

**Republika e Kosovës**

**Republika Kosova - Republic of Kosovo**

***Qeveria – Vlada – Government***

***Ministria e Drejtësisë***

*Ministarstvo Pravde– Ministry of Justice*

**DRAFT CIVIL CODE OF THE REPUBLIC OF KOSOVO**

***SECOND FRAMEWORK***

***SEPTEMBER 2018***

**BOOK ONE – GENERAL PART**

**Chapter I – General Provisions**

**Article 1**

**The Purpose of the Code**

The purpose of this Code is regulation and harmonisation of legal provisions of the civil law.

**Article 2**

**Scope**

1. This Code includes legal provisions of the civil law, which are systemized in:

1.1 BOOK ONE – GENERAL PART;

1.2 BOOK TWO – LAW ON OBLIGATIONS;

1.3 BOOK THREE – LAW ON PROPERTY AND OTHER REAL RIGHTS;

1.4 BOOK FOUR – LAW ON FAMILY; and

1.5 BOOK FIVE – LAW ON INHERITANCE.

2. Dispozitat e këtij Kodi janë të detyrueshme për të gjithë pjesëmarrësit në marrëdhëniet juridike civile, përveç nëse parashihet diçka ndryshe me dispozitat e këtij Kodi ose ligji tjetër të veçantë.

**Article 3**

**Definitions**

1. Shprehjet e përdorura në këtë kod kanë këto kuptime:

1.1.

1.2.

1.3.

1.4.

1.5.

**Neni 4**

**Burimet e të drejtës civile**

1. Burim e si drejtës civile është ligji.
2. Në mungesë të ligjit, zakoni është burim i së drejtës vetëm kur ka zbraztësira juridike dhe nuk është në kundërshtim me ligjin.
3. Zakoni lind nga përdorimi afatgjatë i një lloji të sjelljes nëse personat e përfshirë në tregti e konsiderojnë atë ligjërisht i detyrueshëm.

**Neni 5**

**Interpretimi i ligjit**

1. Një dispozitë e këtij kodi do të interpretohet së bashku me dispozitat e tjera të kodit në përputhje me formulimin, frymën dhe qëllimi i kodit.
2. Dispozitat e librit të parë të këtij kodi, vlejnë për të gjitha pjesët e kodit dhe ligjet tjera të veçanta në fushën civile, përveç nëse ndryshe parashihet shprehimisht me Librat tjerë të këtij Kodi ose ligjet e veçanta.

**Neni 6**

**Analogjia**

1. Në mungesë të një dispozite që rregullon një marrëdhënie juridike, dispozitat e një ligji të cilat rregullojnë marrëdhënie të ngjashëm zbatohen edhe në këtë rast, përveç nëse rregullimi i marrëdhënieve juridike është në kundërshtim me parimet e përgjithshme ose qëllimin e ligjit.
2. Në mungesa e një dispozite të tillë, marrëdhënia juridike rregullohet sipas frymës së përgjithshme të ligjit dhe të së drejtës.

**Neni 7**

**Krijimi i të drejtave dhe detyrimeve civile**

Të drejtat dhe detyrimet civile krijohen nga punët juridike, ngjarjet e parashikuara me ligj, veprime të tjera që krijojnë të drejta dhe detyrime të përcaktuara me ligj, si dhe nga veprimet jokontraktuale.

**Neni 8**

**Ushtrimi i të drejtave dhe përmbushja e detyrimeve me kujdes**

1. Çdo person duhet t’i ushtrojë të drejtat dhe t’i përmbush detyrimet e tij me mirëbesim.

2. Ndalohet keqpërdorimi i të drejtave subjektive civile.

**Neni 9**

**Prezumimi i mirëbesimit**

1. Kur ligji e kushtëzon ndonjë efekt ligjor me mirëbesimin e një personi, mirëbesimi prezumohet.
2. Asnjë person nuk mund të thirret në prezumimin e mirëbesimit, nëse ai ka dështuar ushtrimin e kujdesit të duhur të kërkuar sipas rrethanave të caktuara.

**Neni 10**

**Ndalimi i shkaktimit të dëmit**

Çdokush duhet të kujdeset që të mos i shkaktoj dëm personit tjetër.

