effect, undertaken on his own account.

## **Article 924**

The contractor shall, upon being thereof asked, be bound to provide to the contracting authority the entire information regarding the accomplishment of the order, along with the supporting documentation, to render account to him once accomplishing the order, as well as returning to him all what he has taken for the purposes of accomplishing the order.

## **Article 925**

The contracting authority shall reimburse the contractor all the advance payments, along with the legal interest of the day when made, as well as defray to him the appropriate remuneration. The contracting authority shall also pay the damages that the contractor has sustained due to the accomplishment of the assignment.

## **Article 926**

The pecuniary claims emerging out the performance of the contractor shall prevail towards the contracting authority and his creditors.

## **Lapse of ordering**

## **Article 927**



The order shall lapse upon the death, incapacity to act or bankruptcy of the contracting party or contractor, notwithstanding a different agreement or upon emerging differently out of the established circumstances. However, upon the lapse of order not affecting the interests of the contracting authority, the contractor, their heirs or representatives shall be bound to continue with the administration until the contracting authority, their heirs or representatives are capable of dealing directly with these affairs.

## **Waiving the order and legal effects**

### **Article 928**

The contractor may waive the contract, however, as long as the contrary has been foreseen in the agreement, he shall be liable for the damages, unless the waiver occurs for a just cause.

The order granted in the interest of the contractor or third parties shall not lapse upon the revocation of the contracting authority, unless it has been foreseen differently in the contract or it occurs for a just cause, however, it does not lapse due to the death or incapacity to act sustained by the contracting authority.

### **Article 929**

Appointing a new contractor for the same agreement or its performance by the contracting authority brings about the deprivation of the order and it shall be effective of the day when the contractors have been notified.

### **Article 930**

Waiving the order against payment and for a definite period of time or for a certain task shall oblige the contracting authority to pay the damages, as long as it has occurred prior to the expiry of the time period or accomplishment of works, unless a just cause exists.

Upon the order being of indefinite period, the waiver shall oblige the contracting authority to reimburse the damages, as long as no prior notice has been made at the appropriate time, unless there is a just cause for revocation.

### **Article 931**

The contractor waiving the order in lieu of any just cause shall reimburse the damages to the contracting authority. The order being of an indefinite period, the contractor waiving in lieu of any just cause shall be bound to reimburse the damages, as long as he has made no prior notice at the appropriate time.

The waiver shall always be made at such fashion and time that the contracting authority make arrangements for proceeding differently, notwithstanding the case of a significant difficulty on the side of the contractor.

### **Article 932**

Where the order has been granted by many persons by way of a single act and for an issue of a joint interest, the waiver shall not be of any effect as long as it has not been made by all the contractors, notwithstanding the case of a just cause for the waiver.

## **Article 933**

The activities carried out by the contractor prior to taking notice of the lapse of order shall be valid towards the contracting authority and their heirs.

## **Article 934**

The order granted to some persons deemed to work jointly shall lapse as long as the cause of lapsing is connected to just one of the contractors, unless the agreement provides for differently.

## **CHAPTER XI COMMISSION**

### **Contents**

## **Article 935**

The agency contract is an order which scope is the purchase or sale of the property items on the account of the ordering party and on behalf of the commissioner.

### **Rights and obligations of parties**

## **Article 936**

The ordering party shall be bound to reimburse to the commissioner the entire expenses he has made for accomplishing the order and the remuneration foreseen in the agency contract, as well as to relieve them of any obligation that the commissioner has assumed towards the others for performing the agency order.

## **Article 937**

The commissioner shall be assumed to be authorised to suffer delays in payments, in compliance with the local customs where the activity is being carried out, as long as the ordering party has not decided differently.

Where the commissioner suffers delays in payments, despite the prohibition of the ordering party or of local customs, the ordering party may seek from him immediate defrayment, notwithstanding the right of the commissioner to benefit the advantages emerging due to the delays in payment.

The commissioner having suffered the delay in payment shall identify to the ordering party the contracted party and the deadline being set, or the action will be considered to have been carried out in lieu of suffering the delay and the above paragraph shall apply.

## **Article 938**

The commissioner shall not be liable for the enforcement on the side of the third party in the contract entered into by the commissioner with him on the account of the ordering party, unless the commission contract provides for differently.

## **Article 939**

The commissioner having performed the legal transaction under more favourable conditions than contained in the instructions of the ordering party all that the commissioner has acquired on this occasion shall be assigned to the benefit of the ordering party.

## **Article 940**

The commissioner shall be entitled to deviate from the instructions received from the ordering party only where, due to the changing circumstances, such a deviation is necessary for the interests of the ordering party, and the commissioner cannot contact the ordering party in advance or, although he has contacted him, no response has been provided at the right time.

## **Article 941**

The commissioner shall be bound to enter into an insurance contract concerning the property items of the ordering party being with him only if foreseen in the commission contract, or if insurance is mandatory under the law.

## **Article 942**

The ordering party may amend the sequence of conclusion of the agreement as long as the commissioner has not concluded it. In such an instance, a part of the remuneration regarding the brokerage shall belong to the commissioner, which is determined taking account of the incurred expenses and work carried out.

## **Article 943**

The commissioner may include in the commission fee for the sale and purchase of goods, titles, currencies and other valuables whereof there is a price list or a price set out by the state authorities, as long as the ordering party has not decided differently, within the same amount, set out at the moment of enforcing the order, the property items he has to purchase or that he has to buy for the property items he shall sell, by way of preserving his entitlement to a brokerage fee.

## **Reference provision**

## **Article 944**

The provisions regarding the ordering shall apply even to the commission, as long as this chapter does not provide for differently.

## **CHAPTER XII FORWARDING AGENCY**



## **Contents**

### **Article 945**

The forwarding agency contract is an ordering contract wherewith the forwarding agent assumes to be bound to enter into, on behalf and in the account of the ordering party, a transport contract and to accomplish the entire auxiliary arrangements.

### **Rights and duties of parties**

#### **Article 946**

As long as the forwarding agent has not entered into the contract with the transporter, the sender may revoke the sending order, by way reimbursing the forwarding agent of the incurred expenses and providing to him an appropriate remuneration for the service provided.

#### **Article 947**

With regard to choosing the itinerary, vehicle and ways of transporting the freight, the forwarding agent shall be bound to abide by the instructions of the ordering party and, in lieu thereof, act in accordance with the latter's best interest. The remunerations, price reduction and fee-related benefits achieved by the forwarding agent shall be credited to the ordering party, unless the agreement provides for differently.

#### **Article 948**

The remuneration amount for the forwarding agent regarding the accomplishment of the order shall, in lieu of any specific agreement, referring to the professional fees and, in lieu thereof, referring to the local customs where forwarding occurs.

The advance payments and reimbursements for the auxiliary services provided by the forwarding agent shall be defrayed based on the underlying documentation, unless the re-payment or reimbursements have been set out in advance in a lump sum.

#### **Article 949**

The forwarding agent undertaking to provide the transport in full or in part with his own or third party vehicles shall assume the rights and obligations of the transporter.

## **CHAPTER XIII**

### **AGENCY**

*(Amended by law no 121/2013, dated 18.4.2013)*

#### **Article 950**

### **General provisions**



One party shall, based on the agency contract, undertake to conclude, continuously and against payment, the contract in a certain zone on the account of the other party.

Each party shall be entitled to receive from the other party a copy of the contract signed by them.

## **Article 951** **Exclusiveness**

The ordering party shall not have simultaneously more than one agent in the same zone or the same group of customers and for the same field of activity.

The agent shall also not process simultaneously, in the same zone or for the same group of clients and for the same field of activity, the contracts of many enterprises being in competition with each other.

## **Article 952** **The rights and obligations of the parties**

The commercial agent shall, in the course of carrying out their activities, attend to the interests of the ordering party and conduct himself appropriately and in good faith in order to perform their obligations. The commercial agent shall specifically:

- a) try to negotiate and, as appropriate, enter into the contracts wherewith he has been assigned;
- b) impart to the ordering party any necessary information he is in possession of;
- c) implement the reasonable instructions issued by the ordering party.

The ordering party shall, in their relations with the commercial agent, act appropriately and in good faith to perform their obligations. The ordering party shall specifically:

- a) make available to the commercial agent the necessary documentation pertaining to the contracts in question;
- b) ensure for the commercial agent the information necessary for performing the agency contract, specifically informing the commercial agent by a reasonable time period, once they estimate that the volume of contracts shall evidently lower than the one that the commercial agent would normally accept.

The ordering party shall also inform the commercial agent by a reasonable time period regarding the acceptance, rejection or failure to enforce a contract that the commercial agent has ensured for the ordering party.

The parties cannot circumvent the application of the provisions of this **Article**.

## **Article 953** **Remuneration of the commercial agent**

In lieu of any agreement between the parties regarding this issue, the commercial agent is entitled to the remuneration that the commercial agents, designated for the contract making up the scope of his agency contract, normally benefit at the location where he is carrying out his activity. Where such

a customary practice is missing, the commercial agent shall be entitled to a reasonable remuneration, taking account of the entire aspects of the contract.

Considered to be a remuneration of the agent shall be the entire elements of the payment that he is benefiting and that is depending on the number or worth of the commercial transactions.

In lieu of such customs, the commercial agent shall be entitled to a reasonable remuneration, taking account of all the elements pertaining to the transaction.

## Article 954

The commercial agent is entitled to remuneration regarding the contracts completed during the agency contract:

- a) if the contract has been completed as a consequence of his activity;
- b) if the contract has been completed with a third party, whom he had acquired as a customer for the contract of the same type;
- c) if he has an exclusive right concerning a certain geographic zone or a group of customers and the contract has been performed with a client belonging to this zone and/or group.

