

**FEDERAL LAW NO.(18) OF 1993**  
**COMMERCIAL TRANSACTIONS LAW**

We Zayed Bin Sultan Al Nahyan, President of the United Arab Emirates;  
After perusal of the Provisional Constitution; and  
Federal Law No. (1) of 1972 concerning the jurisdictions of the ministries and the powers of the ministers as amended; and  
Federal Law No. (5) of 1975 concerning the Commercial Register; and  
Federal Law No. (8) of 1980 concerning the Organization of Labour Relations as amended;  
and  
Federal Law No. (10) of 1980 concerning the Central Bank, the Monetary System and the Organization of the Banking Profession as amended; and  
Federal Law No. (18) of 1981 concerning the Organization of Trade Agencies as amended;  
and  
Federal Law No. (26) of 1981 concerning the Commercial Maritime Law as amended; and  
Federal Law No.(8) of 1984 concerning the Commercial Companies Law as amended; and  
Federal Law No. (9) of 1984 concerning the Insurance Companies and Agents as amended;  
and  
Federal Law No. (5) of 1985 issuing the Civil Transactions Low as amended; and  
Federal Law No. (22) of 1991 concerning the Notary Public; and  
Federal Law No. (10) of 1992 issuing the Law of Evidence in Civil and Commercial Transactions; and  
Federal Law No. (11) of 1992 issuing the Civil Procedures Law; and  
Federal Law No. (37) of 1992 concerning the Trademarks; and  
Federal Law No. (44) of 1992 concerning the Organization and Protection of Industrial Property of Industrial Patents and of Industrial Drawings and Models; and  
Pursuant to the proposal of the Minister of Economy and Commerce, and the approval of the Cabinet and the ratification of the Supreme Federal Council;

Hereby Enact The Following Law:

**ARTICLE (1)**

The attached Commercial Transactions Code shall take force and effect.

**ARTICLE (2)**

Any provision contrary to the provisions hereof shall be repealed.

**ARTICLE (3)**

The Ministers and specialized Authorities in the Emirates shall, each within the scope of his jurisdiction, enforce the provisions hereof, and the Minister of Economy and Commerce shall after obtaining such Authorities' opinion, issue the resolutions necessary for its implementation.

**ARTICLE (4)**

This Law shall be published in the official Gazette and shall operate three months after the date of its publication.

Zayed Bin Sultan Al Nahyan  
President of the United Arab Emirates

Enacted at the Presidential Palace in Abu Dhabi  
On 21 Rabie Al Awal 1414 A.H. corresponding to 7 September 1993 A.D.

**COMMERCIAL TRANSACTIONS LAW**  
**PRELIMINARY PART**

**ARTICLE (1)**

The provisions of this Law shall apply to traders, as well as to all commercial activities carried out by any person even though he be not a trader.

**ARTICLE (2)**

1. Traders and commercial activities shall be governed by the agreement entered into by the two contracting parties unless such agreement contradicts an imperative commercial text.
2. Where there is no specific agreement, the rules of commercial customs and practices shall apply to any matter, regarding which, there is no provision herein or in another law related to trading matters. A specific or local custom shall have precedence over the general custom. In the absence of a commercial custom, the provisions pertaining to civil matters shall apply as long as they do not contradict the general principles of the commercial activity.
3. Specific agreements or commercial customs rules may not be applied if they contradict the Public Order or Morals.

**ARTICLE (3)**

Commercial matters regarding which Specific Federal Laws are enacted shall be subject to the provisions of such laws, and to the provisions hereof which do not contradict with said laws.

**BOOK ONE**  
**COMMERCE IN GENERAL**  
**PART ONE**  
**CHAPTER ONE**  
**COMMERCIAL ACTIVITIES**

**ARTICLE (4)**

Commercial activities are:

1. Such activities which are carried out by a trader in relation to his trade affairs, provided that each activity carried out by a trader is considered to be related to his trade unless proved otherwise.
2. Speculative activities carried out by a person, though not a trader, with the intent of realizing profit.
3. The activities which are specified by the Law to be commercial activities.
4. The activities which are related to or facilitating a commercial activity.

**ARTICLE (5)**

The following activities shall, by virtue of their nature, be considered as commercial activities:

1. The purchase of commodities and other material and non-material movables with the intention of selling them at a profit, best to sell them in the same condition or after processing or manufacturing them.
2. The purchase or the hiring of commodities and other material and non-material movables with the intent of hiring them out.
3. The sale or hiring out of commodities and movables purchased or hired as provided for herein.
4. The banking, exchange, stock markets and investment companies operations, trust funds, financial establishments and all kinds of other financial brokerage operations.
5. All kinds of transactions related to commercial papers, irrespective of the capacity of the concerned persons therein or the nature of the transactions for which such operations are carried out.
6. All kinds of sea and air navigation activities, including:-
  - a. The construction, sale, purchase, chartering or taking on charter , repair or maintenance of vessels and aircrafts, as well as sea and air shipment and carriage.
  - b. The sale and purchase of vessel and aircraft supplies, tools and materials and supplies thereof.
  - c. Loading and unloading activities.
  - d. Maritime and air loans.
  - e. Employment contracts for commercial vessel and aircraft captains and pilots.
7. Formation of companies.
8. Current accounts.
9. All kinds of insurances with the exception of the cooperative insurance.
10. Public auction sale premises.
11. Hotels, restaurants, movie halls, theaters, play grounds and amusement centers activities.

12. Water, electricity and gas distribution activities.
13. Publication of newspapers and magazines with the intent of making profit through the publishing of advertisements, news and articles.
14. Post, telegraph and telephone activities.
15. Broadcasting, television, recording and photography studios activities.
16. The activities of public warehouses and mortgages on property deposited therein.

**ARTICLE (6)**

The following activities shall be considered as commercial activities if practiced as a profession:-

1. Brokerage.
2. Commercial agency.
3. Commission agency.
4. Commercial representation.
5. Supply contracts.
6. Purchase and sale of lands or real estates with the intent of making profit by selling there in their original condition or after transforming or dividing them.
7. Land transport.
8. Real estate activities at times when the Contractor undertakes to supply the materials or the workers.
9. The income from extraction industries of natural resources.
10. Tourism, travel, export, import and customs clearing activities, as well as the activities of services and recruitment offices.
11. Printing, publishing, photography, recording and advertising activities.
12. Industry.
13. Animal resources and fisheries activities.

14. Third party's work hiring and taking on lease with the intent of giving it on lease.
15. Letting or renting of houses, apartments and rooms, furnished or unfurnished, with the intent of sub-letting them.

**ARTICLE (7)**

Activities which may be deemed to be analogous to the activities herein mentioned in the above two articles, due to the similarity of their qualities and objectives shall be considered as commercial activities.

**ARTICLE (8)**

An artwork made and sold by the artist himself, or by using the services of workers, shall not be deemed to be a commercial activity the same applying to an another printing and selling his work.

**ARTICLE (9)**

1. The sale by a farmer of the produce obtained from land owned or cultivated by him, even when the said produce has been transformed means normally available to hire, shall not be deemed to be a commercial act activity.
2. Where a farmer establishes a permanent trading shop or factory for the sale of his produce in its original condition or after manufacturing, the sale in such a case shall be deemed to be a commercial activity.

**ARTICLE (10)**

Where a contract is commercial with regard to one party and civil to the other party, the provisions hereof shall apply to the obligations of both parties unless the laws states otherwise or there is an agreement between the parties to the contrary.

**CHAPTER TWO**  
**THE TRADER**

**ARTICLE (11)**

Shall be deemed a trader:-

1. Every person who works in his own name and for his own account in commercial activities and has the proper qualification when taking on such activities as his occupation.
2. Every company which undertakes a commercial activity or has adopted one of the legal forms stipulated by the Commercial Companies Law, even if such an activity whereof civil nature.

**ARTICLE (12)**

Any person who announces to the public, by any means, about business premises established by him for commerce, shall be deemed a trader even if he does not take on trade as his normal profession.

**ARTICLE (13)**

The capacity of trader shall be established in respect of any person who practices commerce under a pseudonym or under the cover of another person's name. The person whose name is apparent shall also be established to have the capacity of trader.

**ARTICLE (14)**

Any person who carries out a commercial activity although prohibited under specific laws or regulations from practicing trade, shall be deemed a trader and shall be governed by the provisions hereof.

**ARTICLE (15)**

The capacity of trader shall not be established to the State Ministries, Departments, Public Authorities and Corporations, as well as Public Benefit Authorities and Establishments, Associations and Clubs, and those persons who practice free professions excluding commercial activities. However, commercial activities carried out by such entities shall be governed by this Law except if excluded by virtue of a specific text.

**ARTICLE (16)**

The capacity of trader is established in respect of trade companies formed, owned or portions owned by the State or public entities and corporations and they shall be governed by the provisions hereof except where otherwise excluded by a specific provision.

**ARTICLE (17)**

Individuals who practice a simple business or small trade where they rely on their work to derive some form of profit to secure their living more than their reliance on cash capital, shall not be governed by the duties of commerce such as keeping commercial books or registering in the Commercial Register nor shall they be governed by the provisions of bankruptcy and composition. The Ministry of Economy and Commerce shall, in consultation with the specialized authorities in the Emirates, determine the maximum number of individuals working with them and the capital to be invested in this small trade.

**ARTICLE (18)**

1. Any person who has attained 21 calendar years of age and is free of any legal impediment shall be competent to carry on commerce.
2. Nevertheless, a minor may - whether under guardianship or custody - practice commerce whenever he attains 18 calendar years of age and is granted a Court order giving him an absolute or restricted permission to practice trading activities.

**ARTICLE (19)**

1. Where a minor or a legally incompetent person has funds in commerce, the Court is empowered to order the withdrawal of his funds from said commerce or to carry on with the business, as may best serve his interests.
2. If the Court gives orders for the business to continue, it shall be required to grant the person acting for him an absolute or restricted authority to undertake all activities required therefor.
3. The Court has the power to withdraw or limit the authority where there be causes to justify it, without undo prejudice to any rights acquired by a bona fide third party.

**ARTICLE (20)**

Any order issued by the Court to continue with the business of the minor or the legally incompetent person, or to withdraw or limit the authority, must be entered in the Commercial Register and published in two arabic dailies issued in the State.

Where the Court orders the continuance of the business of the minor or the legally incompetent person, he shall be liable only to the extent of the funds invested in such commerce. He may be declared bankrupt but the bankruptcy shall not include funds which are not invested in the business nor shall it have any effect with regard to the minor or the legally incompetent person.

**ARTICLE (21)**

1. The capacity of a married woman to practice trade shall be regulated by the law of the country of which she is a national, subject to the provision of Article (II) of the Civil Transactions Law.
2. A foreign wife who practices trade is assumed to have obtained her husband's approval to do so; and where the applicable law authorizes a husband to object to his wife practicing the trade or to withdraw his previous permission, such objection or withdrawal of permission should be entered in the Commercial Register and published in two arabic dailies issued in the State.
3. The objection or withdrawal of permission shall have no effect except from the date of its entry in the Commercial Register and newspaper publication, nor shall it be prejudicial to the rights acquired by a bona fide third party.

**ARTICLE (22)**

1. It shall be assumed that a foreign trader wife has concluded a marriage settlement based on separate ownership of property, unless the financial stipulation between the spouses provides otherwise. Moreover such stipulation may not be opposed to third



parties unless it is entered in the Commercial Register and a summary thereof has been published in two Arabic dailies issued in the State.

2. In case of negligence to enter the stipulation in the Commercial Register and publish its summary, a third party may prove that the marriage settlement was based on a financial system more convenient to his interest than the separate ownership of property.
3. A foreign judgement ordering the separation of property ownership may not be opposed to third parties except from the date of its entry in the Commercial Register and publication of its summary in two Arabic dailies issued in the State.

#### **ARTICLE (23)**

1. No persons other than a U.A.E. citizen may practice trade in the State., unless he has one or more U.A.E. partners according to the conditions and within the limits stipulated by the Commercial Companies Law.
2. Professionals may not practice import and export activities.
3. Non-U.A.E. citizens practicing on trade in the State at the time when this Law becomes effective and having no national partners, must regulate their status according to the provisions hereof.

#### **ARTICLE (24)**

1. The following persons may not engage in trade:-
  - a. Every trader whose bankruptcy was declared during the first year of his practicing trade unless he has been rehabilitated.
  - b. Any person who has been convicted of a crime of bankruptcy either by fraud, commercial swindle, theft, deception, or by breach of trust, forgery, use of falsified papers, unless he was rehabilitated.
2. Any person who violates the foregoing prohibition in the above subsection shall be sentenced to imprisonment for no more than one year and charged with a fine of at least Dhs 5,000/- and not exceeding Dhs 100,000/-, or with either of these penalties, with an order to have the trading premises closed in all cases.

#### **ARTICLE (25)**

Any dealings formalities undertaken by the trader in connection with his trade may not be accepted by the specialized authorities, unless such trader is entered in the Commercial Register.

### **CHAPTER THREE** **COMMERCIAL BOOKS**

**ARTICLE (26)**

1. The trader shall keep such commercial books as may be required by the nature and importance of his trade, in such manner as to show his financial position with accuracy as well as any rights and liabilities related to his trade.
2. In all cases, the trader is to keep the following two books:-
  - a. Daybook;
  - b. General ledger.

**ARTICLE (27)**

1. All the financial operations carried out by the trader as well as his personal drawings shall be entered into the Daybook day by day.
2. The trader has to use auxiliary daybooks to prove the details of his commercial operations, in which case it shall be sufficient to enter the total of such operations in the Daybook at regular intervals, otherwise each auxiliary book shall be deemed a Daybook.

**ARTICLE (28)**

The following shall be entered in the General Ledger:-

1. All accounting operations carried forward from the Daybook on the basis of supporting documents thereof; in particular the accounts related to the cash money bank, partners, creditors, debtors, revenues, withdrawals and expenditures.
2. Inventory of the stocks available to the trader at the end of the financial year or an overall statement thereof if the particulars are shown in separate books or lists, in which case such books and lists shall be considered as a complementary section to the General Ledger.
3. A copy of the annual balance sheet and the profit and loss account.

**ARTICLE (29)**

1. The commercial books shall not contain any blank, crossing out, erasure, writing in the margins, scraping or insertion.
2. Before using the Daybook and the General Ledger, the pages thereof shall be numbered and signed by the Commercial Registrar used by the trader, and stamped with the official seal of the said Authority, showing the date of such procedure. Where the pages of the said two books are filled up, the trader is to produce them to the same Authority to have them marked up to that effect after the last entry made therein and before using the new book.
3. In case of discontinuation of the commercial activities in the business premises, the

trader or his heirs is to produce the said two books to the Commercial Register to have them marked up to that effect.

4. No fees shall be charged for affixing the official seal and the marking up stipulated in the foregoing cases.

#### **ARTICLE (30)**

The trader must keep exact copies of the originals of all correspondence, telegrams and invoices sent or issued by him for the purpose of his commercial activities; and further he must keep all incoming correspondence, telegrams, invoices and other documents related to his trade. All such papers shall be kept in an orderly fashion that facilitates reference thereto and for a minimum period of five years from the date of issue or receipt.

#### **ARTICLE (31)**

The trader or his heirs should keep the commercial books and the documents supporting the entries made therein for a minimum period of five years to run from the date of marking up the book when all its pages are filled up.

#### **ARTICLE (32)**

The banks, companies or establishments in respect of which a decision is taken by the Minister of Economy and Commerce may keep, for the period mentioned in the two preceding Articles the micro films (or any other modern technological device) instead of keeping the originals of the books documents, correspondence, telegrams and other papers related to their financial and commercial activities. Such micro films shall constitute the same evidence as the original provided that the rules organizing use thereof for the purpose of this Article shall be set by the Minister of Economy and Commerce, and said banks, companies and establishments shall be bound to comply with such rules.

#### **ARTICLE (33)**

Entries made in the commercial books by employees authorized by the trader shall be deemed as entries made by the trader himself, and it shall be assumed that such entries were made with his knowledge and consent until he proves otherwise.

#### **ARTICLE (34)**

The Court may, of its own record or at the request of either litigant, order the trader to produce his commercial books to extract therefrom what is of relevance to the conflict referred to such Court; and the latter should get peruse directly peruse such books, or through an expert appointed by it to that effect.

#### **ARTICLE (35)**

1. The Court may not order the trader to produce his commercial books for the perusal of his adversary unless the conflict in question is related to an estate, a partnership or the division of joint property to both of them.
2. In case of bankruptcy or composition the commercial books shall be delivered to the

specialized Court, the bankruptcy trustee or to the composition controller.

**ARTICLE (36)**

The commercial books kept by the traders may be used as evidence in the cases lodged by or against them if such cases are related to their commercial activities and according to following rules:-

1. The data entered in the commercial books - even if not duly organized according to the law provisions - shall constitute a proof against the trader who keeps such commercial books. Nevertheless, a person wishing to derive therefrom any evidence in his favour, may not divide the data entered therein.
2. The data duly entered in the commercial books according to the law provisions shall constitute a proof for the trader who keeps such books against his opponent trader, unless such opponent nullifies them by virtue of data duly entered in his books according to the law provisions or by any other means proving that them not be true.
3. In the event where both litigants' commercial books are regularly kept according to the law provisions and the comparison made between them shows a contradiction in the data entered therein, the Court shall require another evidence.
4. In case of discrepancy in the data entered in both litigants' books, while one trader's books are regularly and duly kept according to the law provisions and the other trader's books are not, the data entered in the regular books shall prevail, unless the adversary proves the contrary of the data entered therein. The same provision shall apply if either litigant produces regular books and the other one does not produce any books.

**ARTICLE (37)**

If either litigant trader relies for the validity of his case on his opponent's commercial books, and he admits in advance the correctness of the data entered therein, then the opponent refrains without excuse from producing such books to the Court for perusal; this shall be deemed a presumption that the facts required to be proved is the books are correct. The Court may further administer supplementary oath to the Plaintiff on the validity of his case.

**ARTICLE (38)**

Traders using computers or other modern technological equipment in the organization of their trading activities, shall be excluded from the provisions of Articles (26,27,28,29) of this Law. The data obtained from such computer or other high tech methods shall be considered as commercial books and general rules shall be set by a resolution of the Minister of Economy and Commerce to regulate the use of such data.

**PART TWO**

**BUSINESS PREMISES, TRADE NAME, UNFAIR  
COMPETITION, TRADE MARKS AND DESCRIPTIONS**

**CHAPTER ONE**  
**BUSINESS PREMISES, TRADE NAME AND UNFAIR COMPETITION**

**SECTION (ONE)**  
**BUSINESS PREMISES**

**ARTICLE (39)**

A business premise constitutes a group of tangible and intangible assets allocated for the practice of commercial activities.

**ARTICLE (40)**

1. The business premises cover the necessary elements for the commercial activity. Such elements are divided into tangible elements such as the goods, equipment, machines and tools, and intangible elements such as the clientele (customer contacts), goodwill, trade name, right to let, industrial, literary and artistic patents and licenses.
2. The tangible elements are not considered essential to the business premises, contrary to the intangible elements as the business premises have no existence unless one or more elements thereof are available.

**ARTICLE (41)**

In the event where the trader is the owner of the real estate in which he practices his trade, such estate shall not be considered as an element of the business premises and any provision to the contrary shall not be valid.

**ARTICLE (42)**

Any action dealing with the transfer of the ownership of the business premises or the creation a real right thereon, shall not be valid unless it is attested and authenticated by the Notary Public and entered in the Commercial Register.

Such action should include the following data:

1. Names of the contracting parties with their nationalities and place of residence.
2. Date and type of the action.
3. Type and address of the business premises and those elements agreed to be included in the action.
4. Price of the tangible and intangible elements, each of them being separate, if the action is a sale and part of the price paid upon conclusion of the contract and mode of

payment of the balance.

5. Specific agreements concerning the contracts and undertakings (if any), pertaining to the business premises.
6. Agreements concerning the seller maintaining the right of rescission, termination or franchise -if any-.

**ARTICLE (43)**

Out of any sum paid on account of the price, the price of the goods shall be deducted first, then the price of the equipment, then that of the intangible elements, even if there is an agreement to the contrary.

**ARTICLE (44)**

1. The title to the business premises shall only be transferred as between the contracting parties and with regards to third parties, from the date on which the action is entered in the Commercial Register and a summary thereof is published in two Arabic dailies issued in the State with an interval of one week between the two issues, and after expiry of the period prescribed for acceptance of the objection to the said action.
2. In case the business premises include elements that are subject to specific regulations for advertisement and registration, the advertisement made for the disposal of the business premises shall not replace the special advertisement or registration procedure, unless the law provides otherwise.

**ARTICLE (45)**

The disposal of the business premises shall only be entered after finalization of the following formalities:

1. The officer in charge at the Commercial Register shall, at the request and expense of the purchaser, publish a summary of the sale contract in two Arabic dailies issued in the State with an interval of one week between the two issues.
2. The summary published shall include the names of the contracting parties, their nationalities and place of residence, designation of the business premises, total price and an authorization to the creditors to submit their objections within ten days from the date of the last publication.
3. Objections shall be lodged with the specialized Civil Court to which jurisdiction the business premises pertain and they shall include the amount of the debt and its cause.
4. The purchaser shall be forbidden from paying the price until the Court makes a ruling on the objections. However, the seller may make a request for the summary judge to

authorize him to cash the price even before the objections are looked into, if he provides sufficient guarantees for the settlement of the creditors' rights.

5. Any objecting creditor or mortgagor may offer to purchase the business premises for himself or for a third party for a price exceeding by at least one fifth the price agreed upon.
6. Any person objecting to the price shall deposit at the Court treasury a sum equal to at least one third of the original price in addition to the increase offered by him.
7. The specialized Court shall notify the offers of increase to the two contracting parties for the sale of the business premises and twenty days after such notification the Court shall decide the sale of the business premises to be sold to the persons having offered the highest price.

#### **ARTICLE (46)**

1. Any person upon whom the ownership of the business premises devolves, shall, under the law, subrogate the person who disposed thereof in all the rights and obligations arising from the contracts related to the business premises, it was agreed upon to the contrary or unless the contract is entered into on basis of personal considerations.
2. Nevertheless, any person second party to the contracts referred to in the previous paragraph, may request the cancellation of the disposal within ninety days from the date of notification thereof, provided he has serious reasons to justify such cancellation and provided that he notifies the new owner within a convenient period of his wish to cancel the disposal.

#### **ARTICLE (47)**

1. The person upon whom the title to the business premises has devolved, shall fix a date for the creditors holding debts prior to the notification of the disposal, in order to submit a statement of their debts for settlement. Such date shall be published in two dailies issued in the State one of which is in Arabic and with an interval of one week between the two issues. The date fixed to the creditors may not be less than ninety days from the date of publication. The person upon whom the title to the business premises has devolved shall remain liable for the debts, if the creditors of such debts submit a statement thereof within the said prescribed period and if such debts are not settled within such period.
2. However, the person upon whom the title to the business premises has devolved, shall be released of any debts regarding which the creditors do not produce a statement within the prescribed time as shown in the previous paragraph.
3. Furthermore, the disposing party shall remain liable for the debts related to the

business premises and which have arisen prior to the notification of the disposal unless he is discharged therefrom by the creditors.

**ARTICLE (48)**

As an exception to the bankruptcy provisions, the seller of a business premise who did not receive the full price, may protest to the group of creditors in the purchaser's bankruptcy and exercise his right to rescind the sale contract of the business premises, to redeem this latter or his right of lien if he reserved for himself such right in the sale contract, and if such right of lien was published in the newspapers. Nevertheless, such rescission or termination or lien shall only affect the elements included thereby.

**ARTICLE (49)**

1. Business premises may only be mortgaged to banks and financing institutions.
2. Where the mortgage deed does not specify the elements covered by the mortgage, it shall then only cover the trade name, the right to let, the clientele (customers' contacts) and the goodwill.

**ARTICLE (50)**

1. A mortgage is not put into effect except by an authenticated deed, attested by the Notary Public and entered in the Commercial Register.
2. The mortgage deed shall contain a declaration by the debtor as to whether or not the seller has a privilege over the mortgaged business premises, as well as the name of the company which insured the business premises (if any).

**ARTICLE (51)**

1. The mortgage entry in the Commercial Register shall secure a privilege right for five years from the date thereof, and where the entry is not renewed within the said time limit it shall be deemed to have been cancelled.
2. The said entry may be crossed off by mutual agreement of the concerned parties or pursuant to a final Court order.

**ARTICLE (52)**

The mortgagee shall be held responsible to keep the mortgaged business premises in good condition.

**ARTICLE (53)**

1. Where the owner of the business premises fails to pay the price or the balance of the price to the seller, or if he fails to pay the debt on the maturity date to the mortgagor, the seller or mortgagor may, after eight days from the date of service of a notice on his debtor who has possession of the business premises, submit a petition to the summary judge, requesting permission to sell, by public auction all or some of the constituent elements of the business premises which are covered by the seller's or



mortgagor's privilege.

2. The sale shall be effected at the venue, date and hour and according to the manner designated by the judge; and the sale shall be advertised for at least ten days before the set date.

**ARTICLE (54)**

Any provision in the mortgage contract granting the creditor the right to acquire the property of the mortgaged business premises or to dispose thereof without the procedures prescribed above shall be considered null and void.

**ARTICLE (55)**

The seller, as well as the mortgagors, shall have the same rights and privileges over the sums resulting from the insurance as those which they had over the insured items, provided it has been established that such sums have matured.

**ARTICLE (56)**

The lessor of the place wherein lies the mortgaged furniture and equipment being used for exploiting the business premises, may not exercise his privileges for more than two years.

**SECTION TWO**

**TRADE NAME**

**ARTICLE (57)**

The trade name of an individual trader consists of his first name and surname; it may also contain particulars pertaining to the persons therein mentioned, relevant to the kind of trade for which it is designated. However, it may consist of an innovated nomenclature. In all cases, the trade name must conform to the truth, or else it would be misleading or prejudicial to the public order or morals.

**ARTICLE (58)**

Trade names of commercial companies shall be in compliance with the specific and relevant provisions.

**ARTICLE (59)**

A trade name shall be entered in the Commercial Register in accordance with the provisions stipulated to that effect. Once registered, no other trader may use such name for his trade which is of a similar kind. Where the name and surname of a trader are similar to a trade name previously entered in the Register, he must add to his name such particulars as would distinguish him from the trade name already registered.

**ARTICLE (60)**

1. The trader shall write his trade name on the facade of his business premises, and he must carry out his commercial transactions under his trade name.

2. A trader may not use the trade name of another trader after abatement or removal of such name, except after the lapse of one year from the date of such abatement or removal.

**ARTICLE (61)**

1. A trade name may not be disposed of independently of the business premises allocated therefor.
2. However, in case the owner of the business premises disposes thereof, such disposal shall not include the trade name, unless it is explicitly or implicitly provided as such.
3. The person upon whom the title to the business premises devolves, excluding its trade name, shall not be liable for the obligations of his predecessor unless there is an agreement to the contrary entered in the Commercial Register.

**ARTICLE (62)**

1. A person to whom the ownership of a business premise is transferred, may not use his predecessor's trade name, unless such name devolves unto him or the predecessor authorizes him to use it; provided that he adds to the name such particulars purporting to the transfer of ownership.
2. Any violation of the provisions of the previous paragraph shall be punished by being sentenced to imprisonment or by a fine of at least (Dhs 10,000) Ten Thousand Dirhams or by either of these two punishments.

**ARTICLE (63)**

1. Any person to whom the ownership of a trade name is transferred, following the transfer of the title to a business premise, shall subrogate his predecessor in the rights and obligations accrued under the said trade name. Any agreement to the contrary does not be apply to third parties except from the date of its entry in the Commercial Register and the notice served to the concerned parties to that effect.
2. In case of denial and lack of legitimate excuse, the action in liability for the predecessor's obligations, may not be heard after the lapse of five years from the date on which the ownership of the business premises is transferred.

**SECTION THREE**  
**UNFAIR COMPETITION**

**ARTICLE (64)**

A trader may not induce the employees or workers of another competitor trader, so that they aid him in usurping the customers of that other trader, or so that they leave their employer's service and enter into his service or disclose to him the secrets of his competitor; and the foregoing acts are considered unfair competition necessitating damages.

**ARTICLE (65)**

A trader may not disclose such matters as are inconsistent with the reality regarding the origin or description of his goods, or any other matters pertaining to their nature or importance. He may not either declare falsely that he holds a status or degree or award, nor may he resort to any other misleading means, with the intent thereby to usurp the customers of a competitor trader; or else, he shall be liable for compensation.

**ARTICLE (66)**

A trader may not resort to fraud and cheating when marketing his goods, nor may he spread or publish false particulars tending to be prejudicial to the interests of another competitor trader; in default he shall be liable for damages.

**ARTICLE (67)**

A trader may not issue to an ex-employee or ex-worker a certificate that is inconsistent with the reality, otherwise he shall be liable to compensate the damages caused to any other trader who was misled by such certificate.

**ARTICLE (68)**

1. Where a trade name is used by other than its owner without any agreement authorizing it or where the owner uses it in a manner violating the law, the concerned parties may apply to the specialized Court to order the prohibition of its use and to strike it off if it is entered in the Commercial Register; they may further claim damages, if relevant.
2. Any violation of the foregoing provisions shall be punishable by imprisonment or a fine of at least (Dhs 10,000) Ten Thousand Dirhams or by either of these two punishments.

**ARTICLE (69)**

Any person engaged in the business of supplying information to commercial houses about the conditions of trade, who knowingly or through gross negligence supplies untrue statements about the behavior or financial standing of a trader, shall be liable to compensate such damages which may result therefrom.

**ARTICLE (70)**

The foregoing provisions shall be without prejudice to any other punishments stipulated by other laws concerning the commitment of the acts mentioned in such provisions.

**CHAPTER TWO**  
**TRADE MARKS AND DESCRIPTIONS**

**ARTICLE (71)**

Trade marks and descriptions shall be regulated by the specific laws issued to that effect.

**BOOK TWO**  
**COMMERCIAL OBLIGATIONS AND CONTRACTS**  
**PART ONE**  
**COMMERCIAL OBLIGATIONS**

**ARTICLE (72)**

1. Where two individuals or more assume a commercial debt, they shall be jointly liable for the settlement of such debt, unless otherwise provided for by law or agreement.
2. The foregoing provision shall also apply in cases where there are several guarantors in a commercial debt.

**ARTICLE (73)**

A guarantee shall be commercial if the guarantor has guaranteed a debt which is deemed in regard to the debtor to be commercial unless otherwise provided for by law or agreement, or if the guarantor is a trader and has an interest in guaranteeing the debt.

**ARTICLE (74)**

In a commercial guarantee, the guarantors shall be jointly liable with each other and with the debtor.

**ARTICLE (75)**

Where a trader carries on, for a third party, such business or services as are related to his commercial activities, he shall be deemed to have done so in return of a consideration, save where it is established otherwise; such consideration shall be determined according to the custom and in the absence of such custom, it shall be determined by the Court.

**ARTICLE (76)**

A creditor is entitled to receive interest on a commercial loan as per the rate of interest stipulated in the contract. If such rate is not stated in the contract, it shall be calculated according to the rate of interest current in the market at the time of dealing, provided that it shall not exceed 12% until full settlement.

**ARTICLE (77)**

Where the contract stipulates the rate of interest and the debtor delays payment, the delay interest shall be calculated on basis of the agreed rate until full settlement.

**ARTICLE (78)**

The interest shall be paid at the end of the year if the loan is for one or more years, or on the maturity date of the debt if the loan period is less than one year, unless the commercial or banking practice requires otherwise.

**ARTICLE (79)**

Where the loan is for a specified term, the creditor shall not be bound to accept payment prematurely, unless the debtor pays the interest which accrues for the remaining period of the loan term, save where both parties agree otherwise.

**ARTICLE (80)**

Demands and authorizations issued by a trader for matters related to his commercial activities shall not lapse upon his death. Nevertheless, his heirs may cancel same if they decide to discontinue the trade, and in such a case they shall not be deserving of any compensation if they notify in due time that who has contracted with the intestate (or legator) of notify their wish to cancel such demands and authorizations.

**ARTICLE (81)**

1. Where the commercial obligation is the delivery of a certain thing within a specific season or a time of the year, it shall be referred to the agreement between the two parties, in order to fix the time for delivery, and in case is no such agreement then to the custom prevailing in the country where the delivery is to take place.
2. As to the method of measuring, weighing or counting the goods, it is the custom prevailing in the country, where the contract was concluded, that shall be applied.

**ARTICLE (82)**

A creditor may not be compelled to accept performance of a contract for the performance of which a term has been fixed, after the expiry of such term and if the debtor fails to perform within the specified term, unless there is an agreement to the contrary.

**ARTICLE (83)**

Where the debt is deferred and the debtor offers to settle it before its maturity, he may not upon payment deduct a part of it therefrom except with the creditor's consent, unless it is otherwise provided for by law or agreement.

**ARTICLE (84)**

Where either contracting party reserves the right to rescind the contract before execution has commenced, such party shall forfeit his right of rescission if he performs his obligations under the contract or if he consents to the other party's performance of his obligations.

**ARTICLE (85)**

Excuses and notices in commercial matters shall be through the notary public, by registered letter with acknowledgement of receipt or by cable.

**ARTICLE (86)**

Courts may not grant a debtor, who is under a commercial obligation a respite for payment nor may they make same payable by installments except with the creditor's consent or under general exceptional circumstances.

**ARTICLE (87)**

Where the debtor settles a commercial debt to the person holding the instrument of such debt marked with acquittal or to the person holding an acquittal from the creditor, he shall be discharged from the debt.

**ARTICLE (88)**

Where the commercial obligation is a sum of money which was known when the obligation arose and the debtor delays payment thereof, he shall be bound to pay to the creditors as compensation for the delay, the interest fixed in Articles (76) and (77), unless otherwise agreed.

**ARTICLE (89)**

For the accrual of delay interest, it is not a condition that the creditor proves that he sustained damages as a result of such delay.

**ARTICLE (90)**

Interests for delay of payment of commercial debts shall accrue on mere maturity of such debts, unless it is otherwise provided for by law or agreement.

**ARTICLE (91)**

1. A creditor may claim complementary damages, to be added to the delay interest, and shall not be required to prove that the damages in excess of said interest were caused by the debtor's cheating or gross fault.
2. Where the creditor, when claiming his right, causes, in bad faith, the prolongation of the dispute, the Court may reduce the interest or it may not award any interest at all for the period of the unjustified prolongation.

**ARTICLE (92)**

1. Any check for the payment of a sum of money or the delivery of goods, may be circulated by way of indorsement if payable to the order of the creditor or by handing in directly if payable to bearer.
2. Indorsement or handing in directly shall result in the transfer of all rights arising from the check to the indorsee or new bearer.
3. In case of indorsement, the indorser shall guarantee payment of the right established in the check on maturity date, unless it is agreed in the indorsement phrase to restrict

the guarantee to the existence of the right at the time of indorsement.

4. Where the check is drawn as a result of a commercial transaction, the signatories thereto shall be jointly liable, unless the indorsement phrase provides otherwise.
5. In all cases, the debtor may not have an objection on the bearer of the check when the payment is based on a personal relationship existing between him and the drawer or the previous bearers, unless the bearer's intent upon receiving the check was to cause harm to the debtor, or unless the payment was related to the debtor's lack of capacity.
6. The debtor may also refrain from paying the value of the check if such check is not delivered to him marked up with acquittance.

**ARTICLE (93)**

The possession by the debtor of the instrument of the debt constitutes a presumption that he has been discharged of the debt, until otherwise established.

**ARTICLE (94)**

Commercial obligation, whatever their amount, should be proved by all means of evidence, unless otherwise provided for by law or otherwise stipulated in the agreement.

**ARTICLE (95)**

The obligations of traders towards each other and concerning their commercial activities, shall not be hard when there is ..... or each of legitimate ..... on the lapse of ten years from the date on which the performance of the obligation falls due, unless the law stipulates a shorter period.

**PART TWO**  
**COMMERCIAL SALE**  
**CHAPTER ONE**  
**GENERAL PROVISIONS**

**ARTICLE (96)**

The general provisions stipulated in this chapter shall not apply to sales, concluded between traders concerning their trading affairs, unless it is otherwise stipulated.

**ARTICLE (97)**

Where the two contracting parties fail to fix the price, the sale shall be concluded at the price reckoned in their dealings, and if there were no previous dealing between them, then at the prevailing price in the market; all this unless it has been revealed from the ..... circumstances the necessity of adopting a different price.

**ARTICLE (98)**

Where both contracting parties agree that the sale price shall be at the market rate, then the

..... shall be ..... at that note on the date and at the venue where the contract is concluded, otherwise stipulated in the agreement, and in case of several market prices then the average price shall prevail.

**ARTICLE (99)**

The two contracting parties may agree to delegate a third party to fix the price of the item being sold. However, if such party fails to fix the price within the prescribed term or within a convenient period and if no prescribed term was stipulated, then the then current market price shall be applied on the date and at the venue where the contract was concluded.

**ARTICLE (100)**

Where the price is estimated on the basis of the weight, it shall mean the net weight, unless there is an agreement or custom to the contrary.

**ARTICLE (101)**

1. Where it is agreed by both contracting parties that the purchaser may prescribe the form, volume or any other distinguishing features of the item being sold, the purchaser shall do so within the agreed period or within a convenient term if no fixed period is agreed upon.
2. If the aforementioned time limit has lapsed and the purchaser did not prescribe the features of the item sold, the vendor shall have an option to claim for rescission of the contract and damages , or to prescribe himself the said features and notify the purchaser thereof. This determination shall be deemed final if the purchaser does not object thereto within ten days from his notification.

**ARTICLE (102)**

1. Where a date is not fixed for delivery, it must be effected immediately upon conclusion of the contract, unless the nature of the item sold requires that it be delivered on another date.
2. Where it is agreed that the purchaser may fix the date of delivery of the item sold, the vendor is bound to deliver it on such date, with consideration taken as to the period required for the preparation of the sold item being ..... for delivery and to its nature.

**ARTICLE (103)**

1. The vendor shall bear the liability for the perishing of the sold item until effective or definite delivery thereof to the purchaser.
2. Where the vendor, at the request of the purchaser, sends the item being sold to other than the designated venue for delivery, the liability for the perishing of the item shall be borne by the purchaser from the date of handing is the item sold to the carrier, unless otherwise agreed upon.
3. Where the vendor fails to comply with the instructions of the purchaser regarding the



method of despatch without a justifiable necessity, he shall be liable for such damages as are sustained by the item sold as a result of such breach.

4. The purchaser shall, unless otherwise agreed, bear the expenses incurred in delivering the sold item in other than the venue designated for delivery.

**ARTICLE (104)**

Any shortage occurring to the sold item upon its delivery shall not be taken into consideration if custom allows such shortage.

**ARTICLE (105)**

Where the vendor fails to deliver the specific item sold, the purchaser may serve notice on the vendor insisting on performance within a suitable term. Where the vendor fails to perform that obligation, the purchaser shall have an option either to apply to the Court for order to compel the vendor to an execution in kind by delivering to him the sold item - if possible - with payment of damages if necessitated, or to consider the contract rescinded and claim for damages if necessitated, or to buy at vendor's expense an object similar to the item sold and claim from him the difference between the price agreed upon and the price paid by him in good faith to obtain such object. Where the sale relates to an item having a known price in the market, the purchaser may claim from the vendor the difference between the price agreed and the market price on the date fixed for delivery, even though he did not buy an object similar to the item sold.

**ARTICLE (106)**

Where the two contracting parties agree that the sold item be delivered in batches, the purchaser may ask for the rescission of the contract if the vendor fails to deliver any of the batches on the fixed date. However, such rescission shall not apply to the batches already delivered, except where the purchaser sustains heavy damages due to the division of the item sold.

**ARTICLE (107)**

Where the purchaser does not pay the price on the date agreed upon, the vendor may, after serving notice to the purchaser, re-sell the goods. If the goods are sold in good faith at a price less than the price agreed upon, the vendor shall be entitled to claim from the purchaser the price difference. Furthermore, if the goods have a known price in the market, the vendor may claim from the purchaser the difference between the price agreed upon and the market price on the date fixed for payment of the price, even though the sale did not effectively take place.

**ARTICLE (108)**

1. The purchaser, who has paid the full price, may ask the vendor to give him a list of the goods, where it is mentioned that the price has been paid.
2. Any person, having expressly or implicitly accepted a list of the sold goods, shall be deemed as having agreed to its contents. Where the person receiving the list, does not object to its contents within eight days from the date of receipt, this shall be

considered as an implicit acceptance, unless a longer period has been agreed upon.

**ARTICLE (109)**

1. Where the purchaser refuses to take delivery of the item sold, the vendor may apply to the Court to establish this and grant him permission to sell same under the Court supervision after the lapse of a period fixed by it and notified to the purchaser. However, the Court may order that highly perishable items to be sold without delay and without notice.
2. The total value of the sale shall be deposited in the treasury of the Court, after deducting therefrom all the expenses incurred by the vendor until the dispute between him and the purchaser is settled.

**ARTICLE (110)**

Save where an agreement or custom stipulates the rescission, if the quantity or type of the goods delivered is different from that agreed, or if the goods are defective, the purchaser may not apply for rescission of the contract unless the difference is so great as to render the goods delivered unsuitable for the purpose for which they were to be used, or difficult to be marketed. The Court may further, upon rejecting the application for rescission of the contract, decide to reduce or complement the price, depending on the deficiency or excess in quantity, the discrepancy in type or the degree of defect.

**ARTICLE (111)**

1. The purchaser shall, in the cases mentioned in the previous Article, notify the vendor that there is a difference or a defect, within fifteen days of the date on which the item sold is effectively delivered to him, and he must file the action for rescission or reduction of the price within sixty days of such delivery date. However, if the defect is hidden and cannot be detected with the routine examination, the purchaser must then notify the vendor immediately when he discovers it, and lodge the action in warranty of the defect within six months of the date of actual delivery, unless there is an agreement to the contrary.
2. Where the purchaser does not notify the vendor of the difference or defect, or if he does not file the action for rescission, price reduction or defect warranty within the period hereinabove referred to as the case may be, his action shall not be heard in case of denial or lack of legitimate excuse, unless the purchaser proves cheating on the vendor's part, in which case the action shall not be heard if lodged after the lapse of one year of the delivery date.
3. The action instituted by the vendor to complement the price due to increase in quantity or in the item standard, shall not be heard after the lapse of sixty days of the date of actual delivery of the item sold.
4. It is permissible to exempt the purchaser from the periods prescribed in the previous paragraphs or to amend such periods.

**ARTICLE (112)**

1. Where the item sold is a commodity protected by a registered trade mark, it is permissible to agree that the purchaser may not sell it under a certain specific price.
2. The Court may decide the non-compliance with this condition if it considers that the item sold to be necessary commodity.
3. The purchaser's successors shall not be bound to observe the above condition, except if they came to know or they could have known about it.

**ARTICLE (113)**

It is not permissible to agree in supply contracts where the supplier grants certain advantages to the purchaser, to present the latter from buying similar goods to the item sold from another supplier during a period of five years from the date of agreement. Any agreement on a longer period shall be reduced to five years.

**CHAPTER TWO**  
**CERTAIN TYPES OF COMMERCIAL SALES**  
**SECTION ONE**  
**SALE BY INSTALLMENT**

**ARTICLE (114)**

The contract of a sale by installment shall be executed in two copies and shall state the particulars which identify and determine the item sold, as well as the price, the period and conditions of the installment. The seller should handing the buyer one copy of said contract.

**ARTICLE (115)**

The installments shall be paid at the place of residence of the seller, as stated in the contract, unless otherwise agreed upon. Where the installments are collected from the purchaser's place of residence, the purchaser may not charge additional expenses, and acquittance of any installments shall be deemed a quitclaim of all the previous installments unless there is an evidence to the contrary.

**ARTICLE (116)**

1. Where the purchaser fails to pay any installment of the price agreed, the seller may, after notice served to the buyer, ask for rescission with damages if justified. However, if it is revealed to the Court that the buyer has executed the biggest part of his obligation, it may grant him a respite for payment and dismiss the claim of rescission if he performs within the prescribed period.
2. Where a judgement of rescission is rendered, the buyer shall return the item sold to the seller and this latter return to the buyer the installments received after deducting therefrom charges equivalent to the benefit derived therefrom, in addition to an indemnity against the damage sustained by the item sold due to ordinary use thereof; all this unless there is a provision to the contrary in the sale contract and provided that the total amount received by the seller does not exceed the original price amount with

its interests.