**Neni 11**

**Bartja e të drejtave dhe detyrimeve**

1. Të drejtat dhe detyrimet civile mund të barten nga një person në tjetrin (pasardhës ligjor) nëse të drejtat dhe detyrimet nuk lidhen në mënyrë të pandashme me personin sipas ligjit.
2. Pamundësia ligjore e bartjes bazohet në një punë juridike ose në ligj.
3. Të drejtat dhe detyrimet barten në bazë të një pune juridike përkatëse. Çdo e drejtë dhe detyrim transferohet ndaras, përveç nëse me ligj parashihet ndryshe.

**Kapitulli** **II - Personat/Subjektet e së Drejtës Civile**

**Nënkapitulli** **I -**  **Personat Fizik**

**Neni 12**

**Aftësia për të qenë titullar i të drejtave dhe detyrimeve civile**

1. Çdo person fizik gëzon aftësi të plotë dhe të barabartë për të pasur të drejta dhe detyrime civile, brenda kufijve të caktuar me ligj.
2. Të huajtë gëzojnë të drejta dhe detyrime përveç përjashtimeve të caktuara me ligje të veçanta.

**Neni 13**

**Aftësia juridike**

1. Aftësia juridike e personit fizik fitohet në momentin e lindjes, me kusht që të lind i gjallë.
2. Fëmija kur lind i gjallë gëzon aftësinë juridike që nga koha e zënies.
3. Aftësia juridike e personit fizik përfundon me vdekjen e tij.

**Neni 14**

**E drejta në emër**

1. Çdo person fizik e gëzon të drejtën në emër sipas dispozitave ligjore.
2. Kontestimi i emrit dhe çështjet tjera rregullohen me ligj të veçantë.

**Neni 15**

**Mosha madhore**

Mosha madhore fitohet me arritjen e moshës 18 vjeçare.

**Neni 16**

**Aftësia për të vepruar**

1. Me mbushjen e moshës 18 vjet, lind aftësia e plotë për të vepruar e personit fizik. Nga kjo moshë personi fizik me veprimet e veta mund të fitoj të drejta dhe të marrë përsipër detyrime civile në mënyrë të pavarur.
2. Aftësinë e plotë për të vepruar e fiton me anë të martesës edhe personi mbi moshën 16 vjet, me kusht që të ketë marrë lejen paraprak për martesë nga gjykata kompetente;

3. Aftësia e plotë për të vepruar sipas paragrafit 2 të këtij neninuk humbet edhe në rastet kur martesa është shpallur e pavlefshme ose është zgjidhur me shkurorëzim para se personi të mbush moshën 18 vjet.

**Neni 17**

**Aftësia për të vepruar e personit të mitur mbi 14 vjeç**

1. I mituri, që ka mbushur moshën katërmbëdhjetë vjeç, mund të kryejë veprime juridike vetëm me pëlqimin e mëparshëm të përfaqësuesit të tij ligjor;
2. I mituri i moshës 14 vjeçare mund të jetë anëtarë i ndonjë organizate shoqërore, të disponoj me pasurinë që fiton me punën e tij, të depozitoj kursime dhe t’i disponoj vetë këto depozita.
3. Mbikëqyrja e përfaqësuesit ligjor sipas dispozitave të librit mbi familjen, kërkohet vetëm për ndalimin e keqpërdorimit të mjeteve në dëm të tij dhe të tjerëve.

**Neni 18**

**Aftësia e veprimit e personit të mitur nën 14 vjeç**

1. I mituri që nuk ka mbushur moshën14 vjeç, nuk ka aftësi për të vepruar. Ai mund të kryejë veprime juridike që i përshtaten moshës së tij, aftësisë për të kuptuar veprimet dhe që përmbushen aty për aty, si dhe veprime juridike që i sjellin dobi pa asnjë kundër shpërblim;
2. Veprimet e tjera juridike i kryen në emër të tij përfaqësuesi ligjor.

**Neni 19**

**Heqja e aftësisë së veprimit për personin e mitur**

1. I mituri me moshë 14 vjeç deri në tetëmbëdhjetë vjeç, i cili është i paftë të kujdeset për punën e tij për shkak sëmundjesh psiqike ose zhvillimi të metë mendor, me vendim të gjykatës mund t’i hiqet zotësia për të kryer veprime juridike që u lejohen personave të moshës 14 deri në 18 vjeç.
2. Këto veprime mund të kryhen vetëm nëpërmjet përfaqësuesit të tij ligjor.
3. Heqja e zotësisë se personave 14-18 rregullohet me procedure te njëjtë sikurse te personat madhor.