Regarding a contract completed following the expiry of the agency contract, the commercial agent shall be entitled to remuneration:

- a) if the contract is mainly attributed to their attempts made in the course of the agency contract, regardless whether the contracts have been completed within a reasonable time period, following the expiry of the agency contract; or
- b) if the order of a third party has been received by the ordering party or the commercial agent prior to the expiry of the agency contract.

The commercial agent shall not be entitled to remuneration if they owe to the previous commercial agent, unless it emerges out of the circumstances that it is fair for the remuneration to be shared between the commercial agents.

The remuneration shall become due at the moment and to the extent one of the following circumstances emerges:

- a) the ordering party has enforced the contract;
- b) the ordering party had to have enforced the contract, in compliance with an agreement entered into with a third party;
- c) the third party has enforced the contract.

The remuneration shall be granted later if a third party has enforced their part of the contract or would have performed it, if the ordering party had enforced their own part of the contract.

The remuneration shall be paid no later than the last day of the month ensuing after the semester when it becomes due.

The application of this provision to the detriment of the commercial agent cannot be circumvented by way of agreement.

## Article 955





The right to remuneration shall lapse upon the condition and at the extent that:

- a) it is decided that the contract between the third party and the ordering party shall not be enforced, and
- b) failure to enforce is not due to circumstances attributable to the ordering party.

The commercial agent shall pay back the reimbursement he has received as long as such right does not persist any longer.

The application of this provision cannot be avoided by way of an agreement to the detriment of the commercial agent.

## **Article 956**

The ordering party shall submit to the agent an account extract of the remunerations belonging to him, no later than the last day of the month ensuing the semester, where they become due. The account extract shall indicate the essential elements, on which basis the calculation of remunerations has been made.

The agent shall be entitled to obtaining the entire information, specifically an extract of the accounting books, being available to the ordering party and necessary to verify the amount of paid remunerations. The application of this provision cannot be avoided by way of an agreement to the detriment of the commercial agent.

## **Article 957**

### **Ending and terminating the agency contract**

Where the agency contract limited to a certain duration continues to be implemented by the parties even following the expiry of its time period, it shall be transformed into a contract of indefinite period. Where the agency contract is of indefinite period, each of the parties may withdraw from this contract, by way of notifying the other party in advance within a certain time period.

The preliminary notice period cannot be shorter than one month during the first year of the contract duration, two months for the current second year, three months for the third current year, 4 months for the fourth year, 5 months for the fifth year and 6 months for the sixth year and for the entire ensuing years. Where the parties agree of longer notice periods, the notice period to be abided by the ordering party shall not be shorter than the time period to be abided by the agent. Except where the parties have determined differently by way of an agreement, the end of the notice period shall coincide with the last day of the calendar month. The same rules shall apply even for the agency contract of a definite period, transformed into a contract of indefinite period, provided that, in calculating the notice period, account shall be taken of the previous period.

Upon the expiry of the agency contract, the ordering party shall be bound to pay to the agent a proportional remuneration, if:

- a) the agent has acquired new customers for the ordering party or has developed considerably the contracts with the existing customers and the ordering party has still considerable benefits emerging out of the contracts with these clients;
- b) the payment of such remuneration is fair, taking account of all the circumstances, specifically the remuneration that the commercial agent forfeits and emerging out of the transactions

with these customers, as well as due to constraining their professional activities, attributed to the existence of a non-competition clause.

The remuneration amount may not exceed an amount equal to the annual remuneration calculated out of the annual average of remunerations acquired by the commercial agent during the recent five years. Where the contract extends over a period shorter than five years, the remuneration shall be calculated over the average of the contract period. The acquisition of the remuneration shall not exempt the agent from the right to eventual reimbursement of damages.

The commercial agent shall be entitled to the reimbursement of the damage having sustained as a consequence of terminating the relations with the ordering party.

This damage emerges specifically where the termination of the contract has occurred under the circumstances:

- a) depriving the commercial agent of the remuneration that he might have acquired upon the appropriate performance of the contract, ensuring concurrently considerable profits to the ordering party with regard to the activity of the commercial agent, and/or
- b) depriving the commercial agent of the possibility to have the costs and expenses he has incurred for performing the contract, under the instructions of the ordering party, reimbursed.

The right to reimbursement also emerges where the agency contract ends as a consequence of the death of the commercial agent and it may be sought by his heirs. The commercial agent shall forfeit the right to reimbursement as long as, within a year of the end of the contract, he does not communicate to the ordering party his intention to have his rights represented.

## Article 958

No remuneration shall be paid where:

- a) the ordering party terminates the contract due to a failure in performance being attributed to the agent, which justifies an immediate termination of the contract;
- b) the agent terminates the contract, unless the termination is justified by circumstances being attributed to the ordering party, or due to the age, incapacity or sickness of the commercial agent, whereof he may not reasonably be required to pursue his activity;
- c) the agent does not assume personally the rights and obligations he is bound to under the agency contract, but assigns them to a third party.

## Article 959

The parties cannot, to the detriment of the commercial agent, avoid the application of **Articles 957 and 958** prior to the ending of the contract.

## Article 960

The agreement providing for a restriction of the professional activities of the commercial agent following the end of the contract shall be referred to as the clause of non-competition.



The agreement of non-competition shall be valid if concluded in writing. It shall belong to a geographic zone or group of clients, assigned to the commercial agent, as well as the type of contracts where of the commercial agent was assuming representation, under the agency contract.

The non-competition clause shall be valid for a period no longer than 2 years from the date of the end of the contract.

## **Article 961**

### **Guarantee agreement signed up by the agent**

An agreement whereof the agent guarantees that a customer shall pay the price of goods falling under the scope of the contract, which he has negotiated or concluded, shall be valid, provided and to the extent it has been done in writing, covers just the contracts specifically referred to in the agreement and is reasonable regarding the interest of the parties, specifically regarding the amount of remuneration benefitted by the agent. The amount offered as guarantee shall not be bigger than the remuneration that the agent would benefit under this contract.

## **CHAPTER XIV**

### **ASSIGNMENT OF PROPERTY TO CREDITORS**

#### **GENERAL PROVISIONS**

## **Article 962**

The assignment of property is the contract wherewith the debtor binds his creditors or some of them to defray for all or some of his activities to distribute among themselves the proceeds to the effect of satisfying their claims.

## **Article 963**

The assignment of property shall occur in writing, otherwise it is not valid.  
Where claims are among the assigned properties, the provisions of **Articles 502 and 503** of this Code shall apply.

## **Article 964**

The administration of the assigned property shall be incumbent on the respective creditors. They may file lawsuits for all the property related issues connected to that property, including the properties for maintaining the possession.

## **Article 965**

The debtor may not dispose of the property items being assigned to the creditors.  
The creditors, whose claims existed prior to the assignment of property and failing to intervene, may seek enforcement over the entire property.

The creditors having been assigned the property may not, as long as the assignment encompasses just some activities of the debtor, seek the enforcement for other activities prior to the defrayment of those related to the assignment of property.

## **Rights and obligations of parties**

### **Article 966**

The creditors having concluded the contract or acceding to it shall pay in advance the necessary expenses for the liquidation and shall be entitled to acquire the amount out of the proceeds of liquidation.

### **Article 967**

The creditors shall share among themselves the proceeds proportional to their respective claims, except the cases of preferences. The remainder shall belong to the debtor.

### **Article 968**

The debtor shall be entitled to check the administration and obtain an account of the financial situation upon the completion of liquidation, or at the end of each year if the administration lasts more than one year.

Where a receiver has been appointed, the latter shall make available the account also to the debtor.

### **Article 969**

The debtor shall be relieved of his creditors on the day when they receive their pertinent share out of the liquidation proceeds and to the extent of the amount they have acquired, unless a contrary agreement exists.

### **Article 970**

The debtor may withdraw from the contract by undertaking to defray the dues and interests to those he has entered the contract with or having acceded to the contract. The withdrawal shall be of effect on the payment day.

The debtor shall be bound to pay for the expenses of the agency of necessity.

## **Termination of contract**

### **Article 971**

The contract may be terminated if the debtor has, after declaring that he is assigning his entire property, hidden a considerable part of it, or if he has hidden the losses or has asserted losses which did not exist.

### **Article 972**

The contract may be terminated due to failure to perform under the general rules.



## CHAPTER XV BROKERAGE

### **Contents** **Article 973**

Broker shall be the one arranging for the contact of two or more parties for concluding an agreement, without being related to any of them in cooperation, dependency or representation relationship.

### **Remuneration** **Article 974**

In lieu of any agreement or where the professional fees or the customs do not provide for any determination, the amount of remuneration and the proportion thereof weighing on each of the parties shall be set out by the court.

### **Rights and obligations of parties** **Article 975**

The right of the broker to remuneration shall emerge upon the brokerage contract yielding its effects, regardless of the subsequent occurrences.

The above paragraph shall not apply upon the brokerage contract being established invalid and the broker being aware of the invalidity grounds.

### **Article 976**

The broker shall be entitled to being reimbursed regarding the expenses from the person on whose behalf the expenses have been incurred even if the agreement has not been completed, unless the agreement or customs provide for a different solution.

### **Article 977**

The agreement being concluded upon the involvement of many brokers, each of the latter shall be entitled to a remuneration amount.

### **Article 978**

The broker shall inform the parties of the circumstances he is aware of and bearing a connection to the evaluation and certainty of the agreement, which might have an impact on its conclusion. The broker shall be liable for the authenticity of the signature on the documents and for the last assignment of titles transmitted through him.