**ARTICLE (117)**

An agreement that the full price shall fall due, in case one of the installments is not paid on the maturity date, shall only be valid if the buyer fails to pay even though notice is served and seven days have lapsed from the date of notification.

**ARTICLE (118)**

1. Where the ownership of the movable item sold is retained by the seller pending the payment of all installments, the buyer shall acquire such ownership on payment of the last instalment, and the purchaser shall bear the consequences of the perishing of the item sold from the time of its delivery to him.
2. Without prejudice to the provisions stipulated in the Bankruptcy Part hereof, the condition related to the retention of ownership may not apply to a third party unless it is put in writing in the form of an agreement and prior to such third party's right.

**ARTICLE (119)**

Where the third party's right is subsequent to the sale by installment contract, the provision related to the retention of ownership may apply to such third party, if the said provision is made in writing in an agreement having a fixed date and prior to the execution proceedings undertaken by the creditors on the item sold.

**ARTICLE (120)**

A purchaser may not dispose of the item sold before he has paid all installments, save where the seller agrees to this in writing. Any disposal by the buyer in violation of this provision, shall not apply to the seller, unless the third party proves his good will, in which case the remaining installments shall fall due.

**ARTICLE (121)**

The provisions of the preceding Articles regarding sales by installment, shall apply even if the contracting parties have termed the sale as a lease.

**SECTION TWO**

**OPTIONAL PUBLIC AUCTION SALE OF SECOND-HAND MOVABLES**

**ARTICLE (122)**

1. The provisions of this Section shall apply to optional sales by public auction of second-hand movables.
2. Public auction sale shall mean any sale which any person may attend even if bidding is restricted to a specific group of persons.
3. Second-hand movables shall mean all movable properties the possession of which was transferred to the consumer for any of the causes of property acquisition.

**ARTICLE (123)**

1. Without prejudice to the provisions of the Civil Procedures Law and the laws organizing certain kinds of sales, the movables referred to in the preceding Article may not be sold by auction except through evaluation by an expert appraiser in a hall specially allocated for this purpose, or at the venue where the movables are originally located, or at such other venue where a licence therefor may be issued by the specialized authorities in the concerned Emirate.
2. A bona fide buyer may request nullification of the sale effected contrary to the provisions of the preceding Article and the action in nullification may not be heard in case of denial and lack of legitimate excuse after the lapse of thirty days of the date of sale.
3. The provisions of the two preceding paragraphs shall not apply to second-hand items, when the value of the part thereof offered for sale by public auction does not exceed (10,000) Ten Thousand Dirhams.

#### **ARTICLE (124)**

1. The expert appraiser undertaking the sale by public auction shall keep a specific book in Arabic, where he shall enter all the items intended for sale, the initial estimation of their value and the names of those requesting sale. The appraiser shall further affix on the goods offered for sale labels whose numbers shall be entered in the said book and shall further register therein the outcome of each sale.
2. Any person who violates the provisions of the preceding paragraph shall be penalized by a fine which may not exceed (10,000) Ten Thousand Dirhams. In case of repetition of the violation, the fine shall not exceed (20,000) Twenty Thousand Dirhams, in case of non-compliance to any other penalty or disciplinary sanction provided in the resolutions organizing the practice of the profession of appraiser.

#### **ARTICLE (125)**

Where the initial estimation of the second-hand goods offered for sale at a public auction exceeds the amount of Dhs 2000,000 (Two Hundred Thousand Dirhams), the appraiser shall publish the same in one daily or more - one of which in Arabic - issued in the State, seven days at least prior to the sale, and he shall fix one day before the sale date for inspection of the goods offered.

#### **ARTICLE (126)**

1. The buyer who wins the auction shall pay half the price at the auction session and the balance when he takes delivery of the object for which he was the successful bidder, and the delivery must take place within one week of the date on which the auction was knocked down.
2. Where the successful bidder does not pay the balance or he fails to appear on the date fixed in the preceding paragraph in order to take delivery of the item knocked down to him, the sale shall be repeated by public auction as well, within fifteen days of the

delivery date, and the successful bidder of the first sale may not bid again in the second sale.

3. Where the second auction is awarded at a price less than that awarded at the first auction, the buyer who failed to pay the balance price or to appear in order to take delivery of the item knocked down to him, shall be bound to pay the difference. However, where the second auction is awarded at a higher price, the increase shall be for the eventual seller.
4. The price shall be paid to the appraiser who carried on the auction, and the appraiser shall be directly responsible for payment of such price to the person in favour of whom the auction was effected.
5. The person requesting the sale may not, either personally or through others, bid on the goods offered by him for sale.

#### **ARTICLE (127)**

The hall owner or the appraiser, as the case may be, shall for the fee or commission to which he is entitled, have a right of lien over the price of the item he is selling at the public auction.

#### **ARTICLE (128)**

A decision of the Minister of Economy and Commerce, in consultation with the local specialized authorities shall be issued for the organization of the practice of the profession of appraisers.

Without compliance with any severer punishment stipulated in another law, any person violating the provisions of such decision, shall be inflicted to pay a fine not exceeding (5,000) Five Thousand Dirhams. In all cases, the judge shall order that the office or hall be closed, and the billboards and panels which the violator had used be removed. Such Court order shall be published at the sentenced party's expense, in two Arabic dailies issued in the State.

#### **SECTION THREE**

#### **PUBLIC AUCTION SALE AT REDUCED PRICES**

#### **AT COMMERCIAL STORES**

#### **FIRST: SALE BY PUBLIC AUCTION**

#### **ARTICLE (129)**

Commercial stores shall be prohibited from selling their goods at public auction, except in one of the following cases and after obtaining the necessary authorization from the local authorities:

- 1.- Final liquidation of the commercial store.
- 2.- Discontinuation of trading once and for all with one or more of the items, which the commercial store deals with in its trade.
- 3.- Liquidation of one of the commercial store's branches, unless such branch is located in the same city as the head office of the commercial store.

- 4.- Moving the main store and branches thereof, from one Emirate to the other. In such case, the liquidation must be effected within four months at the most, and it shall result in a prohibition to carry on the activity discontinued due to the liquidation in such Emirate, before the lapse of one year at least from the date on which the auction was completed.
- 5.- Clearance of the goods which have become defective due to fire, water leakage, humidity, insects raging or the like.

## **SECOND: SALE AT REDUCED PRICES (SALES)**

### **ARTICLE (130)**

1. A commercial store and its branches located in the same city, may only sell at reduced prices the same goods, twice at the most during the same year in case of seasonal goods, and once for all other goods.
2. Sales may not continue for more than thirty days, and seasonal sales may not start except after the lapse of five months at least after the end of the preceding seasonal sales.
3. Any action with the purpose of announcing a sale at reduced price shall be considered as "Sales".
4. Sales may only be effected or announced by any media means, after obtaining a permit therefor from the specialized authorities in the concerned Emirate, which shall state the starting and ending date of the sales and the selling prices prior to and during such period. Such permit may only be granted to those persons holding a valid trading license and registered in the concerned Chamber of Commerce.
5. The trader shall also observe any rules and principles organizing sales and issued by the specialized Authority in the concerned Emirate.

### **ARTICLE (131)**

The employees of the specialized Authority in the concerned Emirate shall have the right to control the implementation of the provisions of Articles (129) and (130) of this law. They are entitled to that effect to enter the commercial store which holds a permit to carry out the clearance or sales, and to ask for the papers and documents pertaining to the operation, subject of the permit, and to record any breaches of its provisions.

## **THIRD: THE PENALTIES**

### **ARTICLE (132)**

Any person who violating the provisions of Articles (129), (130) and (131) shall be penalized by a fine not exceeding (20,000) Twenty Thousand Dirhams. In case of repetition of the violation, a fine of (30,000) Thirty Thousand Dirhams at the most shall be inflicted upon him,

and the violator may be prohibited from obtaining permits for sales for the period of three years from the date on which he committed the violation.

**SECTION FOUR**  
**CERTAIN KINDS OF INTERNATIONAL SALES**  
**1- F.O.B. SALES**

**ARTICLE (133)**

1. An F.O.B sale is one by which the item sold is delivered at the port of shipping on board of the vessel designated by the buyer for its transport.
2. The buyer shall in this kind of sale execute the sea transport contract, pay freightage and notify the seller within reasonable time of the name of the vessel designated for the transport, as well as the venue and date or time limit set for shipping.
3. The buyer may entrust the seller with the execution of both transport and insurance contracts for the goods on behalf of the buyer, and the relationship between the seller and the buyer in this respect shall be governed by the provisions of the agency contract.

**ARTICLE (134)**

1. The seller shall pack and transport the item sold to the port of shipping, and ship it on board of the vessel designated by the buyer, on the specified date and within the time limit set for shipping.
2. The seller shall bear the expenses of packing and the costs of checking, measuring, counting or weighing the item sold before shipping it.
3. The seller shall without delay notify the buyer that the item sold has been shipped and shall dispatch to him the papers evidencing this, but the buyer shall bear the costs of such notice and dispatch.

**ARTICLE (135)**

1. Where the item sold needs an export permit for it to be exported outside the State, or any other governmental licence, the seller shall be bound to obtain same at his own expense.
2. The buyer shall undertake to obtain at his own expense the import permit and other documents required for this purpose.
3. The seller shall duly obtain a certificate of origin for the item sold and shall present it to the buyer, who shall bear the expenses related thereto, unless otherwise agreed upon.

**ARTICLE (136)**

The seller shall provide such assistance as will be needed to enable the purchaser to obtain the bill of lading and such other documents as should be issued in the country of shipping of



the item sold, in order to enable the buyer to import it or make its passage in transit through another state easur; the buyer shall bear the expenses incurred for the obtaining of such papers.

**ARTICLE (137)**

The seller shall pay all the sums due in connection with the item sold, including the export charges and the shipping expenses upto the moment when the item sold crosses, during its shipping, the barrier of the vessel, as well as the liability for damages which may be suffered by the item sold until that stage. However, any sums due or damages sustained thereafter shall be borne by the buyer.

**ARTICLE (138)**

Where the arrival of the vessel, designated by the buyer for transporting the goods, is delayed beyond the expiry of the time limit set for shipping, or where the vessel departs the said port before expiry of the said time limit, or if the vessel is unable to ship the goods for a reason that cannot be attributed to the seller, the buyer shall be liable for the resulting additional costs and the damages suffered by the item sold from the expiry date of the time limit set for the shipping, provided that the item sold has been, on that date, designated per se.

**ARTICLE (139)**

Where the buyer fails to notify the name of the vessel at the appropriate time or if he reserves the right to fix the date of delivery during a set a time limit and he fails to do so or to designate the port of shipping but fails to issue specific instructions during such time limit, he shall be liable for the resulting additional costs and such damage as may be suffered by the item sold from the expiry of the date of notification or the time limit agreed upon to designate the date for delivery, provided that the item sold has been, on that date, designated per se.

**ARTICLE (140)**

Where it is agreed that the item sold shall be delivered on the dock of the port of shipping where the vessel designated by the buyer is anchored, the sale shall be termed F.A.S., and such sale shall be governed by the provisions of the F.O.B. sales, except the shipping of the goods on board of the vessel.

**2 - C.I.F SALES**

**ARTICLE (141)**

1. A C.I.F. sale is one concluded against a lump sum price covering the price of the item sold, the maritime insurance charges and freight by vessel to the port of destination.
2. The goods shall be considered as having been delivered to the buyer upon completion of shipment by the vessel, and the liability for the perishing shall from that moment be borne by the buyer.
3. Where the seller fails to provide insurance cover, the sale shall be deemed a (C.&F.) sale.

**ARTICLE (142)**

The seller shall execute a transport contract for the goods with a reputable carrier, according to the usual (customary) conditions, and shall choose a suitable vessel to carry goods of the same type of the item sold. The seller shall further pay the freight and any other sums which the carrier might stipulate to be paid at the port of shipping.

**ARTICLE (143)**

1. The seller shall buy an insurance policy for the item sold from a reputable insurer covering the risks of transport and he shall assume all the costs and expenses required therefor.
2. The insurance policy shall be by a negotiable instrument and in accordance with the conditions of prevailing practice, provided that the insurance sum shall not be less than the price mentioned in the sale contract.
3. The seller shall only be bound only to insure against the normal risks of transport, and he shall not be required to insure against additional risks and the risks of war, except where an agreement to that effect is made with the buyer in the sales contract.
4. The seller shall not bear any responsibility towards the buyer for the inability of the insurer to pay the insurance amount, if he has bought the insurance policy for the item sold from a reputable insurance company.

**ARTICLE (144)**

1. The seller is bound to pack the item sold and ship it on board of the vessel within the time limit set for shipping, or within the period dictated by the practice. The seller shall further bear the expense of packing, the costs of checking, measuring, weighing or counting the item sold as is required for its shipping.
2. The seller shall, without delay, notify the buyer of the name of the vessel and completion of shipping.

**ARTICLE (145)**

1. Shipping of the item sold by the seller shall be proved by means of the bill of lading, where the word "shipment" is mentioned. However, if the bill of lading states "under shipment", the buyer should prove the shipping did not actually take place on the date mentioned in the bill.
2. Where the bill of lading contains a statement, handwritten and signed by the captain of the vessel, certifying that the goods were actually shipped on the specified date, the buyer in such a case does not have to prove the contrary when dealing with the seller.

**ARTICLE (146)**

1. The seller is bound to duly obtain a certificate of origin for the item sold and shall present it to the buyer, who shall bear the expenses related thereto, unless otherwise

agreed upon.

2. The seller shall further provide such assistance as will be needed to enable the purchaser to obtain the necessary documents issued in the country of shipping of the item sold, in order to facilitate its import or passage in transit through another country.

**ARTICLE (147)**

1. The seller shall pay all the sums due in connection with the item sold, until its shipment on the vessel, including the export fees.
2. However, the buyer shall bear the import fees, and the charges and expenses to clear the item sold at the port of discharge.

**ARTICLE (148)**

The seller shall bear the consequences of the damage which may be sustained by the item sold, up to the moment when it crosses the barrier of the vessel; such liability shall thereafter devolve on to the buyer.

**ARTICLE (149)**

1. The seller shall send without delay to the buyer, a clean negotiable bill of lading which is subject to circulation, addressed to the port designated for discharge, and there shall be attached to the bill of lading a list of the goods sold, their value, the insurance policy or a certificate in lieu thereof, in addition to any other documents required by the buyer. Where the bill of lading refers, certain matters, to the condition of the charter of the vessel, a copy of the latter shall also be attached to the bill of lading.
2. A bill of lading is deemed to be clean if it does not contain any express additional conditions confirming the existence of defects in the item sold or in the method of its packing. But such additional conditions do not include a reference in the bill of lading to the prior use of the containers or the wrappings or the non-liability for any damage that may be sustained because of the nature of the item sold or of the carrier's ignorance of the contents or weight of the packages.
3. The certificate substituting the original insurance policy, shall be issued by the insurer and shall include the basic conditions provided for in the original policy vesting unto the bearer the rights stated therein.

**ARTICLE (150)**

1. The buyer shall not be bound to accept the documents sent to him by the seller, if they do not conform to the stipulations of the sale contract. The buyer shall be deemed to have accepted such documents if he does not raise any objection via the seller's accountant within seven days of the date of receipt. The objection shall be made by notice served in writing to the seller requiring him to send documents conforming to the conditions agreed upon within a reasonable time limit, and the buyer may after the expiry of said time limit, apply for rescission of the sale and payment of damages, if

- relevant.
2. Where the buyer returns the documents for certain specified reasons or accepts them subject to reservations, he may not thereafter make any objection for other than the causes and reservations already made.
  3. Where the buyer returns the documents without any legitimate reason, he shall be liable to compensate the seller for whatever damage that may result therefrom.

**ARTICLE (151)**

Where the vessel carrying the item sold arrives before the arrival of the documents or where the documents are received incomplete, the seller shall immediately, upon being informed of the same, carry out whatever action necessary to enable the purchaser to obtain a copy of the documents which had not arrived or to replace the missing documents; the seller shall bear the required expenses and any damages, if relevant.

**ARTICLE (152)**

With consideration given prejudice to the provisions of Article (111), the buyer shall be bound to receive the item sold upon its arrival at the port of discharge agreed upon: and the buyer shall bear such sums as will be due on the item sold during its transport, and the expenses of discharge upon its arrival, save where the carrier has obtained such sums and expenses at the port of shipping or where it is agreed in the sale contract that they shall be borne by the seller (the sale being C.I.F. until the discharge).

**ARTICLE (153)**

Where the buyer reserves the right to fix a date for the shipping or to designate the port of discharge within a set time limit but fails to issue specific instructions during such time limit, he shall be liable any additional expenditure resulting therefrom and such damage as may be suffered by the item sold until the expiry of the time limit for shipping, provided that the item sold has been, on that date, designated per se.

**ARTICLE (154)**

Where it is revealed that the goods do not tally with the specifications stated in the documents and if the discrepancy does not exceed the limit allowed by custom, the buyer shall be bound to accept same with a reduction of the price amount to a sum to be assessed by the experts according to the practices prevailing at the port of arrival.

**3 - ARRIVAL SALE**

**ARTICLE (155)**

A contract which contains such conditions as will render the seller liable for the perishing of the goods after shipment, or makes the performance of the contract conditional on the safe arrival of the vessel, or which vests the buyer with an option to accept the goods according to the contract or according to the pro-forma delivered to him at the time of contracting, shall neither be a C.I.F nor a F.O.B. sale, but shall be deemed to be a sale conditional upon delivery at the place of arrival.

#### **4- SALE AT THE AIRPORT OF DEPARTURE**

##### **ARTICLE (156)**

A sale at the airport of departure is one by which the goods sold are delivered at the airport of departure, by way of placing them at the disposal of the air carrier designated by the buyer or chosen by the seller.

##### **ARTICLE (157)**

The seller shall, after entering into the contract, undertake to deliver the goods at the airport of departure to the air carrier or to his representative at the place and on the date agreed upon or at the place designated by the buyer, according to the rules and practices applicable at the airport of departure.

The seller shall without delay notify the buyer that the delivery of the goods was effected, by any means of wire or wireless communications.

##### **ARTICLE (158)**

1. The seller shall conclude a transport contract for the goods, at the expense and responsibility of the buyer if it were requested by this latter; or the seller shall perform this in case the buyer has issued no instructions, within a reasonable time concerning the transport of the goods, and such act shall be according to the applicable commercial customs. The seller may refrain from concluding a transport contract, in which case the buyer shall be promptly notified thereof.
2. Where the seller takes it upon himself to conclude a transport contract, he shall abide by the instructions issued to him by the buyer and choose an airplane suitable to carry goods of the same nature of the item sold, on the ordinary flight from the airport of departure to the airport of arrival designated by the buyer, or to the closest airport to the buyer's establishment.

##### **ARTICLE (159)**

1. The seller is bound to pay all the costs and insurance on the goods as a result of their export.
2. The seller is also bound to supply the buyer with all the documents needed for the receipt of the goods, that would be at the disposal of the buyer

##### **ARTICLE (160)**

Where the air carrier or the other person designated by the buyer refrains from taking delivery of the goods at the airport of departure, or otherwise if the buyer does not provide the seller within a reasonable time with the instructions required for the transport of the goods, the seller shall as promptly as possible notify the buyer thereof.

##### **ARTICLE (161)**

In the event where the seller is not bound to conclude the transport contract for the goods, the buyer shall at his own expense be bound to organize the transport operation of the goods from the airport of departure to the airport of arrival. The buyer shall further designate the air carrier or his representative or any other person to whom the goods are to be delivered, and he shall notify the seller within a reasonable time thereof.

Where the buyer does not notify the seller, within a reasonable time, of the instructions required for the transport of the goods, the buyer shall bear all the additional costs arising therefrom, as well as any damage that may be sustained by the goods, from the date fixed for delivery, provided that the goods were allotted or designated per se.

**ARTICLE (162)**

Where the air carrier, or any other person designated by the buyer, refrains from taking delivery of the goods, the buyer shall bear all the additional costs arising therefrom, as well as any damage that may be sustained by the goods, from the date on which the goods had become ready for delivery, provided that the goods were allotted and designated per se.

**ARTICLE (163)**

The sale contract in the above international sales shall be separate and shall not affect the relations between the seller, the buyer and the carrier in the transport contract, or between the buyer and the bank in the documentary credit contract.

**PART THREE**  
**COMMERCIAL MORTGAGE**

**ARTICLE (164)**

1. A commercial mortgage is the one contracted on a movable property in security of a commercial debt.
2. With the exception of the restrictions stipulated herein or in any other law, a commercial mortgage may be proved by all means of evidence in regard to the contracting parties and against third parties.

**ARTICLE (165)**

1. A commercial mortgage shall not be effective against the debtor or a third party, unless possession of the mortgaged article passes to the mortgagor or to such other person as is appointed by both contracting parties and remains in the possession of either such party receiving it until the lapse of the mortgage; or unless it is placed under joint possession in such manner as to prevent the mortgagee to dispose thereof without the knowledge of the mortgagor.
2. The mortgagor or the person appointed by the contracting parties shall be deemed as having possession of the mortgaged article if it is placed at his disposal in such manner as will lead others to believe that the article has come into his custody; or if he receives a deed representing the mortgaged article vesting unto its holder the sole right to take delivery of such article.
3. Possession of rights passes by the delivery of the cheques establishing them; and where a cheque has been deposited with a third party, the delivery of the deposit receipt shall be deemed as the delivery of the cheque itself, provided the cheque is adequately described in the receipt and provided that the depositary accepts

possession thereof for the account of the mortgagor. In such case, the depositary shall be considered as having waived every right he had, to retain the cheque for his own account for a reason existing prior to the mortgage, unless he had reserved such right when he accepted to hold possession of the cheque for the account of the mortgagor.

**ARTICLE (166)**

1. Where the mortgaged item consists of nominal cheques, mortgage thereof shall be made in writing with a waiver of such cheques stating that it is a security. This shall be marked on the cheque itself and such waiver shall be entered in the registers of the authority having issued the cheque. The rank of the mortgagor shall be determined as of the date of such entry.
2. As for promissory notes, mortgage thereof shall be effected by an endorsement stating that the value is for mortgage, security or any other statement to that effect.

**ARTICLE (167)**

1. A debtor who is indebted with a commercial debt may mortgage in favour of his creditor and by a written instrument a debt owed to him by a third party, in which case he shall have to deliver to the mortgagor the deed establishing the said debt.
2. The mortgage of a debt shall not be valid as against the debtor on whose debt the mortgage was effected, unless such mortgage is notified to him or unless he accepts it. It shall not either be valid as against a third party, unless the mortgagor holds possession of the mortgaged debt deed.
3. The rank of the debt shall be determined as of the date of notification or acceptance.

**ARTICLE (168)**

A mortgagor is bound to take all the necessary measures to safeguard the mortgaged article and undertake maintenance thereof. Where the mortgaged article is an actual commercial paper, the mortgagor shall on the maturity date carry out the proceedings necessary to protect the right established therein and collect it. The mortgagee shall be bound to pay all expenses incurred by the mortgagor in this regard.

**ARTICLE (169)**

A mortgagor shall use on behalf of the mortgagee all the rights and procedures relevant to the article mortgaged, to receive its value, profits, interests and any other sums resulting therefrom, he shall however deduct the sums received from the value of the expenses incurred on behalf of the mortgagor, then, from the interests, then, from the principal amount secured by the mortgage, save where the agreement provides otherwise.

**ARTICLE (170)**

A mortgagor shall, when requested by the mortgagee, deliver to him a receipt showing the nature, type, quantity, weight and other distinguishing features of the mortgaged article.

**ARTICLE (171)**

1. Where a mortgage is effected on a fungible article, it shall remain valid even if the

mortgaged article has been replaced by another article of the same kind.

2. Where the mortgaged article is non-fungible, the mortgagee may replace it by another article, provided that it is agreed upon to that effect in the mortgage contract and that the mortgagor accepts the substitute, without prejudice to the rights of a bona fide third party.

#### **ARTICLE (172)**

1. Where the mortgagee fails to pay on the date of maturity the debt secured by the mortgage, the mortgagor may, after the lapse of seven days from the date of service of notice on the debtor to pay, submit a petition to the Court to the effect of authorizing him to sell the mortgaged article. The petition shall be looked into promptly and without delay and the Court shall determine the mode of payment.
2. The mortgagor shall have priority right to collect his debt- principal, interests and expenses incurred in his claim of it - from the price resulting from the sale.

#### **ARTICLE (173)**

Where the mortgage is established on several properties, the mortgagor is entitled to designate the property to be sold unless otherwise agreed upon. In all cases, the sale may only cover what is needed to settle the mortgagor's right, except where the item sold is indivisible.

#### **ARTICLE (174)**

Where the market price of the mortgaged article decreases and becomes insufficient to secure the debt, the creditor may fix a suitable time limit for the debtor to complement the security; if the mortgagee refuses to do so or where the time limit expires and the mortgagee fails to complement the security, the creditor may cause the article mortgaged to be sold even before the maturity date by adopting the proceedings stipulated in Article (172).

#### **ARTICLE (175)**

Where the mortgaged article is subject to perishing, deterioration or decrease in value, or where its possession necessitates the incurring of exorbitant expenses and the mortgagee is unwilling to replace it by another article, either the creditor or the mortgagee may petition the Court requesting an authorization to sell it forthwith and determine the method of sale, in which case the mortgage transfers to the price resulting from the sale.

#### **ARTICLE (176)**

1. An agreement concluded at the time or after the establishment of a mortgage which vests the mortgagor, in case the debtor does not settle the debt on the maturity date, with the right to acquire or sell the mortgaged article, without observing the provisions and proceedings provided for in Article (172).
2. Nevertheless, after the maturity of the whole debt or an installment thereof, it may be agreed that the debtor shall assign to the creditor the whole or part of the mortgaged article in settlement of the whole debt or part thereof.



**ARTICLE (177)**

Where the mortgaged article is a cheque, the nominal value of which has not been paid in full, the mortgagee shall, when called upon to pay the unpaid portion, present to the mortgagor the sums of money needed to pay such portion at least two days before the maturity date; otherwise the mortgagor may sell the cheque according to the proceedings provided for in Article (172).

**PART FOUR**  
**DEPOSIT IN PUBLIC WAREHOUSES**

**ARTICLE (178)**

1. Deposit in public warehouses is a contract pursuant to which the warehouseman - whether an individual, a company or a public entity - undertakes to receive and store goods for the account of the depositor or any other person to whom ownership or possession thereof devolves pursuant to the cheques which represent them.
2. No public warehouse vested with the right to issue negotiable instruments representing the goods deposited therein, may be constructed or exploited except by virtue of a licence issued by the competent authority in the concerned Emirate, and according to such terms and conditions as are laid down by the Minister of Economy and Commerce in consultation with the local competent authority.
3. Any warehouse where goods are received for deposit and no storage and mortgage deed are issued against such goods, shall not be subject to the provisions of public warehouses.
4. Any person exploiting a public warehouse shall cover it with an insurance against the risks of fire, perishing and theft.

**ARTICLE (179)**

1. The warehouseman may not practice, on in any capacity, either for himself or for others any commercial activity having for object goods of the same kind as the goods which he is licensed to keep in his warehouse and issue documents representing such goods.
2. The foregoing provision shall apply if the person in charge of exploiting the warehouse is a company where one of its partners who owns at least ten percent of its capital practices on a commercial activity included in the restriction provided in the preceding paragraph.

**ARTICLE (180)**

1. The depositor shall provide the public warehouse with correct data about the nature, type, value and quality of the goods deposited.
2. The depositor is entitled to examine the goods delivered in the public warehouse for

his account and to take samples thereof.

**ARTICLE (181)**

1. The warehouseman shall be responsible for the goods handed over to him upto an amount not exceeding that estimated by the depositor.
2. The warehouseman shall not be liable for any loss or deficit sustained by the goods if resulting from a force majeure or from the nature of the goods or packing thereof.

**ARTICLE (182)**

The warehouseman may, after notifying the depositor, apply to the Court to which jurisdiction the public warehouse pertains to grant him permission to sell the goods deposited if they are subject to immediate damage, in which case the Court shall designate the method of sale.

**ARTICLE (183)**

1. The depositor shall receive from the warehouseman a storage receipt showing the depositor's name, occupation and domicile, as well as the type, nature and quantity of the goods deposited, the name and location of the warehouse, name of the insurer of the goods -if any- and such other particulars as are required to identify the goods and indicate their value.
2. A mortgage deed stating all the data mentioned in the storage receipt shall be attached to each storage receipt.
3. The warehouseman shall keep one true copy of the original of the storage receipt and the mortgage deed.

**ARTICLE (184)**

Where the goods deposited in respect of which a storage receipt and a mortgage deed have been issued are fungible, they may be replaced by goods of the same nature and quality provided that a stipulation to that effect has been included in both the storage receipt and the mortgage deed, in which case all the rights and privileges of the receipt or deed holder shall devolve upon the new goods.

**ARTICLE (185)**

1. The storage receipt and the mortgage deed may be issued in the name or to the order of the depositor.
2. Where the storage receipt and the mortgage deed are made to the order of the depositor, he may assign them together or separately by endorsement.
3. The endorsee of a storage receipt and a mortgage deed or of either may request that the endorsement be registered along with his domicile and occupation on the copy kept by the warehouseman.

**ARTICLE (186)**

1. The endorsement of the storage receipt and the mortgage deed must bear a date.
2. Where the mortgage is found to be separate from the storage receipt, the endorsement shall comprise, besides the provision of authority, the sum of the debt secured by the mortgage, the maturity date, the creditor's name, occupation, domicile and the signature of the endorser.
3. The endorsee shall request that the mortgage deed endorsement as well as any relevant particulars be registered in the books of the warehouse and that the mortgage deed be marked up with such endorsement and particulars.

**ARTICLE (187)**

1. The holder of both the storage receipt and the mortgage deed is entitled to take delivery of the goods deposited. However, he may request that the goods be divided into several batches and the receipt of a storage receipt and mortgage deed for each batch.
2. The holder of the mortgage deed alone without the storage receipt shall have a right of mortgage on the goods deposited.
3. The holder of the storage receipt alone without the mortgage deed has the right to recover the goods deposited provided that he pays the debt guaranteed by the mortgage deed if such debt is due, and if not, he may recover the goods before the maturity date of the debt, as long as he deposits with the warehouseman a sufficient sum to pay off the debt with its interest and expenses until it falls due. This provision shall apply if the debt is due and the holder of the mortgage deed does not appear to cash it. The recovery of the goods deposited may be restricted to one part thereof after paying a sum that is proportionate to the value of such part.

**ARTICLE (188)**

Where the debt secured by the mortgage deed is not paid on the maturity date, the holder of the mortgage deed separate from the storage receipt may request for the goods mortgaged to be sold, by adopting the proceedings stipulated in Article (172).

**ARTICLE (189)**

1. The mortgagor shall have a priority right over all the creditors for collecting his right from the cost of the goods after deduction of the following amounts:
  - a. taxes and duties due on the goods;
  - b. judicial expenses incurred for the joint interest of the creditors;
  - c. expenses incurred for the safekeeping, storage and sale of the goods.
2. Any amount exceeding the sum due to the holder of the mortgage deed shall be paid

to the holder of the storage receipt if he is present at the time of the sale of the goods. However, if he is not present, the same shall be deposited in the Treasury of the Court which has ordered the sale.

**ARTICLE (190)**

1. The holder of a mortgage deed may not have recourse against the debtor or the endorsers until execution over the mortgaged goods has been effected and it has been established in that it is insufficient to pay off the debt.
2. The holder of a mortgage deed must have recourse against the endorser within fifteen days from the date on which goods are sold, otherwise action shall be rejected in case of denial.
3. In all cases, the holder of a mortgage deed shall forfeit his right of recourse against the endorsers if he fails to commence the execution proceedings over the mortgaged goods within thirty days from the maturity date of the debt.

**ARTICLE (191)**

Where the goods suffer an accident, the holder of the storage receipt or the mortgage deed shall have all the rights over the value of the insurance which accrues upon the occurrence of such accidents as those he had over the goods.

**ARTICLE (192)**

1. In case of loss or perishing of the storage receipt, the ex-holder thereof may apply to the Civil Court to which jurisdiction the public warehouse pertains, for an order to be issued to deliver a copy to him of the said receipt, provided that he establishes his ownership thereof and provides a sufficient guarantor or security.
2. In case of loss or perishing of the mortgage deed, the ex-holder may obtain an order from the Court against the debtor for payment of the secured debt upon maturity; provided that he produces a sufficient guarantor or security. If the debtor fails to execute the order, the person in whose favour the order was issued may request that the goods mortgaged be sold by adopting the proceedings stipulated in Article (172), provided that the endorsement has been registered on the copy kept by the warehouseman, and that the notice requiring payment contains the particulars of such endorsement.

**ARTICLE (193)**

1. A guarantor who has been presented in case of loss of the storage receipt shall be discharged of liability upon recovery of the goods or with the lapse of three years if no claim for the recovery of the goods is submitted to the warehouse.
2. A guarantor who has been presented in case of loss of the mortgage deed shall be discharged of liability with the lapse of three years from the date of entering the endorsement in the books of the public warehouse.

**ARTICLE (194)**

1. Where the depositor fails to recover the goods on the expiry of the deposit contract, the warehouseman may request the sale thereof by adopting the proceedings provided for in Article (172); he shall collect the sums due to him from the proceeds of the sale and hand over the balance to the depositor or deposit such balance in the Court Treasury for the depositor's account.
2. The provision of the preceding paragraph shall also apply if the deposit term is not fixed and one year after the depositor failing to apply for the recovery of the goods or expressing his wish to carry on with the deposit contract.

**ARTICLE (195)**

1. Without compliance with to any severer punishment, any person who establishes or exploits a public warehouse without obtaining the licence stipulated in paragraph (2) of Article (178) shall be sentenced to imprisonment and a fine ranging between (5,000) Five Thousand Dirhams minimum and (20,000) Twenty Thousand Dirhams maximum or with either penalty.
2. The Court may, in case of conviction, order the closure of the warehouse until the violator obtains the required licence, or it may also decree the liquidation of the warehouse.

**PART FIVE**  
**STOCK EXCHANGE MARKET**

**ARTICLE (196)**

A market for stock exchange may not be opened in the State except pursuant to the approval of the Council of Ministers and a Federal Law shall be enacted to regulate the stock exchange market.

**PART SIX**  
**COMMERCIAL AGENCY**

**CHAPTER ONE**  
**GENERAL PROVISIONS**

**ARTICLE (197)**

An agency shall be commercial when it relates to commercial activities.

**ARTICLE (198)**

1. A commercial agency shall be deemed subject to remuneration, save where otherwise agreed upon.
2. Where the agent's fee has not been fixed in the agreement or has not been stated in the law, it shall be determined according to customs, and in the absence of custom the Court shall estimate it.

**ARTICLE (199)**

The fee shall accrue to the agent by the mere execution of the transaction assigned to him, or if he proves that it was not executed due to reasons attributed to the principal. In all other cases, the agent shall only be entitled to a remuneration for his efforts and expenses in accordance with customs -if any- or pursuant to the Court's estimation.

**ARTICLE (200)**

The commercial agency, even though it has a general power of attorney, shall apply only to commercial business, save where otherwise agreed upon.

**ARTICLE (201)**

Where the commercial agency is granted for a specific commercial transaction, the agent may carry out all the actions required to execute such transaction without the need to obtain an authorization from the principal.

**ARTICLE (202)**

1. The agent shall abide by the compulsory and express instructions of the principal, and if he violates them without an acceptable excuse, the agent may refuse the transaction. However, in case of advisory instructions issued by the principal, the agent shall have the exclusive authority to act within the scope of the general objective set by the principal for the agent.
2. Where no express instructions are issued by the principal concerning the transaction, the agent shall delay its execution and request instructions from the principal, unless the delay in implementing the transaction may cause damage to the principal or unless the agent is authorized to act without instructions from the principal.

**ARTICLE (203)**

Where the agent implements the tasks assigned to him under conditions that are more beneficial than those stipulated in the agency, he may not acquire the difference which in such a case belongs to the principal, save where otherwise agreed upon.

**ARTICLE (204)**

Where the goods or items held by the agent for the account of the principal are highly perishable or are subject to a drop in value and no instructions were received from the principal in this respect within a reasonable time, the agent may petition the Court requesting a prompt authorization to sell them and determine the method of sale.

**ARTICLE (205)**

The agent may refrain from performing the work entrusted to him where performance requires exorbitant expenses which have not been paid by the principal, unless otherwise agreed upon between the two parties or unless there previous dealing between them which is to the contrary, and provided that the agent such expenses.

**ARTICLE (206)**

Where the agent refuses to execute the transaction entrusted to him, he has to forthwith notify

the principal thereof. In such a case, the agent shall safekeep the goods and other things which he keeps for the principal until he receives instructions in this respect. If the instructions are not received within a reasonable time, the agent may request the Court to authorize him to deposit the goods and other things with a trustee to be appointed by the Court.

**ARTICLE (207)**

The agent is liable for such damages and losses as are suffered by the goods and other items which he keeps for the principal, save where such damages or losses result from a foreign cause beyond the agent's control or from a defect that is inherent to the goods or items.

**ARTICLE (208)**

The agent shall not be bound to insure the articles which he keeps for the principal unless the latter so requires, or where insurance is obligatory according to the law or the custom, or if the nature of the article so dictates.

**ARTICLE (209)**

1. The agent may not constitute himself as a second party to the transaction assigned to him for execution except in the following cases:
  - a. If the principal authorizes him to do so.
  - b. If the principal's instructions concerning the transaction are express and specific, provided the agent has implemented them accurately.
  - c. If the transaction is related to a commodity which has a fixed price in the market and the agent has bought it for himself or has sold it to the principal from his own money at such price.
  - d. The agent shall not be entitled to any fee against the agency in the foregoing cases.

**ARTICLE (210)**

A third party dealing with the agent may request the right to peruse the agency contract, the correspondence and other documents establishing the agent's authority. Any restrictions to the agent's authority may not be opposed to a third party, except if it were established that such party had knowledge of such restrictions at the time of contracting.

**ARTICLE (211)**

The agent shall inform the principal of the transactions he concludes for the principal's account.

**ARTICLE (212)**

The agent shall submit to the principal on the agreed date or on the date fixed by the custom or by their previous dealing an account of the business carried out for his account. Said account shall be in conformity with the facts; if false particulars have been premeditatedly included therein, the principal may reject the relevant transactions, and shall further be entitled to claim damages. The agent shall not receive any fee for the said transactions.

**ARTICLE (213)**

The agent may retain possession of the goods and other articles dispatched to, deposited with or delivered to him, as a security for the fees and expenses due to him from the principal.

**ARTICLE (214)**

Either party to the commercial agency contract may terminate it at any time, and no compensation is due except if the termination occurs without prior notice or at an inconvenient time. Where the contract has a fixed term, it may only be terminated for a serious and acceptable reason, otherwise compensation will be required.

**ARTICLE (215)**

Where the principal does not have a known domicile in the State, the domicile of his agent shall be deemed to be his domicile; he may be litigated and official papers served on him, in regard to the business conducted by the agent on his behalf.

**ARTICLE (216)**

Anything related to the organization of the commercial agency business shall be governed by the ad hoc laws.

**CHAPTER TWO**  
**CERTAIN TYPES OF COMMERCIAL PROXY (POWER OF ATTORNEY)**  
**I - CONTRACTS PROXY**

**ARTICLE (217)**

A contracts proxy is a contract pursuant to which a person undertakes to carry on continuously against remuneration, in a specific area of activity, instigation and negotiation in order to enter into transactions for the benefit of the principal and in return of a fee. The agent's task may include the execution and implementation of transactions in the name of the principal and for his account.

**ARTICLE (218)**

The contracts agent shall carry out the business of his proxy and manage his commercial agency in an independent manner, and shall bear alone the expenses necessary to conduct such business.

**ARTICLE (219)**

Where the contract stipulates that the contracts agent is to set up showrooms or warehouses for the goods or maintenance and repair installations, the contract term may not be less than five years, except if otherwise agreed upon.

**ARTICLE (220)**

1. The contracts agent may not receive the principal's rights, unless the principal grants him this right, in which case the agent may not make any reduction or grant a respite without obtaining a special authorization therefor.



2. The contracts agent may receive such applications as are related to the implementation of the contracts entered in through him, as well as any complaints concerning the non-implementation of such contracts. He shall further be deemed as the representative of his principal in the cases relevant to said contracts, whether lodged by or against him in the area of activity of the agent.

**ARTICLE (221)**

1. The principal must pay the agreed remuneration to the agent.
2. Such remuneration may be a percentage of the transaction value, to be calculated on basis of the sale price to the customers, unless otherwise agreed upon.

**ARTICLE (222)**

The contracts agent shall be entitled to a remuneration for the transactions concluded or for those whose non-conclusion is due to the principal's act, unless the contract stipulates otherwise.

**ARTICLE(223)**

The principal shall provide the agent with all the information necessary for the implementation of the agency.

**ARTICLE (224)**

1. The contracts agent shall be bound to safeguard the principal's rights and he may take all the precautionary measures to that effect. He must as well provide the principal with the information pertaining to the market conditions in the area of his activity.
2. The contracts agent may not, even after termination of the contractual relationship, divulge the principal's secrets which may come to his knowledge as a result of the execution of the proxy.

**ARTICLE (225)**

In the event where the principal replaces the contracts agent by a new agent, this latter shall be jointly responsible with the principal for the payment of the indemnities decided by the court to the previous agent whenever it is established that the dismissal of the previous agent was a result of collusion between the principal and the new agent.

**ARTICLE (226)**

As an exception to the rules of jurisdiction provided for in the Civil Procedure Code, the Court within which jurisdiction lies the place of implementation of the contract, shall be competent to look into any conflicts arising from the contracts proxy contract.

**ARTICLE (227)**

A distribution contract whereby a trader undertakes to promote and distribute the products of an industrial or commercial establishment in a specific area on an exclusive distributorship basis, shall be considered as a contracts proxy and be governed by the provisions of Articles (220), (225) and (226) hereof.

**ARTICLE (228)**

In case of denial and lack of legitimate excuse, all cases arising from a contracts proxy contract may not be heard after the lapse of three years from the termination of the proxy.

**II - PROXY BY COMMISSION**

**ARTICLE (229)**

1. A proxy by commission is a contract pursuant to which the agent undertakes to carry out in his own name a legal act for the account of the principal against a commission to be received from the principal.
2. Where the commission agent carries out the legal act in the name of the principal, he shall be subject to other general provisions of the commercial agency.

**ARTICLE (230)**

1. Where the commission agent sells at a lower price or buys at a higher price than that fixed by the principal, and this latter wishes to refuse the transaction, the principal must notify the agent thereof within one week from the date on which he was informed that said transaction was concluded, otherwise he shall be considered as having accepted the price.
2. The principal may not reject the transaction if the agent accepts to bear the price difference.

**ARTICLE (231)**

1. Where the commission agent buys for the account of the principal, goods of a type or category that is different from that requested by the principal, this latter shall not be bound to accept them.
2. Where the commission agent buys goods which are in conformity to the goods requested but in a bigger quantity, the principal shall be bound to accept only the quantity which he had requested.

**ARTICLE (233)**

1. Where a commission agent who is assigned to sell, grants the buyer without the permission of the principal, a respite for payment of the price or makes the price payable by installments, the principal may require the agent to pay the whole price immediately, in which case the commission agent may retain for himself the price difference and its interests -if any.
2. Nevertheless, the commission agent may grant a respite for payment of the price or makes the price payable by installments without the principal's permission, if it is the custom to do so in the area where the sale was effected, save where the principal's instructions bind the agent to sell on immediate payment basis.

**ARTICLE (234)**

Where the instructions of the principal bind the commission agent to sell against payment on term and this latter sells for immediate payment at a lesser price, the principal may not require him to pay the price until maturity of the term fixed by him, in which case the commission agent shall be bound to pay the price on the basis of sale on term.

**ARTICLE (235)**

1. A commission agent may not change the trade marks affixed on the goods received by him from the principal or for the principal's account.
2. Where the commission agent has possession of a whole bunch of goods of the same kind which were dispatched to him by different principals, he must put a label on each batch of goods that is distinctive of it.

**ARTICLE (236)**

1. A commission agent may disclose the name of the principal for whose account he enters into contract unless the principal requires him not to do so. The disclosure of the principal's name shall not result in a change in the nature of the proxy as long as the commission agent enters in contract in his name.
2. The commission agent must disclose to the principal the name of the third party with whom he contracts if the principal requires him to do so, and if he refrains from doing so without an acceptable excuse he may be considered as having guaranteed the implementation of the transaction.
3. In all cases, the commission agent shall be bound to establish the existence of the third party with whom he contracted if the principal requires him to do so.