**Neni 20**

**Heqja e aftësisë së veprimit për personin madhor**

1. Personit madhor, i cili për shkak sëmundjes psikikë ose zhvillimit të metë mendor, është tërësisht ose pjesërisht i pazoti të kujdeset për punët e tij, me vendim të gjykatës mund t’i hiqet ose kufizohet zotësia për të kryer veprime juridike.
2. Me vendim të gjykatës përcaktohet heqja e aftësisë për të vepruar në mënyrë plotë ose të pjesshme.

**Neni 21**

**Shtetësia, vendbanimi dhe vendqëndrimi**

1. Personi fizik ka shtetësinë, vendbanimin dhe vendqëndrimin.
2. Fitimi dhe humbja e tyre rregullohen me ligje të veçanta.

**Neni 22**

**Shpallja e personit te zhdukur**

1. Personi që mungon nga vendi i banimit ose i vendqëndrimit të fundit të tij dhe për të cilin nuk ka informata për më shumë se dy vjet, me kërkesën e secilit person fizik ose juridik që për një gjë të tillë ka interes juridik, mund të shpallet i zhdukur me vendim të gjykatës kompetente.

1. Procedura gjyqësore rregullohet me ligj të veçantë.

**Neni 23**

**Shpallja e personit për të vdekur**

1. Personi që është shpallur i zhdukur me vendim gjyqësor, me kërkesën e çdo personi të interesuar mund të shpallet i vdekur me vendim të gjykatës, kur kanë kaluar pa pasur informata tri vjet nga dita që është shpallur i zhdukur.
2. I vdekur mund të shpallet me vendim gjyqësor edhe personi:
   1. për jetën e të cilit gjatë pesë vjetëve të fundit nuk ka pasur kurrfarë informata, kurse nga lindja e tij kanë kaluar 65 vjet;
   2. për jetën e të cilit gjatë pesë vjetëve të fundit nuk ka pasur kurrfarë informatash, kurse rrethanat në të cilat është zhdukur bëjnë të besohet se nuk është më i gjallë;
   3. që ka humbur gjatë luftës lidhur me veprimet luftarake dhe kjo vërtetohet nga organet kompetente ushtarake, për jetën e të cilit nuk ka pasur kurrfarë informatash për një vit nga dita që ka hyrë në fuqi marrëveshja e paqes, ose dy vjet nga mbarimi i veprimeve luftarake;
   4. që ka humbur në një fatkeqësi komunikacioni, zjarri përmbytje, termet ose në ndonjë rrezik tjetër të drejtpërdrejtë për jetën, kurse për jetën e tij nuk ka pasur kurrfarë informatash për gjashtë muaj nga dita e heqjes së rrezikut.

3. Afatet nga nën-paragrafi 2.1 dhe 2.2 të këtij neni llogariten nga dita kur sipas informatave të fundit personi i humbur pa dyshim ka qenë i gjallë, e nëse kjo ditë nuk mund të konstatohet me saktësi, këto afate llogariten me mbarimin e muajit, përkatësisht të vitit, në të cilin personi i humbur sipas lajmeve të fundit ka qenë i gjallë.

4. Procedura gjyqësore rregullohet me ligj të veçantë.

**Neni 24**

**Konsumatori**

Konsumator është çdo person fizik i cili hynë në një punë juridike për qëllime që janë jashtë tregtisë, biznesit apo profesionit të tij.

**Neni 25**

**Sipërmarrësi**

1. Një sipërmarrës nënkupton një person fizik ose juridik ose një partneritet me personalitet juridik, i cili kur lidh një punë juridike, vepron në kuadër të ushtrimit të veprimtarisë biznesore ose të profesionit të tij.
2. Partneriteti me personalitet juridik është një partneritet që ka aftësinë për të fituar të drejta dhe përmbushur detyrime.

**Nënkapitulli II** **- Personat Juridik**

**Neni 26**

**Kuptimi i personit juridik**

1. Personi juridik, është shoqëri tregtare, shoqatë, fondacion, institucion publik, ndërmarrje publike apo entitet tjetër të cilit pa u limituar legjislacioni në fuqi në Republikën e Kosovës ia njeh personalitetin juridik.
2. Personi juridik është i veçantë dhe i ndarë nga anëtarët, aksionarët apo themeluesit e tij.