### **Article 979**

The tasks of the professional broker regarding the agreements for goods or titles shall be:



1. To preserve the types of the goods sold by way of samples, as long as the possibility of dispute regarding the identity of goods persists;
2. to make available to the purchaser a signed list of titles whereon discussion focused, indicating the serial and number;
3. to note down on the respective book the main data of the contract, pertaining to his involvement and, make available copies of each such note signed by him to the parties.

## **Article 980**

The broker may be assigned by one of the parties to represent them in transactions regarding the implementation of the contract being entered into upon his involvement.

## **Article 981**

The broker not disclosing the name of one contractor to the other shall be liable for the implementation of the contract and, upon implementing it, shall assume the rights towards the undisclosed contractor.

Where, following the conclusion of the contract, the undisclosed contractor appears before the other party or they are disclosed by the broker, each of the contractors may file a lawsuit directly against the other, however, not affecting the liability of the broker.

## **CHAPTER XVI SAFEKEEPING**

### **GENERAL PROVISIONS**

## **Article 982**

Safekeeping is a contract wherewith one party takes over from the other a movable property item, being bound to safekeep it and to return it in kind.

## **Article 983**

The safekeeping contract shall be considered to be concluded at the moment the property item is handed over for safekeeping.

## **Article 984**

The safekeeping shall be presumed to be against remuneration, unless the professional capacity of the safekeeper or other circumstances indicate a different will of the parties.

### **Rights and obligations of parties**

## **Article 985**



The safekeeper shall keep the property item diligently. He may not use it himself nor give it over to other, in lieu of the consent of the depositor. Upon using the property item in lieu of the consent of the depositor, he shall be liable for the loss or harm to it up to the casual occurrence.

Where urgent circumstances so require, the safekeeper may assume safekeeping in a way different from the contract, by way of giving immediate notice to the depositor at the earliest opportunity.

## **Article 986**

The safekeeper shall be bound to give back the property item left in safekeeping at any time that the depositor is seeking, even if a deadline has been set for its return, unless the deadline has been set to the benefit of the safekeeper.

Returning the property item left in safekeeping shall occur at the location where the property item had to be safekept, where, except the performance of parties, the return shall occur upon the expenses of the depositor.

## **Article 987**

Where the safekeeping is free of charge, the court may reduce the extent of damages.

## **Article 988**

The depositor shall be bound to pay to the safekeeper the entire expenses incurred for safekeeping the property item, as long as they have not been included in the remuneration.

## **Article 989**

No deadline being set out for the return of the property item left in safekeeping, the safekeeper shall at any time be entitled to seek his release from the liability of safekeeping the property item, by way of giving notice to the depositor to take back the property item within a reasonable period which he sets out on his own.

## **Article 990**

The depositor shall be bound to reimburse the damage which the safekeeper has sustained due to the hidden flaws of the property item, as long as he did not notify thereof the safekeeper although he was aware of them.

## **Article 991**

Where the depositors of the property item are more than one and they do not agree regarding the return, it shall be decided by the court.

This is the way of procedure even upon a sole depositor being succeeded by many heirs, as long as the property item is not divisible.

Where the safekeepers are more than one, the depositor shall be entitled to seek the return from the person keeping the property item, the latter being bound to notify thereof the others.

## Article 992

Where the property has been deposited even in the interest of a third party and the latter has informed the depositors and safekeepers of his acceptance, the safekeeper shall not be released through returning the property item to the depositor, in lieu of the consent of the third party.

## Article 993

The safekeeper shall be bound to return the fruits of the property item, which he has harvested.

## Article 994

The heir of the safekeeper having alienated the property item in good faith, being unaware that it should be safekept, shall be bound just to give back the remuneration he has received. Where this payment has not been done yet, the depositor shall assume the rights of the alienator.

## Article 995

The safekeeper shall return the property item to the depositor or persons assigned to take it over, ignoring the need for the depositor to establish him being the owner.

Where the safekeeper is being sued by a person revendicating the ownership over the property item or claiming having titles over it, the safekeeper shall make this dispute known to the depositor and seek to be exempt from the proceedings by way of indicating the person, otherwise he has to pay damages. In such a case he may be released of his obligation to return the property item, by way of depositing it in the ways set out by the court, upon the expenses of the depositor.

## Article 996

Where the safekeeper is precluded of safekeeping as a consequence of a fact he is not culpable, he shall be released from the obligation to return the property item, however, he has to give notice to the depositor of the fact due to which he has lost safekeeping the property item, otherwise he shall pay the damages.

The depositor shall be entitled to acquire what the safekeeper has already ensured as a consequence of the fact and he shall assume the rights belonging to the latter.

## Article 997

The credits emerging out of the safekeeping to the benefit of the depositor shall prevail over the property item given out to safekeeping. The safekeeper may withhold the property item, which has been encumbered, until he is reimbursed for his credit and he may sell it under the provisions regulating the lien.

## Article 998

Where the property item given out to safekeeping has not been withdrawn by the deadline set out in the contract or following the notice given by the safekeeper, the latter shall not be liable for the



loss or harm to the property item occurring following the expiry of the deadline, unless the loss or harm has been caused intentionally or due to grave negligence.

The safekeeper shall, in the above instances, be entitled to seek from the court to grant selling the property item given out to safekeeping under the foreclosure rules.

The proceeds out of the sale of the property item shall, following the deduction of the amounts owed to the safekeeper, be given to the depositor or they shall be deposited on his behalf in the bank.

## **Reference provision**

### **Article 999**

Where falling under the scope of safekeeping are an amount of money or other equal legal tender with the safekeeper having the right to use them, he shall acquire ownership and shall be bound to repay them in the same amount and out of the same kind and quality.

The provisions regulating the loans shall apply in such an instance, as long as they do not run counter the provisions regulating safekeeping.

## **A. SAFEKEEPING IN GENERAL STORES**

### **Article 1000**

The general stores operating as safekeepers shall be liable to store the property items being safekept, unless it is established that the harm has emerged due to accidental incidence, nature of property items or defects of property items or wrapping.

The safekeeper shall, in each case, carry out the necessary activities to restrict the damage.

### **Article 1001**

The safekeeping store shall store the safekept property items separated from each other, while assigning to them distinction marks to indicate the belonging of the property item to the depositor.

Provided the explicit consent of the depositor, they shall not mix up among themselves property items as equal legal tender of the same type and quality.

The depositor shall be entitled to inspect the safekept property items and withdraw the samples of use.

### **Article 1002**

Upon the general stores issuing a representation title for the safekept property items, the safekeeper shall give the property items back to the creditor being legitimised based on such title.

### **Article 1003**

The general stores may, upon giving notice to the depositor, start with selling the property items with a higher price, where, upon the expiry of the contract duration, the property items have not been withdrawn, or safekeeping has not been renewed, and always where the property items are running

the risk of getting lost or consisting a considerable risk for the safety of the locations where they have been stored.

The proceeds out of the sale shall, following deduction of the cost and remaining expenses of the safekeeping, be handed over to the depositor immediately.

## B. SAFEKEEPING IN HOTEL

### Article 1004

Hotel owners are liable for the harm, destruction or loss of property items that the clients have brought to the hotel.

Considered brought to the hotel shall be:

1. the property items which are there during the time the client is accommodated there;
2. the property items that the hotel owner, a member of his family or his assistant undertake to keep, outside the hotel premises and during the time period that the client is accommodated;
3. the property items that the hotel owner, a member of his family or his assistant undertake to keep inside or outside the hotel premises, for a reasonable time, prior or after the client has checked in.

The liability referred to by this Article shall be restricted to the worth of that which has been stolen, harmed or lost up to the equivalent of hundred times the rent price of accommodation for one day.

### Article 1005

The liability of the hotel owner is unrestricted, if:

1. the property items have been handed over for safekeeping;
2. he has refused to take over safekeeping property items which he was bound to accept. The hotel owner shall be bound to accept the securities, cash or items of value; he may not accept to take them over if it is about dangerous items or, taking account of the significance and administration terms of the hotel, are of significant worth or of major dimensions.

The hotel owner may require that the item being given over be wrapped up and sealed.

### Article 1006

The hotel owner shall not be liable if theft, harm or loss emerge out of:

1. the client, persons accompanying him, serving him or visiting him;
2. force major;
3. 3. nature of items.

### Article 1007



The hotel owner failing to invoke the restrictions provided for in the last paragraph of **Article 1004** shall be liable if the theft, harm or loss of property items brought by the client to the hotel have been caused culpably by him, members of his family or his assistants.

## **Article 1008**

In addition to the case provided for in **Article 985**, the client cannot avail of the above provisions as long as, following the finding of theft, harm or loss, he notifies the fact to the hotel owner with an unjustifiable delay.

## **Article 1009**

The agreement or statements aiming at exempting or restricting the liability of the hotel owner in advance shall be invalid.

## **Article 1010**

The above provisions shall not apply to the vehicles, items left therein or living animals.

## **Article 1011**

Regarding the assessment of liability or setting out the limit of reimbursement, the provisions for safekeeping in hotels shall apply even to the entrepreneurs of public and private health care clinics, institutions for public performances, resort houses, hotels, pensions, restaurants and in all the cases which, due to the specific activity carried out by the entrepreneur, the client cannot take personal care of safekeeping the property items.

## **Article 1012**

The claims of the hotel owner regarding the reimbursement affected to the clients shall have encumbering title over the property items brought by them to the hotel in their possession and continuing to be there.

The encumbering title shall be of effect even to the detriment of the third parties having titles over these property items, provided that the hotel owner was knowledgeable thereof at the time when the items were brought to the hotel.

## CHAPTER XVII CHECKING ACCOUNT

## **Article 1013**

The checking account is a contract wherewith the parties are bound to register the mutual crediting transactions in an account, considering it non-disposable and non-repayable until the account is closed.