**ARTICLE (237)**

1. A commission agent shall be directly bound to the third party with whom he entered into contract; such third party shall also be directly bound to the commission agent.
2. A third party with whom the commission agent has entered into contract may not have direct recourse against the principal, neither may this latter have direct recourse against such third party unless there is a legal provision to the contrary.

**ARTICLE (238)**

1. The agent shall have - in addition to his right of seizure - a right of lien over such goods and other articles which are dispatched to, deposited with or delivered to him by the principal.
2. The right of lien shall secure the agent's remuneration and any expenses and sums he pays on behalf of the principal or he lends them to him, along with their interests and other sums that may accrue to the agent on account of the proxy, irrespective whether such amounts have been paid before delivery of the goods and articles or while they

were in the possession of the agent.

3. The said lien is established without regard to whether the debt has arisen from business related to the goods or articles which are still in the agent's possession or to other goods or articles which had previously been deposited with, delivered to or dispatched to the agent.

**ARTICLE (239)**

1. The agent shall not have any right of lien as is mentioned in the foregoing Article, unless he is in possession of goods or articles for the principal's account; and such possession shall be realized in the following cases:
  - a. Where the agent has effectively received the goods or articles.
  - b. Where the goods or articles were placed at his disposal in a public warehouse or customs.
  - c. Where he legally had possession of the goods before their arrival pursuant to the bill of lading or any other bill of carriage.
  - d. Where he has exported the goods and has retained possession thereof pursuant to a bill of lading or any other bill of carriage.
2. In case the goods or articles subject of the right of lien have been sold and delivered to the buyer, the agent's lien shall pass on to the price.

**ARTICLE (240)**

The agent's lien shall have priority over all other liens, except judicial expenses and sums due to the Government.

**ARTICLE (241)**

1. The execution proceedings adopted for a commercially mortgaged item shall apply to the execution on goods and articles held in possession of the agent.
2. However, where the agent is assigned to sell the goods or articles held in his possession, he may obtain execution thereon by selling them without having to comply with the proceedings referred to in the preceding paragraph, unless he fails to abide by the principal's express instructions issued in respect of the sale.

**ARTICLE (242)**

1. Where the commission agent who is assigned to sell is declared bankrupt before cashing in the price, the principal may claim payment of the price directly from the buyer.
2. Where the commission agent who is assigned to buy is declared bankrupt before he received the item bought, the principal may claim delivery of the item bought directly from the seller.

**ARTICLE (243)**

1. A commission agent shall not guarantee the fulfillment of his obligations by the third party with whom he contracted, unless he assumed expressly this guarantee, or if such guarantee is stipulated by law, or if it is customary in the area where he carries on his activity to do so.
2. A commission agent who is guarantor of the fulfillment by the contractee of his obligations, shall be entitled to an additional remuneration to be determined by the Court where there is no agreement or custom in this respect.

**ARTICLE (244)**

A commission agent may not delegate to a third party the business entrusted to him, unless he obtains the permission of the principal to do so, and if he fails to comply with this provision the person delegated shall have no right of seizure or lien except to the limit of the debt due to the original commission agent.

**III - COMMERCIAL REPRESENTATION**

**ARTICLE (245)**

The commercial representation is a contract pursuant to which the commercial representative undertakes to enter into transactions in the name and for the account of his principal, on a permanent basis and within a specific area.

**ARTICLE (246)**

The commercial representative shall not warrant the implementation of the transactions concluded through him, unless he had expressly agreed to such guarantee or in case the custom in the area where he carries on his activity dictates such a guarantee.

**ARTICLE (247)**

1. The trader shall be liable for any transactions and contracts entered into by his representative within the limits of the authority conferred to him by the trader.
2. Where the representative is delegated by several traders, they shall be jointly responsible.
3. If the representative is delegated by a company, the company shall be responsible for his action and the partners' responsibility shall depend on the type of company.

**ARTICLE (248)**

1. Where the limits of the authority vested in the commercial representative have not been determined, the authority shall be deemed general and comprehensive for all the transactions related to the kind of trade which the representative has been authorized to carry out.

2. The trader may not plead against a third party that the authority is limited unless he establishes that such third party was aware of such limitation.

**ARTICLE (249)**

The commercial representative shall carry on in the name of the trader who delegated him the commercial activities which he has been authorized to undertake; when signing he shall place next to his name in full, the full name of the trader and shall indicate his capacity as commercial representative; otherwise he shall be personally liable for his own action. Nevertheless, third parties may have direct recourse against the trader in regard to the transactions concluded by the representative in connection with the trade which he has been authorized to carry on.

**ARTICLE (250)**

A commercial representative may represent the trader in the lawsuits arising from the commercial transactions carried on by him.

**ARTICLE (251)**

The commercial representative shall be jointly liable with the trader for observing the law provisions related to unfair competition.

**ARTICLE (252)**

A commercial representative may not effect any commercial transaction of the kind for which he is authorized, for his own account or for the account of a third party without obtaining an express approval to do so from the trader who had appointed him.

**ARTICLE (253)**

Where it is agreed that the commercial representative shall be the exclusive general representative for the trader in the agreed area, the representative shall be entitled to a commission for each transaction entered into for the account of the trader in such area, even if the trader has concluded it by himself or if it were concluded through a person other than the commercial representative.

**PART SEVEN**

**BROKERAGE**

**ARTICLE (254)**

Brokerage is a contract pursuant to which a broker undertakes to another person to look for and mediate in the negotiations with a second party in order to execute a specific contract in consideration of a remuneration.

**ARTICLE (255)**

1. Where the broker's remuneration is not fixed in the law or the agreement, it shall be determined according to the customs; in the absence of a custom the judge shall estimate it commensurately with the effort exerted by the broker and the time spent by him in carrying out the work assigned to him.

2. The judge may reduce the remuneration agreed if it is not commensurate with the nature of the transaction and the effort exerted by the broker. No reduction may be decided if the remuneration was agreed upon or if it were willingly paid by the customer after execution of the contract which has resulted from the broker's mediation.

**ARTICLE (256)**

1. A broker shall not be entitled to a remuneration unless his mediation results in the execution of the contract between the two parties; the contract shall be deemed to be executed once both parties have agreed on all the substantial matters therein.
2. The broker shall be entitled to receive his remuneration by the mere execution of the contract even it were not implemented, unless otherwise stipulated by the law or the custom.
3. Where the contract is made conditional upon a suspended condition, the broker shall receive his remuneration only when the condition is realized.
4. Where the contract cannot be executed for a reason attributable to the customer, the broker shall be entitled to a compensation commensurate with the effort exerted.

**ARTICLE (257)**

Where the contract which has resulted from the broker's mediation is rescinded, the broker may claim payment of his remuneration or keep it in case he had already received it, unless fraud or gross error is established on his part.

**ARTICLE (258)**

Where the broker mediates for the execution of a legally prohibited transaction, he shall not receive any remuneration in consideration of such transaction.

**ARTICLE (259)**

1. The broker shall be entitled to receive a remuneration only from the party to the transaction who has delegated him.
2. Where the broker has been delegated by both parties, each of them shall be severally liable to the broker for payment of the remuneration due from him, even if they had agreed that either party will bear the broker's remuneration in full.

**ARTICLE (260)**

A broker, even when he is delegated by one of the transaction parties, shall submit a faithful offer to them and inform them of all circumstances known to him; he shall be liable to them for any fraud or fault committed by him.

**ARTICLE (261)**

A broker may not recover the expenses incurred by him in the execution of the task assigned to him unless otherwise agreed, in which case said expenses shall be payable even if the contract has not been concluded.

**ARTICLE (262)**

A broker may not claim his remuneration or recover his expenses if he has caused damage to either contracting party in favour of the other contracting party who did not assign him to mediate on his behalf or where he has obtained a promise from such other party contrary to the dictates of good faith in order to obtain a benefit for himself.

**ARTICLE (263)**

A broker may not constitute himself as second party to the contract for which he is mediating unless the contracting party authorizes him to do so, and in such case he shall not receive any remuneration.

**ARTICLE (264)**

1. A broker shall enter into his books all the transactions entered into through his endeavors and must keep the relevant documents; he shall further deliver a true copy of the original of all the foregoing to any contracting party requiring them; said books shall be governed by the same provisions as those governing commercial books.
2. In case of sale according to samples, the broker is required to keep the sample until the goods are accepted by the buyer without any reservation or until all conflicts are settled between the two parties in this respect.

**ARTICLE (265)**

A broker shall be liable to compensate any damages resulting from the perishing or loss of documents, papers or items delivered to him and related to the transaction for which he is mediating, unless he proves that such perishing or loss was due to a force majeure.

**ARTICLE (266)**

A broker may not mediate for persons who are reputed for their insolvency or if he knew them to be unqualified.

**ARTICLE (267)**

1. A broker shall not be required to guarantee the affluence of the two parties to the transaction in which he mediates, and he shall bear no liability for its implementation or for the value and quality of the goods related thereto, unless an act of fraud or fault is established on his part and he is held for guarantee under the agreement or the law.
2. Notwithstanding the foregoing, the broker shall be jointly liable for the implementation of the transaction with the contracting party if he has an interest therein in addition to his remuneration.

**ARTICLE (268)**

1. Where a broker delegates another person to perform the task assigned to him without



being authorized to do so, he shall be liable for the proxy's action as if such action had emanated from him; and both the broker and his proxy shall bear joint liability.

2. Where the broker is authorized to appoint a proxy without any designation of the person of such proxy, the broker shall only be liable for his fault in choosing his proxy or his fault in the instructions issued by him to the proxy.
3. In all cases, the person who has assigned the broker may have direct recourse against the proxy.

#### **ARTICLE (269)**

Where several brokers have been assigned for one contract, they shall be jointly liable for the task entrusted to them, unless they have been authorized to act severally.

#### **ARTICLE (270)**

Where several persons assign one broker for a joint task, they shall be jointly liable for the performance of such task, unless otherwise agreed upon.

#### **ARTICLE (271)**

Brokerage in the stock exchange and goods markets shall be governed by the ad hoc laws and regulations.

### **PART EIGHT** **CARRIAGE**

#### **CHAPTER ONE** **GENERAL PROVISIONS**

#### **ARTICLE (272)**

A carriage contract is one by which the carrier undertakes to carry by his own means a person or a thing from one place to another in consideration of a remuneration.

#### **ARTICLE (273)**

With the exception of sea shipment, the provisions stipulated in this Part shall apply to all kinds of carriage regardless of the carrier's capacity, without prejudice to those provisions stipulated in the special laws concerning certain kinds of carriage and in the international carriage conventions applicable in the State.

#### **ARTICLE (274)**

The provisions of this Part shall apply to carriage even if it is associated with operations of another nature, as long as such operations do not constitute the main objective of the contract.

#### **ARTICLE (275)**

1. A carriage contract and a proxy by commission for carriage contract is concluded by the mere association of an offer and an acceptance, unless both parties agree to defer

such conclusion until the time of delivery. The contract may be proved by all means of evidence.

2. The receipt by the carrier of the thing subject of carriage shall be deemed as an acceptance from him of the offer made by the consignor.
3. Also, boarding the means of transport by the passenger shall be considered as an acceptance of the offer made by the carrier, unless it is established that the passenger's intention was not to conclude a carriage contract.

**ARTICLE (276)**

1. Where the carrier uses different forms of contracts and the two parties have not agreed to adopt a specific form, the contract shall be deemed to have been concluded according to the form which includes the general conditions.
2. Where the two parties agree to adopt a specific form, the conditions stated therein shall be indivisible.

**ARTICLE (277)**

1. Where the carrier holds a monopoly over one kind of carriage or over the exploitation of specific lines of transport, he shall be bound to accept all the applications submitted to him, save where an application is contrary to the prescribed carriage conditions or where it is impossible for the carrier to execute it for reasons beyond his control.
2. Where the carriage applications exceed the capacity of the means of carriage which the carrier is licenced to use, he shall accept such applications according to their dates of submission, so that the application first submitted shall have precedence over subsequent applications, unless some of such applications have priority pursuant to the carriage conditions.

**ARTICLE (278)**

The carrier's liability shall cover his acts and those of his subordinates when such acts are committed by them in the course of rendering their services. All persons employed by the carrier for the performance of his obligations under the carriage contract shall be considered as his subordinates.

**ARTICLE (279)**

1. Explosion of the carriage means, their burning, derailling, collision or any other accidents attributed to the tools and machines used by the carrier in the performance of the carriage, shall not be considered a force majeure in the performance of the carriage contract, even if the carrier establishes that he has adopted precautionary measures to guarantee the suitability of said carriage means for work and to prevent

the occurrence of damage.

2. Neither shall be considered a force majeure the accidents attributed to sudden death, or physical or mental weakness which befall the carrier's subordinates at work, even if the carrier proves that he had taken precautionary measures to guarantee their physical and mental fitness.

**ARTICLE (280)**

A carrier shall not be liable to compensate any damage arising from the disruption of carriage, deviation from the route set due to necessity to provide assistance to any sick, injured or endangered persons.

**ARTICLE (281)**

1. Fraud in the performance of the carriage contract shall mean every act or omission committed by the carrier or his subordinates with the intent to cause damage.
2. Gross fault shall mean every act or omission committed by the carrier or his subordinates with imprudence coupled with awareness of the damage which may be caused.

**CHAPTER TWO**  
**CONTRACT OF CARRIAGE OF THINGS**

**ARTICLE (282)**

1. The consignor shall be required to provide the carrier with the particulars concerning the consignee's name and address, destination of the carriage, kind of things intended for carriage, as well as their value, weight, volume, quantity, mode of packing and wrapping, number of parcels included, and any other particulars as are sufficient to identify the thing required to be transported, in addition to the delivery term and the route to be followed.
2. The consignor shall be answerable for any damages arising from the false or insufficient particulars provided by him.

**ARTICLE (283)**

1. The bill of lading shall contain, in particular, the following data:-
  - a. Date of the bill and the venue where it was edited.
  - b. Names and places of residence of the consignor, consignee, carrier and the carriage commission agent - if any.
  - c. Place of departure and destination.
  - d. The particulars related to the identification of the things carried and their value.
  - e. Date fixed for the performance of the task.
  - f. The freight and other expenses with an indication of whether they are payable by the consignor or the consignee.
  - g. The conditions pertaining to the loading and unloading, type of transport

means required to be used for carriage, the route to be followed, a determination of the responsibility and any other special conditions which may be included in a carriage contract.

2. The bill of lading may be made out in the name or to the order of a specified person or to bearer.
3. The carriage deed shall be negotiated according to the rules of the bill of exchange where it is nominative, by endorsement if made out "to order" and by delivery where it is made out "to bearer", this not being concerned with the carriage of the goods or possession thereof.

**ARTICLE (284)**

1. The consignor may require the carrier to hand him a copy of the bill of lading.
2. Where no bill of lading is made out, the consignor may require the carrier to deliver to him a receipt signed by this latter purporting to the receipt of the thing carried. Such receipt shall be dated and must include the sufficient particulars to identify the thing carried and the freight.

**ARTICLE (285)**

The bill of lading and the receipt issued and signed by the carrier purporting to the receipt of the thing carried shall constitute a means of evidence of the particulars stated therein; any person claiming the contrary to such particulars shall have to establish same.

**ARTICLE (286)**

1. The rights and obligations arising from the carriage contract shall not bind the consignee unless he accepts such rights and obligations either expressly or implicitly.
2. The receipt by the consignee of the bill of lading or of the thing intended for carriage, as well as his requiring to deliver the same to him or to issue instructions in this respect, shall be deemed as an implicit acceptance of the rights and obligations arising from the carriage contract.

**ARTICLE (287)**

1. The consignor shall deliver to the carrier the thing to be carried and the documents necessary for the performance of the carriage. The consignor shall be answerable where such documents are insufficient or not corresponding to the truth, and he shall as well be liable for the loss of such documents or, in case of negligence, in using them or any abuse thereof.
2. Where the carriage requires special preparations, the consignor shall notify the carrier accordingly within sufficient time prior to the delivery of the thing to be carried.
3. Delivery shall take place at the place of business of the carrier, unless otherwise agreed upon.

**ARTICLE (288)**

1. Where, owing to the nature of the thing, special preparations should be made for its carriage, be it its packing or wrapping the consignor shall have to take such precautions as would protect it from perishing or being damaged and would not expose the other persons or things carried with it to injury or damage respectively. Where the carriage conditions impose a specific mode of packing or wrapping, the consignor shall be required to abide by them.
2. The consignor shall be further liable for the damages arising from the defect in packing or wrapping, and the carrier shall be jointly responsible with the consignor for such damages if he has accepted to perform the carriage with his knowledge of the defect. The carrier shall be deemed to be aware of the defect where it is apparent or where it is of the type which cannot be concealed to an ordinary carrier.
3. A carrier may not exonerate himself from the liability for the perishing or loss of one of the things carried, by proving that the damage has arisen from a defect in the packing or wrapping of another thing, and any agreement to the contrary shall be null and void.

#### **ARTICLE (289)**

1. A carrier has the right to examine the things to be carried, in order to verify their condition and the authenticity of the particulars provided by the consignor in this respect.
2. Where such an examination requires the opening of the wrappings or containers, the consignor shall be notified to attend the examination. Where the consignor fails to show up on the date fixed, the carrier may undertake the examination in his absence and have recourse against the consignor for the examination costs, unless otherwise agreed upon.
3. Where the examination shows that the condition of the thing does not allow its carriage without damage, the carrier may refuse to transport it or may carry it after taking from the consignor a declaration that he is aware of the condition of the thing to be carried and that he agrees to its being transported. In such case, it is required to establish in the bill of lading the condition of the thing and the consignor's declaration.

#### **ARTICLE (290)**

The receipt by the carrier of the things to be carried without any reservations, shall constitute an evidence that he received them in good condition and in conformity with the particulars stated in the bill of lading. Where the carrier claims the contrary, he shall be required to prove it.

#### **ARTICLE (291)**

1. The carrier is bound to ship the thing to be carried and stack it on board of the ordinary means of carriage, unless otherwise agreed upon.

2. Where the consignor requires the shipping to be made on board a specific type of means of carriage, the carrier shall not be liable for the damage resulting from the use of such type of means of carriage.

**ARTICLE (292)**

1. The carrier must follow the route agreed upon, and in the absence of an agreement for a specified route, the carrier shall take the shortest route.
2. However, a carrier may change the route agreed upon or take a longer one where a necessity arises compelling him to do so. In such case, the carrier shall bear no responsibility for the delay and other damages which may result from the change of route, unless fraud or gross fault is established on his part or on the part of his subordinates.

**ARTICLE (293)**

1. The carrier shall be responsible for the safety of the thing during the performance of the carriage contract.
2. Where the safekeeping of the thing during carriage necessitates re-packing, repair of the wrappings, increase or decrease thereof or any other necessary measures, the carrier shall undertake this and pay any costs required therefor, unless otherwise agreed upon. Notwithstanding the foregoing, the carrier shall not be committed to take any extraordinary measures in the transport such as supply food and water to animals, provide medical services or other services or irrigate the plants, unless otherwise agreed upon.

**ARTICLE (294)**

1. The carrier shall unload the thing on arrival, unless unloading is carried out by the consignee or another person, pursuant to an agreement, a law, regulation or instructions. In such case, the carrier shall not be liable for any damages resulting from the unloading.
2. In all cases, the carrier shall bear the unloading costs unless otherwise agreed upon.

**ARTICLE (295)**

1. Where the delivery is not required at the place of the consignee, the carrier shall notify him of the arrival of the thing carried and of the time on which he may take delivery thereof.
2. The consignee shall receive the thing on the date fixed by the carrier, otherwise he shall bear the storage fees. On the expiry of the time limit set for delivery, the carrier may carry the thing to the consignee's place in consideration of an additional freightage.

3. The consignee may require to examine the thing before receiving it, and if the carrier fails to enable him to do so, the consignee may refuse to receive the thing.

**ARTICLE (296)**

1. Where the thing to be carried is in possession of the carrier, the consignor may order him to refrain from executing the carriage, to stop it or to return the thing to him, or to direct it to a person other than the original consignee or to any other place or issue any other instructions, provided that the consignor shall pay the freight and costs of that part performance of the carriage and compensate the carrier for any damage he may have sustained as a result of the new instructions. Where the consignor had received a copy of the bill of lading, he should return it to the carrier so that he enters therein the new instructions which shall be signed by the consignor, failing which the carrier may refrain from implementing such instructions.
2. The right to issue instructions concerning the thing carried, shall pass on to the consignee by the mere fact that he receives the bill of lading or when he accepts expressly or implicitly the carriage contract, in which case, also, the bill of lading should be returned to the carrier to enter therein the new instructions which shall be signed by the consignee, failing which the carrier may refrain from implementing same.
3. No new instructions related to the thing to be carried may be issued, after arrival of the thing and notification of the consignee to receive it or to appear in order to receive it.

**ARTICLE (297)**

The carrier is bound to execute the instructions issued to him by whomever is entitled to do so pursuant to the provisions of the foregoing Article, unless the carriage conditions prohibit same, or unless it is impossible for the carrier to execute such instructions, or if execution thereof would cause a disturbance in the traffic, or if the value of the thing carried is not sufficient to cover the expenses incurred by the carrier due to execution of the instructions. In all such cases, the carrier shall notify the person who issued the new instructions of his abstention from execution, the reason for such abstention, and the carrier shall not be liable for said abstention, unless it is unreasonably withheld.

**ARTICLE (298)**

1. Where an obstacle prevents the commencement of carriage, or if the transport is disrupted during its execution, or if the consignee does not appear to take delivery of the thing carried, or if he reports but refuses to receive it or pay the freightage or expenses due, the carrier shall notify the consignor accordingly and seek further instructions; and as an exception to the provisions of Article (296), the carrier must in this case implement the instructions received by him from the consignor, even if he fails to return the copy of the bill of lading given to him by the carrier.
2. Where the consignor fails to issue instructions in due time, the carrier may apply to the Court to certify the condition of the thing and to authorize him to deposit it with a

trustee for the account of the consignor and at the consignor's responsibility.

3. Where the thing is subject to perishing, deterioration of value, or when its maintenance costs are exorbitant, the Court may order that it be sold in the manner specified by it and the price deposited in the Court Treasury for the account of the persons concerned.

**ARTICLE (299)**

The consignor shall pay to the carrier the freight and other costs which may accrue, save where it is agreed that they be borne by the consignee, in which case, both the consignor and consignee shall be jointly liable to pay them to the carrier.

**ARTICLE (300)**

No freight shall accrue to the carrier in respect of such things carried which may perish by a force majeure.

**ARTICLE (301)**

1. Where a force majeure prevents the execution of carriage no freight shall accrue to the carrier. However if said force majeure hinders the carriage from being completed, the carrier shall be entitled to receive the freight for the part performance of the carriage.
2. In all cases, a carrier may claim payment of the loading and unloading costs and other necessary expenses.

**ARTICLE (302)**

The right to claim for the recovery of the sum paid in surplus to the freightage agreed or prescribed in the carriage conditions shall be vested in the person who paid the freight.

**ARTICLE (303)**

1. The carrier may withhold the thing carried until payment of the freight, expenses and other sums as are due to him because of the carriage.
2. The carrier shall have a right of lien over the price resulting from the sale of the things carried to collect the freightage and other sums as are due to him because of the carriage; the provisions relative to the procedures of execution on commercially mortgaged things shall apply in this regard.

**ARTICLE (304)**

1. From the moment the carrier receives the thing to be carried, he shall be liable for its perishing in whole or in part, its damage and the delay in delivering same.
2. The thing shall be deemed totally perished if the carrier fails to deliver it or to notify the consignee to appear in order to receive it within thirty days of the expiry of the time limit set for delivery, or if no date for delivery has been fixed, within thirty days



of the expiry of the time limit usually required by an ordinary carrier for the carriage had he been in the same circumstances.

**ARTICLE (305)**

The carrier shall not be liable for the perishing or impairment of the thing after delivery thereof to the consignee, to the customs agreed upon or to the trustee appointed by the Court as depositary of the thing, save where fraud or gross fault is established on the part of the carrier or his subordinates.

**ARTICLE (306)**

1. The carrier shall not be answerable for any decrease in weight or volume that occurs to the thing during carriage owing usually to its nature, unless it is proved that such decrease has resulted from another cause.
2. Where the bill of lading covers several things divided into groups or parcels, the decrease allowed shall be determined on basis of the weight of each group or parcel, in case such weight has been specified separately in the bill of lading or if it could have been specified.

**ARTICLE (307)**

Where the thing is carried in the custody of the consignor or consignee, the carrier shall not be liable for its perishing or deterioration, unless fraud or gross fault is proved on his part or on the part of his subordinates.

**ARTICLE (308)**

The carrier may not exonerate himself from liability regarding the perishing or deterioration of the thing, or the delay in delivering it, save where he proves a force majeure, a defect inherent to the thing carried, a fault committed by the consignor or consignee, or an act of the government.

**ARTICLE (309)**

1. Any provision exonerating the carrier from liability for total or partial perishing or deterioration of the thing, shall be null and void; also, any provision exonerating the carrier from said liability if arising from the acts of his subordinates shall be null and void. Any condition which tends to bind the consignor or consignee, in any capacity whatsoever, to pay all or part of the insurance expenses against the carrier's liability, shall be deemed as an exoneration from liability.
2. However, the carrier may stipulate his total or partial exoneration from liability for the delay.

**ARTICLE (310)**

1. The carrier may determine his liability for the total or partial perishing or deterioration of the thing, provided that the indemnity agreed shall not be fictitious and remains subject to the Court's estimation in case of conflict.

2. The consensual indemnity shall not be payable, if the carrier proves that the consignee did not sustain any damage.
3. Where the damage value is less than the amount of the consensual indemnity, the judge may reduce such amount to make it equivalent to the damage value. Nevertheless, where the damage exceeds the consensual indemnity amount, it is not permissible to claim for more than such amount, unless it is established that the carrier or his subordinates have committed fraud or a gross fault, in which case the carrier shall be bound to compensate for the damage in full.

**ARTICLE (311)**

The condition for determination of or exoneration from liability for delay shall be in writing, otherwise it shall be considered as null and void. Where the carriage contract is made out on printed forms, the said condition must be clear and written in a manner which draws the attention, failing which the Court may consider it null and void.

**ARTICLE (312)**

The carrier may not cling to the condition of determination of, or exoneration from, liability for delay where fraud or gross fault is proved on his part or on the part of his subordinates.

**ARTICLE (313)**

1. Where the thing to be carried perishes or deteriorates and its value is not indicated in the bill of lading, the indemnity shall be assessed on basis of its real value at the venue time of arrival, unless otherwise stipulated by law or agreement. Save where the perishing is total, the indemnity shall be estimated while taking into account the decrease permitted in pursuance to the provision of Article (298).
2. Where the value of the thing carried is indicated in the bill of lading, the carrier may contest such value and prove by all means of evidence the real value of the thing.
3. With the exception of the two cases of fraud and gross fault committed by the carrier or his subordinates, the carrier shall not be liable for the loss of the thing entrusted to him for carriage, where such thing consists of money, bonds and securities, jewelries or any other valuable thing, except to the extent of the express written particulars provided by the consignor at the time he delivered the thing for carriage.

**ARTICLE (314)**

1. Indemnity for total perishing and indemnity for delivery may not be cumulated.
2. Indemnity for delay may not be adjudged in case of partial perishing except for the part which did not perish.
3. In all cases, the indemnity adjudged may not exceed the amount which would accrue

in the event of total perishing of the thing.

**ARTICLE (315)**

Where the thing deteriorates, perishes in part or its delivery is delayed, such as it may not serve anymore the purpose for which it was carried, and if the carrier's liability for such deterioration, perishing or delay is established, the claimant for compensation may waive the thing to the carrier against an indemnity to be estimated on basis of the total perishing of the thing.

**ARTICLE (316)**

1. Where the compensation is paid due to perishing of the thing, then within one year of such payment the thing is found, the carrier shall notify forthwith the person who received the compensation, inform him of the thing's condition and invite him to inspect it, at his own discretion, at the place where it was found, the place of departure or the place of destination.
2. Where the person who received the compensation fails to send his instructions within fifteen days of his notification, or if he sends the instructions but fails to report on the date fixed by the carrier for inspection, or if he reports but refuses to recover the thing, the carrier may then dispose of the thing thereof.
3. Where the person who received the compensation requests that it be returned to him, he is bound to reimburse the compensation received after deduction therefrom of the expenses of the claim and a sum equivalent to the damage sustained due to the delay in delivering the thing.

**ARTICLE (317)**

1. Receipt of the things carried and payment by the consignee of the freightage shall invalidate any lawsuit against the carrier if the defect that had occurred therein is apparent. However, where such defect is not apparent, it may be proved, but the case lodged for said defect shall be admitted only if notice is served regarding the defect within seventy hours of the time of receipt, and if the claim is submitted to the Court within thirty days, adding to such two time limits the time required for the distance.
2. The condition of the goods shall be established either by the specialized authorities or by an expert appointed by the Court without delay.
3. The provisions of this Article shall not apply where it is established that the defect was a result of fraud or gross fault committed by the carrier or his subordinates, or where it is established that the carrier and his subordinates have intentionally concealed the defect.

**ARTICLE (318)**

1. Where several carriers undertake successively the performance of one carriage contract, the first carrier shall be liable towards the consignor and consignee for the

whole operation, and any provision to the contrary shall be null and void.

2. Each of the carriers subsequent to the first one shall not be liable towards this latter or towards the consignor or consignee, except for the damage that has occurred in that part of carriage performed by him. Where it is impossible to determine the part during which the damage occurred, the compensation shall be divided between all the carriers in proportion to each carrier's share in the freight, and in case one of such carriers is insolvent, his share shall be divided between the others in accordance with the same proportion.
3. The carrier who proves that the damage did not occur during the part of carriage executed by him, shall be exempted from liability therefor.

**ARTICLE (319)**

Each of the consecutive carriers may require that the thing be examined and its condition established on delivery thereof to him by the previous carrier. Where he receives it without making reservations, it shall be assumed that he received it in good condition and in conformity to the particulars stated in the bill of lading, until the contrary is proved.

**ARTICLE (320)**

The last carrier is responsible towards the preceding ones for claiming payment from the consignee of the sums due because of the carriage. He has the right to collect such sums on their behalf and take all the legal proceedings for collection thereof, including the use of the right of withholding the thing and the right of lien over the thing that is subject of carriage.

**ARTICLE (321)**

Where there is denial and lack of legitimate excuse the following cases may not be heard:-

1. The cases lodged against the carrier on ground of delay, perishing or damage arising from a contract of carriage of things after the lapse of six months in respect of carriage inside the State, and after the lapse of one year in respect of overseas carriage, as of the date of delivery of the thing to the consignee, or the customs or to the trustee appointed by the Court as depositary of the thing. In case of total perishing of the thing carried, the period shall run from the expiry of the date stipulated in paragraph (2) of Article (304).
2. The case lodged by one carrier as a recourse against the consecutive carriers pursuant to paragraph (2) of Article (318) after the lapse of sixty days of the date of payment of the compensation or of the date on which official claim for compensation was filed.

**ARTICLE (322)**

Any person or subordinate of a person having committed fraud or gross fault may not cling to the plea of "non hearing" stipulated in the foregoing paragraph.

**CHAPTER THREE**  
**CONTRACT OF CARRIAGE OF PERSONS**

**ARTICLE (323)**

1. The passenger shall pay the fare on the date agreed, or the date stated on the carriage schedules or as is customary; he shall further abide by the carrier's instructions in regard to the carriage.
2. The carrier shall transport the effects carried by the passenger during the trip, and the passenger shall not be bound to pay any fare for the transport of his effects, except where they exceed the limit set in the carriage tariff or the limit recognized by customary usage.

**ARTICLE (324)**

1. Where a force majeure prevents the commencement of carriage or where before execution of carriage, circumstances occur rendering such carriage a danger to people's lives, the carrier shall not be liable for indemnity due to non-execution, neither shall he be entitled to receive the fare.
2. Where the force majeure or the danger to people's lives arise after commencement of execution of carriage, the carrier shall receive only the fare due for that part of carriage which was executed.

**ARTICLE (325)**

Where carriage is impossible because of the death or illness of the passenger or due to other compelling impediments, the carriage contract is rescinded and the fare shall not be payable.

**ARTICLE (326)**

1. Where the passenger gives up the idea of travelling before commencement, he shall notify the carrier of his renunciation before the date set for execution of the carriage and in case of extreme necessity, such notice can be served on the same day.
2. Where the notification is effected according to the preceding paragraph, the carrier's fare shall not be payable. However, he may claim for compensation of the damage sustained by him due to the fact that the passenger has given up the idea of travelling.

**ARTICLE (327)**

Where the passenger gives up the idea of pursuing the trip after commencement thereof, the full fare shall be payable, unless his renunciation is attributed to extreme necessity, in which case he shall only pay the fare corresponding to the executed part of carriage.

**ARTICLE (328)**

Without prejudice to the provisions of the two foregoing Articles, where the passenger fails to report on the time fixed for carriage, he shall pay the full fare and he may, whether he paid the full fare before or after the date fixed, require that the carriage be executed on a later date; all this unless otherwise agreed upon.

**ARTICLE (329)**

1. Where carriage is cancelled prior to commencement or completion thereof due to a

reason which is attributable to the carrier, his subordinates or the means of carriage used by him, the passenger shall not be bound to pay the fare, without prejudice to his right for compensation - if justified.

2. Where carriage is disrupted after commencement for a reason attributed to the carrier, his subordinates or the means of carriage used by him, the passenger may renounce to pursue the trip and the carrier shall in this case bear the costs of carrying the passenger to the place agreed. However, the passenger may choose to wait until the carriage traffic resumes and he shall not be required in such case to pay any additional fare.

#### **ARTICLE (330)**

The passenger may, before commencement of execution, relinquish the carriage ticket, unless it is made out in the passenger's name or it is issued to him or based on special considerations.

#### **ARTICLE (331)**

1. The carrier shall prepare for the passenger a seat in the class agreed upon, and this latter may recover from the carrier the difference in case he is compelled to travel in a lower class than the one indicated on his ticket.
2. Where the passenger pays an additional fare against special advantages, he may claim that such additional fare be reimbursed to him if the carrier fails to provide the corresponding advantages.

#### **ARTICLE (332)**

1. The carrier may withhold the passenger's effects to secure payment of the fare and the price of food or other things served on him during the performance of the carriage contract.
2. The carrier shall have a priority right over the price of the passenger's effects which accrue to him by reason of the carriage; the proceedings of execution on things which are commercially mortgaged shall apply in this respect.

#### **ARTICLE (333)**

1. The carrier is bound to carry the passenger and his effects up to the destination of arrival on the date agreed upon, and if no date is specified then within the time limit required by an ordinary carrier had he been in the same circumstances.
2. The carrier may, prior to carriage commencement or during the trip, examine the passenger's effects in his presence to ensure their conformity to the carriage conditions.

#### **ARTICLE (334)**

1. The carrier shall secure the safety of the passenger for the duration of the performance of the carriage contract, and any agreement exonerating the carrier from such liability shall be null and void.

2. Performance of the carriage contract covers the period between the moment the passenger starts to board the means of transport at the place of departure, until he disembarks at the place of arrival. Where there are quays or platforms for the means of transport to lay by, the performance of the contract shall cover the period lying between the moment the passenger embarks the quay or platform at the place of departure and his exit therefrom at the place of arrival.
3. Where necessity arises during the trip to change the means of transport, the liability shall not cover the period of transfer of the passenger from one means of transport to the other without the custody of the carrier or his subordinates.

**ARTICLE (335)**

1. The carrier shall be liable for the delay in arrival and for such bodily or non-bodily injuries sustained by the passenger during the performance of the carriage contract.
2. The responsibility stipulated in the preceding paragraph shall not be exonerated paragraph, except by the carrier proving that the delay or injury is due to force majeure or the passenger's or third party's fault.

**ARTICLE (336)**

1. Any provision which exonerates fully or partially the carrier from liability in regard to bodily injuries sustained by the passenger, shall be null and void.
2. Any condition which aims to make the passenger, in any way, pay all or some of the insurance expenses against the carrier's liability shall be deemed as being an exoneration from liability.

**ARTICLE (337)**

1. The carrier may place & condition for being exonerated completely or partly from liability for the delay of the passenger or other than bodily injuries which may be suffered by him during carriage.
2. The condition exonerating from liability shall be in writing, otherwise it shall be considered null and void. Where the carriage contract is executed on printed forms, the condition must be clear and written in such manner as to draw the attention, failing which the Court may consider it null and void.
3. The carrier may not cling to the condition exonerating from liability in full or in part where fraud or gross fault is proved on the part of the carrier or his subordinates.

**ARTICLE (338)**

1. The passenger shall be bound to watch over the effects and animals which he is permitted to carry with him, and the carrier shall not be liable for any loss or damage which may be sustained thereby, save where the passenger proves that such loss or damage is due to fault by the carrier or his subordinates.

2. The passenger shall be liable for the damage caused to the carrier or to third parties as a result of the effects or the animals which he carries with him.
3. As for the effects which are delivered to the carrier, carriage thereof shall be governed by the provision stipulated in relation to the carriage of things.

**ARTICLE (339)**

1. Where a passenger dies or falls ill in the course of performance of the carriage contract, the carrier shall take such measures as are deemed necessary to safekeep his effects until they are delivered to the persons concerned.
2. Where any of the persons concerned is present at the place of occurrence of death or illness, he may intervene to supervise the measures adopted by the carrier to safekeep the effects and request from the carrier to deliver to him a declaration that the passenger's effects are in his custody.

**ARTICLE (340)**

The heirs and dependents of the passenger may, in execution of alimony, lodge an action for liability arising from the carriage contract, in case of death of the passenger, regardless of whether the death occurred directly after the incident or after the lapse of a period of time.

**CHAPTER FOUR**  
**PROXY OF COMMISSION FOR CARRIAGE**

**ARTICLE (341)**

1. Proxy by commission for carriage is a contract by which the agent undertakes to enter into a carriage contract in his own name and for the account of his principal, and where necessary, to carry out such operations as to relate to the carriage, in consideration of a commission received from the principal. A commission agent for carriage shall be in regard to the consignor in the same stature as a carrier.
2. Where the commission agent undertakes carriage by his own means, he shall be governed by the provisions of the carriage contract, unless otherwise agreed upon.

**ARTICLE (342)**

With the exception of the provisions stipulated in this Chapter, the provisions of proxy by commission shall apply to proxy by commission for carriage.

**ARTICLE (343)**

The principal may at any time cancel the order for carriage before the commission agent enters into the carriage contract, in which case he shall be bound to reimburse to the commission agent, the expenses incurred by him and compensate him for any work performed.

**ARTICLE (344)**

1. The commission agent shall execute his principal's instructions, and in particular



those instructions as related to the date of carriage, the selection of the carrier, the carriage means and the route to be followed.

2. The commission agent may not charge his principal any fare/freightage exceeding the one agreed upon with the carrier, and any advantages obtained from the carrier by the commission agent shall benefit to the principal, unless otherwise agreed upon in the proxy contract or dictated by the custom.

**ARTICLE (345)**

The commission agent for carriage shall guarantee the safety of the passenger or the article carried, and any agreement to the contrary shall be null and void.

**ARTICLE (346)**

1. Where the carriage relates to goods, the commission agent shall as of the time of receiving the goods be wholly or partly liable for the perishing thereof, damages suffered thereby or the delay in the delivery of such goods. He may not deny his liability, unless he proves a force majeure, an inherent defect of the goods, or a fault of the principal or the consignee.
2. Where the carriage relates to persons, the commission agent shall be liable for the delay of arrival, and for such bodily or non-bodily injuries as are suffered by the passenger in the course of performing the carriage contract. The commission agent may not deny his liability, except by proving a force majeure or a fault committed by the passenger.
3. In all cases, the commission agent may have recourse against the carrier where relevant.

**ARTICLE (347)**

1. Any provision exonerating wholly or partially the commission agent for carriage, from the bodily injuries suffered by the passenger, shall be null and void.
2. A provision which tends to impose on the passenger in any manner whatsoever, the payment of all or some of the insurance costs against the liability of the commission agent, shall be deemed to have the status of the exoneration stipulated in the preceding paragraph.

**ARTICLE (348)**

1. The commission agent for carriage may place & condition that he be exonerated wholly or partially from the liability which arises from the perishing, damaging or delay in the delivery of the goods carried, as well as from the liability arising from the delay of the passenger's arrival or bodily injuries sustained by him during carriage.
2. The condition of exoneration from liability shall be in writing, otherwise it shall be considered null and void. Where the proxy by commission contract is executed on

printed forms, such condition must be clear and written in such manner as to draw attention, otherwise the Court may consider it null and void.

3. The commission agent for carriage may not cling to the condition of total or partial exoneration from liability in cases of fraud or gross fault committed by him or his subordinates, or by the carrier or his subordinates.

**ARTICLE (349)**

1. The principal and passenger shall each have direct recourse against the carrier to claim the rights arising from the carriage contract. The carrier shall also have direct recourse against each of the principal and passenger to claim such rights. In all cases, the commission agent must be intromitted in the case.
2. The passenger in the carriage contracts of persons and the consignee in the carriage contract of things shall have direct recourse against each of the principal, carrier and commission agent for carriage for the rights arising from the carriage contract.

**ARTICLE (350)**

Where the commission agent pays the fare/freightage to the carrier, he shall subrogate him in his rights.

**ARTICLE (351)**

The original commission agent is a guarantor of the commission agent for carriage appointed by him, except where the consignor has appointed the commission agent in the agreement concluded by him with the original principal.

**ARTICLE (352)**

The provisions of Articles (321) and (322) hereof, shall apply to the non-hearing of the cases arising from proxy by commission contract for carriage.

**CHAPTER FIVE**  
**PROVISIONS PERTAINING TO AIR CARRIAGE**

**ARTICLE (353)**

1. Air carriage herein means the carriage of persons, luggage and goods by airplanes in consideration of a freight/freightage.
2. Luggage referred to in the foregoing paragraph, means articles which the passenger is allowed to carry with him in the airplane or which are delivered to the carrier for safe custody during the carriage.

**ARTICLE (354)**

Without prejudice to the international conventions to which the State is a party, the provisions of this Part shall apply to air carriage, with due consideration to the specific provisions stipulated in the following Articles.

**ARTICLE (355)**

An air carrier shall be held liable for such damage as is sustained as a result of a passenger's death, wound or bodily injury occurring during air carriage or during any of the operations of the passenger's boarding or disembarkation of the airplane.

**ARTICLE (356)**

1. An air carrier shall be held liable for such damage as is sustained due to the perishing, loss or damaging of the registered luggage and goods, if the accident which caused the damage occurred during the air carriage.
2. Air carriage includes the period when the luggage and goods are in the custody of the carrier during the flight or during the presence of the airplane at the airport or in any place where the airplane has landed.
3. Air carriage shall not cover the period when the luggage or goods are being carried by land, sea or river outside the airport. However, where such carriage is necessary to ship the luggage or goods, to deliver them or to transfer them from one airplane to another, in implementation of an air carriage contract, it shall be presumed that the damage resulted from an accident which occurred during the air carriage period until the contrary is proved.

**ARTICLE (357)**

An air carrier shall be held liable for such damage as may result from the delay in the arrival of the passengers or the registered luggage or the goods.

**ARTICLE (358)**

An air carrier shall not be liable for such small personal articles which are retained in the custody of the passenger during the travel, and the carrier shall not be questioned about some unless the passenger proves that the carrier or his subordinates failed to take the necessary measures to prevent the occurrence of the damage.

**ARTICLE (359)**

1. In case of carriage of persons, the compensation adjudged for payment by the carrier where the passenger dies or is injured, shall not be less than the amount of the prescribed Sharia blood money, but it may be agreed to exceed this amount.
2. In case of carriage of luggage and goods, the compensation amount may not exceed Dhs 150 (One Hundred Fifty Dirhams) for each kilogram, unless it agreed to exceed this sum. Nevertheless, where the consignor on delivering the luggage or goods submits a specific statement indicating that he attaches special importance to the delivery of the same in safe condition at the place of arrival, due to its value, and if he pays such additional freightage as is required by the carrier for the same, the carrier shall be bound to pay compensation according to the value indicated by the consignor, save where the carrier proves that such value exceeds the real value of the luggage and goods.
3. Where one parcel is lost, damaged or delayed and this has an effect on the value of

the other parcels covered by the same carriage application form, the total weight of such parcels shall be taken into consideration upon determination of the liability extent.