**Neni 27**

**Llojet e personave juridik**

1. Personi juridik është publik apo privat.
2. Person juridik privat është shoqata, fondacioni dhe shoqëria tregtare.

**Neni 28**

**Personat juridik publik**

Person juridik publik është institucioni shtetëror, institucioni publik, ndërmarrja publike në çfarëdo forme të organizimit të saj apo entitet tjetër publik i cili me ligj njihet si person juridik.

**Neni 29**

**Shoqata**

1. Shoqata është person juridik i përbërë nga anëtarësia, e grupuar në bazë të vullnetit të lirë të personave me interes të përbashkët, për realizimin e qëllimeve të ligjshme për përfitim publik ose për interes të ndërsjellë.
2. Shoqata themelohet nga të paktën tre (3) persona.
3. Themelues të shoqatës mund të jenë personat fizik dhe juridik.
4. Shoqata është person juridik jo-fitimprurës.

**Neni 30**

**Fondacioni**

1. Fondacioni është person juridik pa anëtarësi, i themeluar për menaxhimin e pronave dhe pasurive, për realizimin e qëllimeve të ligjshme për përfitim publik ose për interes të ndërsjellë.
2. Fondacioni themelohet nga një ose më shumë persona fizik apo juridik.
3. Fondacioni themelohet me kapital fillestar, me testament, apo me lënie të trashëgimisë.
4. Fondacioni është person juridik jo-fitimprurës.

**Neni 31**

**Fitimi i personalitetit juridik**

1. Shoqatat, fondacionet dhe shoqëritë tregtare e fitojnë personalitetin juridik, në momentin e regjistrimit në regjistrin e Organizatave jo-Qeveritare, përkatësisht në regjistrin e Shoqërive Tregtare.
2. Personit juridik publik të themeluar me ligj, i cili nuk ushtron aktivitet ekonomik i njihet personaliteti juridik pa u regjistruar.
3. Mënyra e themelimit, akti themeluese dhe përmbajtja e tyre si dhe mënyra e regjistrimit të personave juridik rregullohet në mënyrë të detajuar me ligje të veçanta.

**Neni 32**

**Emri i personit juridik**

Personi juridik ka emrin e tij të plotë dhe shkurtesën, i cili dallon në mënyrë të konsiderueshme nga emri i personave tjerë juridik.

**Neni 33**

**Selia e personit juridik**

Personi juridik ka selinë e tij sipas legjislacionit në fuqi.

**Neni 34**

**Aftësia juridike dhe veprimit**

1. Personi juridik ka aftësitë fitojë të drejta dhe të marrë përsipër detyrime që nga momenti i fitimit të personalitetit juridik.
2. Personi juridik mund të kryej çdo veprim juridik të lejuar me ligj, statut apo aktin e themelimit.
3. Vullneti i personit juridik shprehet përmes organeve të tij të përcaktuara në ligj, aktin themelues apo statut.
4. Veprimet juridike të ndërmarra nga organet e personit juridik brenda kompetencave te tyre, konsiderohen veprime të ndërmarra nga personi juridik.

**Neni 35**

**Shuarja e personit juridik**

1. Personi juridik shuhet sipas mënyrës së përcaktuar me statut, akt themelues apo me ligj.
2. Me shuarjen e personit juridik përfundon veprimtaria e tij dhe subjektiviteti juridik.
3. Mënyra e shuarjes së personave juridik është rregulluar në mënyrë specifike me ligje të veçanta.
4. Likuidimi i personit juridik është rregulluar me ligj të veçantë.

**Neni 36**

**Shoqëritë pa personalitet juridik**

Për shoqërinë tregtare apo shoqatën pa personalitet juridik, personi që vepron në emër të saj është përgjegjës personalisht në raport me palët e treta për çdo transaksion të ndërmarrë në emër të saj.

**Kapitulli III -** **Sendet dhe Kafshët**

**Neni 37**

**Objekti i së drejtës**

Objekt janë sendet, të drejtat personale me karakter pasuror, veprimet e njeriut me karakter pasuror, kërkesa me karakter pasuror dhe përfitimet tjera që mund të jenë objekt i së drejtës.

**Neni 38**

**Sendet**

Sende konsiderohen objektet trupore dhe jotrupore nëse nuk parashihet ndryshe me ligj të veçantë.

**Neni 39**

**Kafshët**

1. Kafshët mbrohen me ligje të veçanta.
2. Rregullat që aplikohen për sendet me modifikime të nevojshme aplikohen për kafshët përveç nëse parashihet ndryshe me ligj.