The remainder of the account shall be repayable upon the expiry of the term. Where the payment has not been requested, the remainder shall be renewed for an indefinite period.

## **Article 1014**

The credits, which cannot be reimbursed, shall be exempted from the checking account. Where the contract is in place between entrepreneurs, the foreign credits for the respective ventures shall be exempted from the account.

## **Article 1015**

The interest accruing on the respective balance shall be paid at the extent set out in the contract and, in lieu thereof, by the law, however, always within the limits set out by law.

## **Article 1016**

The commission and expenses incurred by the procedures related to depositing shall be paid regarding the checking account. These rights are not part of the account, unless the agreement provides differently.

## **Article 1017**

Including a credit into the checking account does not exclude the right to file a lawsuit and other rights connected to the transaction wherefrom the credit is emerging.

Upon the above transaction being invalid or declared as such or terminated, the respective amount of money shall be excluded from the checking account.

## **Article 1018**

Where the credit included in the account has been secured by real or personal guarantee, the client shall be entitled to use this guarantee for the existing surplus to his benefit from the closing of the account to collecting the guaranteed credit.

The above paragraph shall apply even if a joint liability exists for the credit.

## **Article 1019**

Unless the parties have provided for differently in the contract, inclusion of a credit towards a third party in the checking account shall be assumed to have been made upon the condition of payment. Where the credit is not repaid, the recipient shall be entitled to proceed with the collection, taking the cash amount from the account, by reintegrating the one having made the depositing. This amount of money may be taken from the account even after unsuccessfully attempting to assume the rights towards the debtor.

## **Article 1020**

Where the creditor of a client has affected the attachment of the eventual remainder of the account belonging to his debtor, the other client cannot affect the rights of the creditor through new depositing. The depositing made in connection with the rights emerging prior to the attachment shall not be considered to be new depositing.

The client to whom the attachment or lien has been encumbered must give notice to the other party. Each of them may withdraw from the contract.

## **Article 1021**

Closing the account by way of defraying the remainder shall occur upon the expiry of the time periods set out in the contract and, in lieu thereof, upon the expiry of each 6-month period calculated from the date of entering into the contract.

## **Article 1022**

The transfer of transactions to the account from one client to another shall be implied to be admitted as long as it has not been objected by the deadline set out by the parties or by the deadline, which may be considered appropriate referring to the circumstances.

The admission of the transaction does not include the right to object it due to writing or calculation mistakes, omissions or duplications.

The objections shall occur within 6 months of the date of the transfer of the account, regarding the liquidation and closing, which shall be sent by recorded mail. Reinstatement shall not be allowed.

## **Article 1023**

Where the contract has been entered into for an indefinite period, each of the parties may be withdrawn from the contract in each closure of the contract, by way of giving at least a 10-day notice. In the event of Theban of carrying out this activity, incapacity to act, insolvency or death of one of the parties, each of them, or their heirs, shall be entitled to withdraw from the contract.

The termination of the contract shall prohibit including other amounts into the account, however, the payment of the remainder cannot be sought only after the expiry of the period foreseen in **Article 1021**.

## **CHAPTER XVIII BANK CONTRACTS**

### **A. BANK DEPOSITS**

## **Article 1024**

Upon an amount of money being deposited with a bank, the latter acquires the ownership thereon and it shall be obliged to return it in the same currency, upon the expiry of the time period being set out or upon the request of the depositor, taking account of the notice period determined by the parties or banking customs.

## **Article 1025**

Upon the bank issuing a savings bankbook, the depositing and withdrawals shall be noted down in the bankbook.

The notes on the bankbook signed up by the bank employee, assigned to provide this service, consist conclusive evidence between the bank and the depositor.

Any contrary agreement shall be invalid.

## **Article 1026**

Where the savings bankbook is payable to the holder, the bank providing the service to the possessor, unintentionally and not gravely culpably, shall not be liable even if he is not the depositor. The same provision shall also apply to the case where the bankbook of the deposit payable to the holder has been issued in the name of a certain person.

The provisions of separate laws are herewith excluded.

## **Article 1027**

The bank admitting and receiving the deposits of the titles under administration shall preserve the titles by way of collecting the interests and dividends, verify the trading in connection with the price or repayment of capital, being diligent for collecting the income in the account of the depositor and generally taking care of the rights pertaining to the title. The collected amounts shall be credited to the account of the depositor.

Where an option right shall be assumed regarding the deposited titles, the bank shall request the necessary instructions of the depositor in time and implement them, if, as appropriate, it has taken the necessary funds. In lieu of such instructions, the option rights shall be sold through the exchange agents on the account of the depositor.

A remuneration at the extent set out in the agreement between parties or the one ordinarily applied shall belong to the bank, in addition to the payment of expenses sustained by it.

Any agreement excluding the bank from safekeeping and administering the titles with a reasonable care shall be invalid.

## **B. BANKING SERVICE AND SECURITY SAFES**

## **Article 1028**

The bank shall, with regard to the security safes services, be liable towards the user regarding the solvency, maintaining the premises and inviolability of the safe, except any casual incidence.

## **Article 1029**

Where the safe is in the name of many persons, access to it shall be acknowledged to each of them unless a contrary agreement exists.

In the event of death of the sole holder or one of these holders, the bank having received the notification may allow the opening of the safe with the agreement of all those being entitled, or in the way determined by the court.

## **Article 1030**



Upon the expiry of the contract period, the bank may, following a notice to the holder or after six months of the expiry, seek from the court authorisation to open the safe. The notification may also occur through registered mail with confirmation.

Opening shall occur at the presence of a notary taking account of the measures that the courts deems necessary. The court may order taking the necessary measures for safekeeping the items found therein, including the sale of some of them, which is necessary to reimburse the expenses sustained by the bank.

## C. OPENING THE BANK CREDIT

### **Definition**

#### **Article 1031**

Opening the bank credit is a contract wherewith the bank is bound to keep available an amount of money for the other party, for a definite or for an indefinite period of time.

#### **Article 1032**

Notwithstanding a different agreement, unless otherwise agreed upon, the credit borrower may use the credit for a couple of times, according to the usage format and he can, by way of further depositing, reinstate his disposability.

Depositing and withdrawals shall occur at the bank where this relationship has emerged, unless it has been provided for differently by the parties.

#### **Article 1033**

Where for opening the credit real or personal security has been provided, this does not lapse due to the fact that the credit borrower ceases to be a bank debtor at the moment of ending this relationship. Where the security becomes insufficient, the bank may require a supplemental security or replacement of the guarantor.

Where the credit borrower is not abiding by the requirements, the bank shall reduce the credit proportionally to the extent of reduction of the worth of security or may withdraw from the contract.

#### **Article 1034**

The bank cannot withdraw from the contract prior to the expiry of the contract period, except in reasonable cases, or where a different agreement exists. The withdrawal terminates immediately the use of credit, however the bank shall determine a deadline at least of fifteen days for the repayment of the used or additional amounts.

Where granting of credit is for an indefinite period of time, each of the parties may withdraw from the contract through a notice within the period set out in the contract, which is usually applied or, in lieu thereof, within fifteen days.

## Ç. BANK ADVANCE PAYMENT



## **Disposal of pawned property items**

### **Article 1035**

In the context of bank advance payment on the lien over the titles or goods, the bank cannot dispose of the property items whereon the lien has been imposed, as long as it has issued a document wherewith these items have been individualised.

A contrary agreement needs to be established based on documents.

### **Article 1036**

The bank shall, on behalf of the contractor, make arrangements for insuring the goods under lien encumbrance, as long as, taking account of their nature, worth and location, the insurance falls under an ordinary maintenance.

### **Article 1037**

The bank shall, in addition to the obligations it is bound to, be entitled to have the expenses it has incurred for maintaining the goods and titles reimbursed, unless it has committed itself to it.

### **Article 1038**

The contractor may, prior to the expiry of the contract period, withdraw the titles and goods under lien encumbrance, by way of making a proportional payment between the amounts received as advance payment and the other amounts belonging to the bank under the above article, as long as the credit surplus turns out to be covered insufficiently with security.

### **Article 1039**

Where the worth of security is reduced by at least one tenth as compared to its worth at the moment of entering into the contract, the bank may require the debtor an additional security, warning him that upon failure to do so it will proceed with the sale of these goods or titles under lien encumbrance. Where the debtor does not abide by the requirements, the bank may proceed with the sale under the provisions on pawn.

The bank shall be entitled to the immediate payment of the account surplus, which has not been fully covered by the proceeds out of sale.

### **Article 1040**

Where money deposits, goods or titles, which have not been individualised, or whereof the bank has been granted the opportunity to dispose of have been frozen with the securities of one or more credits, the bank shall repay just the amount or a part of the goods or titles exceeding the amount of guaranteed credits. This surplus shall be determined in connection with the worth of goods or titles at the time of the expiry of the credits.



## D. BANK TRANSACTION IN CHECKING ACCOUNTS

### Article 1041

Where the deposit, opening the credit or other bank transactions have been accommodated in the checking account, the client may dispose at any time of the amounts credited to him, unless the deadline reserve has been provided in the agreement.

### Article 1042

Between the bank and the client existing a couple of relations or accounts in different currencies, the active and passive surplus shall be mutually be set off, unless a contrary agreement exists.

### Article 1043

Where the liquidating account is in the name of many persons, entitled to carry out transactions even individually, these persons shall be referred to as contributory creditors or debtors of the accounts surpluses.

### Article 1044

Where the transactions in checking accounts are for an indefinite period, each of the parties may withdraw from the account, giving notice to the other party within the time period set out in the contract, or, in lieu thereof, within 15 days.