4. As regards such personal or small articles as would remain in the custody of the passenger during the flight, the compensation adjudged to each passenger for the perishing or damaging of such articles, may not exceed the sum of Dhs 3000 (Three Thousand Dirhams).
5. An air carrier may not plead the limitation of liability as is stipulated in this Article where it is proved that the damage was the result of an act or omission by the carrier or his subordinates, either with intent to cause damage or due to imprudence coupled with awareness that a damage might result therefrom. Where the act or omission is committed by the subordinates, it must be also established that it was committed in the course of performance of their duties.

**ARTICLE (360)**

An air carrier shall be held liable within the limits set in the preceding Article, irrespective of the capacity of the litigants in the action of liability.

**ARTICLE (361)**

1. Where an action for compensation is brought against one of the carrier's subordinates, he may plead the limitation of liability stipulated in Article (359), where it is proved that the act which has caused the damage was perpetrated by him during the performance of his services.
2. However, no subordinate of the carrier may plead the limitation of liability, where it is proved that the damage was the result of an act or omission by him, either with intent to cause damage or with imprudence coupled with awareness that a damage is likely to result therefrom.

**ARTICLE (362)**

1. The airway bill shall contain a statement that the carriage is being made in accordance with the limited liability provision stipulated in Article (359), otherwise the carrier or his subordinates shall not have the right to cling to such provision.
2. Any condition exonerating the air carrier from liability or determining it at less than what is specified in Article (359), shall be null and void, except where the article carried has perished or has sustained damage due to its nature or to an inherent defect.

**ARTICLE (363)**

Where the consignee receives the luggage or goods at the place of arrival without having any reservation, it shall constitute a presumption that he has received them in good condition and in conformity to the conditions of the airway bill, unless otherwise proved.

**ARTICLE (364)**

1. Where the luggage or goods arrive damaged, the consignee must serve a notice on the carrier immediately upon discovery of the damage within no more than seven days in regard to luggage and twenty four days in regard to goods, from the date of their receipt. In case of delay, the notice must be sent within twenty one days at the most from the day on which the luggage or goods are placed at the disposal of the consignee.
2. The notice may be addressed in the form of an objection as a protest written in the airway bill upon taking delivery of the luggage or goods.
3. The action for liability against the carrier may not be admitted where the notice is not served within the time limits specified in this Article, unless the plaintiff proves that the carrier or his subordinates have exercised cheating or fraud in order to evade such time limits or to conceal the damage sustained by the luggage or goods.

**ARTICLE (365)**

1. Where the carriage is free of charge, the air carrier shall not be held liable, unless it is proved that he or his subordinates have committed a fault, in which case the carrier shall be liable with the limits stipulated in Article (359).
2. Carriage shall be deemed to be free of charge where it is performed without consideration and the carrier is not a professional carrier. However, where the carrier is a professional one, the carriage shall not be considered free of charge.

**ARTICLE (366)**

The aircraft pilot may impose compulsory measures upon all the persons on board, and he may decide to take out any person or article whose presence on board the aircraft might constitute a threat to its safety or a breach to the regulations.

**ARTICLE (367)**

An air carrier shall be exonerated from liability if he proves that all the damage was due to the fault of the injured person. The carrier's liability may be reduced by the Court, where it is proved that the fault of the injured person has contributed to cause the damage.

**ARTICLE (368)**

The plaintiff shall have an option to file his case before one of the following courts:

1. The court within whose jurisdiction the carrier's domicile is located.
2. The court within whose jurisdiction the head office of the carrier's activity is located.
3. The court within whose jurisdiction the carrier has a corporation or an establishment which has entered into the carriage contract on his behalf.
4. The court of the place of destination.

Any stipulation bringing an amendment to the rules of jurisdiction hereinabove referred to, shall be null and void, unless provided for before occurrence of the damage.

**ARTICLE (369)**

In case of consecutive carriage performed by several successive carriers, each carrier shall be deemed a party to the carriage contract in regard to the period performed by him. However, the carrier having entered into the consecutive carriage contract shall assume the liability for all the period agreed in the contract, even if he has not personally performed it in whole or in part.

**ARTICLE (370)**

The right to bring the action in liability against the air carrier or any of his subordinates may not be heard after the lapse of two years from the day on which the airplane arrives or was supposed to have arrived, or from the day on which the carriage was stopped.

**BOOK THREE**  
**BANKING OPERATIONS**  
**PART ONE: BANK DEPOSITS AND ACCOUNTS**

**CHAPTER ONE**  
**BANK DEPOSITS**

**ARTICLE (371)**

1. A bank cash deposit is a contract by which one person delivers a sum of money, by any means of payment, to the bank which undertakes to return it upon request or according to the agreed conditions.
2. The bank shall acquire ownership of the deposited money, and it shall be entitled to dispose of the money thereof for the needs of its own activity, with an obligation to return its like to the depositor; return of the money shall be in the same currency as that deposited.

**ARTICLE (372)**

1. Save where otherwise agreed upon, the money deposit must be returned immediately upon request; the depositor may at any time dispose of the balance or any part thereof.
2. The foregoing right may be made conditional upon the serving of a prior notice or the expiry of a specific time limit.

**ARTICLE (373)**

Save where the deposit is intended for investment, a cash deposit shall be considered a debt and clearance may be effected between a cash deposit and a debt owed to the bank by the depositor; and agreement to the contrary shall be null and void.

**ARTICLE (374)**

Where the bank issues a saving deposit book, it must be in the name of the person in whose favour the book is issued. Deposits and withdrawals shall be entered therein; the particulars entered in the book and signed by the bank official, shall constitute an evidence for proving the said particulars, as between the bank and the person in whose favour the book was issued, and any agreement to the contrary shall be null and void.

**ARTICLE (375)**

Unless otherwise agreed upon, the deposits and withdrawals shall be effected in the branch of the bank where the account was opened.

**ARTICLE (376)**

Where the depositor has several accounts in one bank or in the same branch of a bank, each account shall be deemed as being independent of the other, unless otherwise agreed upon.

**ARTICLE (377)**

With compliance with the provisions of Article (391) hereof, a of money deposit contract does not vest the depositor with the right to draw from the bank sums in excess of the sums deposited. Where the bank carries on operations which cause the depositor's balance to in debit, the bank must forthwith inform the depositor thereof to adjust his situation.

**ARTICLE (378)**

The bank is bound to send to the customer a statement of the balance of the account once every month, unless otherwise agreed upon.

**ARTICLE (379)**

A bank may open a joint account for two or more persons with equality among them, unless otherwise agreed upon and provided that the following provisions are complied with:-

1. The joint account shall be opened by all its owners or by one person holding a power of attorney from the owners of the joint account duly authenticated by an official specialized authority. Withdrawals from such account shall be effected according to the agreement of the account owners
2. Where the balance of a joint account's co-owner is seized, said seizure shall be valid on the distrainee's share of the account balance as of the day on which the bank is served with the notice of the seizure. In such a case, the bank shall suspend withdrawals from the joint account upto and equivalent to the seized share. The co-owners of the joint account or whoever represents them shall be informed of the seizure within no more than five days as of the date of levying same.

3. Where the bank is affecting a clearance between the various accounts of a co-owner of a joint account, it may not include such joint account in the clearance, except with the written consent of the other co-owners.
4. Upon the death or loss of legal capacity of a co-owner of a joint account, the other co-owners must give notice to the bank of that fact within no more than ten days of the date of death or loss of capacity; the bank shall thereupon suspend the withdrawal from the joint account from the date of notification until a successor is appointed.

## **CHAPTER TWO** **BANK TRANSFERS**

### **ARTICLE (380)**

1. A bank transfer is an operation pursuant to which the bank enters a specified sum in the debit side of the account of the person who has ordered the transfer following a written order from such person, and in the credit side of another account.
2. The following may be achieved through the foregoing operation:
  - a) the transfer of a specified sum from the account of one person to another person's account, each of whom having an account with the same bank or in two different banks.
  - b) the transfer of a specified sum from one account to another both of which are opened in the name of the person who has ordered the transfer, is the same bank or in two different banks.
3. The agreement between the bank and the customer ordering the transfer shall regulate the conditions of issue of the order; however, the order of transfer may not be made to bearer.

### **ARTICLE (381)**

Where the banking transfer is effected between two branches of the same bank or between two different banks, every objection emanating from third parties regarding this transfer must be addressed to the branch or the bank or the bank where the beneficiary's account is opened.

### **ARTICLE (382)**

The transfer order may be effected in respect of sums which are actually entered in the account of the person ordering the transfer, or in respect of sums which may be entered in such account within a specified period as is agreed with the bank.

### **ARTICLE (383)**



It may be agreed that the beneficiary may present the transfer order in person to the bank where the account of the person ordering the transfer is opened, rather than it being notified to such bank by the said person.

**ARTICLE (384)**

1. The beneficiary shall acquire ownership of the bank transfer value as of the time it is entered in the debit side of the account of the person ordering the transfer; the latter may countermand the transfer order until the foregoing entry is made.
2. However, where it is agreed that the beneficiary shall present the transfer order to the bank in person, the person ordering the transfer may not countermand the transfer order, with compliance with the provisions of Article (389).

**ARTICLE (385)**

The debt in settlement of which the transfer is made shall remain outstanding with its securities and supplements until the value has been actually entered in the credit side of the beneficiary's account.

**ARTICLE (386)**

It may be agreed to postpone the execution of specified transfer orders, whether they were sent directly by the person ordering the transfer or presented by the beneficiary, until the end of the day in order to have them executed with other orders of the same kind and presented to the bank on the same day.

**ARTICLE (387)**

1. Where the transfer order is addressed directly by the person making the order to the bank, the latter may, if the balance of such person is less than the value indicated in the transfer order, refuse to execute the order provided it notifies without delay such refusal to the person ordering the transfer.
2. But where the transfer order is presented by the beneficiary, the bank shall credit his account with the partial (insufficient) balance, unless the beneficiary refuses the same. The bank shall further indicate on the transfer order the crediting of the partial balance or the beneficiary's refusal of the transfer.
3. Where several beneficiaries present themselves to the bank at the same time and the value of the transfer orders held by them exceed the balance of the person ordering the transfer, they shall be entitled to require the distribution of the insufficient balance between them, each according to his share.
4. Where the bank refuses to execute the transfer order or where the beneficiary refuses to accept the transfer of the partial balance in accordance with paragraphs (1) and (2) hereinabove, the person ordering the transfer shall have the right to dispose of such balance.

5. Where the bank fails to execute the transfer order on the first working day following the day on which it is presented, the order shall within the limits of the non-executed part, be considered as null and void and must be returned to the person who presented it against a receipt. Where an agreement is reached for a longer period, the transfer order which has not been executed shall be added to the orders submitted on the following days.

#### **ARTICLE (388)**

In case of death of the person ordering the transfer, the bank shall, as of the date on which it was informed of the death, cease execution of the transfer order issued by him. Where the beneficiary dies, the bank shall carry on with the execution of the transfer orders.

#### **ARTICLE (389)**

1. Where the beneficiary is declared bankrupt, the person making the order may suspend the execution of the transfer order even if the beneficiary has received it in person.
2. The declaration of the bankruptcy of the person making the order transfer shall not bar the execution of the transfer order which had been presented to the bank prior to the issue of the bankruptcy declaration judgement, save where the Court decrees otherwise.

### **PART TWO** **CURRENT ACCOUNTS**

#### **ARTICLE (390)**

A current account is a contract between two persons pursuant to which the rights and debts arising from their mutual relation are converted into entries to be made in the account, for which clearance shall be effected such that the final balance resulting upon the closure of the account shall alone constitute a payable debt.

#### **ARTICLE (391)**

1. A bank may open a current account for its customer where the operations carried out by said bank are coupled with the opening of credit or the granting of credit facilities in his favour.
2. It may be agreed that the account shall not be overdrawn from the customer's side with a continuously credit balance. It may also be agreed that said account shall be overdrawn on both sides, which means that it could have a debit or credit balance in regard to both parties.

#### **ARTICLE (392)**

It is required, in order that payments may be entered in a current account, that they fulfill the following conditions:

1. That they be money or fungible articles of one kind so that clearance may be effected between them.
2. That they arise from debts which are established as to their existence and amount.
3. That they be delivered to the payee on basis of transfer of ownership.

**ARTICLE (393)**

The two parties may keep several current accounts, as long as each account is restricted to one specific kind of operations or currencies.

**ARTICLE (394)**

A contract of current account shall result in the following:-

1. Ownership of the properties and monies delivered and entered in the current account shall be transferred to the party who receives them.
2. The entry of a negotiable instrument in the current account is deemed to be valid provided its value shall not be taken into consideration where it is not paid on the date of maturity, in which case it may be returned to its owner and a counter entry is made in the manner stipulated in paragraph (2) of Article (407).
3. The totality of the items of the current account is indivisible before closure of the account and extraction of the final balance.
4. Clearance may not be affected between one item in a current account and another item in the same account.
5. The entering of items into the current account shall not extinguish the rights of either party regarding such contracts and transactions from which such items resulted.
6. Save where otherwise agreed upon each party to a current account may at any time dispose of his credit balance.

**ARTICLE (395)**

1. All debts which arise from such business relations as are effected between both parties to the current account, shall by the operation of the law be entered in said account, save where such debts are secured by legal or contractual securities.
2. However, debts secured by contractual securities, whether they have been established by the debtor or a third party, may be entered in the current account, where all the concerned parties have expressly agreed on such measure.

**ARTICLE (396)**

1. Where it has been agreed to enter a debt secured by a contractual security in the current account, such security passes to guarantee the balance of the account on closure by the amount of the debt, without regard to any changes which may occur to the account during its course of operation, save where otherwise agreed upon.
2. Where the law provides for certain specified measures for concluding the security or for being used in evidence against third parties, such security shall not pass to guarantee the current account balance and may not be offered for a plea except from the date of carrying out the said measures.

**ARTICLE (397)**

Where the debts due to either party are entered in the current account they shall lose their special characteristics and independent existence and shall neither, thereafter, be susceptible to settlement separately, nor to clearance or suing or prescription by time limitations.

**ARTICLE (398)**

1. Where the entries of a current account contain cash debts evaluated in various currencies or non-fungible articles, both parties may agree to have them entered in the current account, provided they are entered under separate sections with due regard to the similarity of the payments represented thereby and provided also that both parties allow the account to maintain its unity in spite of its several sections.
2. The balances of said sections must be transferable so that it would be possible, within the time limits specified by both parties or at the most when closing the account, to effect a clearance between the various sections to extract a single balance.

**ARTICLE (399)**

1. Payments, made by the customer, into the current account shall not bear interest unless otherwise agreed upon. Interest shall be computed on the basis of the rate agreed upon; where the rate of interest has not been fixed in the agreement, it shall be computed on basis of such rate interest as is current in the market at the time of dealing, provided that it does not exceed 12%.
2. Interests shall run on the debit balance as of the date of closure of the account, save where otherwise agreed upon.

**ARTICLE (400)**

1. Where a time limit has been fixed for the closure of the account it shall be closed on the expiry of said limit; it may be closed prematurely by agreement of both parties.

2. Where a time limit is not set for the current account it may be closed at any time at the wish of either party with due consideration to the time limits prescribed for notices as agreed upon or as is customary.
3. In all cases, the account shall be closed on the death of either party, his becoming legally incompetent, his being declared bankrupt, or by the expiry of the corporate person, crossing off of the bank from the list of banks operating in the State, or upon the bank ceasing its operations.

**ARTICLE (401)**

The current account shall, as between the bank and its customer, be deemed to be closed at the end of the bank's financial year. Such closing shall not be considered as a closure of the account, which shall remain open with its balance being carried forward to the same current account. The said account shall resume its operation on the next working day.

**ARTICLE (402)**

Where the current account is closed, the debit balance is deemed to have immediately matured, unless both parties agree otherwise, or where some of the transactions bound to be entered into the account and tending to change the sum of the balance, are still in the course of being entered, in which case the debit balance shall be deemed matured as of the working day following the last entry required for such transactions.

**ARTICLE (403)**

The general rules of prescription by time limitations shall apply to the debit balance and its interests.

**ARTICLE (404)**

Where the sum of a debt entered into the account disappears or is reduced due to a course subsequent to its entry into the account, such entry must be cancelled or reduced ( as the case may be) and the account amended accordingly.

**ARTICLE (405)**

The creditor of either party to the account may levy seizure on the credit balance of his debtor with third parties as at the time of effecting the seizure.

**ARTICLE (406)**

1. Where either party to the current account goes bankrupt, no mortgage made on his properties after the date fixed by the Court for the suspension of payment may be adduced in evidence against third parties, in order to guarantee the eventual balance debt to the extent of the debit balance amount at the time when the mortgage is decided.

2. Nevertheless, the mortgage may be adduced in evidence against the group of creditors, as to the difference -if any- between the debit balance amount at the time when the mortgage is decided and the balance amount at the time of closing the account, where it is established that the mortgagor was aware, when the mortgage was decided, that the debtor had stopped payment.

#### **ARTICLE (407)**

1. Where the resultant of the discount of a negotiable instrument is entered in the current account but the value thereof is not paid on the date of maturity, the person discounting the bill may cancel the entry of its value into the current account by a counter entry, even though the person who presented it for discount has been declared bankrupt.
2. A counter entry means entry of a sum equal to the value of the negotiable instrument in addition to the expenses in the debit side of the current account.
3. No counter entry may be made except in regard to such negotiable instruments as have not been paid on their maturity dates; any agreement to the contrary shall be null and void.

#### **ARTICLE (408)**

1. In case of denial and lack of legitimate excuse, legal action for the rectification of the current account shall not be heard in regard to entries made one year after the date of receipt of the statement of account, even if such legal action is based on an error, omission or repetition of such entries; save where during such period one party have notified the other that he clings to his right of rectification of the account, or where the customer proves, regarding a current account opened with a bank, that throughout the said period he did not receive from the bank any statement of account; in such both cases the action shall prescribe after the lapse of five years from the date of closure of the account.

### **PART THREE** **BANK CREDITS**

#### **CHAPTER ONE** **BANK LOAN**

#### **ARTICLE (409)**

1. A bank loan is a contract pursuant to which the bank delivers to the borrower a sum of money as a loan or enters such sum in the credit side to his account with the bank

according to the conditions and time limits agreed.

2. The loan may be guaranteed with securities.
3. The borrower shall be bound to repay the loan and its interest to the bank within such time limits and according to such conditions as are agreed.

**ARTICLE (410)**

A bank loan is considered a commercial activity irrespective of the capacity of the borrower or the purpose for which the loan is allocated.

**CHAPTER TWO**  
**BANK GUARANTEE**

**ARTICLE (411)**

1. A bank guarantee is an undertaking issued by a bank to settle the customer's debt to a third party in accordance with the conditions agreed and included in the guarantee, which may be for a definite or indefinite term.
2. A bank guarantee is a joint liability.

**ARTICLE (412)**

A bank guarantee may be issued under different forms, among which:-

1. Where the bank signs on a negotiable instrument as a reserve guarantor or gives such reserve guarantee by a separate paper which allows that several negotiable instruments be guaranteed together at one time.
2. An independent contract of guarantee is entered into.
3. A letter of guarantee is addressed by the bank to the customer's creditor pursuant to which the bank guarantees its customer's fulfillment of his obligations.

**ARTICLE (413)**

A bank guarantee is considered a commercial activity, regardless of the capacity of the guaranteed (=the person to whom guarantee is issued) or the purpose for which it is issued.

**ARTICLE (414)**

A letter of guarantee is an undertaking issued by a bank (the guarantor) at the request of one of its customers (the person making the order) to pay unconditionally and without restrictions, a certain specified or determinable sum to another person (the beneficiary), unless the letter of guarantee is made depending on a condition where payment is requested within the time limit set in the letter; the letter of guarantee shall state the object for which it has been issued.

**ARTICLE (415)**

1. The bank may require the production of a security in consideration of issuing the letter of guarantee.
2. The security may be in cash, negotiable or in the form of financial instruments, goods or an assignment to the bank by the person making the order of his vis-a-vis the beneficiary.

**ARTICLE (416)**

Save with the approval of the bank, a beneficiary may not assign his right, which had arisen from the letter of guarantee, to a third party.

**ARTICLE (417)**

1. The bank may not refuse payment to the beneficiary on grounds concerning the bank's relation with the person making the order or the relation of this latter with the beneficiary.
2. In exceptional cases, the Court may at the request of the person making the order, levy seizure on the guarantee amount with the bank, provided that the person making the order relies for his claim on serious and sure grounds.

**ARTICLE (418)**

The bank shall be discharged from liability vis-a-vis the beneficiary if within the validity period of the letter of guarantee no request for payment is received from the beneficiary, unless it had been expressly agreed to renew said term prior to its expiry.

**ARTICLE (419)**

Where the bank pays to the beneficiary the sum agreed in the letter of guarantee, it shall subrogate him for recourse against the person making the order for the amount it had paid.

**CHAPTER THREE**  
**OPENING OF CREDIT**

**ARTICLE (420)**

1. The opening of a credit is a contract pursuant to which the bank places at the disposal of the customer a certain specified sum of money, which the customer would have the right to draw at one go or at several times.
2. A credit is opened either for a definite or indefinite term.

**ARTICLE (421)**

A contract of opening of credit is not considered a loan and the customer is not bound to use the credit opened in his favour.

**ARTICLE (422)**

1. Where the credit is opened for an indefinite term, the bank may at any time cancel



it, provided notice of cancellation is sent to the beneficiary at least thirty days before the date set for the cancellation. Any agreement which vests the bank with a right to cancel an indefinite term credit without need for notice or at shorter notice than that specified above shall be null and void.

2. In all cases, the credit opened for an indefinite term shall be deemed cancelled, if the beneficiary does not use it, after the lapse of six months from the date on which the beneficiary was notified of such opening, save where it is otherwise agreed upon.

#### **ARTICLE (423)**

1. The bank may not cancel the credit before expiry of the term specified therefor, except where the beneficiary dies, becomes legally incompetent, suspends payment - even though a judgment declaring his bankruptcy is not issued - or commits a gross fault in using the credit opened in his favour.
2. Where the customer in whose favour the credit is opened is a company, such credit shall expire also upon its cancellation or upon expiration of its term.

#### **ARTICLE (424)**

Where a substantial decrease occurs to the real or personal securities presented by the customer, the bank has the right to require an additional security or reduce the credit amount in proportion to such decrease.

#### **ARTICLE (425)**

A credit may not be transferred save with the approval of the bank which opened it.

#### **ARTICLE (426)**

A contract for opening a credit is considered a commercial activity, regardless of the capacity of the customer or the purpose for which the credit is intended.

#### **ARTICLE (427)**

The contract for opening a credit shall specify the maximum amount of the credit as well as the method of using the same.

### **CHAPTER FOUR** **DOCUMENTARY CREDIT**

#### **ARTICLE (428)**

1. A documentary credit is a contract pursuant to which a bank opens a credit at the request of its customer (the person ordering the opening of the credit) within the limits of a specified amount and for a definite term in favour of another person (the beneficiary) against a security of documents represented goods transported or intended for carriage.
2. A documentary credit contract is deemed to be independent of the contract which caused the opening of the credit, and the bank shall remain a stranger to such

contract.

**ARTICLE (429)**

Every documentary credit shall contain a time limit date for its validity and for presenting the documents for payment, acceptance or discount.

Where the date set for the expiry of the validity of the credit on a bank holiday, its validity shall be extended to the next following working day; the validity of the credit shall not extend beyond other than holidays even when the expiry of the validity coincides with the date of disruption of the banks business due to force majeure circumstances, unless there is an express authorization to that effect from the person ordering the opening of the credit.

**ARTICLE (430)**

1. The documents regarding the opening of the documentary credit or its confirmation or notice thereof shall describe precisely the paper against which the operations of payment, acceptance or discount are executed.
2. A bank which opens a letter of credit must execute the conditions of payment, acceptance and discount as agreed in the credit contract, if the documents representing the goods conform to the particulars and conditions provided for in the contract.

**ARTICLE (431)**

1. A documentary credit may be revocable or irrevocable.
2. A documentary credit shall be irrevocable, unless expressly agreed to the contrary.
3. A documentary credit may either be divisible or transferable or indivisible or not subject to transfer.

**ARTICLE (432)**

1. A revocable documentary credit shall not create any obligation on the bank towards the beneficiary; the bank may at any time amend or cancel it of its own accord or at the request of the person who ordered the credit to be opened.
2. Where the bills of lading presented are in conformity with the particulars and conditions contained in the documentary credit contract, within its validity term and prior to its cancellation, the bank and the person ordering the opening of the credit shall be jointly liable towards the beneficiary.

**ARTICLE (433)**

1. Where the documentary credit is irrevocable the obligation of the bank shall be absolute and direct to the beneficiary and to any bona fide holder of the document drawn in execution of the contract which caused the documentary credit to be opened.
2. An irrevocable documentary credit may neither be cancelled nor amended, save

with the agreement of all the concerned parties.

**ARTICLE (434)**

1. An irrevocable documentary credit may be confirmed by a bank other than the one that opened it, such confirming bank shall in turn assume an absolute and direct obligation towards the beneficiary and any bona fide holder of the document drawn in execution of the documentary credit contract.
2. A mere notice of the opening of the irrevocable documentary credit sent to the beneficiary through another bank other than the one that opened the documentary credit, shall not be deemed to be a confirmation of the credit by such other bank.

**ARTICLE (435)**

1. The documents shall be presented to the bank before the expiry of the validity of the credit, otherwise the bank may reject them, unless the person ordering the opening of the credit requests that they be accepted and the bank consents to such a request.
2. The bank must ascertain that the documents required are available, that their contents are in full conformity with the conditions of the letter of credit and that they fully conform with each other.

**ARTICLE (436)**

The bank shall only be liable to ascertain that the documents are as they appear, in conformity with the documents required in the letter of credit; and it shall not be bound to check if the goods conform with the documents which represent them.

**ARTICLE (437)**

Where the bank accepts the documents, it shall immediately send them to the person ordering the opening of the credit, and where the bank rejects the same, it shall forthwith send notice of its rejection to the beneficiary, indicating the reasons of such rejection.

**ARTICLE (438)**

1. The beneficiary may not assign the credit in whole or in part to another person or persons, save with an express authorization to that effect from the bank and provided it is expressly stipulated in the letter of credit.
2. The bank may not divide the performance of the credit, except with the authorization of the person ordering the opening of the credit.
3. The assignment may only be made once, unless the contract for the opening of the credit stipulates otherwise.
4. Assignment shall be made by endorsing the letter of credit if it is promissory or by receiving it if it is to bearer, but in case it is nominative, the procedures of the

remittance shall apply.

**ARTICLE (439)**

1. The person ordering the opening of documentary credit shall be bound to repay to the bank the amount it has paid to the beneficiary within the limits of the credit opened, as well as to pay to the bank the expenses disbursed in this respect.
2. As a guarantee of its entitlements, the bank shall have the right to withhold the documents it receives from the seller and a right of mortgage on the goods represented in their documents.
3. Where the person who ordered the opening of the credit fails to pay to the bank the value of the bills of lading conforming with the conditions of the opening of the credit within one month from the date of being notified of arrival of said bills, the bank may sell the goods by adopting the methods of execution on articles which are subject of a commercial mortgage.
4. Where the goods perish or are damaged the mortgage right shall pass to the insurance amount.Φ
5. Nevertheless, the bank and its customer may, after arrival of the documents of the credit financed by said bank, agree that the customer debtor assigns the goods subject of the documentary credit or part thereof to the bank, in settlement of the bank's debt in whole or in part. The bank shall thereafter entrust the customer with the receipt of such goods, keep them in trust and sell them on behalf of the bank, for its account, following the conditions and terms agreed to by both parties. The customer's responsibility shall in this case be that of a commission agent, and the bank shall have all the rights of an agent over such goods or their price.

**PART FOUR**

**OPERATIONS ON COMMERCIAL PAPERS**

**CHAPTER ONE**

**DISCOUNT**

**ARTICLE (440)**

1. Discount is a contract pursuant to which a bank undertakes to pay in advance the value of a commercial paper to the beneficiary in consideration of transferring the ownership of such paper to the bank.
2. The bank shall deduct from the sum paid to the beneficiary of the discount interest on the paper's amount plus a commission. It may be agreed to effect the discount against a fixed lumpsum.

**ARTICLE (441)**

1. Interest is calculated on basis of the time which lapses from the date on which the

commercial paper is presented for discount until its maturity date, unless otherwise agreed upon.

2. Commission shall be estimated on basis of the value of the commercial paper.

**ARTICLE (442)**

1. The bank shall acquire the ownership of the discounted commercial paper and it shall be vested with all the rights of the bearer and it may have recourse against the signatories of the paper.
2. The bank shall further have vis-a-vis the beneficiary of discount an independent right to recover the sums it had placed at his disposal, without deducting such interest and commission which were received by the bank.  
Without compliance with the provisions related to the current account, the bank shall exercise such right within the limits of the unpaid papers, regardless of the cause of non-payment of the discounted papers.

**ARTICLE (443)**

1. Where the value of the paper is not paid or the customer goes bankrupt, the bank may reserve for itself the right to make a counter-entry to the value of the commercial paper and the expenses in the debit side of its customer's account, who in his turn shall endorse the paper to the bank.
2. Where the customer has no current account with the bank, he shall be bound to repay to the bank the value of the commercial paper and the expenses.

**CHAPTER TWO**  
**CREDIT BY ACCEPTANCE**

**ARTICLE (444)**

Credit by acceptance is a contract in which the bank plays the role of the drawee; it accepts in this capacity a commercial paper drawn on it by its customer or another party who deals with such customer and the bank undertakes to pay the value upon maturity.

**ARTICLE (445)**

Where the bank pays the value of the commercial paper it has accepted, it shall enter its value and the expenses in the debit side of the customer's account, and shall have recourse against the customers for the sums paid by virtue of the credit opened in favour of the customer and used as a consideration for the payment of the commercial paper which it had undertaken to accept.

**CHAPTER THREE**  
**COLLECTION OF COMMERCIAL PAPERS**

**ARTICLE (446)**

The bearer of a commercial paper may endorse it to the bank in terms of a delegation of power following which the bank, by virtue of the endorsement, shall become a proxy in the collection of the paper's value for the account of the endorser.

**ARTICLE (447)**

Upon maturity of the commercial paper the bank must claim payment from the drawee or the author. Where payment is made, the bank shall enter the value of the paper in the credit side of the customer's account, and if payment is not made the bank shall make a protest or establish the non-payment and in both cases the expenses shall be charged to the customer's account.

**ARTICLE (448)**

1. The bank shall be liable for fault or omission in the execution of his proxy.
2. The bank may stipulate its exoneration from liability for delay in drawing up the protest; such stipulation shall produce its effects between the customer and the bank, unless an act of fraud or gross fault is attributed to the bank. Such stipulation shall not have effect vis-a-vis the other endorsers.

**ARTICLE (449)**

The proxy resulting from an endorsement made as a delegation of power shall not lapse upon the endorser's death or his becoming legally incompetent.

**PART FIVE**  
**OPERATIONS ON FINANCIAL SECURITIES**

**CHAPTER ONE**

**LENDING AGAINST A GUARANTEE CONSISTING OF FINANCIAL SECURITIES**

**ARTICLE (450)**

1. Lending against a guarantee consisting of financial securities is a loan secured by mortgage.
2. Where the financial securities are nominative instruments, mortgage thereof shall be made in writing by virtue of an assignment stating that it is given as a guarantee, marked on the instrument itself and entered in the records of the issuing party. However, where the financial securities are bonds to bearer, they shall be treated as material movables and mortgage thereof may be proved by all means of evidence.

**ARTICLE (451)**

1. Ownership of the mortgaged financial securities shall pass on to the creditor mortgagee bank.

2. The bank shall have the right to withhold such instruments.

**ARTICLE (452)**

The bank must safekeep the mortgaged securities, by collecting their profits, receiving their value upon depreciation and deduction such sums from the principal debt.

**ARTICLE (453)**

Where the bank does not receive its dues on the maturity date, it may apply to the specialized Court for authorization to sell the mortgaged instruments by public auction or at their price in the stock exchange market and obtain payment of his dues from the sale price before any other creditor

**ARTICLE (454)**

Where the instruments are presented by a person other than the debtor, the owner thereof shall not be bound to pay the debt guaranteed by the mortgage, except in his capacity as a guarantor in rem.

**ARTICLE (455)**

A third party appointed by the two contracting parties to acquire the mortgaged instruments, shall be deemed as having waived his right to foreclose on the mortgage for any reason prior to such mortgage, unless he had reserved such right when he accepted to take possession of the mortgaged instrument for the account of the mortgagee creditor.

**ARTICLE (456)**

Where the full value of an instrument is not paid at the time it is presented for mortgaging, the debtor shall upon maturity of the unpaid part, pay it two days at least prior to its maturity date; otherwise the mortgagee creditor may petition the Court to sell the instrument, in accordance with the provisions of Article (453) hereof, then he shall settle the unpaid part from the proceeds of the sale and keep the balance as a guarantee instead of the mortgage.

**ARTICLE (457)**

The lien of the mortgagee creditor shall remain valid in the same rank as between the contracting parties and vis-a-vis third parties, over the profits of the mortgaged instrument, its interests, the papers replacing it and its value if paid before its maturity date.

**CHAPTER TWO**  
**DEPOSIT OF FINANCIAL SECURITIES**

**ARTICLE (458)**

The deposit of financial securities with a bank is a contract by which the customer delivers to the bank the financial securities which have been agreed to be deposited, and the bank gives the customer a receipt upon taking delivery of such securities. Such receipt shall contain the contract conditions and the number of the financial securities, but the said receipt shall neither represent the securities deposited nor replace them, it shall be deemed as a mere instrument to prove the contract.

**ARTICLE (459)**

1. In safekeeping the financial securities deposited with it, the bank shall exercise such care as is exercised by a depository who receives remuneration and shall take to that effect all the precautionary measures as is required in the banking customs; any agreement which exonerates the bank from such obligations shall be null and void.
2. The bank shall be held liable for the perishing or theft of such financial securities, save where such perishing or theft has resulted from a force majeure.

**ARTICLE (460)**

A bank may not use the financial securities deposited with it, whether by disposing thereof, mortgaging the same or exercising the rights derived therefrom, except with a special authorization by the customer to do so.

**ARTICLE (461)**

1. The bank shall undertake the management of the financial securities deposited with it, by collecting the profits and value of such due or redeemed securities, and it shall notify the customer depositor of the operations relating to the said securities, such as replacement or renewal thereof, and place the collected sums at the disposal of the depositor and credit them to his account.
2. The bank shall inform the depositor of every matter or right relevant to the financial security and requiring his approval or is dependent on his & preference; where the depositor's instructions are not received in due time the bank shall dispose of the matter in such manner as is beneficial to the depositor who shall bear the costs.
3. The bank shall be held liable where it fails to fulfill its obligations and damage is caused to the customer as a result of such failure.

**ARTICLE (462)**

1. The bank shall be entitled to a remuneration against the obligations it assumes, such remuneration shall, in case of absence of agreement, be determined according to the custom, with due consideration given to the number and value of the financial securities deposited.
2. As a guarantee for the bank's receipt of its due remuneration, it shall have the right to withhold the financial securities deposited and refrain from returning same until recovery of its right, in addition to the priority right prescribed by the law for the expenses disbursed for the safekeeping of a movable property.

**ARTICLE (463)**

1. The bank must return the financial securities deposited with it on demand of



the depositor with due consideration to the time needed for preparation of the securities for such return.

2. The return shall be effected in the same place where the deposit was effected; the bank must return the same securities which had been deposited and not securities of the same kind with different numbers, unless both parties agreed thereon or the law permits the return of fungibles.

**ARTICLE (464)**

The return of the financial securities must be to the depositor in person, his legal representative, his heirs or his personal proxy- as the case may be- even when the security contains something indicating that it is owned by a third party.

**ARTICLE (465)**

1. Where the bank loses possession of the financial securities for a reason beyond its control, it shall have the right to file a claim for recovery of the same from the person having acquired them.
2. Where the financial securities made to the bearer are lost or stolen, the bank shall inform the party having issued such securities of the fact and instruct him to refrain from paying the profits or value of said securities to any person who shall claim therefor in case of redemption or maturity.

**ARTICLE (466)**

Where an action-at-law is brought for the maturity of the securities deposited with the bank, the bank shall send notice directly to the depositor accordingly and abstain from returning the securities to him until the action is decided by the judicial authorities .

**PART SIX**

**RENTAL OF SAFE DEPOSIT BOXES**

**ARTICLE (467)**

1. Rental of safe deposit boxes is a contract pursuant to which the bank undertakes to place a certain specified safe deposit box at the disposal of its customer, the lessee, to be used for a certain specified period against a fixed remuneration.
2. The bank shall safekeep the leased safe deposit box and ensure its fitness for use by taking all such measures as are imposed by the banking customs.

**ARTICLE (468)**

1. The safe deposit box should be opened with two keys, one of which should be handed in by the bank to the customer lessee and keep the other one. The bank may not give a duplicate of the key to any other person, neither may it grant access to the safe deposit box or allow it to be used except by the customer himself or his authorized agent.

2. The key handed to the lessee shall remain the property of the bank and must be returned to it on termination of the lease term.
3. The bank may use other means such as automated control or plastic cards systems.

**ARTICLE (469)**

1. The bank shall be responsible for the safety, custody and usability of the safe deposit box and may not deny responsibility except by proving a force majeure or a cause beyond the bank's control having the same effect as that of a force majeure.
2. The bank may not plead the exoneration from liability where fraud or gross negligence is proved to have been perpetrated by it or by its subordinates.

**ARTICLE (470)**

1. The lessee shall undertake to use the safe deposit box as is customary and to pay the rental agreed on the maturity dates.
2. The lessee of a safe deposit box may not place therein articles detrimental to its safety or the safety of the place where it lies.
3. Save where otherwise agreed upon with the bank, a lessee may not sublet the safe deposit box or part thereof nor may he assign the lease to a third party.

**ARTICLE (471)**

1. Save where otherwise agreed upon, when a safe deposit box is leased to several lessees, each one of them may use it separately.
2. Where one of the lessees dies, the bank may not, after becoming aware of the death, give permission for the opening of the safe deposit box, except with the approval of all concerned persons or pursuant to a Court's order.

**ARTICLE (472)**

The bank shall keep a register where the dates and times on which the lessee opens the safe deposit box shall be entered.

**ARTICLE (473)**

Where the bank finds out that the safe deposit box is endangered or that it contains dangerous articles, it shall forthwith notify the lessee to report to the bank premises immediately and either empty the box contents or remove the dangerous items therefrom. Where the lessee fails to report on the date fixed, the bank may request Court in whose jurisdiction the bank is located, permission for opening the box in order to empty it or to remove such dangerous items therefrom, in the presence of any person assigned therefor by the Court. Minutes of such procedure shall be drawn, wherein the box contents shall be listed down. Where the danger threatening the safe deposit box is imminent, the bank may,

at its own responsibility, open the box and empty it or remove any dangerous articles therefrom, without any notice or permission from the Court. This shall be performed by a committee consisting of at least three of the bank officers, minutes thereof shall be drawn and one copy of such minutes shall be attained to the customer.

**ARTICLE (474)**

1. Where the lessee fails to pay the box rental on the due dates, the bank may, after the lapse of fifteen days - unless it is agreed upon for another period- from the date of a notice served on him requiring payment, consider the contract as automatically rescinded and recover the box, after sending notice to the lessee that he must report to the bank, open the box, empty its contents and deliver its key. The notice shall be valid if sent to the last address specified by the lessee to the bank.
2. Where the lessee fails to report on the date set or if the contract term expires, the bank may, after serving notice on him, apply to the Court in whose jurisdiction the bank is located, for permission to open the safe deposit box and empty it in the presence of a person designated by the Court to that effect, who shall prepare a report of the fact, listing down the contents and signed by the Court delegate and the bank. The Court may order that the contents be deposited with the bank, or with a trustee appointed by the Court, until they are handed to their owner or until a Court order is issued to dispose thereof.

**ARTICLE (475)**

The bank may withhold the contents of the safe deposit box and shall have a priority right over the price resulting from the sale of its contents for collection of the rent and the accruing expenses.

**ARTICLE (476)**

1. A precautionary and executory attachment should be remanded on the contents of the safe deposit box.
2. The attachment shall be remanded by notifying the bank of the contents of the deed by virtue of which such attachment is levied, and by requiring the bank to state whether it has leased a safe deposit box to the distrainee. Upon receiving such notice, the bank shall forthwith bar the distrainee from using the box and notify him without delay that attachment was levied on the safe deposit box.
3. Where the attachment is precautionary, the lessee may request to the Court to lift the seizure from all or part of its contents.
4. Where the attachment is executory, the bank shall be bound to open the safe deposit box, empty its contents in the presence of the distrainer and the execution officer and notify the lessee of the date determined for the opening of the safe. On the date fixed, an inventory of the box contents shall be made, and such contents shall be delivered to the bank or the trustee appointed by the Court, until they are sold in

accordance with the procedures set by the Court.

5. Where the safe deposit box contains papers or documents not included in the compulsory sale, they must be handed to the lessee. However, if the lessee is not present at the time of opening the box, such papers or documents shall be delivered to the bank for safekeeping after placing them in an envelope sealed with the stamps of both the execution officer and the bank delegate, until they are claimed by the lessee.
6. The distrainer must pay the bank a sum sufficient to secure the rent of the safe deposit box for the duration of the period of attachment.

**ARTICLE (477)**

Save the cases provided for by the law, the bank may not open a leased safe deposit box or empty its contents except with the permission of the lessee and in his presence, or in execution of a Court order or decision.

**BOOK FOUR**  
**COMMERCIAL PAPERS**

**GENERAL PROVISIONS**  
**DEFINITION AND TYPES OF COMMERCIAL PAPERS**

**ARTICLE (478)**

Commercial papers are instruments written according to forms determined by the law, representing a right having for object specific sum of money payable on mere sight, or after a definite or determinable time, negotiable through the commercial means and which the custom generally recognizes as a payment instrument instead of money.

**ARTICLE (479)**

Commercial papers include bills of exchange, promissory notes, bearer instruments, cheques and other papers drawn for commercial activities and which the custom generally accepts as a means of payment in transactions.

**ARTICLE (480)**

The bill of exchange (draft) is a commercial paper by which a person (the drawer) draws an order for the payment of a specific sum of money from another person( the drawee), at mere sight or at a definite or determinable future time.

**ARTICLE (481)**

The promissory note is a commercial paper pursuant to which its maker undertakes to pay a specific sum of money to another person (the beneficiary), at mere sight or at a definite or determinable time.

**ARTICLE (482)**

The bearer instrument is a commercial paper by which its maker undertakes to pay a specified sum of money to the order of bearer at mere sight or at a definite or determinable time.

**ARTICLE (483)**

The cheque is a commercial paper containing an order issued by the drawer upon a bank (the drawee) to pay in the date indicated therein, as being the date of issue, a specific sum of money to the order of a third person being the beneficiary or the payee.

**PART ONE**  
**THE BILL OF EXCHANGE**

**CHAPTER ONE**

## **DRAWING OF A BILL OF EXCHANGE**

### **ARTICLE (484)**

A bill of exchange shall contain the following particulars:

1. The word "Bill of Exchange" written in the text thereof and in the language in which the bill is written.
2. An unconditional order to pay a specific sum of money.
3. The date and place of drawing the bill.
4. Signature of the drawer.
5. First name and surname of the drawee.
6. Name of the person to whom or to whose order payment must be made (the beneficiary).
7. Date of maturity and place of payment.

### **ARTICLE (485)**

An instrument which does not contain any one of the particulars mentioned in the foregoing Article shall only be deemed a bill of exchange in the following cases:

1. Where the bill does not indicate the date of maturity, it shall be considered as being payable at sight.
2. Where the place of payment of the bill is not stated therein, the place indicated next to the drawee's name shall be considered as the place of payment and the drawee's domicile at the same time; in this case the bill shall be payable at the drawee's place of residence if there is no condition of payment in another place.
3. Where the place of drawing of the bill is not stated therein, the bill shall be deemed as having been drawn in the place mentioned next to the drawer's name; and where such place is not expressly stated, the place of drawing shall be considered as being the place where the drawer has signed the bill.

### **ARTICLE (486)**

1. The signature on a bill of exchange may be in writing or by thumb-print.
2. Two witnesses shall testify that the thumb printer has affixed his signature before them while being aware of the contents of the instrument on which he had signed.

### **ARTICLE (487)**

1. Where the bill amount is written in letters and in figures at the same time, the sum indicated in letters shall prevail in case of discrepancy.
2. Where the amount is written several times either in letters or in figures, the lesser

sum shall prevail in case of discrepancy.

**ARTICLE (488)**

1. A bill of exchange may not contain more than one sum.
2. Where a bill of exchange is drawn in a currency having a nomenclature which is common between the two countries of drawing and payment, without a specification of the currency was meant, the currency of the country of payment shall prevail.

**ARTICLE (489)**

1. A bill of exchange may be signed by more than one drawer.
2. A drawer may authorize a third party to sign the bill of exchange on his behalf, in which case the third party must prove his capacity upon signing the bill.

**ARTICLE (490)**

1. Interest may not be stipulated on the sum expressed in the bill of exchange unless it is made payable at sight or after a specific period from the time it had been seen.
2. The stipulation for interest shall be null and void if the rate of interest is not mentioned in the bill itself.
3. In the absence of any other date the interest shall run from the date of the drawing of the bill of exchange.

**ARTICLE (491)**

1. A person who without authority signs a bill of exchange on behalf of another person shall be personally liable thereunder. If he discharges said liability, the rights which would have devolved to the person on whose behalf he purported to have acted shall devolve to him.
2. This provision shall also apply to the proxy who acts ultra vires(i.e. exceeding the limits of his authority).

**ARTICLE (492)**

Where a bill of exchange bears forged signatures, or signatures of fictitious persons, or signatures of persons who have no capacity to incur liability; or where the signatures subscribed do not bind the signatories thereof for other reasons, or do not bind those persons on whose behalf the bill is signed, the obligations of other signatories shall nevertheless remain valid.

**ARTICLE (493)**

Obligations of a person who lacks legal capacity and has not permission to practice commerce and that of a person who is legally incapable, arising out of subscribing their signatures on a bill of exchange in any capacity whatsoever, shall be null and void in regard to themselves only; and they may invoke such nullity against any bearer of such bill.

#### **ARTICLE (494)**

1. A bill of exchange may be drawn to the order of the drawer himself.
2. It may also be drawn on its drawer.
3. It may as well be drawn to the account of another person.

#### **ARTICLE (495)**

1. The form of a bill of exchange shall be governed by the law of the State where it is drawn.
2. The capacity of the obligor of a bill of exchange is determined according to the law of his country; and where such laws refer to that of another State, this latter shall apply.
3. Where the applicable law considers the obligor as a person lacking legal capacity, his obligation under the bill shall nevertheless remain valid if he subscribed his signature in a State under whose laws he is deemed to have full legal capacity.

#### **ARTICLE (496)**

A bill of exchange may be made payable in the place of residence of another person, whether in the place where the drawee's domicile is located or in any other place.

#### **ARTICLE (497)**

1. The drawer of a bill of exchange shall guarantee its acceptance and its payment.
2. He may further stipulate that he be exonerated from the guarantee of acceptance, however any stipulation for exoneration from guarantee of payment shall be deemed null and void

### **CHAPTER TWO** **NEGOTIATION OF A BILL OF EXCHANGE**

#### **ARTICLE (498)**

1. A bill of exchange is negotiable by endorsement even when it does not contain an express stipulation that it is drawn "to order".
2. A bill of exchange is not negotiable when the drawer stipulates therein that it is not "to order", or any other term purporting the same meaning, save in accordance with the provisions governing the transfer of a right.
3. Indorsement may be made to the drawee regardless to whether he accepted the bill of exchange or not, endorsement may also be made to the drawer or to any other obligor; all the foregoing persons may re-endorse the bill of exchange.



**ARTICLE (499)**

1. Subject to the provision of Article (503) hereof, the indorsement must be unconditional and any condition attached to the indorsement shall be deemed null and void.
2. Partial indorsement shall be void.
3. Indorsement to bearer shall be deemed to be blank indorsement.

**ARTICLE (500)**

1. Indorsement shall be written on the bill of exchange itself or on an allonge and shall be signed by the indorser.
2. Indorsement may consist of the indorser's signature only (blank indorsement), in which case the indorsement must, in order to be valid, be written on the back of the bill of exchange or on the allonge.

**ARTICLE (501)**

Indorsement transfers all the rights resulting from the bill of exchange to the indorsee.

**ARTICLE (502)**

In case of blank indorsement, the bearer may:

1. Fill in the blank by writing his name or any other person's name.
2. Re-indorse the bill of exchange in blank or to another person.
3. Deliver the bill of exchange to another person without filling in the blank and without indorsing it.

**ARTICLE (503)**

1. The indorser shall guarantee the acceptance and payment of the bill of exchange, unless otherwise agreed upon.
2. The indorser may prohibit its re-indorsement, in which case he shall not be liable towards any person upon whom the bill of exchange shall devolve by virtue of a subsequent indorsement.

**ARTICLE (504)**

The possessor of a bill of exchange shall be deemed to be its lawful bearer when he proves that he is entitled thereto by successive indorsements even if the last one is in blank. Crossed indorsements shall in this regard be considered void; and where another indorsement succeeds the one made in blank, the signatory of this last indorsement shall be deemed to be the person to whom the right to the bill has devolved following the blank indorsement.

**ARTICLE (505)**

Where a person loses possession of a bill of exchange the bearer shall not be bound to surrender it if he proves his right thereto in accordance with the preceding Article, save where he has acquired it in bad faith or if he had committed a gross fault in order to acquire it.

#### **ARTICLE (506)**

Without prejudice to the provision of Article (493), a debtor who is sued for a bill of exchange may not invoke against its bearer the pleas based on his personal relationships with the drawer or with one of its previous bearers, except where the bearer's intent at the time of acquiring it was to cause harm to the debtor.

#### **ARTICLE (507)**

1. Where the indorsement includes the term "value for collection" or "value for receipt" or any other term purporting delegation of power, the bearer may exercise all the rights arising from the bill of exchange, including the right to file an action in his own name and may only indorse it as proxy.
2. The obligers may not in this case invoke against the bearer the pleas which they may invoke against the indorser.

#### **ARTICLE (508)**

1. Where the indorsement includes the term "value for security" or contains any other expression purporting to the mortgage of the right established by the bill of exchange to the indorsee, the bearer may exercise all the rights arising from the bill of exchange. Nevertheless, where the bearer endorses the bill of exchange, such indorsement shall be deemed as having been made as proxy.
2. The obligers of the bill of exchange may not in this case invoke against the bearer the pleas based on their personal relationships with the indorser, save where the bearer's intent, at the time of acquiring the bill of exchange, was to cause harm to the debtor.

#### **ARTICLE (509)**

1. An indorsement after the date of maturity shall produce the same effects as an endorsement prior to such date; however, an indorsement subsequent to a non-payment protest or after the expiry of the time limit set by the law for making the protest, shall only produce the same effects as for the transfer of right.
2. An indorsement which does not bear a date shall be deemed to have been made before the expiry of the time limit fixed for the protest, unless the contrary is proved.

#### **ARTICLE (510)**

An indorsement may not be predated; a predated indorsement shall be considered a forgery.

**CHAPTER THREE**  
**CONSIDERATION FOR PAYMENT OF THE BILL OF EXCHANGE**

**ARTICLE (511)**

The drawer of a bill of exchange or the person for whose account it was drawn shall be bound to make available with the drawee sufficient funds to pay the value thereof; however, the person who has drawn for the account of another shall be held personally liable towards the indorsers and the bearer of the bill of exchange to the exclusion of others, for providing the consideration for payment.

**ARTICLE (512)**

Provision for payment is deemed to be available when, on the maturity date of the bill of exchange, the drawee is indebted to the drawer or to the person who ordered the drawing, in a specific sum of money payable and at least equal to the amount of the bill of exchange.

**ARTICLE (513)**

1. The acceptance of a bill of exchange is considered a presumption that the consideration required for payment is available with the acceptor; this presumption may only be rebutted as to the relation between drawee and bearer.
2. In case of denial, the drawer alone shall be bound to prove, irrespective whether the bill of exchange was accepted or not, that the drawee had the consideration for payment on the maturity date. If he fails to do so, he shall be liable for payment even if he had protested after the time limit prescribed by the law. In case the drawer proves that consideration is available and continues to be available until the date on which protest was supposed to be made, he shall be discharged to the extent of such consideration, save where it had been used in his interest.

**ARTICLE (514)**

1. The title to the consideration for payment passes by operation of the law to the consecutive bearers of the bill of exchange.
2. Where the consideration for payment is less than the amount of the bill of exchange, the bearer shall be vested in regard to such deficit in the consideration with all the rights vested upon him for the entire consideration.
3. The provision stipulated in the preceding paragraph shall also apply in the event where the consideration for payment is subject of dispute, is uncertain or not due on the maturity date of the bill of exchange.

**ARTICLE (515)**

The drawer shall, even when protesting after the statutory time limit, deliver to the bearer of the bill of exchange the documents required to obtain the consideration for payment; when the drawer is declared bankrupt, the trustee shall do so, but the bearer of the bill of exchange shall in all cases assume all the expenses incurred in this respect.

#### **ARTICLE (516)**

Where the drawer is declared bankrupt, the time limit shall lapse and the date set for payment of the value of the bill of exchange shall fall due, and the bearer to the exclusion of the other drawer's creditors, shall be entitled to receive his right from the consideration for payment which is available with the drawee.

#### **ARTICLE ( 517)**

1. Where the drawee is adjudged bankrupt and the consideration for payment is a debt on him, such debt shall be included in the assets of the bankruptcy.
2. Where the drawee who is adjudged bankrupt has possession on behalf of the drawer of goods, commercial papers, financial securities or any other properties that may be recovered according to the bankruptcy provisions, and if such property is expressly or implicitly allocated for payment of the value of the bill of exchange, the bearer shall have a priority in receiving his right from the value thereof.

#### **ARTICLE (518)**

1. Where several bills of exchange have been drawn on a consideration insufficient to accommodate them all, the priority in recovering their value shall be given to the order of the dates of their drawing.
2. Where the said bills of exchange were drawn on the same date, the bill bearing the drawee's acceptance shall have priority; where none of the bills of exchange bears the drawee's acceptance, the bill for which consideration for payment has been allocated shall have priority. Bills of exchange containing a provision of non-acceptance shall rank last in the order of priority.

### **CHAPTER FOUR** **ACCEPTANCE OF THE BILL OF EXCHANGE**

#### **ARTICLE (519)**

The bearer or possessor of a bill of exchange may, during the period from its drawing upto the date of its maturity, present it to the drawee at his place of residence for acceptance.

#### **ARTICLE (520)**

1. The drawer of a bill of exchange may stipulate that it be presented on a specific date or refrain from specifying any date.
2. He may stipulate that it be not presented for acceptance, unless it is due for payment with a person other than the drawee, or in a place other than his domicile or due for payment a specific period after having been seen.
3. He may also stipulate that it be not presented for acceptance before a specified term.
4. Every indorser may stipulate that the bill of exchange be presented for acceptance on a specified date or any date without specification, unless the drawer had

stipulated that it must not be presented for acceptance.

#### **ARTICLE (521)**

A bill of exchange which is due for payment after the lapse of a specified period from the date of it having been seen after sight, must be presented for acceptance within one year of its date. The drawer may abridge or extend such time limit and every indorser may only abridge such time limit.

#### **ARTICLE (522)**

1. The drawee may require that the bill of exchange be re-presented for acceptance on the next day following the first presentation and any concerned person may not allege that such demand was rejected, unless it has been mentioned in the protest.
2. The bearer of a bill of exchange presented for acceptance shall not be bound to surrender and deliver it to the drawee.

#### **ARTICLE (523)**

1. Acceptance shall be written on the face of the bill of exchange with the word "accepted" or with any other phrase having the same meaning and shall be signed by the drawee.
2. The mere signature of the drawee on the face of the bill of exchange shall be deemed as an acceptance.
3. The date of acceptance shall be stated on the same day on which acceptance occurred if the bill of exchange is due for payment a certain specified period after having been seen, or where it is stipulated that it must be presented for acceptance within a specific period pursuant to a condition pertaining thereto, unless the bearer requires that the date of acceptance be stated on the same day of acceptance.
4. Where the date of acceptance is not stated the bearer may in order to safeguard his rights have recourse against the indorsers, and the drawer must establish the lack of date by a protest made in due course.

#### **ARTICLE (524)**

1. The acceptance must be unconditional, however the drawee may restrict it to one part of the value of the bill of exchange.
2. Any modification to the particulars of the bill of exchange related to the wording of the acceptance shall be deemed as a refusal of acceptance; nevertheless the acceptor shall remain bound by the contents of the acceptance wording.

#### **ARTICLE (525)**

1. Where the drawer stipulates on the bill of exchange a place for payment other than the drawee's domicile without specifying the name of the person to whom payment is to be made, the drawee may designate the name when signifying his acceptance;

if he fails to so, the drawee who has accepted shall be bound to make the payment at the place designated therefor.

2. Where the bill of exchange is due for payment at the drawee's domicile, he may specify in the acceptance wording an address at the place where the payment must be made.

#### **ARTICLE (526)**

1. Where the drawee accepts the bill of exchange he shall be bound to pay its value on the maturity date.
2. In the event of non-payment the bearer may -even if he is the drawer himself- have direct recourse against the drawee acceptor instituting an action resulting from the bill of exchange and claiming all the rights which may legally be claimed.

#### **ARTICLE (527)**

1. Where the drawee crosses out his acceptance stated on the bill of exchange before returning it, the acceptance shall be deemed as rejected and the crossing out as having occurred before the bill of exchange is returned, unless the contrary is proved.
2. Nevertheless, in the event where the drawee notifies in writing his acceptance to the bearer or to any other signatory, he shall be bound towards them by such acceptance.

### **CHAPTER FIVE** **PRECAUTIONARY GURANTEE FOR A BILL**

#### **ARTICLE (528)**

1. Payment of the bill of exchange in whole or in part may be guaranteed by precautionary guarantee.
2. Such guarantee may be given by any person even from amongst the signatories of the bill of exchange.

#### **ARTICLE (529)**

1. The precautionary guarantee shall be written on the bill of exchange itself or on an allonge, in such wording as to indicate " precautionary guarantee" and shall be signed by the guarantor.
2. Such guarantee is deduced from the mere signature of the guarantor on the face of the bill of exchange, unless such signature is subscribed by the drawee or the drawer.
3. The wording of the guarantee must include the name of the guarantor otherwise it shall be deemed as issued for the drawer.

### **ARTICLE (530)**

1. The precautionary guarantor shall be liable in the same manner as the guaranteed party.
2. The liability of a precautionary guarantor shall be valid even if the guaranteed liability is void for any reason whatsoever other than a defect in the form.
3. Where a precautionary guarantor pays the bill of exchange, all the rights arising therefrom shall devolve upon him vis-a-vis the guaranteed party and every party liable towards this latter under the bill of exchange.

### **ARTICLE (531)**

1. A precautionary guarantor may be given on a separate paper indicating the place where it was made.
2. A precautionary guarantor who has given the guarantee on a separate paper shall only be liable vis-a-vis the person in whose favour the guarantee was made.

## **CHAPTER SIX** **MATURITY OF THE BILL OF EXCHANGE**

### **ARTICLE (532)**

1. A bill of exchange must state one single date of maturity.
2. The drawer may specify the date of maturity of the bill of exchange in any of the following manners:
  - At "sight";
  - After the lapse of a specified period from "sight";
  - On a specific date;
  - After the lapse of a specified period from the date of drawing.
3. A bill of exchange which stipulates dates of maturity other than those mentioned in the two foregoing paragraphs shall lose its characteristic as a commercial paper.

### **ARTICLE (533)**

1. A bill of exchange which is due for payment at sight shall be payable on mere presentation, and it must be presented within one year from the date of drawing; the drawee may abridge or extend this time limit but the indorsers may only abridge same.
2. The drawer may stipulate that the bill of exchange which is due for payment at sight be not presented before the lapse of a specified term; in which case the time for presentation is calculated as from the maturity of the said term.

### **ARTICLE (534)**

1. The maturity date of a bill of exchange which is due for payment after a specified

period from the time of is calculated as from the date of acceptance or from the date of protest.

2. Where no protest was made, the acceptance bearing no date shall be deemed as having occurred vis-a-vis the acceptor on the last day of the time limit set for presenting the bill of exchange for acceptance according to Article (521).

#### **ARTICLE (535)**

1. Where a bill of exchange is made payable after one month or more from the date of drawing or date of sight, it shall fall due on the corresponding date of the month during which payment is to be made; in the absence of a corresponding date in the month during which the bill of exchange must be paid, it shall fall due on the last day of such month.
2. Where the bill of exchange is drawn for one month and a half or for several months and a half after its date or after the date of sight, computation must begin to run with the full months and the expression of "half a month" shall mean fifteen days.

#### **ARTICLE (536)**

1. Where the bill of exchange is due for payment on a specific date in a country where the calendar is different from that of the country of issue, the date of maturity shall be deemed as having been determined according to the calendar where payment is to be made.
2. Where the bill of exchange is drawn between two countries having different calendars and it is due for payment after a certain period from its date, the date of drawing shall be adjusted to the corresponding day of the calendar of the country of payment and the date of maturity shall be determined accordingly. The date of presentation of the bill shall be determined according to the foregoing rules.
3. The foregoing rules shall not apply when it appears from a stipulation in the bill of exchange or in its particulars that different rules should be applied.

### **CHAPTER SEVEN** **PAYMENT OF THE BILL OF EXCHANGE**

#### **ARTICLE (537)**

1. The bearer of a bill of exchange must present it for payment on the date of maturity.
2. Presenting a bill of exchange to any of the legally recognized clearing houses shall be tantamount to presenting it for payment.

#### **ARTICLE (538)**



1. Where a drawee pays off the bill of exchange, he may require the bearer to return it with a discharge thereon duly signed.
2. The bearer may not refuse partial payment.
3. In the event of partial payment, the drawee may require such payment to be stated on the bill of exchange and a receipt for the sum to be issued. The drawer, indorsers and any obligor under the bill of exchange shall be discharged upto the amount paid and the bearer shall protest the outstanding amount.

#### **ARTICLE (539)**

1. The bearer of a bill of exchange may not be compelled to receive its value before the maturity date.
2. Where the drawee pays off the value of the bill of exchange before the maturity date, he shall bear any consequences resulting therefrom.

#### **ARTICLE (540)**

Any person who pays off the value of a bill of exchange on the maturity date without valid objection shall be discharged, unless he had committed fraud or gross fault. He must satisfy himself from the regularity of the indorsement sequence but he is not bound to verify the authenticity of the signatures of the indorsers.

#### **ARTICLE (541)**

1. Where payment in the United Arab Emirates of the value of the bill of exchange is stipulated in a currency which is not officially in circulation therein, payment shall be made in the national currency according to the rate of exchange prevailing on the maturity date. Where payment is not effected on the date of maturity, the bearer shall have an option to claim payment of the value of the bill of exchange estimated in the national currency according to the rate of exchange prevailing either on the date of maturity or on the date of payment. The current custom in the place of payment shall apply for the conversion rate of foreign currency unless the drawer had fixed on the bill itself the rate on basis of which the payable sum shall be calculated.
2. The provisions of the foregoing paragraph shall not apply in the event where the drawer had expressly stipulated that payment of the bill of exchange must be made in the foreign currency specified on the bill itself, subject to the special laws concerning currencies and the control over foreign remittance.
3. Where the value of a bill of exchange is specified in a currency having a common denomination in several countries but a different value in the country of drawing and the country of payment, it shall be assumed to mean the country of payment.

#### **ARTICLE (542)**

1. Where a bill of exchange is not presented for payment on the date of maturity, any debtor thereon may deposit its value with the Treasury of the Court within whose

jurisdiction the place of payment is located. Such deposit shall be at the bearer's account and under his responsibility , and against a receipt to be issued to the depositor stating the amount of the sum deposited, the date of drawing of the bill of exchange, the date of maturity thereof and the name of the person in whose favour it was originally drawn.

2. Where the bearer claims payment from the debtor, this latter must hand to the bearer the receipt for the deposit against the surrender of the bill of exchange on which it is marked that payment was made by virtue of the said instrument. The bearer shall in this case receive the sum deposited with the Court against such instrument, and if the debtor fails to hand the receipt for the deposit to the bearer, he shall be bound to pay the value of the bill of exchange.

#### **ARTICLE (543)**

Objecting to the payment of a bill of exchange or refraining therefrom is only acceptable in case of loss thereof or in case of bankruptcy of its bearer.

#### **ARTICLE (544)**

1. Where a non-accepted bill of exchange which is drawn in a set is lost, the person entitled to its value may claim payment by virtue of one of its other counterparts.
2. Where a bill of exchange is drawn in several counterparts and the part which bears the acceptance is lost, payment thereof may not be claimed on the strength of another counterpart except with an order of the president of the specialized Court, provided that a precautionary guarantor is procured.

#### **ARTICLE ( 545)**

A person who has lost a bill of exchange - whether accepted or not- and is unable to present one of the other counterparts, may apply to the president of the specialized Court for an order to have its value paid, provided that he proves his title thereto, and produces precautionary guarantor.

#### **ARTICLE (546)**

1. In the event of refusal to pay the value of a lost bill of exchange after claiming payment thereof pursuant to the provisions of the two foregoing Articles, its owner must prove such refusal in a protest to be made the day following the date of maturity, and notify the same to the drawer and indorsers in such manner and within such time-limits as is provided for in Article (560).
2. The protest must be made within the time limit mentioned in the preceding paragraph even though an order from the specialized Court could not be obtained in due course.

#### **ARTICLE (547)**

Payment of the value of a bill of exchange on the date of maturity following a Court order in the cases referred to in Articles (544) and (545) discharges the debtor from liability.

#### **ARTICLE (548)**

A precautionary guarantor shall be discharged from the obligation stipulated in Articles (544) and (545) after the lapse of three years if no claim or lawsuit is instituted before the Courts.

#### **ARTICLE (549)**

1. The owner of a lost bill of exchange may obtain a counterpart thereof by referring to his preceding indorser, who shall be bound to assist him and authorize him to use his name in order to claim from the previous indorser and so on from one indorser to the other until the drawer.
2. Each indorser shall note his endorsement on the counterpart of the bill of exchange delivered by the drawee after making it up that it is in lieu of the missing original.
3. Payment may not be claimed on the strength of such counterpart except with an order from the specialized Court and after producing a specialized party.
4. All expenses incurred in this respect shall be borne by the owner of the bill of exchange.

### **CHAPTER EIGHT** **CLAIM AND RECOURSE AGAINST THE OBLIGORS OF** **A BILL OF EXCHANGE**

#### **ARTICLE (550)**

The bearer of a bill of exchange, in case of non-payment thereof on the date of maturity, shall have recourse against the indorsers, drawer and other obligors thereof.

#### **ARTICLE (551)**

1. A bearer may have recourse against the obligor of a bill of exchange prior to the date of maturity in the following cases:-
  - a) Total or partial non-acceptance.
  - b) Bankruptcy of the drawee - whether he accepted the bill of exchange or not - or when he suspends payment even if no adjudication is rendered to declare his bankruptcy, or when an attachment of no avail is levied on his property.
  - c) Bankruptcy of the drawer of the bill of exchange which has been drawn under the condition of non-presentation for acceptance.
2. The guarantor may request a respite for payment when recourse is exercised against him in the two cases provided for in Clauses (b) and (c) of the foregoing paragraph, by applying to the Court of First Instance within whose jurisdiction his domicile is located within three days from the date of recourse. Where the Court considers the application justified to grant the respite, it shall determine in its decision a time limit for payment provided it does not exceed the date set for maturity; and the Court decision in this respect shall not be subject to challenge.

#### **ARTICLE (552)**

1. Where the maturity date of a bill of exchange falls on an official or banking holiday, payment thereof may only be claimed on the following working day.
2. Similarly, no action may be taken in relation to the commercial paper, such as presentation for acceptance or protest, except on a working day.
3. When an action concerning a commercial paper must be taken within a specified time limit, and the last day of such time limit falls on an official or banking holiday, the time limit shall be extended till the next day.
4. The intervening holidays shall be calculated within the time limit.
5. The first day of the time limit shall not be computed when calculating statutory or contractual time limits related to commercial papers.

#### **ARTICLE (553)**

Refusal of acceptance or payment of the bill of exchange must be proved by a protest for non-acceptance or a protest for non-payment, which shall be made through the specialized notary public, provided that one copy thereof shall be dispatched to the addressee of the protest.

#### **ARTICLE (554)**

1. The protest shall contain an exact literal transcript of the bill of exchange with all the particulars stated therein, as to its acceptance, indorsement, guarantor, payment of its value if applicable and any other particulars. The protest shall also contain the notice to pay the value of the bill of exchange, whether the person liable to accept or pay such value was present or absent, the reasons of non-acceptance or non-payment, the inability to subscribe the signature or the refusal to sign and the amount paid from the value of the bill of exchange in case of partial payment.
2. The protest for non-acceptance or non-payment shall be notified in the home country of the obligor of the bill of exchange or in the last domicile known for him.

#### **ARTICLE (555)**

The specialized notary public shall enter day by day all the papers related to the protest in chronological order in a special register having numbered pages and duly annotated.

#### **ARTICLE (556)**

The specialized notary public shall also during the first ten days of every month send to the specialized Commercial Register's Office a list of the protests for non-payment entered during the previous month and the specialized Commercial Register's Office shall keep a special register to enter such protests. Every person may have access to such register and obtain a copy thereof against payment of the prescribed fees. The said office shall publish a

bulletin containing such protests.

**ARTICLE (557)**

1. A protest for non-acceptance must be made within the time-limits set for presentation of the bill of exchange for acceptance; where the first presentation for acceptance falls according to Article (522) on the last day of such time limit the protest may be made on the following.
2. Where the bill of exchange is due for payment at sight, the protest for non-payment shall be made according to the conditions stipulated in the foregoing paragraph related to the protest for non-acceptance.
3. Where the bill of exchange is due for payment on a specified date or after a certain period from the date of drawing or of sight, the protest for non-payment must be made on either of the two days following the date of maturity.
4. The protest for non-acceptance waives the need for presenting the bill of exchange for payment and for making a protest for non-payment.

**ARTICLE (558)**

No instrument shall be tantamount to a protest except in the cases stipulated in the law.

**ARTICLE (559)**

1. Where the drawee suspends payment, whether he has accepted the bill of exchange or not, or in case an attachment of no avail is levied on his property, the bearer of the bill of exchange may not have recourse against the guarantor, except after presenting it to the drawee for payment and making a protest for non-payment.
2. Where the drawee is declared bankrupt, whether he has accepted the bill of exchange or not, or in case of bankruptcy of the drawer of the bill of exchange who had stipulated its non-presentation for acceptance, presentation of the bankruptcy judgement shall be sufficient to enable the bearer to exercise his rights of recourse against the guarantors.

**ARTICLE (560)**

1. The bearer of a bill of exchange must notify its drawer and his indorser of the non-acceptance or non-payment thereof within the four working days following the date of protest, or the date on which it is presented for acceptance or payment if it contains the stipulation of "recourse without expense". Every indorser shall, within the two working days following his receipt of the notice, be bound to notify in his turn his indorser of his receipt of such notice, giving him the names and addresses of the previous notifiers, and so on from one indorser to the other until the drawer. The time limit shall, vis-a-vis each indorser, start to run as from the date on which he received the notice from his previous indorser.
2. Where one of the signatories has been notified on the bill of exchange itself according to the previous paragraph, it shall also be compulsory to notify his

guarantor on the same date.

3. Where one of the indorsers has failed to state his address or has stated it in an illegible manner, it shall be sufficient to notify his previous indorser.
4. Any person bound to send notice, may effect it in any manner whatsoever, even by returning the bill of exchange itself.
5. The person bound to send notice, must prove that he did so within the time limit prescribed therefor; and such time limit shall be deemed to be observed if he delivers the registered letter containing the notice to the Post Authority within the said time limit.
6. The person who is bound to serve notice shall not forfeit his rights if he fails to do so within the prescribed time limit, but he shall be required -when relevant- to compensate the damage resulting from his negligence, provided that the compensation shall not exceed the amount of the bill of exchange.

#### **ARTICLE (561)**

1. The drawer, every indorser or precautionary guarantor may exempt the bearer from the obligation of making the protest for non-acceptance or non-payment upon recourse, if there is a stipulation on the bill of exchange of "recourse without costs" or "without protest" or any other stipulation having the same meaning and signed by him.
2. However, this stipulation shall neither exempt the bearer from presenting the bill of exchange within the prescribed time limits nor from serving the required notices. Any person pleading vis-a-vis the bearer the non-observance of such time limits must prove same.
3. Where the drawer has stipulated the conditions of "recourse without costs", the effects of such stipulation shall apply to all the signatories; however if such stipulation is made by an indorser or precautionary guarantor, its effects shall apply to him alone.
4. Where the drawer has himself made this stipulation and the bearer protests, he shall nevertheless bear alone the costs, but if the stipulation is made by an indorser or a precautionary guarantor, recourse may be exercised by all the signatories for the costs of protest, if made.

#### **ARTICLE (562)**

1. The persons who have committed themselves under the bill of exchange shall be jointly liable towards its bearer.
2. The bearer may have recourse against the obligors, jointly or separately, without having to observe the order of their obligations.

3. The right of recourse of each signatory on the bill of exchange shall, if he pays its value, be established against the obligors towards him; and action at law instituted against any of such obligors shall not prevent the right of recourse against the others even if they are subsequent to the obligor to whom the action at law was first addressed.

#### **ARTICLE (563)**

1. The bearer of a bill of exchange may claim the following from the person having a right of recourse against him:
  - a) The principal sum of a non-accepted or non-paid bill of exchange, along with the agreed interest, if stipulated.
  - b) The interest calculated according to the prevailing banking rate as of the date of maturity.
  - c) The costs of the protest, notices and any other expenses.
2. In case of recourse exercised before the maturity date of the bill of exchange, a sum equal to the official discount value on the date of recourse and in the place where the bearer's domicile is located, shall be deducted from the value of the bill of exchange.

#### **ARTICLE (564)**

Any person having paid the value of the bill of exchange may claim from the obligors committed towards him to reimburse him the sum paid as well as the expenses incurred.

#### **ARTICLE (565)**

The Courts may not grant a respite to pay the value of the bill of exchange or to undertake any procedure related thereto, except in the cases stipulated in the law.

#### **ARTICLE (566)**

1. Any obligor who by way of recourse is called upon or is likely to be called upon to pay a bill of exchange, may, if he effects the payment, demand that the bill, together with the protest and a receipt for the amount paid, be surrendered to him.
2. Any indorser having paid the bill of exchange may strike off his indorsement and all subsequent indorsements.

#### **ARTICLE (567)**

In case of recourse exercised after a partial acceptance, the person who has paid the non-accepted part of the value of the bill of exchange, may require its bearer to prove such payment of the bill itself and deliver him a quit-claim therefor. Furthermore, the bearer shall be bound to hand him a certified exact copy of the original bill of exchange together with the protest, in order to enable him to exercise his right of recourse against others for the amount paid by him.

#### **ARTICLE (568)**

1. The bearer of a bill of exchange shall forfeit his right under the rules of the Act of Exchange, to have recourse against the drawer, indorsers and other obligors except

the acceptor on the expiry of the time limits set for the undertaking of the following:

- a) Present the bills of exchange due for payment at sight or a certain specified period after sight.
  - b) Make a protest for non-acceptance or for non-payment.
  - c) Present the bill of exchange for payment in case it contains a stipulation of "recourse without costs".
2. Nevertheless, the drawer shall not take advantage of such forfeiture, except if he proves that he made available the consideration for payment on the maturity date; in which case the bearer may only have recourse against the drawee.
  3. Where a bill of exchange is not presented for acceptance within the time limit set by the drawer, the bearer shall forfeit his right of recourse based on both the non-acceptance and non-payment, unless it is revealed from the wording of the stipulation that the intention of the drawer thereby was to relieve himself from guaranteeing the acceptance.
  4. Where the indorser stipulates on his indorsement a date for presentation of the bill of exchange for acceptance, he may alone take advantage of such stipulation.

#### **ARTICLE (569)**

1. Where due to a force majeure a bill of exchange is not presented or protested within the prescribed time limits, such time limit shall be extended.
2. The bearer shall, without delay, notify his indorser of the force majeure; such notice dated and signed by the bearer shall be transcribed on the bill itself or its allonge; such notices to be served by each indorser to his previous indorser upto the drawer according to Article (560).
3. On cessation of the force majeure, the bearer shall without delay present the bill of exchange for acceptance or payment, then make the protest when necessary.
4. Where the force majeure continues for more than thirty days calculated as of the maturity date, recourse may be exercised against the obligors without the need to present the bill of exchange or make a protest.
5. Where the bill of exchange is due for payment at sight or a certain specified period after sight, the time limit of thirty days shall run from the date the bearer notifies his indorser of the force majeure, even if such date is prior to the expiry of the time limits set for presentation of the bill of exchange. The sight period shall be added to the thirty day time limit, if the bill of exchange is due for payment a certain specified period after sight.



6. Matters related to the person of the bearer or any person delegated by him to present or protest the bill of exchange shall not be deemed to be a force majeure.

#### **ARTICLE (570)**

The bearer of a bill of exchange protested for non payment may levy precautionary attachment, without the need to produce a security, on the properties of the drawer, acceptor, indorser, precautionary guarantor or any other obligors under the bill of exchange, subject to the provisions stipulated for such attachment in the Civil Procedures Code, except the production of security.

#### **ARTICLE (571)**

1. Any person having a right of recourse against the other obligors under the bill of exchange, may recover his right by drawing a new bill of exchange on one of his guarantor, to be payable at sight and in the place of such precautioning guarantor's domicile, unless otherwise stipulated.
2. A recourse bill of exchange shall cover the amounts set down in Articles (563) and (564), in addition to any commissions and other fees prescribed by law.
3. Where the drawer of a recourse bill of exchange is himself the bearer, its amount shall be determined on the same basis as that adopted to fix the value of a bill of exchange due for payment at sight, drawn from the place where the original bill of exchange was payable on the place where the precautionary guarantor's domicile lies.
4. Where the drawer of a recourse bill of exchange is an indorser, its amount shall be determined on the same basis as that adopted to fix the value of a bill of exchange due for payment at sight, drawn from the place wherein lies the domicile of the drawer of the bill of exchange, on the place where the precautionary guarantor's domicile lies.
5. In case of plurality of recourse bills of exchange, the drawer of the original bill or any indorser of such bill, may not be required to pay more than the value of one recourse bill of exchange.

### **CHAPTER NINE**

### **INTERVENTION OF THE BILL OF EXCHANGE**

#### **SECTION ONE**

#### **GENERAL PROVISIONS**

#### **ARTICLE (572)**

1. The drawer, indorser or precautionary guarantor of a bill of exchange may name the person who shall accept or pay the bill, when necessary.
2. A bill of exchange may be accepted or paid by any person intervening for the

interest of any party liable thereon who may be subject of recourse; without prejudice to the conditions stipulated in the following Articles of this Chapter.

3. The intervening person may be a third party, he may also be the drawee who refused acceptance or any obligor under the bill of exchange; however he may not be the drawee who accepted.
4. The intervening party must, within the two working days following the intervention, notify the party in whose favour the intervention took place; otherwise he shall be held liable when relevant, to compensate any damages sustained as a result of negligence, provided that such compensation shall not exceed the amount of the bill of exchange.

## **SECTION TWO** **ACCEPTANCE OF INTERVENTION**

### **ARTICLE (573)**

1. Acceptance of intervention shall occur in all cases where the bearer of an acceptable bill of exchange has a right of recourse prior to the date of maturity.
2. Where the bill of exchange names an acceptor or a payer where necessary of the value at the place of its payment; the bearer may not in this case, prior to the date of maturity, have recourse neither against the person who made such nomination nor against his subsequent signatories; save where he presents the bill of exchange to its nominated acceptor or payer where necessary and such nominee refrains from accepting it and the bearer proves such refrainment with a protest.
3. The bearer may in other cases refuse to accept the interventions, and if he accepts it he loses his right of recourse prior to the maturity date against the party in whose interest the intervention was made and against his subsequent signatories.

### **ARTICLE (574)**

Acceptance of intervention shall be effected by writing it on the bill of exchange itself and shall be signed by the intervener. The name of the person in whose interest the intervention was made shall also be mentioned thereon, otherwise, it shall be deemed to be effected in favour of the drawer.

### **ARTICLE (575)**

1. The acceptor of intervention shall have the same liability towards the bearer of a bill of exchange and the subsequent indorsers of the person in whose interest the intervention was made, as that of this latter.
2. The party in whose interest the intervention was made and his guarantor may in spite of the acceptance of the intervention, require the bearer to surrender to them the bill, the protest and the quitclaim, if any, against payment of the amount stated in Article (563).

## **SECTION THREE**

## **PAYMENT BY INTERVENTION**

### **ARTICLE (576)**

1. A bill of exchange may be paid by intervention in all cases where, upon or prior to maturity date, the bearer thereof has a right of recourse against those liable thereon.
2. Such payment shall be effected by delivering the entire sum which was supposed to have been paid by the person in whose interest the intervention was made.
3. Payment must be effected at the latest on the next day following the last day on which the protest for non-payment may be made.

### **ARTICLE (577)**

1. Where the acceptors of a bill of exchange by intervention or those designated for payment thereof where necessary, have a domicile at the place of payment, the bearer must present the bill of exchange to all such persons for payment thereof, and if relevant he shall protest for non-payment to them at the latest on the day following the last day on which such protest may be made.
2. Where the protest is not made on that date, the person nominated for payment of the bill of exchange where necessary or the person in whose interest the intervention was made shall be discharged; and also the subsequent indorsers shall be discharged from liability.

### **ARTICLE (578)**

Where the bearer of a bill of exchange refuses payment by intervention, he shall forfeit his right of recourse against the person who would have been discharged by such payment.

### **ARTICLE (579)**

1. Payment by intervention shall be established by writing a quitclaim on the bill of exchange, stating the name of the party in whose interest payment was effected; otherwise the payment by intervention shall be deemed to be made in favour of the drawer.
2. The bill of exchange and the protest - if made- must be surrendered to the person who paid by intervention.

### **ARTICLE (580)**

1. The party having paid by intervention shall acquire all the rights arising therefrom against the person in whose interest payment was made and against those persons liable under the bill of exchange towards such party. However, the person who paid by intervention may not re-indorse the bill of exchange.
2. The subsequent indorsers to the person in whose interest payment was made shall

be discharged from liability.

3. Where several persons offer to pay a bill of exchange by intervention, the person whose payment shall discharge the biggest number of those liable on the bill shall have preference. Where this rule is knowingly violated, the intervener for payment shall forfeit his right of recourse against any person who has been discharged had this rule been observed.

**CHAPTER TEN**  
**BILL DRAWN IN SEVERAL COUNTERPARTS**

**ARTICLE (581)**

1. A bill of exchange may be drawn in several counterparts conforming to each other. In such case, each counterpart shall be numbered and shall state the total number of counterparts issued, failing which each counterpart shall be deemed to be a separate bill of exchange.
2. The holder of a bill of exchange which does not stipulate that it is the only copy, may require counterparts thereof at his own expense. He shall to that effect refer to his indorser who shall be bound to assist him to refer to the previous indorser, and so on upto the drawer.
3. Every indorser shall enter his indorsement on the new counterparts.

**ARTICLE (582)**

1. Payment of a bill of exchange on the strength of one of its counterparts is a discharge of liability even when it is not stipulated therein that the payment shall nullify the effect of the other counterparts. Nevertheless, the drawee shall remain liable for payment on the strength of each counterpart signed by him for acceptance and which he failed to recover.
2. An indorser who has indorsed the counterparts of a bill of exchange to different persons, as well as his subsequent indorsers, shall be liable on the strength of all the counterparts bearing their signatures and which have not been recovered by them.

**ARTICLE (583)**

The person who sends any counterpart of the bill of exchange for acceptance, must state on the other counterparts the name of the person who has possession of such counterpart, and this latter shall surrender it to the lawful bearer of any other counterpart. Where he refuses to surrender it, the bearer shall have no right of recourse unless he makes a protest stating :-

- a. That the counterpart sent for acceptance has not been surrendered to him despite the fact that he requested it.
- b. That the acceptance or payment was not effected on the strength of another counterpart.

**CHAPTER ELEVEN**  
**COPIES AND ALTERATIONS OF THE BILL OF EXCHANGE**

**SECTION ONE**  
**COPIES**

**ARTICLE (584)**

1. The bearer of a bill of exchange may make copies thereof.
2. The copy shall fully conform to the original of the bill of exchange, along with any indorsements or any other particulars entered therein; he shall also indicate on the copy the limit where the duplication from the original ends.
3. The copy may be indorsed and have an alternate precautionary guarantor in the same manner as on the original and the copy shall have the same effects as the original.

**ARTICLE (585)**

1. The name of the person having possession of the original shall be mentioned on the copy of the bill of exchange, and such holder shall be bound to surrender the original to the lawful bearer of the copy.
2. Where the holder of the original refrains from surrendering it, the bearer of the copy shall have no right of recourse against the indorsers or alternative precautionary guarantor thereof, unless he makes a protest where he states that the original has not been surrendered to him although he has requested it.
3. Where after the last indorsement and before making the copy, a phrase is written on the original purporting that the bill of exchange may be indorsed after that date only on the copy, in such case each indorsement subscribed on the original shall be deemed null and void.

**SECTION TWO**  
**ALTERATIONS**

**ARTICLE (586)**

Where an alteration is made to the text of the bill of exchange, the persons who sign after such alteration shall be liable according to the altered text, but the persons who signed prior to such alteration shall only be liable in accordance the original text.

**CHAPTER TWELVE**  
**PRESCRIPTION OF ACTIONS AT-LAW**

**ARTICLE (587)**

In the event of denial or lack of legitimate excuse, the following shall not be heard:-

1. The action resulting from the bill of exchange and lodged against the acceptor after the lapse of three years from the date of maturity.
2. The action lodged by the bearer against the indorsers or the drawer after the lapse of one year from the date of the protest made within the prescribed time limit or from the date of maturity, if the bill contains a stipulation of "recourse without expenses".
3. The action lodged by the indorsers against each other or against the drawer after the lapse of six months from the day on which the indorser has paid the bill of exchange or from the day on which the action was lodged against him.

**ARTICLE (588)**

Where a case is instituted, the time limit provided for in the foregoing Article for prescription, shall run only from the date of the last procedure taken on the case.

**ARTICLE (589)**

The time limits stipulated in Article (587) shall not apply if a judgment is rendered on the debt or if the debtor acknowledges the debt in a separate deed, which entails renewal of the debt.

**ARTICLE (590)**

The interruption of the time limit set for the prescription of actions shall have no effect except with regard to the person against whom the procedure of interruption was taken.

**PART TWO**  
**PROMISSORY NOTES**

**ARTICLE (691)**

A promissory note shall contain the following particulars:

1. A stipulation of promise or the expression "promissory or order note" written in the same language as that of the note.
2. An unconditional engagement to pay a specified sum of money written in figures and in letters.
3. The date of maturity.

4. The place of payment.
5. The name of the payee of to whose order it is payable.
6. The date and place of making the note.
7. The signature of the maker of the note (the person who wrote it).

#### **ARTICLE (592)**

A note which does not contain any of the particulars stated in the foregoing Article, shall not be considered a promissory note except in the following cases:

1. Where the date of maturity is not stated, the promissory note shall be deemed payable at sight.
2. Where the place of payment or the maker's domicile is not stated, the place of making of the note shall be considered the place of payment and the domicile of the maker.
3. Where the place of making of the note is not stated, it shall be deemed to have been made at the place indicated next to the maker's name or at the place where he effectively signed the note.

#### **ARTICLE (593)**

1. The maker of a promissory note shall be liable in the same manner as the acceptor of a bill of exchange.
2. The promissory note which falls due after a certain specified period from sight must be presented to the maker within the time limit stipulated in Article (509), to be marked up with an entry that it has been sighted; such entry must be dated and signed by the maker.
3. The term of sight shall begin only from the date of such entry.
4. Where the maker refrains from effecting such entry, his refusal shall be established by virtue of a protest of non acceptance and the date of the protest shall be deemed to run from the date of the protest.