### Article 1045

The bank shall be liable according to the provisions regulating the works and services contract for performing the obligations assumed by the depositor or another client.  
Where this obligation has to be performed where no bank branches exist, it can assign the enforcement to another bank.

### Article 1046

Articles 1016, 1019 and 1022 shall also apply to the checking account.

## E. BANK DISCOUNT

### Definition

### Article 1047

Discount is the contract wherewith the bank, by way of applying the debt interest rate, grants the client the worth of the credit to third parties, which has not ended yet, by way of cession.

## Discount of bill of exchange

### Article 1048

Where the discount occurs by way of redeeming the bill of exchange or bank check, the bank shall, if payment is not made, enjoy, in addition to the rights stemming from the title, the right to repayment of advance payment.

The provisions of specific laws regarding the check and bill of exchange shall be maintained.

### Article 1049

The bank having discounted the documented bills of exchange shall enjoy the same preference over the goods as the recipient has, as long as the representative title is under their possession.

## CHAPTER XIX

### LOAN

### Article 1050

By way of a loan contract one party (lender) grants to the other party (borrower) ownership over an amount of money, or property items determined in number, weight or measure and the borrower shall be bound to repay to the lender the same amount of money, return the same amount of property items of the same type and quality, by the deadline set out in the contract or, where no deadline has been set out, upon the request of the lender.

The Joint Colleges of the Supreme Court in the unifying decision no. 932, dated 22.06.2000, have reasoned regarding the loan contract, determining that:

In any case, in a loan contract, the lender does not have the right to intervene in the way the borrower manages or uses the borrowed money. In this contract, the lender has the right to request only the return of the loaned amount, as well as the stipulated interest, if the borrower has assumed such an obligation. Any eventual risks arising from the management of the borrowed amount, its investment, or any other legal actions taken by the borrower with this amount for the purpose of increasing profits, always fall on the borrower.

### Article 1051

Unless provided for differently in the agreement between the parties, the borrower shall pay the interest amounts to the lender.

The interest amounts, whereon it has been agreed, shall be paid each year, unless the parties have agreed differently.

Failure to pay the interest amounts consists of an essential failure to perform the obligation.

The Joint Colleges of the Supreme Court in the unifying decision no. 932, dated 22.06.2000, have reasoned regarding the maximum limit of interest rates in the loan contract, determining that:



[...] Our Civil Code does not set a maximum limit for the allowable interest rates, as is stipulated in the legislations of other countries. It has accepted the principle of complete freedom of contracting and competition according to market rules. This is the most correct stance for a free market of goods, money, and capital, where the "rules of the game" are respected. However, in a market that is distorted and dominated by interventions from illegal and even criminal factors, such as fraudulent pyramid schemes, it is not about freedom of contracting, but rather the opposite.

The maximum limit of allowable interest rates in the relevant legislation serves as a barrier to avoid contracts with conditions that could lead to disproportionate loss or harm to the interests of the contracting parties. Since the provisions in the special part of the Civil Code of the Republic of Albania (which regulate loan contracts) do not specify the maximum allowable interest rate, it then becomes more necessary to refer to the general and fundamental provisions related to the economic nature of obligations and the fairness of the participants. According to **Article 422** of the Civil Code, "The creditor and the debtor must treat each other with fairness, impartiality, and according to the requirements of reason." The content of this provision and those that set the general conditions for contracts leads to the conclusion that even the freedom to contract is not absolute. It can, however, be "limited" by some economic and moral factors, such as those mentioned in the cited provision, which the court should consider when resolving any specific case. Ignoring these factors leads to a lack of proportionality, or, as the legislator states, to disproportionate harm to the interests of the contracting party, meaning that the will (consent) of that party was not entirely free.

[...]

In the case under review, the loan contract with interest is, in itself, a lawful and valid legal action. The general condition that is invalid, according to **Article 686/2** of the Civil Code, is the part of the interest that exceeds the limit allowed by economic logic, reason, and morality, as analyzed above. In such cases, courts should bear in mind the well-known rule that invalid parts do not necessarily make the entire legal action invalid.

[...]

Ultimately, the Joint Colleges reach the conclusion that under **Article 686/2** of the Civil Code, the loan contract [...] should be considered invalid in the part of the interest percentage that should have been paid by the end of the year, since, as stated above, a lawful activity cannot generate income for which such high interest rates are paid.

[...] The Joint Colleges deem that the legal action, the loan contract [...] should be considered valid except for the part regarding the interest, leaving the debtor plaintiff against the defendant for the value of the loan received [...] and for an annual interest rate, equal to the highest interest rate given by banks in Albania at the time of signing the contract.

## Article 1052

Where the parties agreed on the repayment of the amount of money or property items in instalments and the borrower does not meet his obligation for the payment of two instalments, or delays the payment of a single instalment for a period of more than three months, the lender may seek the immediate repayment of the borrowed amount of money or return of borrowed items.

## **Article 1053**

Where the return of borrowed property items has become impossible or very difficult due to a reason not attributed to the debtor, the latter shall be obliged to pay for their worth, taking account of the time and the location where the return would occur.

## **Article 1054**

The lender shall be liable for the harm he has caused to the borrower regarding the flaws of the property items being borrowed, as long as he does not establish that it was not his fault that he was not aware of them.

Where the loan was free of charge, the borrower shall only be liable where, although he knew the flaws, he did not inform the lender thereof.

## **Article 1055**

Whoever promising to grant a loan may refuse meeting this obligation, as long as the property situation of the other party are such that they make it difficult to repay and the lender has not been granted appropriate guarantees.

## **CHAPTER XX FRANCHISING**

### **Definition**

## **Article 1056**

The franchising contract contains a relationship of continuous obligations wherewith independent enterprises are bound to each other to encourage and develop the commerce jointly, provide services, performing specific obligations.

### **Obligations of franchisor**

## **Article 1057**

The franchisor shall be bound to make available to the franchisee an entirety of standardised of immaterial rights, models, diagrams, profit, trading and organisation ideas, other appropriate knowledge for the development of commerce. While he shall be obliged to preserve this program of obligations against the intrusion of third parties, develop it constantly and support its implementation by the franchisee byway of instructions, information and improvements.

### **Pre-contractual relations**

## **Article 1058**

In the context of negotiations to conclude the contract, the parties shall show to each-other the situation of the commercial affairs bearing a connection with the franchise contract and specifically

with the program of franchise obligations, as well as inform each other based on the principles of good faith. They shall be obliged to keep the secrecy of the confidential information, even if the contract is not concluded.

Anyone violating this obligation shall be obliged to pay the damages. This right shall lapse upon the expiry of a three year period since the day of the end of negotiations.

The party having participated at the negotiations may seek the reimbursement of the expenses incurred based on legitimate trust in concluding the contract, which as not concluded due to a malicious conduct by the other party.

## **Form of contract**

### **Article 1059**

The franchising contract shall be documented while, inter alia, containing an agreed definition of the mutual relations of parties, contract duration and other essential elements of the contract. The text of the contract shall contain a full description of the franchise obligations program.

## **Withdrawal from the contract**

### **Article 1060**

The duration of the contract shall be determined upon the agreement of the parties, while abiding by the requirements imposed by the commerce and respective services.

Where no period has been set out in the contract or the period is longer than ten years, each of the parties is entitled to withdraw from the contract, by way of giving the other party a one year notice.

In the event of termination of the contract as a consequence of the expiry of the time period or an withdrawal from it and prior to the submission of the respective report on the affairs, the parties, being oriented by the principles of good faith, shall endeavour to agree on the renewal of the contract under the same or different conditions.

## **Ban of competition**

### **Article 1061**

Even after the end of the contractual relations, the parties are mutually obliged to a fair competition.

On this basis, the franchisee may be imposed a ban of local competition for a time period of up to one year.

Where a restriction of their professional activity emerges due to the ban of competition, the franchisee shall be granted an equivalent financial reimbursement, notwithstanding the termination of the contract.

## **Liability of the franchisee**

### **Article 1062**

The franchisor shall be liable for the existence of the rights and knowledge of the franchise obligations program. Where the rights do not exist or where the franchisor violates other franchise

obligations culpably, the franchisee shall be entitled to reduce the remuneration. The reduced amount shall be decided authoritatively by an impartial expert. The franchisee may seek the reimbursement of the damage being caused by the non-existence of the elements of the program of obligations and by the culpable violation of the contract by the franchisor.

## **Article 1063**

The franchisor may seek the reimbursement of the damage caused by the culpable violation of the contract, specifically due to the inappropriate implementation of the franchise obligations program by the franchisee.

## **Relinquishment**

### **Article 1064**

In the event of the violation of contractual obligations putting the purpose and conduct of commerce at risk, the contracting party shall be entitled to relinquish the contract, without any reference to the deadline.

## **CHAPTER XXI**

### **LIFE ANNUITY CONTRACT**

## **Article 1065**

The life annuity may be created against remuneration (by way of lien) through the alienation of movable or immovable properties or an amount of money.

The life annuity may be created even by way of donation or last will, thus abiding by the requirements of the law for such legal transactions.

## **Article 1066**

The life annuity may be granted for the entire life of the beneficiary or another party. It may be created even for the whole life on one or more persons.

## **Article 1067**

Where the life annuity has been created to the benefit of many persons, the share of a deceased beneficiary shall be added to the benefit of others, unless a different agreement exists.

## **Article 1068**

The life annuity contract entered into to the benefit of one person, who at the time of the contract was dead, shall be invalid.

## **Impact of life annuity contract**

### **Article 1069**



The person to whose benefit the life annuity has been created by way of lien may seek the termination of the contract, as long as the issuer does not provide the security or reduces the security provided for in the agreement.