#### **ARTICLE (594)**

1. The provisions concerning the bills of exchange in regard to capacity, counterparts and copies, indorsement, maturity and payment thereof, recourse for non-payment, cases where respite for payment may not be granted, precautionary attachment, protest, calculation of time-limits and working days, recourse by drawing a recourse bill of exchange, payment by intervention, prescription of actions-at Law, shall apply to promissory notes, inasmuch as they are not inconsistent with the nature of a promissory note.
2. Furthermore, the rules concerning bills of exchange which are made payable at the

domicile of any third party or at a place other than that where the drawee's domicile lies, stipulations of interest, discrepancies in the particulars pertaining to the sum due for payment, the effects of signatures by persons having no capacity to contract, forged signatures, signatures of fictitious persons, signatures which are not binding or those subscribed by persons having no authority or acting ultra vires beyond the authority granted to them, shall also apply to promissory notes.

3. Also, the provisions pertaining to alternative precautionary guarantee shall apply to promissory notes, provided that if the name of the guarantor is not mentioned in the text of the guarantee this latter shall be deemed to be made in favour of the maker of the promissory note.

### **PART THREE** **CHEQUES**

#### **ARTICLE (595)**

Subject to the provisions stipulated in this Part, the provisions concerning bills of exchange shall apply to cheques, inasmuch as they are not inconsistent with the nature of a cheque.

### **CHAPTER ONE** **DRAWING OF CHEQUES**

#### **ARTICLE (596)**

A cheque shall contain the following particulars:

1. The word "cheque" written in the text of the instrument in the language in which it is written.
2. An unconditional order to pay a specific of in money.
3. The name of the person who should pay (the drawee).
4. The name of the person to whom or to whose order payment should be made.
5. The place of payment.
6. The date and place of drawing of the cheque.
7. The signature of the person who made the cheque (the drawer).

#### **ARTICLE (597)**

An instrument which does not contain one of the particulars mentioned in the foregoing Article shall not be considered a cheque except in the following events:-

1. Where the place of payment is not stated, the place indicated next to the drawee's name shall be deemed to be the place for payment; if several places are mentioned next to the drawee's name, the cheque shall be deemed due for payment at the first place indicated. Where the cheque is void of any such particulars, it shall be



deemed to be due for payment at the place where the drawee's head office lies.

2. Where the place of drawing is not stated, the cheque shall be deemed to be drawn at the place indicated next to the drawer's signature; and if no such place is stated, it shall be deemed to be drawn at the place where it was effectively signed.

#### **ARTICLE (598)**

1. Cheques issued and due for payment in the State must be drawn on a bank.
2. Each bank which delivers a Cheque Book containing blank cheques to draw on its treasury, must write on each cheque the name of the account owner who received the chequebook as well as his account number.
3. Drawing may be effected by way of applications in writing on the special forms set by the bank for this purpose, and which shall be acceptable to the bank as to the form.
4. The signatures subscribed on cheques and special applications in writing shall conform to the specimen signatures and approved signatures registered at the bank; and the account owner shall be liable towards the bank whether such account is creditor or debtor.

#### **ARTICLE (599)**

1. A cheque may not be issued unless the drawer has with the drawee, at the time of drawing the cheque, money which he can dispose of pursuant to an express or implicit agreement.
2. The drawer of a cheque or he who orders person to draw it on his behalf shall deliver sufficient funds to pay such cheque; however, the person who draws on behalf of another shall be held personally liable towards the indorsers and the bearer and no others for providing the consideration for payment.
3. The drawer alone must prove, in case of denial, that the drawee of the cheque had at the time of its drawing sufficient consideration for payment; if he fails to do so he shall be liable to pay the cheque even when he protests for non-payment after the prescribed time limits.

#### **ARTICLE (600)**

1. A cheque is not susceptible to acceptance; an acceptance written on the cheque shall be deemed null and void.
2. The drawee may enter on the cheque an expression of confirmation, such confirmation indicating the availability with the drawee of the consideration for payment on the date of making such entry. The drawee's signature on the cheque itself shall be deemed as a confirmation.
3. A drawee may not refuse to confirm the cheque if the drawer or bearer requires

such a confirmation and when he has sufficient consideration to pay the value of the cheque.

4. The consideration for payment of a confirmed cheque shall remain blocked with the drawee and under his responsibility in favour of the bearer until the lapse of the time limits set for the presentation of the cheque for payment.

#### **ARTICLE (601)**

A cheque may be made payable to:

1. A designated person with an express provision "to order" or without it.
2. A designated person with the provision " not to order " or any other provision having the same meaning.
3. To bearer of the cheque.

#### **ARTICLE (602)**

A cheque made payable in favour of a designated person and containing the provision " or to bearer" or any other expression having the same meaning, shall be deemed to be a cheque to bearer; where the name of the beneficiary is not stated, the cheque shall be deemed to be "to bearer".

#### **ARTICLE (603)**

A cheque due for payment in the State and containing a provision "not negotiable", shall not be paid except to the person who received it marked as such.

#### **ARTICLE (604)**

1. A cheque may be drawn to order of the drawer himself.
2. It may also be drawn for the account of another person.
3. It may not be drawn on the drawer himself except in the event where it is drawn between branches of the same bank or between such branches and the Bank Head Office, provided that the cheque drawn is not made payable" to bearer".

#### **ARTICLE (605)**

A stipulation in the cheque for the payment of interest shall be deemed null and void .

#### **ARTICLE (606)**

The drawer shall be liable to pay the cheque and any condition exonerating the drawer from such liability shall be deemed null and void.

#### **ARTICLE (607)**

A debt is not renewed by the creditor's acceptance to receive a cheque in payment of his debt; the principal debt shall remain outstanding together with all its securities until the value of the cheque has been paid.

**CHAPTER TWO**  
**NEGOTIATION OF CHEQUES**

**ARTICLE (608)**

1. A cheque made payable to a designated person shall, regardless of whether it is expressly made "to order" or not, be negotiable by indorsement, even to the drawer or another obligor, who may in their turn re-indorse it.
2. A cheque made payable to a designated person may not be negotiated if marked "not to order" or any other expression having the same meaning, except according to the provisions relating to the assignment of rights.
3. A cheque made payable to bearer shall be negotiated by delivery.

**ARTICLE (609)**

1. An indorser shall be liable for payment of the value of the cheque, save where otherwise stipulated.
2. An indorser may ban re-indorsement of a cheque, in which case he shall not be liable for payment of the cheque to such persons who acquire it by a subsequent indorsement.

**ARTICLE (610)**

Indorsement to the drawee shall be tantamount to a quitclaim, except where the bank drawee has several branches and the indorsement was made to a branch other than that on which the cheque was drawn.

**ARTICLE (611)**

An indorsement written on a cheque to bearer renders the indorser liable in accordance with the provisions of recourse; however such indorsement shall not result in making the instrument a cheque to order.

**ARTICLE (612)**

The holder of a cheque negotiable by indorsement shall be deemed to be its lawful holder whenever he proves that he has title thereto by virtue of consecutive indorsements, even though the last one is a blank indorsement.

Crossed indorsements shall in this respect be considered void and when another indorsement is made subsequently to the blank indorsement, the person who signed such indorsement shall be deemed to be the person who has acquired title to the cheque by virtue of the blank indorsement.

**ARTICLE (613)**

Where a person loses possession of a cheque, regardless of whether it is a cheque to bearer or indorsable, the person on whom such cheque has devolved shall not be bound to

surrender it if he proves his right in the manner stipulated in the foregoing Article, save the cases where he requires it in bad faith or where he perpetrates gross fault in order to obtain such cheque.

#### **ARTICLE (614)**

1. Indorsement made subsequent to protest or after the expiry of the time limit set for presentation of the cheque shall only produce the effects of the transfer of a right.
2. Where an indorsement is not dated, it shall be deemed to have been made prior to the protest or before the expiry of the time limit set for presentation of the cheque, unless it is otherwise established.
3. Indorsements may not be predated; predated indorsements shall be considered as a forgery.

#### **ARTICLE (615)**

1. An alterative precautionary guarantor may guarantee the payment of a cheque, in whole or in part.
2. This guarantee must be from a third party other than the drawee and may also be one of the signatories of the cheque.

#### **ARTICLE (616)**

1. Partial indorsement is null as well as the indorsement made by the drawee.
2. An indorsement to bearer shall be deemed to be a blank indorsement.

### **CHAPTER THREE** **PAYMENT OF THE VALUE OF A CHEQUE**

#### **ARTICLE (617)**

1. A cheque is due for payment on the date stated thereon as being its date of issue.
2. A cheque may not be presented for payment before such date.
3. Where the consideration for payment is less than the value of the cheque, the bearer must require partial payment from the drawee upto to the amount available therewith, and require that such payment be entered on the back of the cheque and a certificate thereof be given to him. The right of recourse for the balance shall be established by this certificate or by means of a protest.

#### **ARTICLE (618)**

1. A cheque drawn and made payable in the State or abroad shall be presented for payment within six months.

2. The time limit mentioned in the previous paragraph shall run from the date on the cheque purporting to be the date of issue.
3. Presentation of a cheque to a bank, reserving its value by telephone or cable from such bank with the drawee bank, as well as presentation thereof to a legally recognized clearing house is tantamount to presentation for payment.

#### **ARTICLE (619)**

Where a cheque is drawn between two countries using different calendars, the date of its issue shall be adjusted to the corresponding date of the calendar of the place of payment.

#### **ARTICLE (620)**

1. The drawee may pay the value of the cheque even after the expiry of the time- limit set for presentation.
2. Objection by the drawer to the payment of the cheque shall not be entertained except when it is lost or if the bearer becomes bankrupt.
3. The bank must pay the cheque in spite of the drawer's objection in cases other than those stipulated in the foregoing paragraph. The Court may not order to stop payment even where an action is filed on the origin of the right.

#### **ARTICLE (621)**

Where the drawer dies, becomes incapacitated or bankrupt after issuing the cheque, none of its effects shall be altered.

#### **ARTICLE (622)**

1. Where several cheques are presented at the same time and the consideration for payment is insufficient to pay their entire value, the dates of their issue shall be taken into consideration.
2. Where all the cheques presented originate from the same chequebook and have the same date, the cheque bearing the first serial number shall be deemed to have been issued before the others, unless otherwise established.

#### **ARTICLE (623)**

1. Where a cheque is stipulated to be paid in the State in other than its currency, its value must be paid on the date of presentation in the currency of the United Arab Emirates converted at the rate of exchange prevailing on the date of payment. Where payment is not made on the date of presentation, the bearer shall have the option to require payment of the value of the cheque converted into the currency of the State at the rate prevailing either on the date of presentation or of payment.
2. Where the cheque is presented for the first time after the time limit set for presentation, the rate of conversion shall be that prevailing on the expiry date of the time limit set for presentation.

3. The rate prevailing in the market shall be applied for the conversion of foreign currency; however, the drawer may specify on the cheque itself the rate that shall be applied to the payable amount.
4. Where the value of the cheque is stated in a currency having a common nomenclature, but its value in the country of issue is different from that in the country of payment, the intention shall be taken to mean the currency of the country of payment.

#### **ARTICLE (624)**

A precautionary guarantor who has committed itself in case of loss of the cheque made to order, shall be discharged of said liability after six months if no claim is invoked nor an action is lodged within the said time limit.

#### **ARTICLE (625)**

1. Where a cheque "to bearer" is lost or has perished, its owner may file with the drawee and objection to payment of its value, stating in such objection the number, sum, name of the drawer and such other particulars which may help to identify the cheque, as well as the circumstances of the loss or perishing. If it is impossible to furnish some of such particulars, the reasons therefor must be stated, where the objector has no domicile in the State, he must elect a person who has a domicile therein.
2. When the drawee receives the objection, he must refrain from paying the value of the cheque to whomever having possession thereof and must set aside the consideration for payment thereof until the matter is decided.
3. The drawee shall at the objector's cost publish the number and sum of the cheque which was lost or has perished, with the name of the drawer, the name of the objector and his address, in one Arabic daily issued in the State; any disposal related to the cheque after the date of publication shall be null and void.

#### **ARTICLE (626)**

1. The person having possession of the cheque mentioned in the foregoing Article may dispute the objection with the drawee, who must receive the cheque from him against receipt and notify thereafter to the objector the name of the possessor of the cheque and his address.
2. The objector must file an action claiming title to the cheque with thirty days of the date of his receipt of the notice.
3. The objector must institute the action claiming title to the cheque within the time limit mentioned in the preceding paragraph; the possessor of the cheque must obtain a judgment from the summary judge ordering that the objection be disregarded, in which event the possessor of the cheque shall be deemed to be the owner in regard to the drawee.

4. Where the objector files an action claiming title to the cheque, the drawee may not pay the value of the cheque, except to either of the litigation parties who produces to him a final judgment establishing his title to the cheque or an amicable settlement approved by both parties acknowledging him as the title holder.

#### **ARTICLE (627)**

1. Where the possessor of a cheque fails, within six months from the date of filing the objection stipulated in Article (625), to claim payment of the cheque, the objector may within the following month lodge an action before the specialized Court against the drawee, in order to obtain a judgment granting him title to the cheque or a permission to cash the value of the cheque.
2. Where the objector fails to initiate the action stipulated in the preceding Paragraph or where a judgment is rendered dismissing said action, the drawee must re-credit the consideration for payment to the drawer's account.

### **CHAPTER FOUR**

#### **CROSSED CHEQUES AND CHEQUES CREDITED TO ACCOUNT**

#### **ARTICLE (628)**

1. The drawer or bearer of a cheque may cross it, the crossing shall have the effects stated in the following Article.
2. Crossing shall be by drawing two parallel lines on the face of the cheque.
3. Crossing may be general or special.
4. When no writing is made between the two lines or the word " bank" or any other word indicating the same meaning is inserted therein, the crossing is general; whereas, where the name of a specified bank is inserted within the two lines, the crossing is special.
5. A general crossing may be transformed into a special one, but a special crossing cannot be changed to a general crossing.
6. Radication of the cross or of the name of the bank inserted between the two lines, shall be deemed null and void.

#### **ARTICLE (629)**

1. A drawee may not pay a cheque bearing a general crossing except to one of his customers or to a bank.
2. A drawee may not pay a cheque bearing a special crossing except to the bank whose name is written between the two lines or to the customer of such bank if this latter is the drawee; however, the said bank may designate another bank to cash the value

of the cheque.

3. A bank may not acquire a crossed cheque except from one of its customers or from another bank; nor may it cash the value of such cheque for the account of other than such persons.
4. Where the drawee fails to observe the foregoing provisions, he shall be liable for damages not exceeding the value of the cheque.
5. The word "Customer" in this Article means every person having an account with the drawee and having obtained from him a chequebook or having the right to obtain such book.

#### **ARTICLE (630)**

1. The drawer or bearer of a cheque may stipulate that it be not paid in cash, be writing on the face of the cheque " to be credited to the account" or any other expression indicating the same meaning; in which case the drawee may only discharge the value of the cheque by making entries in his books, in lieu of payment.
2. Cancellation of the statement "to be credited to the account" shall be disregarded.
3. Where the drawee fails to observe the foregoing provisions, he shall be liable for damages up to the value of the cheque.

#### **ARTICLE (631)**

Subject to the provisions of Articles (628), (629) and (630), the cheque shall remain negotiable and enjoying all the characteristics of other cheques.

### **CHAPTER (FIVE)** **REFRAINMENT FROM PAYMENT**

#### **ARTICLE (632)**

1. The bearer of a cheque may have recourse against the drawer, indorsers and other parties liable thereon if he presents it within the prescribed time limit but it is not honoured and the fact is established by protest. Instead of a protest, failure to pay may be established by a statement from the drawee mentioning the date of presentation of the cheque, provided that such statement is dated and written on the cheque itself.
2. The writing of the statement mentioned in the preceding paragraph may not be refused when requested by the bearer, even where the cheque stipulates " recourse without expenses"; however, the drawee may request a grace period not exceeding three working days following the presentation of the cheque, even if the cheque is submitted on the last day of the time limit set therefor.

#### **ARTICLE (633)**



Refrainment from paying a cheque shall be established in the manner provided for in the first Paragraph of the preceding Article before the expiry of the time limit prescribed for presentation; if the cheque is presented on the last day of such time limit, the dishonouring may be proved on the next working day.

#### **ARTICLE (634)**

The bearer reserves his right to have recourse against the drawer, even when he fails to present the cheque to the drawee, or to make a protest or to take an alternative action within the prescribed time limit; save where the drawer has provided the consideration for payment and such consideration has remained available with the drawee until the expiry of the time limit for presentation of the cheque, then such consideration ceased to exist due to an act not attributed to the drawer.

#### **ARTICLE (635)**

1. Where due to a force majeure a cheque cannot be presented, or a protest made or an alternative action taken within the prescribed time - limits, such time limits shall be extended.
2. The bearer must without delay notify his indorser of the force majeure and establish such notice dated and signed by the bearer on the cheque itself or an allonge thereof; the said notice shall be served by one indorser to his predecessor and so on up to the drawer according to Article (560).
3. On cessation of the force majeure, the bearer must, without delay, present the cheque for payment, then make a protest or take an alternative action.
4. Where the force majeure continues to exist for more than fifteen days computed from the day on which the bearer served notice on his indorser of the force majeure; even when such date happens to be before the expiry of the time limit prescribed for presentation of the cheque, recourse may be exercised against the parties liable thereon, without the need to present the cheque, or make a protest to take an alternative action.
5. Any matter related to the persons of the bearer of a cheque or to the person who assigned the bearer to present the cheque or make the protest or take an alternative action, shall not be considered as a force majeure.

### **CHAPTER SIX** **ALTERATIONS AND COUNTERPARTS**

#### **ARTICLE (636)**

1. The drawee shall alone be liable for the damages resulting from the payment of a cheque bearing a forged signature of the drawer or where the particulars stated in its text have been altered, unless he proves that a gross fault was committed by the drawer whose name is subscribed on the cheque, and any stipulation to the contrary shall be deemed null and void.

2. The drawer shall be particularly deemed to be at fault, if he fails to exercise the due case to safeguard the chequesbook delivered to him.

**ARTICLE (637)**

1. Save for a cheque :to bearer:, a cheque may be drawn in several counterparts in conformity to each other, if withdrawal is from the United Arab Emirates and payment in a foreign country or vice versa.
2. Where a cheque is made in several counterparts, each counterpart shall be numbered in the text thereof, otherwise is shall be considered as an independent cheque.

**ARTICLE (638)**

In case of denial and lack of legitimate excuse the following actions shall not be heard:-

1. Actions of recourse by the bearer of a cheque against the drawer, indorsers and other parties liable for the payment of the value of the cheque after two years from the expiry of the time limit set for presentation thereof.
2. Actions of recourse by the parties liable thereon against each other after the lapse of one year from the date on which the party liable thereon has paid the value of the cheque or from the date of the judicial claim lodged for payment thereof.
3. Action of the bearer against the drawee after three years from the expiry of the time limit set for presentation of the cheque.
4. The foregoing time limitations shall neither apply to a drawer who has not presented a consideration for payment or has provided it then has withdrawn it in whole or in part, nor to the actions against all the parties liable thereon who have realized an illegitimate profit.

**ARTICLE (639)**

1. In spite of the expiry of the time limitation, the defendants must when required to do so certify under oath that they have discharged the debt.
2. Furthermore, their heirs or other successors shall certify on oath that they are not aware that their legator was still liable on the debt when he died.

**ARTICLE (640)**

1. Where an action is initiated, the time limitations stated in Article (638) shall not apply except from the day of the last action taken thereon.
2. Such time limitation shall not run either, if the debt is established by a judgment or when it is acknowledged by a separate deed in such manner which results in the

renewal of the debt.

3. Interruption of the above time limitations shall have effect only in regard to the person against whom the action interrupting the time limitation is taken.

## **CHAPTER SEVEN** **PENALTIES**

### **ARTICLE (641)**

Any person who commits any of the following acts shall be punished by imprisonment or a fine:-

- a. To declare deliberately and contrary to the truth that the consideration for payment of the cheque is not available or that the consideration is available but is less than the value of the cheque.
- b. To refuse in bad faith to pay to the bearer of a cheque against whom no valid objection was made, the value of the cheque which is drawn on a bank, in spite of the fact that the consideration for payment thereof is available.
- c. To refrain from writing the statement referred to in Article (632).

### **ARTICLE (642)**

Where the Court has ruled conviction for any of the offences related to cheques as stipulated in the Penal Code, it may order that an excerpt of the judgment be published at the expense of the convicted person in a daily issued in the United Arab Emirates, provided that such announcement shall include the name of the convicted person, his domicile occupation and the penalty imposed. Publication shall also be compulsory in case of recidivism.

### **THE ARTICLE (643)**

The Court may, when ruling to convict a person of one of the crimes related to cheques as stipulated in the Penal Code, order that the chequebook be withdrawn from the convicted person and that it be prohibited to deliver to this latter new chequebooks during a certain period specified by the Court.

### **ARTICLE (644)**

Where a criminal action is brought against the drawer for any of the offences related to cheques and provided for in the Penal Code, the bearer of the cheque who claimed the civil right may apply to the Criminal Court to enter judgment in his favour for payment of a sum equal to the value of the cheque or to the unpaid amount in addition to compensation where relevant.

**VOLUME FIVE**  
**BANKRUPTCY AND PREVENTIVE COMPOSITION**

**PART ONE**  
**BANKRUPTCY**

**CHAPTER I**  
**DECLARATION OF BANKRUPTCY**

**ARTICLE (645)**

1. Subject to the provisions of preventive composition, any trader having suspended payment of his commercial debts, at the time of maturity due to the interruption of his financial position and the unsteadiness of his credit, may be declared bankrupt.
2. Any trader using abnormal or illegal ways that indicate his bad financial condition for discharge of his debts shall be deemed to have suspended payment.
3. The bankruptcy shall be declared through a judgment rendered by the specialized civil court.
4. The state of bankruptcy shall be established by a judgement rendered in favour of bankruptcy declaration. The suspension of payment or the use by a trader, of abnormal or illegal ways for discharge of his debts shall have no effect except by passing the judgement, unless otherwise provided for by law.

**ARTICLE (646)**

1. The bankruptcy of a trader may be declared after his death, or retirement from the business or incapacitation, if this occurs while he withholds the payment. A petition in bankruptcy shall be submitted within a year from the date of the death or from the date of striking the trader's name off the commercial register, in case of his retirement from the business or from the date of his incapacitation.
2. In case of the death of the trader, a notification of an action for bankruptcy shall be served at his last place of domicile without the need to designate the successors.
3. The successors of the trader may file a petition for the declaration of bankruptcy after his death, taking into consideration the period stated in paragraph (1) : however if some of the successors object to the declaration of bankruptcy, the court shall hear their statements and then decide on the petition, in accordance with the interest of the concerned persons.

**ARTICLE (647)**

1. The bankruptcy of a trader shall be declared at his request or at the request of any one of his creditors.

2. The court may decide the bankruptcy of a trader upon the request of the public prosecution or with its own accord.

**ARTICLE (648)**

If the court considers the declaration of the trader's insolvency, with its own accord, it shall notify him of the day of the hearing. However, in the cases of summary matters, the court may order the declaration of the bankruptcy one hour after serving summons upon the debtor.

**ARTICLE (649)**

1. The trader may file a petition in bankruptcy, if his financial position is disrupted and payment of his debts has been suspended. Such petition shall become actionable (30) thirty days after his suspension of payment, otherwise he shall be considered an offender of bankruptcy by default. The petition shall be made by a report presented to the court, in which he shows the reasons for suspension of payment, and attached to the report shall be the following documents :
  - a. The main commercial books.
  - b. A photocopy of the last balance sheet audited in accordance with the accounting principles and the profit and loss account.
  - c. A statement of the total personal expenses for the last two years preceding the petition in bankruptcy or for the period of his engagement in commerce in case it is lesser than that.
  - d. A detailed statement of the real estates and movables owned by him and their approximate value as of the date of suspension of payment.
  - e. A statement of the names and addresses of creditors and debtors, and the amount of their dues or debts and the secured deposits.
  - f. A statement of the protests made against the trader during the last two years preceding the petition in bankruptcy.
2. The documents should be dated and signed by the trader, however if it is not possible to submit some of such documents or to fill in their data, the report shall give reasons for them and the court's record clerk shall make a minute thereof.

**ARTICLE (650)**

1. Any creditor with a commercial or civil debt that has become due, may file a petition for adjudication of bankruptcy of the trader indebted to him provided that an evidence is given by the creditor that such debtor has suspended payment of his commercial debt.
2. Any creditor, with a deferred or conditional commercial or civil debt, may file a petition in bankruptcy, if his debtor has no known place of domicile in the state or if he flees, closes or winds up his business, or if he attempts to harm his creditors, provided always that a proof is given by the creditor that the debtor has suspended

payment of his outstanding commercial debt.

**ARTICLE (651)**

Bankruptcy of a trader may not be declared, if he stops payment of any penalties or taxes whatsoever, that become due from him.

**ARTICLE (652)**

1. The court, hearing the declaration of insolvency, may order that necessary measures be taken in order to maintain the funds of the debtor or administer them until a decision on declaration of insolvency is made.
2. The court may deputize an expert to make enquiry on the debtor's financial position and reasons for his suspension of payment and shall submit a report thereon.

**ARTICLE (653)**

1. The civil court having jurisdiction over the debtor's business shall be specialized to declare the bankruptcy, However, in case of several places of business, the court having jurisdiction over the head office, shall have the specialization. If a trader relinquishes his business, the specialization shall be to the court having jurisdiction over the place of his domicile in the state, and if he has no place of domicile, the specialization shall be held by the court of place in which payment has been suspended.
2. Without prejudice to the provisions of the valid international agreements in the state, nothing may jeopardize the declaration of bankruptcy of the trader who has a branch, agency or office in the state, even if adjudication of his bankruptcy has not been issued in a foreign country, in which case the specialized court to declare the bankruptcy shall be the court that has jurisdiction over such branch, agency or office.

**ARTICLE (654)**

1. The court that has declared the state of bankruptcy shall be specialized to hear all petitions and actions arising from such bankruptcy.
2. The action is considered to be arising from a bankruptcy, if it is relevant to the administration of bankruptcy or if a decision thereon requires the provisions of bankruptcy to be applied. Cases arising from debts owed to the bankruptcy by a third party or vice versa, shall not be included in the administration of the bankruptcy, if such actions are likely to arise without bankruptcy.

**ARTICLE (655)**

1. In the adjudication of bankruptcy, the court shall fix a provisional date for

suspension of payment, and shall order that the debtor's place of business be sealed and shall appoint a trustee in bankruptcy.

2. The court shall send a transcript of the adjudication of bankruptcy immediately after being issued to the public prosecution, trustee in bankruptcy, ministry of economy and commerce, confederation of the chambers of commerce and industry, office of the commercial register concerned and the central bank in the state.

**ARTICLE (656)**

The president of the circuit that has decided the declaration of bankruptcy shall be the judge of the bankruptcy, and if the decision for declaration of bankruptcy is given by the court of appeal, it shall appoint any president of the circuit at the court of first instance, to be the judge of bankruptcy.

**ARTICLE (657)**

1. The court may replace the judge of bankruptcy with another judge whenever is required.
2. The decision for replacing the judge of bankruptcy, shall be subject for challenge by any means of objection.

**ARTICLE (658)**

1. If the adjudication of bankruptcy has not fixed the date on which the debtor has suspended the payment, the date on which the adjudication has been given shall be considered a provisional date for suspension of payment.
2. If the adjudication of bankruptcy has been made after the death of the debtor, or after his retirement from the business or his incapacitation, and no date for suspension of payment is given therein, the date of the death, retirement from the business or incapacitation shall be considered a provisional date for suspension of payment.

**ARTICLE (659)**

1. The court shall, spontaneously or at the request of the public prosecution, the creditor, the trustee in bankruptcy or any other interested persons, amend the provisional date for suspension of payment until the lapse of ten days from depositing the list of the verified debts, as provided for in Article (782) paragraph 1, with the court's record clerk; however, after the lapse of such period, the fixed date for suspension of payment shall become final.
2. In all cases, the date for suspension of payment may not be brought back to a period of more than 2 years from the date for adjudication of bankruptcy.

**ARTICLE (660)**

1. The adjudication issued for declaration of bankruptcy or for amendment of the date for suspension of payment shall be recorded in the commercial register as provided therein.
2. The court shall order the adjudication to be displayed on the notice board at the court for a period of 30 days, on the day following its issue, and shall send it to each court having jurisdiction over such place of business or branch or agency or office of the debtor, in order to be displayed on the notice board at such court for a period of thirty days.

**ARTICLE (661)**

1. The trustee in bankruptcy shall publish a summary of the bankruptcy adjudication in one or more dailies as specified by the court. Such publication shall be effected within (15) days from rendering of the adjudication, and the summary shall include the bankrupt's name and place of domicile, his entry number in the commercial register, the court that has awarded the adjudication, the date on which it is being awarded, the provisional date for suspension of payment, name of the bankruptcy judge, as well as the receiver and his address. The publication shall also include an invitation to the creditors for having their debts recorded in the bankruptcy. Apart from such data, the summary amending the date for suspension of payment shall also include the new date given by the court and shall be published in the same manner.
2. The trustee in bankruptcy shall record the summary of adjudication in the name of the creditors at the office of the real estate registry, within thirty days from the date of the adjudication being issued.

**ARTICLE (662)**

1. Any interested third party may file a challenge against the adjudication of the bankruptcy, by objection, before the court that has issued such adjudication, within ten days from the date of the last publication for the summary of the adjudication in the newspapers. Without prejudice to the provisions of article (659), the period for objection by a third party against all adjudications issued, in the actions arising from the bankruptcy shall be ten days from the date of the adjudication being awarded, unless its publication is a must, then the period shall run, from the date of the adjudication being awarded unless its publication is a must, then the period shall run from the date of such publication.
2. The judgement issued on the objection shall be challengeable by appeal.

**ARTICLE (663)**

For appealing against the judgment issued on the bankruptcy cases, procedures and periods



shown in the civil procedures code shall be followed.

**Article (664)**

If-before the adjudication of the bankruptcy has been rendered conclusive - the debtor becomes solvent enough to honour all of his outstanding dues, the court ought to nullify the adjudication, provided that the debtor bears all expenses of the case.

**ARTICLE (665)**

1. Bankruptcy cases shall be heard summarily, however where urgency is required, the petition may be submitted to the court with an evidence in support of the suspension of payment, showing the reasons of the urgency, and in this case, the court may decide in the petition, even within an hour, after summoning the parties to the litigation, and a notification to the debtor at his last domicile, shall be sufficiently given.
2. The judgements awarded in the bankruptcy cases shall be summarily actionable without bail unless otherwise provided.

**ARTICLE (666)**

1. If a debtor files a petition in bankruptcy and the court decides to reject the petition, the court may sentence him to a fine of not less than Dhs. 5000 and not more than Dhs. 10,000 if it appears that he has deliberately fabricated the bankruptcy.
2. If a creditor files a petition in bankruptcy and the court decides rejection of the petition, the court may sentence him to the fine indicated in the preceding paragraph and shall publish the judgement at his cost in the newspapers proposed by it, if it appears that he premeditatedly intends to discredit the commercial reputation of the debtor, without prejudice, however, to the right of the debtor in making claim for compensation.

**ARTICLE (667)**

If no money is available in the bankruptcy at the time of its declaration, to meet the expenses of the adjudication or its declaration, publication, challenging, putting on or lifting the seals from the bankrupt's properties or preserving them, such expenses shall be paid from the public treasury upon an order from the bankruptcy judge, and the public treasury shall recover the amounts it has paid as a lien on all creditors from the first money received into the bankruptcy.

**CHAPTER II**  
**PERSONS WHO ADMINISTER THE BANKRUPTCY**

**ARTICLE (668)**

1. In the adjudication of bankruptcy or in a subsequent adjudication, the court shall appoint a person with pay called a trustee in bankruptcy to administer the bankruptcy.
2. The bankruptcy judge, with his own accord or at the request of the bankrupt or the controller, may order that one or more trustees be added, provided that their number shall not exceed three persons at any time.

**ARTICLE (669)**

1. Whoever is a bankrupt's creditor, spouse, in-law, kin to the fourth degree, or whoever, during the last two years prior to the declaration of bankruptcy, has been his partner, employee, accountant or agent, may not be appointed as a trustee in bankruptcy.
2. Likewise, any one who has suffered judgement in an offence, misdemeanor of robbery, embezzlement, fraud, bankruptcy by default or perjury may not be appointed as a trustee in bankruptcy.

**ARTICLE (670)**

1. The trustee in bankruptcy shall administer and keep the property of the bankruptcy, however after the adjudication of bankruptcy has been rendered, the litigation shall be confined to him, whether the debts are commercial or civil claims.
2. The trustee in bankruptcy shall make daily record of all matters related to the administration of bankruptcy, in a special book whose pages shall be unnumbered, and the bankruptcy judge shall have it signed and shall mark the end of the book with a last entry.
3. The court, the judge of bankruptcy and the controller may have access to such book at any time. Likewise, the bankrupt may have access to it, with permission from the judge of bankruptcy.

**ARTICLE (671)**

1. In case of several trustees in bankruptcy, they shall act, collectively, and shall jointly be responsible for their administration.
2. Yet, the judge of bankruptcy may divide the work among them or entrust one of them to perform a certain job, and in this case the trustee in bankruptcy shall be responsible only to the works assigned to him.
3. The trustees in bankruptcy may deputize each other to carry out the works entrusted to them but may not deputize a third party except with permission from the judge of

bankruptcy, however in this case, the trustee in bankruptcy and his deputy shall be jointly responsible for such works.

**ARTICLE (672)**

The bankrupt and the controller may file objection with the bankruptcy judge against the activities of the trustee in bankruptcy, before they are completed. Such objection shall cause discontinuance of the activity, and the judge of bankruptcy shall decide in the objection, within five days from the date it is submitted and his decision shall be immediately applicable.

**ARTICLE (673)**

The bankruptcy judge, with his own accord or at the request of the bankrupt or the controller, may decide the removal of the trustee in bankruptcy or reducing the number of trustees in bankruptcy, in case they are several, and the bankruptcy judge shall decide this issue within ten days from the date it is being submitted, and his decision in this respect shall be irrefutable. However, if the bankruptcy judge has not decided the issue within the stipulated period, the request shall be submitted directly to the court for giving a decision therein.

**ARTICLE (674)**

1. The fees and expenses of the trustee in bankruptcy shall be estimated according to a decision given by the bankruptcy judge, after a report is being submitted to the trustee in bankruptcy on his administration.
2. The bankruptcy judge may order that certain amounts be paid to the trustee in bankruptcy, prior to the submission of the report indicated in the preceding paragraph and such amounts shall be deducted from his fees.
3. Any interested party may file a challenge with the court against the decision made by the bankruptcy judge on the estimated fees and expenses of the trustee in bankruptcy.

**ARTICLE (675)**

1. Apart from the powers given to him under this law, the bankruptcy judge shall assume control over the administration and proceedings of the bankruptcy and shall take necessary measures to keep its funds intact.
2. He shall convene the creditors for a meeting, in the cases shown in the law, and shall preside over the meetings.
3. At any time, he may summon the bankrupt or his successors, agents, employees or any other person to hear their statements on matters related to the bankruptcy.

4. He shall submit to the court, a quarterly report, on the position of the bankruptcy and on each relevant dispute, the court is specialized to decide therein.

**ARTICLE (676)**

Decisions issued by the bankruptcy judge shall be deposited with the court's records clerk on the day following their issue, and may order, that such decisions be notified to the persons concerned.

**ARTICLE (677)**

1. Decisions issued by the bankruptcy judge, may not be challenged except if the law so permits or if such decisions are beyond the limits of his powers.
2. If it is so permitted, the challenge shall be made through a complaint to be filed with the specialized court of appeal, within ten days from the decision being protested against, or from the date of its being notified to the relevant persons. The court decision shall be issued at the deliberations room summarily and shall not be challengeable, by any means of challenge.
3. The court may order the stay of execution of the challenged decision temporarily until the challenge has been decided.

**ARTICLE (678)**

1. The bankruptcy judge shall appoint one or more controllers from among the creditors who offer themselves as candidates therefor.
2. The bankrupt and any creditor may, before the court, challenge the decision of the bankruptcy judge for appointment of the controller. However, as a result of such challenge, the execution of the decision shall not be held back.

**ARTICLE (679)**

The controller or the deputy for the juridical person appointed as a controller may not be a spouse, son-in-law or kin to the fourth degree of the bankrupt.

**ARTICLE (680)**

1. In addition to the authorities given to him under specific provisions, the controller shall examine the balance sheet and the report submitted by the debtor and shall assist the bankruptcy judge, in exercising control over the activities of the trustee in bankruptcy.

2. The controller may request, from the trustee in bankruptcy, to provide clarifications on the progress of the bankruptcy proceedings, its proceeds and expenses as well as the position of cases related thereto.

**ARTICLE (681)**

1. The controller shall not receive a fee in consideration of his work.
2. He may be removed by a decision from the bankruptcy judge.
3. He shall not be held responsible, except for his serious fault.

**CHAPTER III**  
**EFFECTS OF BANKRUPTCY**

**SECTION 1**  
**WITH RESPECT TO THE DEBTOR**

**ARTICLE (682)**

1. At his own discretion or at the request of the public prosecution or the trustee in bankruptcy, the bankruptcy judge may, at any time, decide the detention of the bankrupt or place him under control, if he intentionally conceals property or books or if he refrains from executing the decisions of the bankruptcy judge, and may order necessary interlocutory measures to be taken to maintain the rights of the creditors, and the public prosecution shall execute such decision with immediate effect.
2. The bankrupt may challenge the decision issued according to the preceding paragraph; however, such challenge may not imply the stay of execution.
3. At any time, the bankruptcy judge may decide to lift the control or the detention against the bankrupt or to lift the interlocutory measures imposed upon him.

**ARTICLE (683)**

1. Any one who has been adjudged bankrupt may not elect or be elected or appointed in the national council, municipality council, chamber of commerce and industry or professional associations nor shall he be a manager or director of any company nor shall he practice the business of a commercial agency, import, export, brokerage for selling or purchasing the securities or the sale or auction sale.
2. Likewise, any one who has been adjudged bankrupt may not act on behalf of another party, in managing his property; yet a specialized court may permit him, to manage the property of his minor children if this shall not involve any harm to them.

**ARTICLE (684)**

The bankrupt may not remain absent from his place of residence without notifying the trustee in bankruptcy in writing of his whereabouts nor change it or leave the country except with permission from the bankruptcy judge.

**ARTICLE (685)**

1. Upon the adjudication of bankruptcy being rendered, the bankrupt shall be prevented from operating and disposing of his properties, and any acts of disposal made by him on the day on which the bankruptcy adjudication has been rendered shall be deemed to have occurred thereafter.
2. If the act is such that it may neither be undertaken nor executed against a third party except by registration or other procedures, it shall not apply to the body of the creditors unless such procedure has been made prior to bankruptcy adjudication being issued.

**ARTICLE (686)**

Prevention of the bankrupt from managing and disposing of his properties, shall not impede him from taking necessary measures to safeguard his rights.

**ARTICLE (687)**

1. Once that adjudication of bankruptcy has been rendered, the bankrupt may neither discharge his debts nor recover his dues.
2. Yet, if the bankrupt is a holder of a commercial paper, he may settle its value at the time of its maturity, unless the trustee in bankruptcy objects to such settlement, in accordance with article (543).

**ARTICLE (688)**

After the adjudication of bankruptcy is being issued, no setoff shall be made between the bankrupt's rights and obligations, unless a linkage is found to exist between them. The linkage shall, in particular, exist if both right and obligation arise from one cause or if they are combined in one current account.

**ARTICLE (689)**

1. Prevention of the bankrupt to manage and dispose of, shall include all of the properties owned by the bankrupt on the day on which the adjudication of bankruptcy is being issued, as well as the properties whose title passes on to him while he is in a state of bankruptcy.
2. Notwithstanding that, the prevention from the management and disposal, shall not include the following :

- a. Properties that may not be seized by law and the subsidies dispensed to him.
- b. Properties owned by some one, other than the bankrupt.
- c. Such rights as related to the vital status of the bankrupt.
- d. Compensations that become due to the beneficiary against a proper insurance contract entered into by the bankrupt, before he adjudication of bankruptcy has been issued; yet the beneficiary shall be under obligation to repay to the bankrupt, as of the date indicated by the court for suspension of payment unless otherwise provided for by law.
- e. Prevention of the bankrupt from the management and disposal as stated under clause (1) shall not include the rights that belong to the bankrupt as a person or in his capacity as a head of the family of the rights that have to do with an exclusively moral interest.

The prevention also shall not apply to the profits that the bankrupt may have earned by virtue of his activity or industry, to such an extent as the judge may consider appropriate enough for the bankrupt to meet his needs and to support himself and his family.

#### **ARTICLE (690)**

1. If an inheritance has devolved upon the bankrupt, his creditors shall have no lien over the properties of such inheritance, except after the creditors of the inheritance receive their dues from such properties.
2. The trustee in bankruptcy shall liquidate the properties of the inheritance that have devolved upon the bankrupt and shall satisfy all debts due therefrom, under the supervision of the bankruptcy judge. Upon the adjudication of bankruptcy being issued, all cases related to the properties of the inheritance and procedures of execution in respect thereof shall be suspended until the liquidation of he inheritance is completed.

#### **ARTICLE (691)**

Action may not be lodged by or against a bankrupt nor may be proceeded with, after the adjudication of the bankruptcy is being issued, with exception of the following actions :

1. Actions related to the properties, rights and disposal which are irrelevant to the prevention of the bankrupt from the management and disposal.
2. Action related to the works of bankruptcy which the bankrupt is authorized to perform under law.

3. Penal actions.
4. Actions ready for adjudication by estoppel of pleading therein.

**ARTICLE (692)**

1. The court may authorize the admission of a bankrupt in the actions of bankruptcy. It may also authorize the creditor to be admitted in these actions if he has a particular interest therein.
2. If a penal action or an action related to him in person or to his vital status, has been filed by or against the bankrupt, the trustee in bankruptcy shall be admitted in such action if it involves financial claims.

**ARTICLE (693)**

If, after declaration of his bankruptcy, the bankrupt has been condemned for compensation against damages caused to a third party, the beneficiary may be admitted in the bankruptcy, unless his involvement as an accomplice with the bankrupt has been proved.

**ARTICLE (694)**

1. After the statements of the trustee in bankruptcy come for hearing before the judge of bankruptcy, the latter may decide for a financial aid to be provided from the funds of the bankruptcy to the one who has applied for, at the request of the bankrupt or whomever he supports.
2. At the request of the trustee in bankruptcy or the applicant for the subsidy, or at his discretion, the judge of bankruptcy may, at any time, amend the amount of subsidy or order its cancellation, however this decision may be objected by challenge.
3. Payment of the subsidy shall be suspended if the compromise has been ratified or if a state of creditors club has been established.

**ARTICLE (695)**

The bankrupt may obtain a permission from the judge of the bankruptcy to practice a new business without having access to the monies of the bankruptcy, and thus the creditors whose debts have arisen in consequence of such business shall have the priority to get their dues satisfied therefrom.

**ARTICLE (696)**

The following acts may not be adhered to, in facing the body of the creditors, if such acts are done by the debtor after suspension of payment and before the adjudication of bankruptcy :

1. All donations, except for the customary small gifts.



2. Settlement of the debt, before maturity of the term, regardless of the manner of such settlement.
3. Settlement of the payable debts in a manner other than agreed; however, settlement by way of a security or a bank transfer shall be considered like payment in cash.
4. Any incidental mortgage or security being made on the properties of the debtor to secure previous debt.

**ARTICLE (697)**

All acts of disposing by the bankrupt other than those mentioned in the preceding article during the indicated period, may be adjudged inexecutable vis-a-vis body of creditors, if such act is deemed to inflict harm upon them and if the disposee becomes aware, at the time of its occurrence, that the insolvent has stopped payment.

**ARTICLE (698)**

In all cases referred to, in the above two articles, the body of creditors may file an action for redemption. However, if the subject of the settlement is a bill of exchange the cheque in his favour only. However, if the subject of settlement is a bond to the order, the action may only be filed against the first endorser and in both cases, the evidence should be established that the person from whom the redemption is requested, is aware at the time when the commercial paper is issued of the debtor's stop-payment.

**ARTICLE (699)**

1. The rights of mortgage or lien levied on the debtor's property maybe adjudged invalid vis-a-vis the body of creditors, if a record thereof has been made after the date of the ceize payment.
2. The creditor shall not give, from the proceeds of the sale subjected for mortgage or lien, to the holder of the mortgage following the mortgage adjudged to be invalid vis-a-vis the creditors, except what he obtains, on the presumption that the previous mortgage is considered valid, and the difference shall devolve to the body of the creditors.