## **Article 1070**

Failure to pay the due instalments of the life annuity does not entitle the person, to whose benefit the annuity has been created, to seek the termination of the contract; however, he may only seek the attachment and sale of all the property items of the debtor, and an amount of the proceeds out of the sale shall be used to ensure the payment of annuity.

## **Article 1071**

The annuity debtor shall not be relieved of his obligation for its payment even if he offers for the repayment of the amount of money or return of the received item, be it even through relinquishing the repayment of the paid instalments.

He shall be bound to pay the annuity for the entire period that it has been created, regardless of the gravity of annuity obligation, unless a different agreement exists.

## **Article 1072**

The life annuity shall be granted to the person, to whose benefit it has been created, proportional to the number of the days he has lived. In case the agreement provides for the advance payment in instalments, each of them shall be acquired on the day that the payment period expires.

## **Article 1073**

Where the life annuity is created on the basis of a title without remuneration, it may be provided (determined) that this is non-attachable.

## **CHAPTER XXII SIMPLE COMPANY**

### **GENERAL PROVISIONS**

## **Article 1074**

The company is a contract wherewith two or more persons agree to carry out an economic activity to the effect of sharing the profit emerging thereof.

The person being a company member shall make available to this activity money, property items or services.

## **Article 1075**



In the event of a simple company, the contract shall not be subject to any specific form, unless it is required due to the nature of property items being pooled.

The company is simple if it does not demonstrate distinguishing features of the commercial companies regulated in the Commercial Code.

## **Relations among members**

### **Article 1076**

The member shall be bound to pay the contributions set out in the contract of the company. It is assumed that the members shall be obliged to contribute in equal shares, to the extent necessary for attaining the purpose of the company, unless the contract provides for differently.

### **Article 1077**

The company contract may be amended only upon the consent of all the partners, as long as they have not agreed differently.

### **Article 1078**

The security sought by the member and the subrogation of risks for the property items, whereon the ownership has been granted, shall be regulated in the provisions on the sale.

### **Article 1079**

The member having contributed in credit shall be liable regarding the insolvency of the debtor, within the limits referred to in Article 506 of this Code regarding the case of acquiring the security upon agreement.

### **Article 1080**

Unless the agreement provides for differently, the administration of the company shall belong to each of the members, separate of others.

Where the administration belongs separately to many members, each of them shall be entitled to object the action which is intended to be carried by another, prior to being accomplished.

The majority of the members set out referring to the share of each member in the profit shall resolve the disputes.

### **Article 1081**

Where administration belongs jointly to a number of members, the consent of the entire administering partner shall be necessary for the commission of the actions of the company. Upon being decided that for the administration or for certain actions the consent of the majority is needed, this shall be determined under the last paragraph of Article 1080.



In the instances provided for in this Article, the specific administrations cannot carry out any action individually, unless in urgent cases, where a damage threatening the company is to be avoided.

## **Article 1082**

The dismissal of the administration being appointed in the contract of the company may occur for a reasonable ground.

The administrator being appointed by a separate act may be dismissed under the provisions of the works and services contract. The dismissal in such a case may be sought also judicially by each member.

## **Article 1083**

The rights and obligations of the administrators shall be regulated by the provisions on the works and services contract. The administrators shall jointly liable to the company for performing the obligations being assigned to them by law or the contract of the company, unless they establish that they are not culpable.

## **Article 1084**

The members not involved in the administration shall be entitled to be informed by the administrators on the developments regarding the affairs of the company, to be consulted with the documents connected to the administration and be provided with a report subsequent to the works, wherefore the company has been established, being accomplished.

Where the accomplishment of the activity of the company lasts more than one year, the members shall be entitled to be provided with the administration report at the end of each year, unless the contract provides for a different time period.

## **Article 1085**

Notwithstanding a contrary agreement, each member shall be entitled to obtain his share of profits following the approval of the report.

## **Article 1086**

The pertinent shares of members in profits or losses shall be assumed proportional to the contributed amounts. Where the worth of these contributions are not set out by the contract, they shall be determined by the court. Where the contract provides for only the part of each member in the profits, it is, at the same extent, assumed that the participation in the losses should be determined.

## **Article 1087**

Any agreement excluding one or more members from the participation in profits or losses shall be invalid.



## **Relations with third parties**

### **Article 1088**

The company shall acquire rights and commit itself to obligations through the members having the right to represent it.

In lieu of other provisions in the contract, the representation shall be incumbent on any administrator member and extend on all actions falling under the scope of the company. The changes and forfeiture of representation powers shall be regulated by the provisions on the representation.

### **Article 1089**

The creditors of the company may seek their rights referring to the assets of the company. Regarding the obligations of the company, the members having acted on behalf and on the account of the company shall also be severally and jointly liable and, if a different agreement exists, even the other members.

The agreement shall be made known to the third parties through appropriate media and, upon failure of receiving notice, the restriction of liability or exemption from the joint liability may not be referred to for those not being aware of it.

### **Article 1090**

The member required to pay for the obligations of the company may seek, even if the company is in liquidation, the preliminary enforcement on the assets of the company, by way of indicating the property items whereon the creditor may be reimbursed best.

### **Article 1091**

Anyone becoming a member of a previously established company shall be liable along with the other members for the obligations of the company prior to having obtained the capacity of the member.

### **Article 1092**

The respective creditor of the member may, as long as the company lasts, seek his rights over the profits belonging to the debtor, as well as taking preserving (conserving) measures on the share belonging to the latter in liquidation.

Where the other property items of the debtor are insufficient to pay off the credit, the respective creditor of the member may, in addition, seek the defrayment of the share of his debtor. The share may be defrayed within three months of lodging the request, unless the dissolution of the company has been decided.

### **Article 1093**

No set-off between the obligation of a third party to the company and the credit that he has to the member shall be permitted.

## **Dissolution of the company**

### **Article 1094**

The company shall be dissolved:

1. upon the expiry of the time period;
2. upon attaining the objective of the company or upon the impossibility to attain it;
3. upon the will of all the members;
4. due to other grounds provided for in the contract of the company.

### **Article 1095**

The company contract shall be extended implicitly for an indefinite period of time, if, although the time period provided for in the contract has expired, the members continue to carry out the activity of the company.

### **Article 1096**

Following the dissolution of the company, the administering members shall preserve the administration powers just for urgent matters, until the necessary actions of liquidation are undertaken.

### **Article 1097**

Where the contract does not provide for the way of liquidation of the property and the members are not of the same opinion to determine it, the liquidation shall occur by one or many liquidators, being appointed with the consent of all the partners or, in the event dispute, by the court. The liquidators may be revoked upon the will of all the members and always by the court upon the grounded request of one or more members.

### **Article 1098**

The liabilities and obligations of the liquidators shall be regulated by the rules set out by the administrators, as long as it has not been provided for differently in the following provisions or by the contract of the company.

### **Article 1099**

The administrators shall hand over to the liquidators the assets and the documents of the company and submit to them the accounts of the administration for the period following the last reporting. The liquidators shall take over the assets and documents of the company, and draft, along with the administrators, the inventory, which is to reflect the active and passive situation of the assets of the company. The inventory shall be signed up by the administrators and by the liquidators.

## Article 1100

The liquidators may carry out the necessary actions for the liquidation and, if the members have not provided for differently, they may sell *en bloc* also the assets of the company and enter into agreements and compromises.

They shall represent the company in the judicial proceedings.

## Article 1101

The liquidators cannot undertake further actions. Otherwise they shall be personally and jointly liable for the initiated activities.

## Article 1102

The liquidators cannot divide the assets of the company among the members, be it in part, as long as the creditors of the company are not paid, or the necessary amounts for paying them off have not been reserved.

Where the funds available are insufficient for the payment of the obligations of the company, the liquidators may require the members to make the deposits which they still owe to the respective limits and, as appropriate, the necessary amounts within the limit of the respective liability, proportional to the part of everyone in losses. To the same proportion shall also the obligation of the insolvent member be divided among the members.

## Article 1103

The members having contributed in assets to be used shall be entitled to get it back in the situation it is in. If the items have got lost or harmed due to the grounds attributable to the administrators, the members shall be entitled to the reimbursement of the damage out of the assets of the company, unless a lawsuit may be lodged against the administrators.

## Article 1104

After the obligations of the company have been paid off, the remaining assets shall be designated to pay the shares of contributions. The eventual surplus shall be divided among the members proportional to the share of every one in profits.

The worth of the shares of contributions which are not equivalent in amounts of money shall be determined according to the assessment made in the contract, or, in lieu thereof, according to the value they had at the moment when they were given up.

## Article 1105

Where in the agreement it has been foreseen that the division of the property items occurs in kind, the provisions for the division of joint property items shall apply.

## **Termination of the relation of one member and the company**

### **Article 1106**

Any member may withdraw from the company if it has been set up for an indefinite period of time or for the whole life of one of the members.

In addition to this, he may withdraw in the instances provided for in the contract of the company or where a fair ground exists.

In the instances provided for in the first paragraph, the withdrawal shall be communicated to the other members at least three months in advance.

### **Article 1107**

Unless the contract of the company provides for differently, in the event of death of one of the members, the others shall liquidate the share to the benefit of his heirs, unless they prefer to dissolve the company or the heirs take it over independently and they provide the consent.

### **Article 1108**

The expulsion of the member may also occur due to the failure to meet significant obligations emerging from the law or the contract of the company, as well as due to the ban, incapacity or his punishment with a measure including the ban, be it temporary, from official offices.

The member having contributed to the company his work or the enjoyment of a property item may also be excluded due to the eminent inappropriateness to accomplish the work or loss of the item, having occurred due to reasons, which cannot be attributed to administrators.

The member having contributed by way of assignment of ownership over a property item may also be excluded, as long as it gets lost prior to being acquired by the company.

### **Article 1109**

The expulsion shall be determined by the majority of the members, not encompassing into this number the member to be expelled and it shall be effective 30 days of the date when notice was made to the expelled member.

Within this timeframe, the expelled member may file an objection with the court, which may suspend the implementation of the decision.

If the company consists of two members, the expulsion of one of them shall be made by the court upon the request of the other.

### **Article 1110**

Expelled from the company shall also be:

- a) the member being declared bankrupt;

- b) the member to whom a creditor has managed to obtain the right to the liquidation of the share according to Article 1092 of this Code.

The expulsion provided for in the first paragraph of this Article cannot be applied where the bankruptcy of the member is a consequence of the bankruptcy of the company.

## **Article 1111**

Where just one member leaves the company, he and his heirs shall be entitled to just an amount of money representing the worth of his share.

The liquidation of the share shall occur based on the property situation of the company on the day when leaving of the member occurs.

Upon activities being pending, the member and his heirs shall participate at the profits and losses pertaining to these activities. Notwithstanding the provisions of Article 1092, the payment of the share belonging to the partner shall occur within 6 months of his day of leaving.

## **Article 1112**

Where just one member leaves the company, he or his heirs shall be liable to third parties regarding the obligations of the company until the day of his leaving.

His leaving shall be notified to the third parties through appropriate media, otherwise, it cannot be referred to towards the third parties who, inculpably, were unaware thereof.

## **CHAPTER XXIII INSURANCE**

### **GENERAL PROVISIONS**

## **Article 1113**

By way of the insurance contract, one party (insurer) shall, upon the event described in the contract being established, be bound to:

- a) in the event of property insurance, reimburse the other party or a third person, to whose benefit the contract has been concluded, the damage sustained within the limits of the amount that has been provided for in the contract;
- b) in the event of personal insurance, reimburse to the other party or a third person, to whose benefit the contract has been concluded, the insurance amount which has been foreseen in the contract.

The insured shall be bound to pay a premium (insurance price) set out in the contract.

The insurer may be a public or private person.

## **Article 1114**



The insurance contract shall be documented, through the insurance certificate (insurance policy) that the insurer issues for the insured, otherwise it is invalid.

## Article 1115

The insurance certificate shall specifically indicate:

- a) name of insurer;
- b) name of insured person, in the insurance event, insured property, location where this property is, in the event of property insurance;
- c) the event, upon establishment of which the insurer shall perform the obligation he has assumed in the contract;
- ç) effectiveness and end of insurance contract (insurance period);
- d) time when liability of the insurer starts;
- e) evaluation of property in the instances when this is required for a certain type of insurance;
- ë) insurance premiums and their payment periods.

Where under the law or based on the contract the reimbursement of insurance or insurance amounts shall be paid not only to the insured person but also to a third person, to whose benefit this contract has been concluded, this condition shall be indicated in the insurance certificate.

## Article 1116

Upon the insurance certificate getting lost, the insurer shall, upon the request and expenses of the insured, shall issue a duplicate copy.

## Article 1117

The insured shall, upon entering into the contract, inform the insurer of all the circumstances that he is aware of and which are of material interest to determining the nature and extent of risk.

It is said to be of material interest all the circumstances whereof the insurer has inquired the insured in writing about.

The insurance contract entered into while falling short of receiving answers to these questions cannot be invalid due to this fact.

## Article 1118

Where, following the conclusion of the insurance contract, it emerges that the insured has intentionally provided inaccurate information in the request or documents being submitted by him based on which the insurance contract has been concluded, the insurer shall, within three months of becoming aware, be entitled to:

- a) change the amount of insurance premium, insurance amount or insurance period;
- b) terminate the insurance contract, as long as such circumstances exist that if the insurer knew, he would not have entered into the contract. In such a case, the insurance premium pertaining

to the period needed for terminating the contract, while under all the circumstances the insurance premium to be paid for the first year of the contract, shall not be reimbursed to the insured.

Upon the insurance event being established prior to the period indicated in the above paragraph starting, the insurer shall not be bound to pay the insurance amount.

Upon the insurance contract being entered into for more than one person or property items, it shall remain valid for those persons and property items bearing no reference to the inaccurate statements or non-disclosure.

## **Article 1119**

Declaring inaccurate information in the request or submitted documents, based whereon the insurance contract has been entered into, or falling short of mentioning the information, while upon being established that they were not due to intention or grave negligence, does not consist a cause for terminating the contract, however, the insurer may withdraw from the contract, by way of notifying the insured in writing, within 3 months of becoming aware thereof.

Upon the insurance event being established prior to the insurer becoming aware of the inaccuracy of information or of falling short of mentioning them, or prior to the withdrawal from the contract being declared, the amount owed shall be proportionally reduced to the difference between the amount set out in the contract and those which would have been applied, as long as the true situation of facts were known.

## **Article 1120**

Where the insurance contract is entered into on behalf of or on the account of third parties and the latter are aware of the inaccuracies in statements or falling short of mentioning the risk (insurance event), the provisions of **Articles 118, 1119** of this code shall apply.

## **Article 1121**

The insurance contract shall be invalid as long as it is established that the insurance risk has never existed or it has ceased to be prior to the conclusion of the contract.

## **Article 1122**

The insurance risk shall be terminated if the insurance risk ceases to exist prior to the conclusion of the contract, however, the insurer has the right to the payment of the premiums, as long as the termination of existence of the insurance risk has been notified to him or until he has become aware thereof in another fashion.

## **Article 1123**

The insured shall, while the insurance contract is in effect, be bound to notify the insurer of all the changes in the circumstances, of which he has become aware after the conclusion of the insurance contract and which can have an impact in increasing the risk.



Where the insured does not make the above notification, the insurer shall, starting from the moment of the increase of the risk, be entitled to change the extent or insurance premium, insurance amount, insurance period or to terminate the contract.

Where the insured does not admit the change or termination of the contract, he shall be entitled to lodge a lawsuit before the court.

## **Article 1124**

The insurance contract shall enter into effect at 24:00hrs of the day of concluding the contract and it shall end at 24:00hrs of the last day of the contract duration.

Where the contract duration is above 10 years, the parties shall, upon the expiry of this period and as long as no contrary agreement exists, be entitled to withdraw from the contract, by way of making a 6-month notice.

The contract may be extended tacitly once or many times, however, at no case more than two years.

This provision shall not apply to the life insurance contract.

## **Article 1125**

The contractor shall be obliged to pay to the insurer the insurance premium by the deadline set out in the contract. Where the premium or the first instalment is not paid by the deadline, the insurance shall be suspended up to 24:00 hrs of the day in which the contractor pays the due amount.

When the contractor doesn't pay the following insurance premiums by the set out deadline the insurance shall be suspended from the 24.00 hrs of the fifteenth day following the expiry of the payment period and the insurer shall be entitled to seek the termination of the contract.

## **Article 1126**

Upon the insurance event being established, the insured shall be bound to notify the insurer by the deadline provided for in the contract. Where the insured fails to make such a notice, the insurer shall be entitled not to pay the insurance remuneration or the insurance amount.

## **Article 1127**

The insured of the third person, to whose benefit the insurance contract has been entered, shall be bound to established that the insurance event has occurred and, in case of property insurance to establish also the amount of damage, as well as to notify the insurer, upon the latter's request, the entire information he is knowledgeable of and bearing a connection to the insurance event. In the event of the insurance of the person, upon the loss of working capacity being established, the medical expertise shall also be made.

Upon the above conditions not being met, the insurer shall be entitled not to pay the insurance remuneration or the insurance amount.

## **Article 1128**



The insurance reimbursement or insurance amount, which should be paid not to the insured by to the third person, to whose benefit the contract was entered into, cannot be attached in connection with the debts of the insured.

The insurer shall be entitled to withhold from the insurance reimbursement or from the insurance amount the amount, which the insured has to acquire from the same insurance contract (premium etc.).

## **Article 1129**

The insurer may refer towards the person, to whose benefit the contract has been entered into, all the demurrers, which he may refer to towards the insured out of the same insurance contract.

## **Article 1130**

Upon a person entering into an insurance contract on behalf of another, while being short of the authorisation to do this, the latter may admit the concluded contract even following the establishment of the insurance event.

The person having concluded the contract shall be bound to perform the obligation stemming from the contract himself, up to the moment when the insurer has received notice of the admission or nonadmission from the person on whose behalf has been concluded.

The insurance price shall be paid to the insurer by the above contractor for the whole period up to the moment when the insurer has taken notice of non-admission of the contract.

## **Article 1131**

The insurer shall not be liable if death or loss of capacity of the insured to work, as well as if loss or harm to property have been caused directly through the acts of war, unless in the insurance contract has been provided for differently.

## **Article 1132**

The conditions about the various types of voluntary insurance of the person and property shall be set out in the contract.

## **Article 1133**

The provisions of this Chapter shall not extend over the mandatory insurance, which is regulated by specific provisions.

The insurance of sea navigation shall be regulated in the Maritime Navigation Code.

## **Property insurance**

### **Article 1134**



The person entering into the property insurance contract or the third person, to whose benefit the contract is concluded, shall have a property interest on the asset being insured, otherwise the insurance contract shall be invalid.

## **Article 1135**

Where following the conclusion of the insurance contract the property interest of the insured or of the third person, to whose benefit the contract has been entered into, lapses, this shall be considered to be terminated.

## **Article 1136**

The insurance amount cannot be higher than the worth of property. This worth may, for some types of insurance, be set out in the insurance contract even by way of assessing the property.