**ARTICLE (700)**

1. If an act of disposal, towards the body of creditors, is adjudged to be invalid, the disposee shall be liable to return to the bankruptcy, what he obtains from the insolvent in accordance with such disposal or to return the value of the thing at the time when it is received by him, and shall undertake to pay the proceeds of what he has received, from the date of receipt, in consideration of his benefits.

2. The disposee shall have the right to take back the reimbursement given by him to the insolvent, if such reimbursement in itself exists in the bankruptcy. However, if it does not exist, the disposee shall have the right to make a claim against the body of the creditors for the benefit that has accrued from such disposal, and shall join the abankruptcy as an ordinary creditor in respect of any excess thereto.

#### **ARTICLE (701)**

The trustee in bankruptcy shall solely apply for non-implementing of the debtor's disposal towards the body of creditors, if the disposal occurs before the bankruptcy adjudication has been issued, in accordance with the rules set forth in the civil transactions law.

It follows from the judgement for non-implementation of the disposal that it shall be rendered ineffective for all the creditors whether their rights have ensued before or after the disposal.

#### **ARTICLE (702)**

1. The legal period, for non-hearing of the action brought by the trustee in bankruptcy against a third party, as well as the other periods prescribed by law for the procedures to be taken by the insolvent or by the trustee in bankruptcy, shall be extended by six months from the date the bankruptcy adjudication comes into effect.
2. Actions arising from implementing the rules provided for in the Article (696, 697, 698, 699, 701) shall not be heard in the case of denial or absence of legal excuse, after the lapse of two years from the date of the bankruptcy adjudication being issued.

### **SECTION 2 WITH RESPECT TO THE CREDITORS**

#### **ARTICLE (703)**

Upon the adjudication of bankruptcy being issued, a body of the creditors whose rights vis-a-vis the insolvent have resulted from a valid cause before the adjudication of bankruptcy, shall come into existence by force of law. Such body shall enjoy the juridical personality and shall be represented by the administrator of the bankruptcy. According to the preceding paragraph, owners of debts secured by mortgage or a special liens shall not be included in the list of the creditors, except in the cases where they join the bankruptcy as ordinary creditors as provided for hereunder.

#### **ARTICLE (704)**

1. It follows from the adjudication of bankruptcy that all individual proceedings and actions brought against the insolvent by the ordinary creditors or by the creditors holding general liens shall be suspended.

2. The creditors referred to in the preceding paragraph, may not carry the procedures into execution against the properties of the insolvent nor shall complete the procedures that have started before the adjudication of bankruptcy being issued. Yet, if a day has been fixed for selling the real estate of the bankrupt, the procedures of execution may be continued by permission from the judge of the bankruptcy, and the proceeds shall devolve to the bankruptcy.
3. Neither the actions in progress nor a fresh action or any other legal proceedings may be taken against the bankruptcy after the adjudication of bankruptcy being issued, unless the judge of the bankruptcy gives the permission to do so, under such conditions as decided by him, except for the loan holders and special liens holders who may institute actions or proceed with them vis-a-vis the trustee in bankruptcy, and may carry or continue the execution made on the properties on which their securities are placed.

**ARTICLE (705)**

1. The adjudication of the bankruptcy shall extinguish all the term cash debts that become due on the insolvent, whether such debts are common or secured by general or special lien.
2. An amount equivalent to the legal interest for the period extending from the date of the adjudication of bankruptcy to the date of the maturity of the debt, shall be deducted by the court, from the deferred debt on which no interest has been stipulated.

**ARTICLE (706)**

1. The adjudication of the bankruptcy shall discontinue the interests of the common debts for the body of the creditors.
2. No claim may be made for the interests on the debts secured by mortgage or a lien, except for the amounts resulting from the selling of the properties that secure such debts. The principal debt shall be deducted first, followed by the interests that become due before the adjudication of the bankruptcy being issued, and then the interests that become due after its being issued.

**ARTICLE (707)**

Debts subject to a terminating condition may join the bankruptcy, provided a guarantor is supplied; however, debts governed by a suspending condition may not receive its share from the distributions until the disclosure of such condition.

**ARTICLE (708)**

1. If a number of persons are jointly liable towards one debt and any of them is being declared insolvent, other persons shall not be affected by such insolvency, unless otherwise provided for by law.
2. If a compromise has been made with an obligor who has gone bankrupt, the terms of such compromise shall not apply to other obligors.

#### **ARTICLE (709)**

If a creditor receives part of the debt, from any of the persons who are jointly liable for one debt, and the rest of the liable persons or any of them becomes bankrupt, the creditor may not have access to the bankruptcies except for the remaining part of his debt. However, he shall reserve his right to claim the remaining part of the debt, from the insolvent party, and such person may have access to each bankruptcy, to the extent of the amount he has settled thereof.

#### **ARTICLE (710)**

1. If all those who are jointly liable for one debt have gone bankrupt at one time, the creditor may take part in each bankruptcy, for all of his debt until his debt has been fully satisfied including the principal, the expenses and the interests.
2. A bankruptcy may not claim from another bankruptcy anything it has settled for it.
3. If the total amount obtained by the creditor exceeds his debt and its accessories, the surplus shall be given to the bankruptcy of any one guaranteed by others, in the order of their obligations towards the debt. However, if such arrangement does not exist, the surplus shall be transferred to the bankruptcies that have paid in excess of their share in the debt.

### **SECTION 3**

#### **OWNERS OF DEBTS SECURED BY A MORTGAGE OR A LIEN ON A MOVABLE**

#### **ARTICLE (711)**

1. Names of the bankrupt's creditors, the owners of debts secured by a mortgage or a lien on a movable, shall be included in the list of the creditors, with reference to the mortgage or the lien.
2. At any time after obtaining a permission from the judge of the bankruptcy, the trustee in bankruptcy may pay the debt secured by mortgage and redeem the

mortgaged things in favour of the creditors.

**ARTICLE (712)**

1. If the mortgaged movable is sold at the request of the loan holder, at a price exceeding the debt, the trustee in bankruptcy shall receive the excess amount in favour of the creditors, and if the price is less than the debt, the loan holder shall join the bankruptcy to the extent of his remaining dues as an ordinary creditor, provided that his debt is being verified in accordance with the provisions of the law.
2. The trustee in bankruptcy may notify the loan holder, that legal proceedings should be taken for execution on the mortgaged things before the expiry of the consolidation. However if the loan holder fails to take such proceedings, the judge of the bankruptcy may authorize the trustee to sell the mortgaged movables, at the request of the trustee, and after hearing the statements of the loan creditor. The decision by the judge of the bankruptcy for permission of sale, shall be notified to the loan holder who may challenge the decision, thus causing the stay of execution on the sale.

**ARTICLE (713)**

1. After obtaining the permission from the judge of bankruptcy, the trustee in bankruptcy, within (10) ten days from the adjudication of bankruptcy has been issued, may pay the wages and salaries of the workers and employees that fall due before the adjudication of bankruptcy has been issued, for a period of thirty days, from the money of the bankruptcy held at his disposal, regardless of any other debt. However, if the trustee of the bankruptcy has no sufficient money for payment of such debts, the first money that comes into the bankruptcy shall be used for payment, regardless of any other debts that have priority in the list of liens.
2. The amounts due for the said categories, if they exceed those indicated in the preceding paragraph, shall be on the list of priority prescribed by law.

**ARTICLE (714)**

If the trustee settles a debt from his money or if such debt is settled by another person, he shall subrogate the parties concerned in whatever rights they may have, and shall recover his debt from the first money that comes into the bankruptcy, and none of them shall have the right of objection thereto.

**ARTICLE (715)**

In the case of termination of a tenancy according to Article (722), the owner of the property rented to a bankrupt shall have a lien upon it as a guarantee of the rent, due to him for the year preceding the adjudication of the bankruptcy being issued as well as for the current year. However, if the movables lying in the rented property are sold or removed, the landlord shall continue to hold his right of lien.

**ARTICLE (716)**

The lien prescribed for the government, against taxes of different kinds shall include only the debt of the tax, due from the bankrupt, for the two years preceding the adjudication of bankruptcy being issued. However, except for these two years, due taxes shall be included in the distributions being common debts.

**ARTICLE (717)**

Upon a proposal made by the trustee in bankruptcy, the judge of the bankruptcy may order, if necessary, to use the first money that comes into the bankruptcy, for payment of the claims of the creditors who have a lien upon the bankrupt's movables, provided that their names are included in the final list of unobjected debts referred to, in paragraph 1 of the Article (757). However, if an objection to the lien occurs, the payment may not be made except after it is decided in a final judgment.

**SECTION 4**  
**OWNERS OF DEBTS SECURED BY**  
**A MORTGAGE OR A LIEN UPON REALTY**

**ARTICLE (718)**

If the proceeds from the realty have been distributed prior to the distribution of proceeds from the movables, or if both distributions have taken place together, the loan holders or the preferred creditors who have not received their debts in whole or in part, from the proceeds of the realty, shall join the ordinary creditors, to the extend of their remaining debt, in the distribution of the properties whose the body of creditors' right is related thereto, provided that their dues have been realized.

**ARTICLE (719)**

1. If one or more distributions of the proceeds from the movables take place before distribution of the proceeds from the properties, the loan holders or the preferred creditors, shall take part in the distributions with all of their dues, provided that such dues have been realized.
2. Following the sale of the realty and completion of the final settlement, according to the ranks of the loan holders and preferred creditors, any one whose rank of the loan holders and preferred creditors, any one whose rank qualifies him to obtain the whole of his debt from the proceeds of the said properties, may not receive the debt except after deduction of the amount that he has obtained from the proceeds of the movables, and such amount shall be reimbursed to the body of ordinary creditors.

**ARTICLE (720)**

The loan holders or the preferred creditors, who don't receive any thing from the proceeds of the realty, on which their deposits have been placed, shall be considered ordinary creditors, and in such capacity, all effects arising from the acts by the body of the creditors and the judicial composition, if occurs, shall apply to them.

**SECTION 5**  
**EFFECT OF BANKRUPTCY ON**  
**PROPER CONTRACTS CONCLUDED BEFORE ITS DECLARATION**

**ARTICLE (721)**

1. The declaration of bankruptcy shall not lead to the termination of the contracts binding on both sides, of which the bankrupt is a party, except if they are based on personal considerations.
2. If the trustee in bankruptcy fails to perform the contract, or if he fails to continue with its performance, the other party may apply for termination, and any decision taken by the trustee in bankruptcy, in respect of the contract, shall be brought before the judge of the bankruptcy to be passed by him. However, the other party may give the trustee in bankruptcy, a grace period to explain his position with regard to the contract.
3. The contracting party may join the bankruptcy as an ordinary creditor in the compensation resulting from the termination, unless it is provided that the compensation shall retain the lien prescribed thereto by law.

**ARTICLE (722)**

1. If the bankrupt is a holder of the lease of the premises, in which he practises the business, the declaration of bankruptcy issued shall not cause termination of the tenancy or maturity of the rent for the remaining period of the tenancy, and any condition to the contrary shall be considered non-existing.
2. If the landlord has proceeded with the execution on the movables available in the leasehold, and such execution has not been completed when the adjudication of the bankruptcy is made, the stay of execution shall become imperative for a period of sixty days from the date of such adjudication, without prejudice to the landlord's right in taking precautionary measures, and to apply for the eviction of the leasehold, in accordance with the general rules; however in this case, the stay of execution shall cease to be in force, without having a decision been issued to this effect. However, the judge of bankruptcy may order that the stay of execution shall continue for another thirty days, if it is deemed necessary by him, and the trustee in bankruptcy shall notify the landlord, during the period while the stay of execution is effective, of his desire to terminate the tenancy or to continue with it.

3. If the trustee decides to continue with the tenancy, he shall be required to pay the rent in arrears and to provide a sufficient guarantee for settlement of the future rent. However, the landlord may demand from the judge of bankruptcy to terminate the tenancy if the guarantee is insufficient, within fifteen days from the date he has been notified that the trustee in bankruptcy is willing to continue the tenancy.
4. The trustee in bankruptcy, after obtaining a permission from the judge of the bankruptcy, may sublet the property or assign the rent, even if the bankrupt is prevented from doing so under the tenancy contract, provided that no damage should be caused to the landlord and that there is a clear and true interest for the body of the creditors and that the landlord has been fairly compensated.

#### **ARTICLE (723)**

If the employer goes bankrupt, the worker and the trustee in bankruptcy may terminate the contract, subject to the rules provided for in the labour law.

#### **ARTICLE (724)**

The agency shall expire upon the bankruptcy of the agent or bankruptcy of the principal; however, the agency may not be terminated upon the bankruptcy of the principal, if the agent or the third party has interest therein.

### **SECTION 6** **REDEMPTION**

#### **ARTICLE (725)**

1. Any person may recover from the bankruptcy particular things by themselves that his title thereto is established at the time when the bankruptcy is declared.
2. The trustee in bankruptcy, after taking the opinion of the controller and obtaining a permission from the judge of bankruptcy, may return the thing to its owner, and if the trustee in bankruptcy refuses to return the same, the matter shall be referred to the court.

#### **ARTICLE (726)**

1. The goods held in possession of the bankrupt as a deposit or for some time, or to be sold in favour of its owner, or for the purpose of handing them over to him, provided they are specifically available in the bankruptcy. Also the price of the goods may be recovered, if no settlement in respect thereof has been made, whether



in cash, or as a commercial paper or through a setoff or by making entry thereof in a current account between the bankrupt and the buyer.

2. The person who recovers the thing shall pay to the trustee in bankruptcy the rights due to the bankrupt.
3. If the bankrupt has deposited the goods with a third party, he may recover them from him.
4. If the bankrupt has borrowed, by pawning the goods, and at the time of mortgaging the creditor seems to be unaware of the fact that they are not owned by the bankrupt, they may not be recovered except after settlement of the mortgaged debt.

#### **ARTICLE (727)**

The commercial papers, and other bonds of value, which are handed over to the bankrupt, may be recovered for collection of their value or profits, or for having them appropriated for a certain settlement if they are specifically in the bankruptcy, if their value has not been paid upon declaration of the bankruptcy.

Nevertheless, such papers and bonds may not be recovered if they have been placed in a current account between the applicant of the recovery and the bankrupt.

#### **ARTICLE (728)**

The monies deposited with the bankrupt, be it coins or papers, may not be recovered, unless the redeemer proves his title to them in specific.

#### **ARTICLE (729)**

In the cases provided for in the preceding articles, the redeemer shall pay to the trustee in bankruptcy the rights due to the bankrupt.

#### **ARTICLE (730)**

1. If the sale contract is terminated either by judgement or in accordance with a clause in the contract, before the buyer's declaration of bankruptcy has been adjudicated the seller may recover the goods in whole or in part from the bankruptcy, provided they have real existence in rem.
2. The recovery is possible, even if the termination has been decided after the adjudication of the bankruptcy, provided that the action of replevin or termination has been submitted prior to such ruling.

**ARTICLE (731)**

1. If the buyer goes bankrupt before payment of the price, and the goods are still held with the seller, the latter may retain them.
2. If the buyer goes bankrupt after the goods have been sent to him, and before they are taken into his stores or the stores of his agent who is entrusted with their sale, the seller may recover their possession, yet recovery may not be possible if the goods have lost their identity or if the bankrupt has disposed of them without fraud, before their arrival, according to the bills of title or shipping documents, to a bonafide buyer.
3. In all cases, the trustee in bankruptcy, after taking the permission from the judge of bankruptcy, may apply for taking delivery of the goods, provided he shall pay to the seller the agreed price, failing which, the seller may abide by his right for termination and his claim for compensation.

**ARTICLE (732)**

1. Without prejudice to the provisions of Article (48) hereunder, if the buyer goes bankrupt before payment of the price and after the goods are taken into his stores or the stores of his agent who is authorized to sell them, the seller may not apply for termination of the sale or recovery of the goods, and his right in the lien shall not be sued.
2. Any clause that enables the seller to recover the goods, or to retain his lien thereupon, shall not be used as argument against the body of the creditors.

**SECTION 7**  
**RIGHTS OF THE BANKRUPT'S SPOUSE**

**ARTICLE (733)**

1. Neither spouse may protest against the body of creditors, in the bankruptcy of the other spouse, with respect to the donations decided to such spouse by the other during the five years preceding the date for suspension of payment.
2. In the bankruptcy of either spouse, the body of the creditors may not plead for the donations decided to such spouse by the other spouse during the period indicated in the preceding paragraph.

**ARTICLE (734)**

Either spouse, regardless of the financial system adopted in the marriage, may recover from the bankruptcy of the other his/her movable and immovable properties, if he/she proves his/her title thereto in accordance with the general rules, and such properties shall remain charged with the rights accrued thereto by a third party in a legal way.

#### **ARTICLE (735)**

1. Properties purchased by the bankrupt in favour of the minors under his guardianship, as of the date he has practised the business, are deemed to have been purchased with the money of the bankrupt and thus it shall be included in the assets of the bankruptcy, unless otherwise proved.
2. Properties that the bankrupt's spouse buys in favour of the other spouse during the five years preceding the date of the bankruptcy declaration are deemed to have been purchased with the money of the bankrupt and thus it shall be included in the assets of the bankruptcy, unless otherwise proved.
3. Any settlement by either spouse of the debts due from the other spouse who goes bankrupt, is deemed to have possession of the money of such spouse unless otherwise is proved.

### **CHAPTER IV** **ADMINISTRATION OF BANKRUPTCY**

#### **SECTION 1** **ADMINISTRATION OF ASSETS**

#### **ARTICLE (736)**

1. As soon as the adjudication of bankruptcy is issued, the judge of the bankruptcy shall seal the bankrupt's place of business, offices, safes, books, papers, and movables, and may deputize any of the court's employees to do so, and the president of each court having jurisdiction over any properties for the bankrupt shall be informed of that, in order to seal such property.
2. If it appears to the judge of the bankruptcy, that it is possible to make inventory of the bankrupt's property in one day, he may proceed forthwith with such inventory without the need to put the seals.
3. A record of sealing shall be made and signed by those who have done such procedure, and shall be handed over to the judge of the bankruptcy if such

procedure is not made by him.

**ARTICLE (737)**

The clothes and movables needed by the bankrupt and those whom he supports, may not be sealed, and such things shall be determined by the judge of the bankruptcy however a list thereof shall be handed over to the bankrupt to be signed by him as well as the judge of bankruptcy.

**ARTICLE (738)**

1. The judge of the bankruptcy may order spontaneously or as requested by the trustee in bankruptcy, to seal or unseal the following things :-
  - a. Commercial books.
  - b. Commercial papers, and other papers that become due for settlement within a short period, or papers that need procedures to maintain the interests established therein.
  - c. Monies needed for spending on the urgent affairs of the bankruptcy.
  - d. Things that are exposed for quick damage or for urgent depreciation in value, or things whose maintenance need heavy expenses.
  - e. Things needed for operating the place of business, if it is decided to continue with its operation.
2. Inventory of things stated in the preceding paragraph, shall be made and signed by the judge of the bankruptcy, or by any one deputed by him for this purpose, and a list thereof shall be handed over to the trustee in bankruptcy and shall be signed by him.
3. Commercial papers may not be handed over except after being closed by the judge of bankruptcy in presence of the bankrupt, if possible.

**ARTICLE (739)**

1. As requested by the trustee in bankruptcy, the judge of the bankruptcy may remove the seals in order to make an inventory of the bankrupt's properties.
2. Removal of seals and inventory shall begin within five days from the date the declaration of bankruptcy has been issued.

**ARTICLE (740)**

1. The inventory shall take place in presence of the judge of bankruptcy or anyone whom he deputizes for such purpose, as well as the trustee in bankruptcy and the

court's clerk, and the bankrupt shall be notified thereof and he may be attend.

2. A list of inventory in duplicate shall be made and shall be signed by the judge of the bankruptcy or anyone whom he deputizes for this purpose, as well as the trustee in bankruptcy and the court's clerk. However, one copy of the inventory list shall be deposited with the court and the other shall remain with the trustee.
3. The properties that have not been sealed or seals have been taken off them must be shown in the list.
4. The assistance of an expert may be needed for making the inventory and for estimation of the properties.

**ARTICLE (741)**

If the bankruptcy is declared following the death of the trader, and no list of inventory is being made on the occasion of death, or if the trader dies after the declaration of his bankruptcy, and before initiating or completing the list of inventory, the list shall be made immediately or shall be proceeded with as shown in the preceding article, in presence of the bankrupt's heirs or after their notification of the presence.

**ARTICLE (742)**

The trustee in bankruptcy, after the inventory has been made, shall take over the properties, books and papers of the bankrupt, and he shall sign to this effect at the end of the list.

**ARTICLE (743)**

If the balance sheet has not been supplied by the bankrupt, it shall be made immediately by the trustee in bankruptcy or by a chartered auditor with permission from the court, and shall be deposited with the court as soon as it is completed.

**ARTICLE (744)**

Letters addressed in the name of the bankrupt and related to his activities, shall be received by the trustee in bankruptcy, who shall open such letters and maintain them, and the bankrupt shall have access to them.

**ARTICLE (745)**

1. The trustee in bankruptcy shall perform all the necessary actions to safeguard the interests of the bankrupt towards the third parties, and shall claim such interests and get them satisfied.
2. And shall make record of any real rights due to the bankrupt on the properties of his debtors, if the bankrupt fails to make such record.
3. And shall submit to the judge of the bankruptcy a report on the position of the bankruptcy, at least once every three months.

**ARTICLE (746)**

1. The properties of the bankruptcy may not be sold, during the period of preliminary proceedings, however, as requested by the trustee in bankruptcy, the judge of bankruptcy may permit the sale of the things exposed for quick damage, or fast depreciation in the value, or whose maintenance needs heavy expenses. Permission for selling the properties of the bankruptcy may also be given, if the sale is necessary for obtaining funds to spend on its affairs, or if the sale realizes a certain benefit for the creditors or for the bankrupt, and in the last case, sale may not be permitted except after the opinion of the controller has been taken and the statements of the bankrupt have been heard or after he has been notified of the sale.
2. The sale of the movable shall be effected in the manner indicated by the judge of the bankruptcy, however; the sale of the realty shall be effected in accordance with the rules provided for in the execution made on realty, under the civil procedures law.
3. The decision issued by the judge of bankruptcy for selling the properties of the bankrupt may be objected by challenge.

**ARTICLE (747)**

1. After the opinion of the controller is taken, and the statements of the bankrupt have been heard or after he has been notified, the judge of the bankruptcy may authorize the trustee in bankruptcy to make the composition or to accept the arbitration in any dispute related to the bankruptcy, even if it related to real estate rights or actions.
2. If the disputed amount is not indicated, or if its value exceeds Dhs. (10,000) ten thousand dirhams, the preventive composition or the acceptance of the arbitration, shall not become effective except after its conditions have been authenticated by the judge of the bankruptcy. The bankrupt shall be served with a summons to appear, and the judge of the bankruptcy shall hear his statements upon his appearance.
3. The trustee in bankruptcy shall not assign any right for the bankrupt, nor shall he acknowledge any right of a third party, except under the conditions indicated in the two preceding paragraphs.
4. If the decision, issued by the judge of the bankruptcy, has rejected the authentication of the composition or the arbitration it may be challenged.

**ARTICLE (748)**

1. As requested by the trustee in bankruptcy or by the bankrupt, and after the opinion of the controller is taken, the judge of the bankruptcy may give the permission to continue with the operation of the trading store, if it serves the public interest or the

interest of the debtor or the creditors.

2. As proposed by the trustee, the judge of the bankruptcy shall appoint someone to administer the trading store and its rent. The bankrupt may be appointed to take charge of the administration, and the fee obtained by him shall be considered as subsidy to him.
3. The trustee in bankruptcy shall exercise control over the person whom he appoints for administration and shall submit a monthly report, to the judge of bankruptcy, on the progress of the business.
4. The bankrupt and the trustee in bankruptcy may challenge the decision that calls for discontinuity of the operation of the trading store.

**ARTICLE (749)**

1. In the case of the bankrupt's death, his successors shall replace him, in the procedures of bankruptcy, and they can appoint someone to represent them in this matter. However, if they fail to agree on someone to represent them, the judge of the bankruptcy, as requested by the trustee in bankruptcy, may do so; and at any time, the judge may remove the representative of the successors and appoint replacement for him.

**ARTICLE (750)**

1. The amount collected by the trustee of the bankruptcy in its favour shall be deposited with the court's treasury or with the bank indicated by the judge of bankruptcy, on the day of collection, or on the first working day that follows the deduction of the amounts appropriated for expenses. The trustee in bankruptcy shall submit to the judge of bankruptcy a statement of account on such amount, within five days from the date of the deposit being made.
2. Such amounts or other amounts deposited by third parties in favour of the bankruptcy, may not be drawn except by an order from the judge of the bankruptcy.

**ARTICLE (751)**

1. The judge of the bankruptcy, if necessary, and after the opinion of the controller is taken, may order that the distributions should be made among the creditors whose debts have been realized. The distribution shall be in accordance with a list, to be prepared by the trustee of the bankruptcy and marked by the judge of the bankruptcy, that the distribution has been made.
2. The bankrupt and any one with interest, may challenge the decision given by the judge of the bankruptcy for making the distributions among the creditors.

**SECTION 2**  
**REALIZATION OF DEBTS**

**ARTICLE (752)**

1. All the creditors, even if their debts are guaranteed by collateral securities, or established by decisive judgements, shall hand over to the trustee of bankruptcy, after the adjudication of the bankruptcy declaration has been issued, their debts accompanied with a statement on such debts and their amount on the basis of the exchange rate, prevailing on the day on which the adjudication of the bankruptcy declaration has been issued. The statement shall be signed by the creditor or his agent and receipt to the effect that he has received the statement and the debt documents shall be made by the trustee in bankruptcy.
2. The Statement and the documents may be sent to the trustee in bankruptcy.
3. The trustee in bankruptcy shall return the documents to the creditors, after the closure of the bankruptcy, and shall be responsible therefor for a period of one year from the date of its closure.

**ARTICLE (753)**

1. If all creditors whose names are recorded in the balance sheet, fail to submit documents of their debts, within ten days following the publication of the adjudication of the bankruptcy declaration in the local newspapers, the trustee in bankruptcy ought to publish , in a daily newspaper as required by the judge of the bankruptcy, a notice for the creditors to submit their documents accompanied with the statement referred to in the preceding article, with a notification to be served on the creditors whose addresses are known .
2. The creditors shall submit documents of their debts accompanied with the statement, within ten days from the date of publication in the newspapers, and a period of one month shall be given to the creditors living abroad.

**ARTICLE (754)**

1. The trustee in bankruptcy shall realize the debts with the assistance of the controller, in the presence of the bankrupt or after he has been notified of presence.
2. If the trustee in bankruptcy or the controller or the bankrupt, objects to any of the debt, its amount or its collateral, the trustee in bankruptcy ought to notify the creditor, of that immediately.  
The creditor may submit written or verbal explanations, within ten days from the date of the notification being received, and a period of thirty days shall be given for the creditor if he is living abroad.



3. The debts held due to the government, as taxes of different kinds shall not be subject for realization.

**ARTICLE (755)**

1. The trustee in bankruptcy, after the realization of the debts, shall deposit with the court, a list showing the debts, their documents and reasons for objection thereto, and his remarks on the acceptance or rejection thereof, and shall deposit a list of the names of creditors, who claim particular securities on the properties of the bankrupt, showing the amount of such debts and kind of such securities and the funds appropriated thereto.
2. Such deposit shall be made within sixty days, at the most, from the date of the adjudication of the bankruptcy declaration; however the period may be made longer, if necessary, upon a decision issued by the judge of the bankruptcy.

**ARTICLE (756)**

1. The bankrupt and any creditor whose name is mentioned in the list of debts, shall object to the debts in the list, within ten days from the date of publication in the newspapers of the deposit having taken place. A period of thirty days shall be given, if the creditor is living abroad. The objection shall be brought before the judge of the bankruptcy, and may be sent by a registered letter or by cable.

**ARTICLE (757)**

1. After the expiry of the period provided for in the preceding article, the judge of bankruptcy may draw a final list of the unobjected debts, and mark the statement accompanied with the documents of such debts, indicating their acceptance and the amount accepted from each debt.
2. The judge of bankruptcy may consider the debt to be objected, even if no objection has been made in respect thereof.
3. The judge of the bankruptcy shall decide in the objected debts within thirty days from the date of expiry of the period given for objection.
4. The judge of the bankruptcy shall notify the parties concerned, of the time of the session, at least three days before its being held, and shall notify them of the decision given on the objection with immediate effect.

**ARTICLE (758)**

1. The decision issued by the judge of the bankruptcy, for acceptance or rejection of the debt may be challenged.

2. The challenge may not stop the proceeding of bankruptcy, unless the court has ordered for same.
3. Before a decision is given in the challenge, the court may order the acceptance of the debt temporarily, at an amount to be estimated by it.
4. The debt may not be accepted temporarily if a penal action has been filed in respect thereof.
5. If the challenge to the debt is related to its collateral, it shall be accepted temporarily as an ordinary debt.
6. The creditor whose debt has not finally or temporarily been accepted shall not take part in the bankruptcy procedures.

#### **ARTICLE (759)**

1. The creditors who have failed to submit their demand within the legal period, shall not take part in the current distributions, ; however , they may raise objection until the distribution of money is completed. Moreover, they shall bear the expenses of such objection .
2. The stay of execution in respect of the distributions ordered by the judge of the bankruptcy shall not come forward as result of such objection. However, the said creditors may take part in the new distributions, based on the amounts temporarily estimated by judge of the bankruptcy, and their shares shall be retained until the decision in the objection has been given.
3. If their debts have been established thereafter, they may not claim shares in the distribution that has been made; however, they may take from the remaining amount without distribution , the shares of their debts which would have devolved to them, had they taken part in the previous distributions.

### **SECTION 3**

#### **CLOSURE OF BANKRUPTCY FOR LACK OF FUNDS**

#### **ARTICLE (760)**

1. If the proceedings of the bankruptcy have stopped for lack of funds, before having had the preventive composition or the state of consolidation, been ratified , the court may order its closure, spontaneously or upon a report from the judge of the bankruptcy.
2. As a result of the decision to close the bankruptcy for lack of funds, each creditor

shall have the right to take the actions and to proceed with individual cases against the bankrupt.

3. If the debt of the creditor has been realized and finally accepted in the bankruptcy, he may carry the execution against the properties of the bankrupt, according to an order of settlement given by the judge of the bankruptcy including the amount of the debt and its final acceptance and the decision for closure of the bankruptcy due to lack of funds.

#### **ARTICLE (761)**

1. The bankrupt and any person of interest may, at any time, request from the court to cancel the decision for closure of the bankruptcy for lack of funds, if it is established that the funds are sufficient to meet the expenses of the bankruptcy, or if a sufficient amount has been handed over to the trustee of the bankruptcy for that purpose.
2. The court may either spontaneously or as requested by the judge of the bankruptcy, reopen the bankruptcy and continue with its procedures.
3. In all cases, expenses of procedures made in accordance with the two preceding paragraphs shall be paid on priority basis.

### **CHAPTER V** **TERMINATION OF BANKRUPTCY**

#### **SECTION 1** **DISINTEREST OF CREDITORS**

#### **ARTICLE (762)**

After the list of debts referred to in Article (757) has been made, the court, at any time and at the request of the bankrupt, may order that the bankruptcy should be terminated, if there is an evidence that he has satisfied all debts of the creditors who have been introduced into the bankruptcy or if he has deposited with the trustee in bankruptcy, the necessary amount for settlement of such debts from the principal, interest and expenses of the bankruptcy.

#### **ARTICLE (763)**

1. The court may not decide that the bankruptcy should be terminated, if the interest of the creditors no longer exist, except after having recognized the report given by the judge of the bankruptcy showing that one of the two conditions indicated in the preceding article , has been materialized.
2. The bankruptcy shall be terminated, once the decision has been issued, and the bankrupt shall recover all of his rights except what is needed for a judgement of

rehabilitation to be issued.

**SECTION 2**  
**JUDICIAL COMPOSITION**

**ARTICLE (764)**

1. The judge of bankruptcy shall invite the creditor whose debts have been finally or provisionally accepted, to attend the deliberations in the composition.
2. The invitation shall be addressed to the composition meeting in case that no objection to the debts has been received within seven days following the list of debts referred to in Article (757) . However, in case that the objection occurs, the invitation shall be addressed, within fifteen days following the expiry of the period fixed for the challenge, before the judge of the bankruptcy, against the last decision issued by him in respect of acceptance or rejection of the debts.
3. The trustee in bankruptcy, within the period provided for in the preceding paragraph, shall publish the initiation for attending the deliberations on the composition, in a daily newspaper as indicated by the judge of the bankruptcy.

**ARTICLE (765)**

1. The compositions meeting shall be held under the chairmanship of the judge of bankruptcy, at such place and time as indicated by him.
2. The meeting shall be attended by the creditors themselves or by proxies authorized for this purpose.
3. The bankrupt shall be invited to attend the meeting, and he may not appoint anyone on his behalf, except for such serious reasons as accepted by the judge of the bankruptcy. However, if he is detained, he shall be permitted to attend the meeting by order from the judge.

**ARTICLE (766)**

1. The trustee in bankruptcy shall submit to the composition meeting a report on the state of the bankruptcy and the last procedures taken in respect thereof, and the proposal made by the bankrupt regarding the composition and comments of the trustee thereon.
2. The report made by the trustee in bankruptcy shall be read out, before the composition meeting, and shall be duly signed and handed over by him to the judge of the bankruptcy, and statements of the bankrupt shall be heard and a minute of the

meeting shall be taken by the judge of the bankruptcy.

**ARTICLE (767)**

1. The composition shall not be made, except if it is approved by a number of the creditors, representing the numerical majority and holding two thirds of the debts the have been finally or provisionally accepted.
2. The creditor who absents himself from the meeting of the composition is considered to be objector thereto.

**ARTICLE (768)**

1. The spouse of the bankrupt or his relatives or his in - laws, upto fourth degree, to whom the bankrupt is indebted, may not take part in the deliberation of the composition or vote for its conditions.
2. If any such creditor assigns his debt to a third party after the adjudication of the bankruptcy has been issued, the assignee may not take part in the deliberations of the composition or vote for it.

**ARTICLE (769)**

1. The creditors having real collateral on the properties of the bankrupt, may not vote in the composition on account of their debts secured by the said collateral, except if they assign such collateral in advance, and if such assignment is mentioned in the minute of the session.
2. If any of the said creditors mentioned in the preceding paragraph, takes part in voting for the composition without declaring his assignment of the collateral, it shall be considered an assignment of the collateral.
3. However, in all cases, the assignment of the collateral shall not be considered final except if the composition has been approved.
4. If the composition becomes void, the collateral included in the assignment shall be restored.

**ARTICLE (770)**

1. The minute of the composition shall be signed at the session, in which voting thereto has been made, even if the composition becomes void.
2. If either one of the two majorities provided for in Article (767), has not been realized, the deliberations shall be extended for another ten days without giving any further grace period.

3. The creditors who have attended the first meeting by themselves or through representatives and signed the minute of the session, may not attend the second meeting , and in such case, their approval for the composition given in the first meeting shall remain effective in the second meeting, unless they have attended such meeting and amended their previous approval, or if the debtor has introduced a substantial change to his proposals concerning the composition, during the period between the two meetings.

**ARTICLE (771)**

Composition may not be made with a bankrupt who has been countermand to a punishment in the fraudulent bankruptcy, an if and enquiry with the bankrupt involved in this crime begins, the deliberations in the composition shall be postponed.

**ARTICLE (772)**

1. The judgement passed against the bankrupt in a punishment of bankruptcy by negligence, shall not prevent the composition with him.
2. If an enquiry with the bankrupt condemned in this crime has started, the creditors may proceed with the deliberation in the composition or may postpone the deliberation.

**ARTICLE (773)**

1. The composition may grant the debtor extended periods for settlement of the debts, and may include an assignment to the debtor over a part of the debt; however, the debtor shall remain liable for the part that has been included in the assignment, being a natural debt.
2. The composition may be made on condition of settlement, if the debtor becomes solvent within five years from the date on which the composition occurs, and the debtor shall not be considered a solvent unless the value of his assets exceeds the debts due from him .
3. The creditors may apply for supplying one or more guarantors as a surety for implementing the conditions of the composition.

**ARTICLE (774)**

1. The judge of the bankruptcy shall submit the minutes of the composition to the court that has declared the bankruptcy for approval, and any one who has been a party to the composition may also apply for its approval.
2. Any one having interest, shall inform the judge of the bankruptcy in writing, of his remarks on the composition, within five days from the date of the minutes being signed.

3. The court, within three days from the lapse of the period mentioned in the preceding paragraph, shall make a decision for nullifying or approving the composition.
4. The decision for nullifying the composition shall be causative, and such decision shall be challengeable.
5. The composition shall become effective, once the decision for approval thereto, has been issued, and the controller of the bankruptcy shall ensure that its conditions are put into execution; however, if the bankruptcy has no controller, the court shall appoint a controller to ensure that the conditions of the composition have been implemented.

**ARTICLE (775)**

1. The composition shall be applied to the creditors who comprise the body of the creditors, as well as to those who have not taken part in its proceedings, nor have agreed to it.
2. The composition shall not apply to the creditors having liens and pledges, if they have not assigned them, nor shall apply to the ordinary creditors whose debts have ensued, during the period of bankruptcy.

**ARTICLE (776)**

1. The decision for approval of the composition shall be declared in a manner similar to that in which the adjudication of bankruptcy is declared, and the extract published in the newspapers shall include the name of the debtor, place of his residence, number of his entry in the commercial register, the date for approval of the decision, and a summary of the most important conditions of the composition.
2. Within ten days from the date of the court's decision issued for approval of the composition, the trustee in bankruptcy shall arrange to register the extract in the name of the composition controller, in his capacity as a representative for the creditors, with each registration department in the area where the realty of the insolvent exists, and as result of such registration, a mortgage on the said realty shall be created to secure the right of the creditors who are governed by the terms of the composition, and the controller shall apply for writing off the debts, after putting the conditions of the composition into execution.
3. Subject to the provisions of Article (48), hereunder, and within the period stated in the preceding paragraph, the trustee in bankruptcy shall record the brief of judgment for approval of the composition, in the name of the controller, in his capacity as a representative for the creditors, with the commercial register office, in

which area the bankrupt's place of business exists, and a result of such entry being made, a mortgage on the basic components of the trade store shall be created as a surety to safeguard the interests of the creditors who are governed by the terms of the composition, and the controller shall write off the mortgage after having the conditions of the composition implemented.

**ARTICLE (777)**

1. Except for deprivation of the rights provided for under specific laws, all effects of bankruptcy shall no longer exist, once the court's decision for approval of the composition has been issued, however the right for prosecution shall remain unaffected.
2. The trustee in bankruptcy shall present to the bankrupt a final account, and the discussion of such account shall be made in the presence of the judge of bankruptcy.
3. The duty of the trustee in bankruptcy shall expire, and the bankrupt shall take over from him, his properties, books and papers, according to a receipt, and the trustee shall not be responsible for these things if the bankrupt fails to receive them within one year from the date for approval of the final account.
4. The judge of bankruptcy shall make a minute of all occurrences stated hereinabove, and if a dispute arises, it shall be referred by the judge of bankruptcy to the court for giving a decision therein.

**ARTICLE (778)**

1. The composition shall be null and void, if, after approval thereto, a judgement has condemned the bankrupt in any criminal case of the fraudulent bankruptcy.
2. The composition shall be null and void, if after approval thereto, it appears that a fraud has arisen from concealing the assets of the bankrupt, or from the excess of his debts, and in such a case, it shall be applied for invalidity of the composition with six months, as of the date on which the fraud appears to have occurred; otherwise the application shall become unacceptable. However, in all cases, the application for invalidity of the composition shall be acceptable, if it is submitted after the lapse of three years from the date of the decision for approval of the composition being issued.
3. As a result of the invalidity of the composition, the guarantor who secures the performance of its conditions shall be acquitted.

**ARTICLE (779)**

If an enquiry opens with the bankrupt in a crime of fraudulent bankruptcy after the



composition has been approved, or if a penal action in such crime has been filed against him, after the composition has been approved, the court that has declared the bankruptcy, at the request of any interested party, may order that such measures, as it considers necessary, should be taken to preserve the property to the debtor, and such measures shall be cancelled ipso jure, if it is decided that the enquiry be filed or the bankrupt be acquitted.

**ARTICLE (780)**

1. If the bankrupt fails to execute the conditions of the composition, an appeal for termination may be made to the court who has approved it.
2. Following the termination of the composition, the guarantor who has insured the execution of its conditions, shall not be acquitted, and shall be served with a summons to attend the session in which the appeal for termination shall be heard.

**ARTICLE (781)**

1. In the ruling issued for nullity or termination of the composition, the court shall appoint a judge and a trustee in bankruptcy, and shall order the sealing of the bankrupt's property.
2. Within seven days from the date of the judgement being issued for nullity or termination of the composition, the trustee in bankruptcy shall publish a brief of such judgment, in a daily newspaper as indicated by the judge of the bankruptcy.
3. The trustee in bankruptcy shall make a supplementary inventory for the property of the bankrupt and shall draw up an additional balance sheet, in presence of the judge or whomever he deputizes therefor.
4. The trustee in bankruptcy shall call upon the new creditors, to submit documents of their debts in order to be realized in accordance with the procedures for realization of the debts.

**ARTICLE (782)**

All new debts shall be realized immediately, whereas the debts that have already been accepted shall not be re-realized, and debts that have been fully paid shall be discarded, and debts that have been partly paid shall be reduced.

**ARTICLE (783)**

Disposal made by the debtor, after the decision issued for approval of the composition, and before its nullity or termination, shall be valid for the creditors and they may not apply for its invalidity except in accordance with the rules prescribed, in the civil transactions Law

on the action for invalidity of the disposal, and such action shall not come for hearing except after two years from the nullity or termination of the composition.

**ARTICLE (784)**

1. After the composition has been nullified or terminated, the creditors shall recover their dues in full.
2. Those creditors shall join the body of the creditors, by virtue of their principal debts in full, if they have not received anything from the amount that has been decided for them in the composition, otherwise their principal debts shall be reduced in proportion of what they have obtained from the said amount.
3. The provisions mentioned in the preceding two paragraphs shall be apply, if the bankruptcy of the debtors has been declared once again, before the conditions of the composition had been fully executed.

**SECTION 3**  
**COMPOSITION AND WAIVER OF THE PROPERTY**

**ARTICLE (785)**

1. The composition may be made, provided that the debtor waives his property in whole or in part, by selling and distribution of its proceeds among the creditors.
2. The provisions of the juridical composition shall apply to the conditions, effects, nullity and termination of the composition. Yet the debtor shall be prevented from the administration of his property waived by him as well as from the disposal thereof.
3. Such property shall be sold and the proceeds therefrom shall be distributed as indicated for the sale ad distribution of the property, in the state of the consolidation.

**ARTICLE (786)**

If the resultant proceeds from the sale of the property waived by the debtor exceed the debts due from him, the excess amount shall be returned to him.

**SECTION 4**  
**COMBINATION OF CREDITORS**

**ARTICLE (787)**

The creditors shall be considered in a state of union, ipso jure if the juridical composition has not been made.

**ARTICLE (788)**

1. Following the establishment of the union, the judge of bankruptcy shall call upon the creditors for deliberating over the affairs of the bankruptcy, and to see whether to keep the trustee or to change him. However the creditors, having real deposits placed on the bankrupt's properties, shall take part in such deliberations as well as voting, however, their deposits shall not be extinguished as a result of that.
2. If the majority of the creditors who are present, decide the change of the trustee in bankruptcy, the judge of the bankruptcy shall immediately appoint the replacement for him, and the new trustee shall be called (the trustee of the creditors' union).
3. The previous trustee, shall submit to the trustee of the union, at such time as determined by the judge of the bankruptcy and in his presence, an account on his administration, and the time fixed for making such account shall be notified to the debtor.

**ARTICLE (789)**

1. The creditors' opinion shall be taken, during the meeting indicated in the preceding article, on the question of a subsidy, to be given from the bankruptcy funds to the debtor or to whom he supports.
2. If the majority of the creditors, who are present, agree on the subsidy to be given to the bankrupt or to whom he supports, the judge of the bankruptcy, after taking the opinion of the trustee of the union and opinion of the controller, shall determine the amount of such subsidy.
3. The trustee of the union may solely challenge the decision made by the judge of the bankruptcy for determining the amount of the subsidy. However, in this case, the subsidy shall be dispensed to whom it is decided until a decision is given in the challenge.