By worth is to be understood the highest value that the property had at the time of establishment of the casual instance.

In the event of insuring the land products, the damage shall be determined in connection with the worth that the products would have at the time of being ripe or when they normally are harvested.

Where just one part of the property worth has been insured, the insurance amount cannot be higher than the worth of the property being insured.

Upon the above conditions being infringed, the insurance contract shall be, as appropriate, valid for an amount equal to the worth or the part of the worth of the insured property.

## **Article 1137**

Upon the insured property getting lost or harmed, its worth shall, as appropriate, be reimbursed within the limits of the insurance amount or the shortfall of the worth of the property, unless the insurance contract provides for differently.

The insurer shall be liable for the lost profit only if this is provided for explicitly in the contract.

## **Article 1138**

Upon the insured property getting lost or harmed in part and the incomplete insurance amount has been respectively paid, the remaining property shall be considered insured to the end of the period set out in the contract for an amount equal to the difference between the insurance amount and the remuneration having been paid.

## **Article 1139**

Upon the insurance amount being smaller than the worth of the insured property, the remuneration of damage shall be set out proportionally to the relationship between the insurance amount and the worth of property being insured, unless the contract provides for differently.

## **Article 1140**

The insured shall be bound to maintain the insured property carefully, abiding the provisions regulating firefighting, and agronomic and veterinary provisions. The insurer shall be entitled to check

the insured property and ask the insured to make arrangements for preserving the property appropriately and for avoiding the irregularities having been found out. Upon the insured infringing the obligation referred to above, the insurer shall be entitled to terminate the insurance contract.

## **Article 1141**

Upon the insurance event being established, the insured shall be bound to make all the arrangements depending on him to salvage and maintain the insured property to the effect of getting the damage stopped or reduced.

The insurer shall not be bound to pay reimbursement for the part of the damage which was caused due to the failure by the insured to make arrangements which could be made to salvage and maintain the insured property.

The insurer shall be bound to defray the expenses for the necessary measures which have been taken for salvaging and maintaining the insured property, regardless whether the purpose has been achieved or not, unless the insurer proves that the means applied and expenses incurred have been applied or used carelessly. The insurer shall be liable for the material damages caused on the insured property items by the means applied by the insured to avoid or reduce the harm having occurred at the insurance event, unless he establishes that these means have been applied carelessly, while not being indispensable.

## **Article 1142**

The insurer having paid the insurance reimbursement shall be entitled to seek the repayment of the paid amount by the persons being responsible for having caused the damage.

## **Article 1143**

The Insured shall be relieved of his obligation to defray the insurance reimbursement, as long as the insurance event has been brought about intentionally or due to grave negligence of the insured or of the person to whose benefit the insurance contract has been entered into.

In case of property insurance of persons, the insurer shall be relieved of his obligation to defray the remuneration amount even if the insurance event has been caused intentionally or due to grave negligence of the major members of the family of the insured.

## **Article 1144**

Where the insured property is assigned to the ownership of another person, the insurance contract shall be considered to be terminated. In such a case the paid premium shall be repaid to the insured proportional to the time remaining until the expiry of the insurance contract duration.

## **Article 1145**

Where for one and the same insurance risk separate insurance contracts have been concluded with various insurers, the insured shall notify each insurer of all the insurances.

Where the insured does not give the above notice intentionally, the insurers shall not be bound to defray the damage reimbursement.

Upon the insurance event being established, the insured shall notify all insurers, divulging to each of them the denomination of the other insurers.

The insured shall be entitled to seek from each insurer the reimbursement of the damage they are bound to under the contract, however, the total amounts being paid shall not exceed the worth of the damage.

#### **Article 1146**

The insurer having paid the damage amount shall have the right to recourse to other insurers for sharing the respective amount under the respective contracts.

Upon one insurer being insolvent, his part shall be shared among other insurers.

#### **Article 1147**

The insurance of goods against the land, water and air transport risks shall include all the damages, which the goods may sustain in the course of the transport, unless the law provides for differently.

#### **Article 1148**

The goods insurance contract against the transport risks shall enter into effect at the moment that the goods have been handed over to the transport and shall be in effect until they are delivered to the recipient, unless the contract has provided for differently.

#### **Article 1149**

Upon the transported goods being taken over by the recipients while the latter falling short of taking down minutes, the insurer shall not be liable for damages or loss of goods, unless the law provides for differently.

### **Insurance of persons**

#### **Article 1150**

The insurance contract for persons may be entered into in case of the events bearing a connection with the life and working capacity of the insured.

#### **Article 1151**

The insurance amount in the insurance contract of the person shall be set out upon the agreement of the parties and under the other provisions regulating insurances.

#### **Article 1152**

The insurance contract is valid even where the life of a third person is insured. Determining the person shall occur in the insurance contract, or upon a subsequent written statement, being notified to the insurer, or upon last will.



## **Article 1153**

The insured may provide for in the insurance contract that in case he dies, the insurance amount be paid to a member of his family, to another person, to the state or to another public legal entity.

## **Article 1154**

The insured shall, in the course of the time that the insurance contract is in effect, be entitled to replace the person he has determining for obtaining the insurance amount by another person. To this effect, the insured shall be bound to notify the insurer in writing and to submit the insurance certificate for making the respective notes.

## **Article 1155**

The determination of the person benefiting the insurance amount may be revoked by the contractor in the form and fashion applied for determining him.

The revocation cannot be made by the heirs following the death of the contractor, upon the insurance event being established and the person having declared that he wishes this benefit. The withdrawal of the contractor and the statement of the beneficiary shall be notified to the insurer in writing.

## **Article 1156**

Determining the person benefiting from the insurance shall, although it may be irrevocable, not be of effect, as long as it is the case provided for in letter 'a' of Article 771 of this Code.

## **Article 1157**

Upon the person eventually benefiting the insurance amount not being indicated in the insurance certificate and upon the indicated person dying prior to being insured, thus falling short of being replaced by another, or upon him intentionally killing or attempting to kill the insured, the insurance amount shall be paid to the insured and, if the latter has died, to his legal or testamentary heirs.

## **Article 1158**

Upon many persons being determined to benefit the insurance amount and some of them having died prior to being insured, or some of them intentionally killing to attempting to kill the insured, their pertinent part shall be shared among the other persons determined to obtain the insurance amount proportional to the part being apportioned to each of them.

Where the contract does not mention the part of persons determined to obtain the insurance amount, they shall be assumed to be equal.

## **Article 1159**

Changes in profession or activity of the insured shall bring about the lapse of the insurance effect, as long as they increase the risk in such a way that, if such a situation existed at the time of entering into the contract, the insurer would not have concluded it.



If the changes are of such a nature that even if the new situation existed at the time of concluding the contract, the insurer would have entered into the contract for a higher price, the payment of the insurance amount shall be reduced proportionally to the lowest price, set out proportionally to that price which was determined at the outset.

Where the insured notifies the insurer of the above changes, the latter shall, within 15 days, declare whether he shall terminate the contract or reduce the insurance amount or raise the price.

The insured shall, within 15 days, declare whether he accepts the above changes in the contract.

Where the insured declares that he does not accept them, the contract shall be terminated.

## **Article 1160**

The insurance amount following the death of the insured being determined to be paid to the person to whose benefit the insurance contract was entered into shall not be included in the legacy of the insured.

## **Article 1161**

The insurance amount emerging out of the insurance contract of the person shall be paid regardless of the amounts which might be paid out of the social insurances.

## **TITLE III TRANSITORY AND LAST PROVISIONS**

## **Article 1162**

The Civil Code of the Republic of Albania shall be applied to the legal relations emerging following its entry into effect.

## **Article 1163**

Regarding the lapse of lawsuit and adverse possession having started to run prior to the entry into effect of this Code, however, not having expired under the previous provisions, the latter shall apply.

## **Article 1164**

The provisions of this Code regarding the possession shall apply also to the possessions having started prior to its entry into effect.

## **Article 1165**

The legal regulation of the periods of time and rent price in the contracts of residences rent shall continue to be made under the previous provisions, until the full liberalisation of this contract by way of specific provisions.

## Article 1166

The specific contracts entered into prior to the entry into effect of this Code and continuing to be applied shall be regulated by the provisions of this Code.

## Article 1167

The law no 6340, dated 26/06/1981 "On the Civil Code", except the provisions regulating property regime between spouses, law no 2362, dated 16/11/1956 "On social organisations not pursuing economic purposes", law no 7688, dated 13/03/1993 "On joint ownership over residences", law no 7695, dated 07/04/1993 "On foundations", **Articles 1 – 15**, Decree no 600, dated 22/07/1993 "On lien and mortgage", approved, as amended, with the law no 7753, dated 30/09/1993, shall be repealed.

## Article 1168

The Civil Code of the Republic of Albania shall enter into effect on 1 November 1994.

\*\*\*

### Transitional provision

*(Article 4 of law no. 17/2012, dated 16.2.2012 has provided the applicable law for lawsuits commenced prior to its entry into force)*

For civil cases with the object of compensating non-pecuniary damage to reputation, which are still in process on the day of entry into force of this law, the civil legislation applicable at the time of filing lawsuits for compensation of non-pecuniary damage shall be applied.

\*\*\*

### Transitional provision

*(About the application of the legal amendments to the Code according to article 11 of law no. 121/2013, dated 18.4.2013)*

The provisions on inheritance are applicable only to requests for the issuance of a certificate of inheritance, made after the entry into force of this law. Court cases with the object "request for issuance of certificate of inheritance" shall continue to be reviewed by the competent court, according to the law at the time of filing the request.

The provisions on the agency are applicable to the contracts of the agency, concluded after the entry into force of this law.