**ARTICLE (790)**

1. The trustee of the union may not continue on with the business of the debtor, although he has already been permitted to do so, except after obtaining an authority, given by a majority, representing three quarters of the creditors, as to the number and the amount, and such authority shall specify its term and the power of the trustee as well as the amount that he may keep at his disposal in order to operate the business.
2. The authority to continue with the business may not be carried into execution, except after the approval is given by the judge of the bankruptcy.

3. If obligations in excess of the union's funds arise from the continuation of the business, the creditors who have agreed to continue with the business shall be severally responsible in their own funds, for the excess, provided however that such excess arises from acts, within the limits of the authority given by them, and the responsibility of each creditor shall be in proportion to his debt.

**ARTICLE (791)**

1. The trustee of the union may sell the movables of the bankrupt, and his place of business, in order to recover his dues, however, the real estates of the bankrupt shall be sold by the trustee of the union and under the supervision of the judge of the bankruptcy, in accordance with the rules of execution carried on the real estates as provided for in the civil transactions law.
2. If the execution has not been made on the real estates of the debtor prior to the formation of the union, the trustee shall solely have the right to levy the execution thereon and commencement of same shall be within the following ten days of the formation of the union, unless the judge of the bankruptcy gives an order for postponement of the execution.
3. The trustee, may enter into composition and accept the arbitration in all the rights of the bankrupt, subject however, to the rules provided for, in Article (747) except for calling the bankrupt to attend the attestation of the composition or the arbitration.

**ARTICLE (792)**

1. The judge of the bankruptcy may show the trustee of the union the manner for selling the movables of the bankrupt and his place of business.
2. The trustee of the union may not sell the assets of the bankruptcy at one time against a lumpsum amount, except after taking the permission from the judge of the bankruptcy. However, the judge may not give such permission except after taking the opinion of the controller.
3. Any interested person may challenge the decision given by the judge of the bankruptcy, in respect of the manner for selling the movables of the bankrupt, or the permission for selling his properties at one time against a lumpsum amount, however, the incident of challenge shall stop the execution of the decision.

**ARTICLE (793)**

1. The trustee of the union, shall deposit the amounts resulting from the selling of the bankrupt's property with the court's treasury or with any bank designated by the judge of the bankruptcy, at a time not later than the day following the collection.

2. The trustee shall submit, to the judge of the bankruptcy a monthly statement on the position of the liquidation and the amounts deposited.
3. Such amounts may not be withdrawn except by an order from the judge of the bankruptcy.

**ARTICLE (794)**

1. The fees, expenses of the bankruptcy administration, and the subsidies prescribed to the bankrupt and to whom he supports, and the amounts due to the preferred creditors, shall be deducted from the amounts resulting from the sale of the bankrupt's property, and the remainder shall be divided among the creditors in proportion to their realized debts.
2. The shares of the debts objected to, shall be put aside and shall remain in safekeeping, until a final decision is given in respect of such debts.

**ARTICLE (795)**

The judge of the bankruptcy shall order that the distributions among the creditors be made, and shall specify the amount to be distributed, and a notification to this effect shall be sent by the trustee of the union, to the creditors, and, if necessary, the judge of the bankruptcy shall order that the decision of distribution be published in a daily newspaper as designated by him.

**ARTICLE (796)**

1. The trustee of the union may not pay the shares, except if the creditor has produced a debenture showing that it has been realized and accepted, and the amounts paid must be indicated on the debenture.
2. If the creditor is unable to produce the debenture, the judge of the bankruptcy may give permission for payment of the debt after verification of its acceptance.

**ARTICLE (797)**

If a period of six months has passed since the formation of the union, and the affairs of the bankruptcy have not yet been completed, the trustee shall submit to the judge of the bankruptcy a report on the position of the liquidation and the reason the completion has been delayed, and the judge shall send such a report to the creditors, and call them for a meeting to discuss the same. However, such procedure shall be made every time the period of six months expire, so long as the liquidation work is not yet completed by the trustee.

**ARTICLE (798)**

1. After the work of liquidation is completed, the trustee of the union shall submit a final account to the judge of the bankruptcy, and the judge shall send copies of such account to the creditors or shall call them to have access thereto, after having it

displayed on a notice board at the court of law. However, in both cases, the judge shall convene the creditors for a meeting to discuss the said account, and the bankrupt shall be called to be present in the meeting.

2. The union shall be dissolved and the bankruptcy shall be considered over, ipso jure, after having the account approved.
3. The responsibility of the trustee of the union shall remain valid for one year from the date of the bankruptcy having ended, and shall include the bonds, documents and the papers handed over to him.

#### **ARTICLE (799)**

After expiry of the union formation each creditor shall recover the right to carry the execution against the debtor for obtaining the remainder of his debt.

Acceptance of the debt in the bankruptcy shall be considered a conclusive judgement in connection with such execution.

### **CHAPTER VI** **MINOR BANKRUPTCIES**

#### **ARTICLE (800)**

If it appears, after the inventory of the bankrupt's property, that its value does not exceed Dhs. 50,000 (fifty thousand), the judge of the bankruptcy may spontaneously, or as requested by the trustee or any of the creditors, order to proceed with the bankruptcy, in accordance with the following provisions, in whole or in part :

1. The periods provided for in Articles (753), (754) paragraph 2, (755) paragraph 2 (756), (757), paragraph 3 and (770) paragraph 2, shall be reduced by half.
2. All decisions made by the judge of the bankruptcy shall be unchallengeable.
3. Supervisor of bankruptcy shall not be appointed.
4. Subsidy to the bankrupt or to whom he supports shall not be decided.
5. In the case of the objection to the debts, when realized, the creditors shall be convened for deliberations on the composition, within five days from the date the judge of bankruptcy gives a final decision in the objections.
6. The composition shall become effective upon approval thereto in the meeting of the creditors, and shall be ratified by the judge of the bankruptcy in such meeting.
7. The trustee in bankruptcy shall not be changed upon the formation of the union.

8. After selling of the bankruptcy, one distribution only shall be made among the creditors.

## **CHAPTER VII** **BANKRUPTCY OF COMPANIES**

### **ARTICLE (801)**

In addition to the rules provided for in this chapter, the bankruptcy of companies shall be governed by the rules provided for in the following articles:

### **ARTICLE (802)**

1. Except for the joint venture companies, any other trading company may be declared bankrupt, if it ceases payment of its debts, at the times of maturity, due to the instability of its financial activities.
2. The bankruptcy of a company may be declared, even in the case of liquidation. However, if the company has been liquidated, the declaration of its bankruptcy may not be adjudicated.
3. The aforesaid judgements shall apply to the companies that have been adjudicated invalid if they continue to exist indeed.

### **ARTICLE (803)**

The following shall be adopted, in respect of the joint stock companies and limited liability companies :-

1. If the declaration of bankruptcy of a company has been applied for, the decision in any such application relevant to the liquidation or placement of the company under receivership, shall be suspended.
2. If the declaration of a company has been adjudicated, it may not be liquidated or placed under receivership before the end of bankruptcy.

### **ARTICLE (804)**

1. Neither the manager of the company nor the liquidator, as the case may be, shall apply for declaration of bankruptcy of a company, except after obtaining a permission to do so from the majority of the partners in the joint liability companies and limited partnership companies, however other companies, may obtain permission from the general assembly in an extraordinary meeting.
2. The report referred to in Article (649) shall be brought to the court having

jurisdiction over the declaration of bankruptcy.

3. The report shall include the names of the current joint partners, and those who have left the company after it has suspended the payment showing the place of residence of each one and date for declaration of his withdrawal from the company, in the commercial register.

#### **ARTICLE (805)**

The creditor of a company may apply for declaration of its insolvency, although he is a partner therein, however, non-creditor partners, in their individual capacity, may not apply for declaration of insolvency of the company.

#### **ARTICLE (806)**

The court, either spontaneously or as requested by the company, may postpone the declaration of insolvency of a company for a period of not more than a year, if its financial position is likely to be supported, or if the interest of the national economy so requires. And in this case, the court orders that appropriate measures should be taken for maintaining the assets of the company.

#### **ARTICLE (807)**

1. If the insolvency of a company has been declared, all joint partners therein, and those who have withdrawn from the company after it has suspended the payment, shall be declared insolvent, provided that a period of not more than a year has elapsed since the declaration of his withdrawal from the company is entered in the commercial register.
2. The court shall pass one adjudication on the declaration of bankruptcy of the joint partners, even if it is not specialized to declare the bankruptcy of such partners.
3. The court shall appoint one judge to the bankruptcy of the company and the bankruptcies of the joint partners. Yet each bankruptcy shall be independent from other bankruptcies as to its administration and realization of its debts and the manner of its termination.

#### **ARTICLE (808)**

If declaration of bankruptcy of the company has been applied for, the court may adjudicate the declaration of bankruptcy of each person who has carried out commercial works on its behalf, in his favour, and disposed of its property as if they have been his own property.

#### **ARTICLE (809)**

If it appears that the assets of the company is insufficient to satisfy at least 20% (twenty per



cent) of its debts, the court who has declared the bankruptcy may order the members of the boards of directors, or all of the directors, jointly or severally, to pay the debts of the company, in whole or in part, in the cases where they are held responsible, in accordance with the rules of the Commercial Companies Law.

**ARTICLE (810)**

The representative of the company whose bankruptcy has been declared, shall act on its behalf in any matter where the law calls for the opinion of the bankrupt to be taken or his presence to be made. The representative of the company shall appear before the judge of the bankruptcy or the trustee, whenever he is required to do so, and shall give any information or explanations required from him.

**ARTICLE (811)**

The trustee in bankruptcy, after taking permission from its judge, may claim from the partners to pay the remaining part of their shares, even before the time of maturity. The judge of bankruptcy may order that such claim be limited to the necessary amount required for fulfilling the obligations of the company.

**ARTICLE (812)**

Debentures issued by the company as provided for in the Commercial Companies Law, shall not be governed by the procedures set for realization of debts, however, such debentures are accepted in their nominal value, after discount of what the company has paid.

**ARTICLE (813)**

1. Proposals for composition are offered, with approval representing the majority of the partners in the joint liability companies and limited partnership companies, and with the approval of the general assembly in an extraordinary meeting, for other companies.
2. Representative of the company shall make proposals for the composition in the assembly of the creditors.

**ARTICLE (814)**

1. If the composition is meant for a company that has issued debentures, in excess of 20% (twenty per cent) of its total debts, composition may not be granted to it, unless its conditions are approved by the general assembly for the holders of such debentures; however the approval shall be essential, in all cases, if the conditions of the composition are different from those governing debenture bonds.
2. The decision by the general assembly for the holders of debentures shall be given, in accordance with the terms provided for in the Commercial Companies Law.

3. In the cases where the approval of the general assembly for the holders of debentures is essential, the invitation of the creditors for the meeting to negotiate the composition, shall be postponed until the decision of the assembly is made.

#### **ARTICLE (815)**

1. If the bankruptcy has ended with the union, and composition has been made with one or more of the joint partners, properties of the company may not be appropriated to fulfill the conditions of such composition or to secure its implementation, and the partner who has obtained the composition shall be discharged of the joint obligation.
2. If a composition with the company has been made, and the bankruptcies of the joint partners have ended with a union, the company shall continue to exist, unless the aim of the composition is to waive its property.
3. If the bankruptcy of the company and bankruptcies of the partners have ended with the composition, each composition shall be considered independent from the other, and its conditions shall only apply to the creditors of the relevant bankruptcy.

#### **ARTICLE (816)**

1. The company shall not be dissolved when its bankruptcy ends with the union, yet, the court that has declared the bankruptcy, may decide that the company should be dissolved, if it appears that its remaining assets after the liquidation is insufficient to carry on with its business effectively.

### **CHAPTER VIII** **REHABILITATION OF THE BANKRUPT**

#### **ARTICLE (817)**

Except for the fraudulent bankruptcy, all the rights that the bankrupt has been deprived of, as provided for in the private laws, shall be restored after the lapse of three years from the date on which the bankruptcy has ended.

#### **ARTICLE (818)**

1. The bankrupt shall be rehabilitated, even if the period provided for in the preceding article has not been revoked, if he discharges all of his debts including the principal amount, the expenses, and the interests, for one year, as well as the part of which he has been discharged from the obligation.
2. If the bankrupt is a joint partner in a company whose declaration of bankruptcy has been adjudicated, he shall not be rehabilitated except after all debts of the company

have been satisfied, including the principal amount, expenses and interests for a period of one year, even if the said partner has obtained his own composition from his creditors.

**ARTICLE (819)**

The bankrupt may be rehabilitated, although he has not breached the term provided for in Article (817) in the following two cases :

1. If he obtains a composition from his creditors and satisfies its conditions. However such provision shall apply to the joint partner in the company whose declaration of bankruptcy has been adjudicated, if the partner obtains a composition of his own and satisfies its conditions.
  
2. If he proves that the creditors have discharged him of all debts that have remained outstanding as liability after completion of the bankruptcy.

**ARTICLE (820)**

The bankrupt who has been condemned in any of the bankruptcy crimes by default, may not be rehabilitated except after the punishment passed against him, has been executed, or pardoned or extinguished by lapse of time or by lapse of its term, if a judgement for stay of its execution has been made, without prejudice, however, to the provisions of Articles (818), (819).

**ARTICLE (821)**

The bankrupt against whom a judgement of condemnation has been passed in any crime of fraudulent insolvency, may not be rehabilitated, except after the lapse of three years from the execution of the punishment passed against him, or from its pardonment, or from its extinguishment by lapse of time, provided that he has discharged all of his debts including the principal, interests, and expenses, or if he enters into a composition with the creditors.

**ARTICLE (822)**

The bankrupt may be rehabilitated after his death, at the request of the successors, and the periods provided for in the two preceding articles shall be computed from the date of the death.

**ARTICLE (823)**

If any of the creditors has abstained from receiving his debt, or if he has been absent, or if his place of residence was found to be inaccessible, the debt may be deposited with the court's treasury, and the receipt of deposit in connection with the rehabilitation shall be treated as a discharge of obligation.

**ARTICLE (824)**

1. The application of rehabilitation shall be submitted with the supporting documents to the court that has passed the adjudication for declaration of the bankruptcy.
2. The court shall immediately send a copy of the application to the public prosecution as well as to the department of the commercial registration and shall inform the creditors whose debts have been accepted in the bankruptcy of such application.
3. A brief of the application shall be published at the cost of the bankrupt, in a daily newspaper designated by the court, and such brief shall include the name of the bankrupt, date on which the adjudication for the declaration of bankruptcy has been issued, and the manner in which the bankruptcy has ended, and the notice served upon the creditors for submitting their objection, if necessary.

**ARTICLE (825)**

Within thirty days from the date on which a copy of the application for rehabilitation has been received by it, the public prosecution shall submit to the court a report containing data on the kind of bankruptcy, and the adjudications issued against the bankrupt in the crimes of bankruptcy, or the trials or the investigations conducted with him in this connection, and its opinion on acceptance or rejection of the application for rehabilitation, provided that such opinion is productive.

**ARTICLE (826)**

Any creditor who has not received his right shall make an objection to the application for rehabilitation, within thirty days from the date of the application being published in the newspapers. Such objection shall be made in writing and submitted to the court, and the supporting documents shall be attached thereto.

**ARTICLE (827)**

After the expiry of the period provided for in the preceding article, the court shall notify the creditors, who have made objections to the application for rehabilitation, of the date of hearing the application.

**ARTICLE (828)**

1. The court shall decide in the application for rehabilitation and its judgement shall be challengeable before the specialized court of appeal.
2. If the application fore rehabilitation has been rejected, it may not be submitted over again, except after the lapse of six months from the date of the decisive judgement being issued in rejection thereof.

**ARTICLE (829)**

If investigations are conducted with the bankrupt in connection with any of the bankruptcy

crimes, or if a penal action is being filed against him, before a decision has been made in the application for rehabilitation, the public prosecution shall notify the court immediately. The court shall suspend the decision being made on the application for rehabilitation until the investigations have been disposed of, or until the decisive judgement in the penal action has been given.

#### **ARTICLE (830)**

If a debtor has been condemned in any crime of bankruptcy, and a judgement against him has passed, after the judgement of rehabilitation, the latter judgement shall be treated as non-existing, and the debtor may not obtain the rehabilitation except under the conditions referred to in the Articles (820), (821).

### **PART TWO** **PROTECTIVE ARRANGEMENT FROM BANKRUPTCY**

#### **ARTICLE (831)**

1. Any person whose financial position has deteriorated to a limited that makes him unable to make the payment, or within twenty days following such inability, may apply of the protective arrangement from bankruptcy.
2. The person who becomes unable to honour the payment of this debts, although he has applied for declaration of insolvency, shall apply for the protective arrangement from the bankruptcy, if he satisfies the conditions stated in the preceding paragraph.
3. Except for the joint stock companies, protective arrangement from the bankruptcy may be granted to any company that satisfies the conditions provided for in the two preceding clauses. Yet such arrangement may not be granted to a company in a state of liquidation.

#### **ARTICLE (832)**

The protective arrangement from the bankruptcy may be granted to the factual company.

#### **ARTICLE (833)**

1. Application for the protective arrangement from the bankruptcy shall not be accepted unless the applicant has practised the business continuously during the year that precedes the submission of the application, and that during this period he has complied with the provisions related to the commercial register and commercial books.
2. The manager of the company may not apply for the arrangement, except after obtaining a permission to this effect from the majority of the partners in the joint

liability companies and limited partnership companies, and from the general assembly in an extra-ordinary meeting of other companies.

**ARTICLE (834)**

Those to whom the commercial store of the deceased has devolved either by succession or by a will, if they carry on with his business, shall apply for the protective arrangement in the three months following his death, provided that the trader, before his death, has been entitled for such arrangement, however, if any of them has objected to the application of arrangement, the court ought to hear his statements and then decides in the application in a manner that serves the interest of the concerned parties.

**ARTICLE (835)**

During the performance of a protective arrangement, the debtor may not re-apply for the arrangement.

**ARTICLE (836)**

The decision in any application for declaration of the bankruptcy of the debtor may not be made, except after a decisive judgement is given for rejection of the protective arrangement.

**ARTICLE (837)**

1. The application for the protective arrangement shall be submitted to the court having the specialization to declare the bankruptcy. Reasons for interruption of works and proposals for the arrangement and sureties to secure its performance, must be shown in the application, provided that the proposed settlement may not be less than 50% of the debt and that the term of payment may not exceed three years from the date on which the arrangement has been ratified.
2. The following shall be attached to the application for arrangement:
  - a. Documents in support of the points contained therein.
  - b. A certificate from the commercial register, in which it is proved that the rules of the register have been complied with, in the year that precedes the application for the arrangement.
  - c. A certificate from the chamber of commerce indicating that the practice of business has been going on in the year that precedes the application for arrangement.
  - d. Obligatory commercial books.
  - e. A copy of the last balance sheet and profit & loss accounts.
  - f. A comprehensive statement showing personal expenses in the year preceding the application for arrangement.
  - g. A detailed statement showing the movable and immovable property, and their approximate value at the time when the arrangement has been applied for.

- h. A list showing the names of creditors and debtors, their addresses, amount of their rights or obligations and bonds given as security therefor.
  - i. Acknowledgement by the debtor that he has never been sentenced in connection with any of the crimes provided for in Article (839/2), and that he has never obtained, at any time, a protective arrangement now being carried out.
3. If the application is made by a company, it should be attached with a copy of the articles of partnership and memorandum of incorporation duly attested by the department of the commercial register, and the documents showing the capacity of the applicant, and a copy of the resolution issued by the partners or by the general assembly in which they apply for the composition, and a list showing the names of the joint partners and their addresses.
4. The documents must be dated and signed by the applicant for the arrangement. However, if it is not possible to submit certain documents or to complete their particulars, the reasons for that, must be shown in the application.
5. The court's record clerk shall make a minute showing the receipt of the above mentioned documents.

#### **ARTICLE (838)**

The court hearing the application for arrangement, shall order those necessary measures that should be taken to insure the safe keeping of the debtor's property or maintain its administration until a decision in the application is made.

The court may also deputize an experienced person to make investigations on the financial position to the debtor and the reasons of its interruption and to submit a report to this effect. The court shall decide in the application for arrangement summarily and without litigation.

#### **ARTICLE (839)**

The court shall decide against the application for arrangement in the following cases:

1. If the applicant for the arrangement fails to submit the documents and particulars provided for in the article (837) or if they are submitted by him unjustifiably incomplete.
2. If a conclusive judgement has been made against the application for arrangement, in a fraudulent bankruptcy or in any crime of forgery, robbery, deception, dishonesty or misappropriation of public wealth.
3. If he fails to comply with his obligations in a previous protective arrangement.

4. If he declares his insolvency and fails to satisfy all the principal debts of his creditors, or if he fails to perform all obligations of the arrangement fully.
5. If the applicant relinquishes the business or takes to fleeing.
6. If the bonds supplied by the applicant of the arrangement are insufficient for distribution of the proposed average.

**ARTICLE (840)**

If the court decides against the application for arrangement, it may adjudge the tradesman to penalty of not less than Dhs (5000) five thousand and not more than (10,000) ten thousand, if it finds that he has purposely interrupted his financial position, or caused the disorder to occur. The court may spontaneously decide to declare the insolvency, if the necessary conditions therefor are made available.

**ARTICLE (841)**

1. If the court decides in favour of the application for arrangement, it shall order the opening of the proceedings, and the court in its decision shall appoint a judge to supervise the arrangement and a trustee or more for the arrangement, in order to initiate and follow up the proceedings of the arrangement, and its decision shall not be challengeable in any way.
2. The debtor shall deposit, with the court's treasury, a designated sum of money as a trust to meet the expenses of the proceedings, and the court shall order that the proceedings of the arrangement be cancelled or suspended if the debtor fails to deposit the trust within the period it has fixed.

**ARTICLE (842)**

Decisions issued by the judge who supervises the arrangement, may not be challenged, unless the law provides for its legality, or if they are beyond the limits of his powers. However, the rules provided for in Article (677) shall apply to the challenge.

**ARTICLE (843)**

The trustee of the arrangement shall be appointed according to Article (668) and shall be governed by the restrictions provided for in the Article (669).

**ARTICLE (844)**

1. The court shall notify the trustee in the arrangement of the decision issued for his appointment, at a time not later than the day following the decision being issued.
2. Within five days from the date on which the appointment has been notified to him,



the trustee shall make entry of the decision issued for opening the procedures of the arrangement in the commercial register, and shall publish a summary thereof accompanied with an invitation to the creditors for a meeting, in two daily newspapers as indicated by the supervising judge.

3. Within the period shown in the preceding paragraph, the trustee shall send the invitation for a meeting, through a notice to the creditors whose addresses are known, and the proposals of the arrangement shall be attached thereto.

**ARTICLE (845)**

1. Upon opening of the arrangement proceedings by a decision, the supervising judge shall close the debtor's books and put his signature thereon.
2. Upon receiving the notification of the appointment, the trustee shall immediately start the proceedings of inventory in the presence of the debtor and the court's clerk.

**ARTICLE (846)**

1. Upon the opening of the arrangement proceedings by a decision, the debtor shall continue to run the administration of his property, under the supervision of the trustee, and shall carry out all the routine acts needed for the running of his business, yet, the donations made by the debtor after the said decision had been issued, shall not apply to the creditors.
2. After the decision has been issued, the debtor may not borrow or enter into a composition or make a mortgage or convey the title of a property which is unnecessary for the running of his normal business work, except after obtaining the permission from the supervising judge. However, any act to the contrary, shall not be considered an argument against the creditors.

**ARTICLE (847)**

1. Upon the decision issued for opening of the arrangement proceedings, the actions and procedures of execution vis-a-vis the debtor, shall be suspended. However, the suspension shall not be beneficial to the debtors acting jointly with the debtor or his guarantors in the debt. Actions filed by the debtor and the procedures or execution initiated by him shall remain valid with the admission of the trustee therein.
2. The mortgages and liens on the properties of the debtor, of which entry is made after the decision has been issued for opening of the arrangement proceedings, may not be used as an argument vis-a-vis the creditors.

**ARTICLE (848)**

As a result of the decision issued for opening of the arrangement proceedings, the debts owned by the debtor shall not become due, nor the interests incident thereto shall cease to accrue.

**ARTICLE (849)**

If the debtor, after submission by him of the application for the composition, has concealed or destroyed part of his properties, or if he has acted with malice, causing harm to the creditors, or if he has acted in the manner shown in Article (645), the court may spontaneously order the cancellation of the arrangement proceedings.

**ARTICLE (850)**

1. All creditors, even if their debts are not mature, or secured with special sureties, or proven by conclusive judgement, shall hand over to the trustee in the arrangement, within ten days from the date on which the summary of the decision issued for opening the arrangement proceedings, has been published in the newspaper, or from the date on which the letter of notification has been received - the documents of the debts accompanied with a statement on such debts together with the sureties, if any, evaluated in the national currency on the basis of the prevailing rate of exchange on the day the decision has been made. However, statement and documents may be sent to the trustee.
2. The period shown in the preceding clause shall be thirty days for the creditors staying outside the country.

**ARTICLE (851)**

1. After the expiry of the period provided for in the preceding article, the trustee in the arrangement shall make a list of the creditors who have applied for participation in the arrangement proceedings, and a statement showing the amount of each debt separately, with the supporting documents, and the sureties given as security, if any, and any thing he deems to be necessary for acceptance or rejection thereof.
2. The trustee may demand from the creditor to submit notes on the debt or to supplement his documents or to amend the amount or nature of the debt.

**ARTICLE (852)**

1. The trustee in the arrangement shall deposit the list of the debts with the court. The deposit shall be made within thirty days, at the most, from the date of the decision being issued for opening the arrangement proceedings. However, when necessary, the period may be extended by a decision from the supervising judge.
2. The trustee in the arrangement, within the next three days following the deposit, shall publish a statement of such occurrence, in a local daily newspaper as specified by the supervising judge. The trustee shall send to the debtor as well as to each

creditor, a copy of the debts list and a statement showing the amounts which he considers to be accepted from each debt.

3. Any interested person may have access to the list deposited with the court.

#### **ARTICLE (853)**

The debtor and each creditor whose name is shown in the list of the debts, shall object to the debts listed therein, within a period of ten days from the date on which the occurrence of the deposit has been published in the newspapers, and the objection shall be submitted to the supervising judge, and may be sent by a registered letter, or by cable, or by telex or by fax or by other means of modern technical communications, however, the distance period shall not be added to the said period.

#### **ARTICLE (854)**

1. After the expiry of the period provided for in the preceding article, the supervising judge shall make a final list of the unobjected debts, and shall mark the statement of the debt showing its acceptance and the amount accepted thereof.
2. The supervising judge may consider the debt objected, even in absence of any objection thereto.
3. The supervising judge shall decide in the objected debts, within thirty days from the date of expiry of the period fixed for objection.
4. The supervising judge, shall notify the relevant parties of the time fixed for the session, at least three days before it has been held, and shall also notify them immediately of the decision given in the objection.

#### **ARTICLE (855)**

1. The decision issued by the supervising judge on acceptance or rejection of the debt, may be challenged before the court which the application for arrangement has been submitted to.
2. As a result of the challenge, the proceedings of the arrangement shall not be suspended unless the court gives an order to this effect.
3. Before a decision is made in the challenge, the court may order temporarily, that the debt be accepted as a certain amount as estimated by it.
4. The debt may not be accepted temporarily if a penal action has been filed in respect thereof.
5. If the challenge is related to the debt's securities, a temporary acceptance must be

made by describing it as an ordinary debt.

**ARTICLE (856)**

The creditors who fail to submit documents in support of their debts within the period stated in the Article (850), and the creditors whose debts have not been finally or temporarily accepted, may not participate in the proceedings of the composition.

**ARTICLE (857)**

1. After the debts have been completely realized, the supervising judge shall fix a time for the creditors to meet and deliberate over the proposals of the composition, and each creditor whose debt has finally or temporarily been accepted shall have an invitation sent to him.
2. The invitation may be published in the local daily newspaper according to an order from the supervising judge.

**ARTICLE (858)**

1. The trustee in the arrangement shall deposit with the court, at least five days before the time fixed for the meeting of the creditors, a report on the financial state of the debtor and reasons of its interruption, and a list showing the names of the creditors entitled to participate in the arrangement proceedings.
2. The report must contain the opinion of the trustee on the conditions proposed by the debtor for the arrangement.

**ARTICLE (859)**

1. The supervising judge shall preside over the meeting of the creditors.
2. The debtor may appoint a special proxy to attend the meeting on his behalf, and the debtor shall attend the meeting by himself, and may not appoint a proxy to attend instead of him, except for a reason acceptable to the supervising judge.

**ARTICLE (860)**

Deliberations on the conditions of the arrangement may not be made, except after a report by the trustee in the arrangement on the financial state of the debtor has been read out. However, the debtor may make a proposal for amending the conditions of the arrangement during the deliberations.

**ARTICLE (861)**

1. The arrangement shall not take place except with the approval of the majority of creditors, whose debts have finally or temporarily been accepted, provided that they hold two thirds of such debts. However, in such two majorities, neither the creditors

who have not participated in the voting, nor their debts shall be counted.

2. If the arrangement pertains to a company that has issued debenture bonds, the terms provided for in Article (814) must be observed.

**ARTICLE (862)**

1. The protective arrangement from the insolvency shall be governed by the restriction provided for in Article (768).
2. Participation in voting by the creditors holding real securities, shall be governed by the provisions stated in Article (769).

**ARTICLE (863)**

1. The arrangement shall be signed at the session in which the voting has been made, otherwise it shall be void.
2. If neither one of the two majorities referred to, in Article (861), paragraph 1, has been realized, the provisions stated in Article (770) shall apply.

**ARTICLE (864)**

1. A minute of the session of the arrangement shall be made and signed by the supervising judge, the trustee, the debtor, and the creditors who are present.
2. Any interested person, within five days from the date on which the minute of the arrangement has been signed, may notify the supervising judge in writing, of any remarks he might have, in connection with the arrangement.
3. The supervising judge shall refer the matter to the court, within three days from the lapse of the said period, in order to decide the cancellation of, or ratification on, the arrangement.
4. The decision to cancel the arrangement shall be productive, however, such decision shall be challengeable.
5. The arrangement shall become effective, as soon as the decision for attestation thereon has been issued, and it may not be challenged. In such decision, the court may appoint from among the creditors, one or more controllers to supervise the manner in which the conditions of the arrangement are being executed, and to inform the court of any violations to such conditions on the part of the debtor.

**ARTICLE (865)**

1. The deed of the arrangement may contain a condition for discharge of whole debt, if the debtor becomes solvent within five years from the occurrence of the

arrangement. The debtor shall not be considered solvent, unless the value of his assets exceeds the debts due from him.

2. The creditors may demand a guarantor or more to ensure that the conditions of the arrangement has been executed.

**ARTICLE (866)**

1. The decision issued for attestation of the arrangement shall be published in the same manner in which the adjudication of bankruptcy is declared, and the summary to be published in the newspaper shall include the name of the debtor, place of his residence, number of its entry in the commercial register, date of decision of attestation and a summary of the most important conditions of the arrangement.
2. The controller who supervises the execution of the conditions of the arrangement, in his capacity as a deputy for the creditors, and within ten days from the date the decision of attestation on the arrangement being issued, shall make entry the summary of this decision in each department of registration in which area the property of the bankrupt exists. The creation of mortgage on the said properties shall be incident to such entry, in order to safeguard the interests of the creditors to whom the arrangement shall be applied, unless the text of the arrangement provides otherwise. The supervising controller shall apply for extinguishment of the mortgage after the conditions of the arrangement have been executed.

**ARTICLE (867)**

The arrangement shall be applied to all the creditors, whose debts are considered ordinary, in accordance with the rules of the bankruptcy, even if they have not participated in its proceedings or approved thereto.

**ARTICLE (868)**

1. The debtors who are in joint liability with the debtor or with his guarantors in the debt shall not be benefited from the arrangement. Yet, if the arrangement is entered into with a company, the partners who are liable, with all the of their properties, for its debts, shall be benefited from its conditions unless the arrangement provides otherwise.
2. The arrangement shall not apply for the spending debts nor for the debts arising after a decision has been made for opening of the arrangement proceedings.

**ARTICLE (869)**

The court may grant the debtor terms for payment of the debts, arising after a decision has been issued for opening of the arrangement proceedings, provided that such terms do not be exceed those provided for in the arrangement, and provided that such judgement applies

to the spending debts.

**ARTICLE (870)**

The debtor's deprivation of the terms which are wider in scope, than those provided for in the arrangement, shall not be incident to the arrangement.

**ARTICLE (871)**

The controller who supervises the performance of the arrangement terms, within fifteen days from having the terms of the arrangement fully effected, shall apply to the court for a decision, on the close of the proceedings, to be issued, and such application shall be notified, in the manner provided for in Article (844).

**ARTICLE (872)**

The decision on the closure of the proceedings shall be issued within thirty days, from the date of publication in the newspapers, and such decision shall be entered in the commercial register in accordance with the provisions related to such register.

**ARTICLE (873)**

1. The arrangement shall be invalid if, after being attested, an act of fraud appears on the part of the debtor, and in particular, the act of fraud shall include concealment of property, fabrication of debts, or deliberate overestimation of debts.
2. The invalidity of the arrangement shall be applied for, within six months from the date on which the fraud appears, otherwise the application shall not be acceptable. In all cases, the application for the invalidity of the arrangement shall not be acceptable, unless it is submitted after the lapse of two years from the date of the decision issued for attestation of the arrangement.

**ARTICLE (874)**

1. It follows from the invalidity of the arrangement that the guarantor who has warranted the performance of its conditions, shall be discharged of his obligation.
2. And the creditors shall not be under obligation to return the portions of debts received by them, prior to the judgement rendered on the invalidity of the arrangement.

**ARTICLE (875)**

If the debtor fails to carry out the terms of the arrangement, it may be applied for its termination. Also it may be applied for termination, if the debtor has died and it appeared that he was not expected to fulfil the terms of the arrangement.

**ARTICLE (876)**

It shall not follow from the termination of the arrangement, that the guarantor who has warranted the performance of its terms, will be discharged of his obligation, and he must be made to attend the proceedings where the request of discharge is being looked into.

**ARTICLE (877)**

1. The supervising judge shall estimate the remuneration paid to the trustee in the arrangement, and shall deposit the decision issued to this effect with the court, on the day following its issue.
2. Any interested person may file a complaint against the decision within three days from the date of the deposit being made. Such decision given to the complaint shall be final.

**PART THREE**  
**CRIMES RELEVANT TO BANKRUPTCY**  
**AND THE PROTECTIVE ARRANGEMENT**

**ARTICLE (878)**

The merchant shall be considered insolvent, and shall be sentenced to imprisonment for a period not exceeding five years, if his bankruptcy is declared by a conclusive judgement, and if it is established that he has committed any of the following acts:

1. That he has concealed, destroyed or altered his books in all or in part.
2. That he has misappropriated or concealed part of his property to inflict damage upon his creditors.
3. That he knowingly acknowledges debts unpayable by him, whether such acknowledgement is made in writing or given verbally or occurs in the balance sheet or by abstention from presenting certain papers or notes.
4. If he obtains the arrangement by an act of fraud.

**ARTICLE (879)**

In the case of a conclusive judgement being issued on the declaration of bankruptcy of a company, members of its board of directors or its managers or the liquidators, shall be sentenced to imprisonment for a period no exceeding five years, if it is established that they have committed any of the following acts:

1. That they have concealed, destroyed or altered the books of the company.
2. That they have misappropriated or concealed part of the company's property.



3. That they have knowingly acknowledged debts which are not payable by the company, or abstained from presenting certain document held in their possession.
4. That they have obtained a special arrangement for the company by way of fraud.
5. That they have disclosed untrue information on the subscribed or paid up capital, or have distributed fictitious profits or received bonuses in excess of the amount provided for in the laws or in its memorandum of incorporation, or articles of association.

The punishment provided for in this article shall not be applied to anyone whose non-participation in the act, subject of the crime, has not been established, or his compliance with the decision issued in respect of him has been proved.

#### **ARTICLE (880)**

Any merchant whose bankruptcy has been declared by a conclusive judgement, and it is proved that his serious negligence has caused loss to his creditors, shall be considered a negligent bankrupt, and shall be sentenced to imprisonment for a period, not exceeding two years or by a fine not exceeding Dhs (20,000) twenty thousand, in any of the following cases:

1. If he spends large amounts in gambling, or fictitious speculations or matters irrelevant to his commercial works.
2. If, after suspension of payments, he has honored the debt of any creditors in attempt to cause harm to others, even if the purpose is to obtain the arrangement.
3. If he disposes of goods at less than the usual price, with the intention to delay suspension of his payment or declaration of his insolvency or termination of the arrangement, or in order to achieve this purpose, he resorts to illegal means to obtain money.

#### **ARTICLE (881)**

Any merchant against whom a final judgement, on the declaration of his bankruptcy has been given, may be considered a negligent bankrupt, and shall be sentenced to imprisonment for a period, not exceeding one year or by a fine not exceeding Dhs (10,000) ten thousand, in any of the following cases:

1. If he fails to keep such adequate commercial books, as to reflect the truth of his financial position or he fails to make the correct inventory in accordance with the law.
2. If he fails to abide by the rules related to the entry in the commercial register.

3. If he enters in favour of a third party, against no consideration, into enormous commitments compared to his financial state, when he has undertaken such commitments.
4. If he refrains from supplying the data needed by the judge of the bankruptcy, or the specialized court, or if he deliberately submits false information.
5. If, after suspension of payment, he gives a special advantage to any of the creditors, in order to obtain the arrangement.
6. If his insolvency recurs before he fulfills the commitments resulting from a previous arrangement.
7. If he spends huge amounts on his personal expenses or his household expenses whether before or after suspension of payment.

#### **ARTICLE (882)**

In the event of a conclusive judgement being made on the declaration of bankruptcy of a company, members on its board of directors, its managers, or liquidators, shall be sentenced to imprisonment, if it is proven that they have committed any of the following acts:

1. If they fail to keep commercial books sufficient enough to reflect the true financial position of the company.
2. If they refrain from supplying the information needed by the judge of the bankruptcy, or the trustee in bankruptcy, or if they deliberately supply untrue information.
3. If they act free in the property of the company after suspension of payment, in order to keep such property off the hands of the creditors.
4. If, after suspension of payment, they have honored the debt of any creditor to inflict harm on others, or have provided securities or special benefits to any of the creditors, by giving him preference over others, even if the purpose is to obtain the arrangement.
5. If they sell the goods of the company at less prices than usual, in an attempt to delay the suspension by the company of the payment, or declaration of its bankruptcy, or termination of the arrangement, or have resorted to illegal channels to obtain money, in order to achieve their purposes.

6. If they spend enormous money in gambling or fictitious speculation, on matters irrelevant to the affairs of the company.
7. If they act jointly in a way contrary to the law or to the company's memorandum of incorporation of articles of association, or have agreed to such acts.

The punishment provided for, in this article shall not apply against anyone whose non-participation in the act, subject of the crime, has been established or whose compliance with the decision passed in respect of him, has been proven.

#### **ARTICLE (883)**

If a penal action in fraudulent or negligent bankruptcy has been filed against the bankrupt, or a member on the board of directors of a bankrupt company, or its manager, or its liquidator, or has received a judgement, in this connection, in accordance with the provisions of the preceding articles, the civil or commercial actions shall remain independent from the penal action, and the proceedings related to the bankruptcy affairs, shall remain as stipulated by the law, and shall to be referred to the penal court, nor shall the court be entitled to deal with, unless otherwise provided for by law.

#### **ARTICLE (884)**

1. The trustee in bankruptcy shall be sentenced to imprisonment for a period of not more than five years if he misappropriates the funds of the bankruptcy while he assumes its administration.
2. He shall be sentenced to imprisonment if he deliberately give untrue information pertaining to the bankruptcy.

#### **ARTICLE (885)**

Any person who misappropriates or steals or hides the funds of the bankruptcy, shall be sentenced to and by a fine or by either one of those two penalties, even if such person is a spouse of the bankrupt or from his ascendants or descendants, or from the ascendants or descendants of his spouse. And the court shall spontaneously decide the return of the funds even if a judgement of acquittal has been given in the crime, and the court at the request of the concerned parties shall judge in favour of compensation when necessary.

#### **ARTICLE (886)**

Any creditor to the bankrupt shall be sentenced to imprisonment if he commits any of the following acts:

1. If he increases his debts held with the bankrupt by way of deception.
2. If he favours himself vis-a-vis the bankrupt or a third party, with special benefits,

against voting for the bankrupt on deliberations over the bankruptcy or the arrangement.

3. If he concludes with the bankrupt, after suspension of payment, a cladenstine agreement, that confers upon him special benefits, detrimental to other creditors knowingly.

The court shall spontaneously, adjudge the said agreements void, as to the bankrupt as well as to other persons, and shall oblige the creditor to return what he has taken by virtue of the void agreement, even a judgement of acquittal had been issued. The court may, in response to a request made by those concerned, order for compensation when needed.

#### **ARTICLE (887)**

Anyone who brings into the bankruptcy, by way of deception, fictitious debts, in his name or in the name of a third party, shall be sentenced to imprisonment.

#### **ARTICLE (888)**

1. The trustee in bankruptcy or the trustee in the composition, as the case may be, shall provide the public prosecution with any documents, notes and information, as is required.
2. The documents shall remain, during the investigation or the penal trial, in the custody of the court's record clerk, and access to them may be made available and official copies thereof may be obtained, unless otherwise ordered by the court.
3. The documents, after the investigation or the trial, shall be returned to the trustee in bankruptcy or to the controller against a receipt.

#### **ARTICLE (889)**

Punishment by imprisonment for a period not exceeding five years may be passed against the creditor.

1. If he purposely hides all or part of his property, or if he overestimates them, in order to obtain the arrangement.
2. If he purposely enables a creditor who is fictitious, or banned from participation in the arrangement, or who overestimates his debt, to take part in the deliberations and voting, or purposely lets him take part.
3. If he purposely deletes the name of a creditor from the list of creditors.

#### **ARTICLE (890)**

The creditor shall be sentenced to imprisonment:

1. If he overestimates his debts.
2. If he takes part in the deliberations of the arrangement or the voting, knowing he is legally banned to do so.
3. If he concludes with the debtor a cladenstine agreement that confers upon him special advantages which are detrimental to the interests of other creditors knowingly.

**ARTICLE (891)**

Punishment by imprisonment shall be passed against any one who is not a creditor, and knowingly takes part in the deliberations of the arrangement or the voting.

**ARTICLE (892)**

Punishment by imprisonment shall be passed against any controller, who purposely gives untrue information on the condition of the debtor, or if he confirms such information.

**ARTICLE (893)**

No amendment to the rules governing the proceedings of the bankruptcy shall affect the fraudulent or negligent penal action being filed, unless otherwise provided for by the law.

**ARTICLE (894)**

If the crime pertains to an agreement concluded with one of the creditors, in order to grant the creditor special advantages, against voting for the arrangement, or to jeopardize the interests of other creditors, the penal court may spontaneously adjudge such agreement void, and shall bind the creditor to return whatever he has taken over, by virtue of the void agreement, even if a judgement of acquittal in the crime has been made, and the court shall, at the request of the parties concerned, adjudge in favour of compensations, when necessary.

**ARTICLE (895)**

All penal judgements passed on the bankruptcy crimes, shall be published in the manners prescribed for publishing bankruptcy adjudication.

**PART FOUR**  
**FINES AND CHARGES**

**ARTICLE (896)**

Fines and charges of the penal action related to the negligent bankruptcy which are filed by the public prosecution may not, in all cases, be borne by the body of the creditors.

**ARTICLE (897)**

In the case of the arrangement being made, the bankrupt shall bear the charges of the action, however, the public treasury may not claim such charges, except after the expiry of the periods granted to him in accordance with the arrangement having been made.

**ARTICLE (898)**

The charges of the action filed by the trustee in the bankruptcy, in the name of the creditors, shall be borne by the body of the creditors, if the bankrupt has been adjudged innocent, and the public treasury shall bear such charges, if the bankrupt has been condemned, however, the public treasury shall continue to have the right to recourse to the bankrupt.

**ARTICLE (899)**

The charges of the penal action filed by any of the creditors, in his name shall be borne by him, if the bankrupt has been adjudged innocent, and shall be borne by the public treasury if the bankrupt has been condemned, however, the public treasury shall continue to have the right to recourse to the bankrupt.

**ARTICLE (900)**

The fines and charges of the penal action brought in connection with the fraudulent bankruptcy, in no case, may be borne by the body of creditors, unless one or several creditors assume the capacity of the plaintiff at a suit of personal rights, then the charges in the case of acquittal shall be borne by them