**Neni 40**

**Sendet e luajtshme**

Sende të luajtshme janë objektet trupore të pavarura që nuk janë në mënyrë të përhershme të lidhura me tokën ose pjesët e tokës dhe që në përgjithësi mund të lëvizin nga një vend ne vendin tjetër, përveç nëse parashihet ndryshe me ligj.

**Neni 41**

**Paluajtshmeria**

Paluajtshmëria është toka dhe ato sende që në mënyrë përhershme janë të lidhura me tokën. Paluajtshmëria është toka (bujqësore, pyjet dhe kullotat), instalimet dhe ndërtimet mbi të dhe nën të, të cilat janë të lidhura në mënyrë të fortë për tokë, bimët me rrënjë në tokë dhe çdo gjë që nuk mund të lëvizë nga një vend në tjetrin pa u dëmtuar në thelb.

**Neni 42**

**Pjesët esenciale të sendit**

Pjesët e një sendi që nuk mund të ndahen ose kur ndahen ndonjëra nga pjesët shkatërrohen apo u ndryshohet natyra e tyre, dhe ne këtë rast nuk mund të jenë objekt i një të drejte të veçantë.

**Neni 43**

**Pjesët esenciale të tokës ose ndërtesës**

1. Pjesët esenciale të një toke përfshijnë sendet e ngulitura dhe që janë të lidhura me tokën, në veçanti ndërtesat dhe prodhimet e tokës deri sa janë të lidhura me tokën. Fara bëhet një pjesë thelbësore e pjesës së tokës kur mbillet, ashtu edhe një bimë kur mbillet.
2. Pjesët esenciale të një ndërtese përfshijnë sendet e vendosura për tu ndërtuar ndërtesa.

**Neni 44**

**Sendet e konsumueshme**

1. Sendet e konsumueshme janë sende të luajtshme që qëllimi i përdorimit të tyre është konsumi ose disponueshmeria.
2. Sendet e luajtshme ndryshe konsiderohen si harxhueshme nëse ato janë pjesë e një depoje ose një bashkësie (grumbulli) tjetër të sendeve, përdorimi i synuar i të cilave është disponimi i sendeve individuale.

**Neni 45**

**Sendet e zëvendësueshme**

Sendet e zëvendësueshme janë sende të luajtshme që në marrëveshjet ekonomike zakonisht janë të specifikuara me numër, masë dhe peshë.

**Neni 46**

**Pjesët për përdorim të përkohshëm**

1. Pjesët e një ngastre toke nuk përfshijnë sende që lidhen me tokën vetëm për një qëllim të përkohshëm.
2. Sendet që futen në një ndërtesë për një qëllim të përkohshëm nuk janë pjesë esenciale e ndërtesës.

**Neni 47**

**Sendet akcesore**

1. Aksesorët janë sende të luajtshme të cilat pa qenë pjesë e sendeve kryesore kanë për qëllim t'i shërbejnë qëllimit ekonomik të sendeve kryesore dhe janë në një marrëdhënie hapësinore me të dhe që korrespondon me këtë qëllim. Një send nuk është një akcesorë nëse nuk konsiderohet si një aksesor në marrëdhëniet e biznesit te sendit kryesor.

2. Përdorimi i përkohshëm i një sendi për qëllimin ekonomik të një sendi tjetër nuk i jep atij cilësinë e një sendi akcesor. Ndarja e përkohshme e një sendi akcesor nga sendi kryesor nuk e privon atë nga cilësia e një akcesori.

**Neni 48**

**Sendet në qarkullim juridik**

Vetëm sendet që janë në qarkullim juridik mund të jenë objekt i marrëdhënies juridike civile.

**Neni 49**

**Sendet në pronësi publike**

Sendet në pronësi publike rregullohen me ligj të veçantë.

**Neni 50**

**Frutat**

1. Frutat janë produktet e sendit dhe të ardhurat e tjera të marra nga sendi në përputhje me qëllimin e përdorimit të tij.
2. Frutat e një të drejte janë të ardhurat që prodhon e drejta në përputhje me qëllimin përdorimit të saj, në veçanti në rastin e një të drejte për nxjerrjen e pjesëve përbërëse të tokës.
3. Frutat janë gjithashtu të ardhurat nga një send ose një e drejtë në bazë të një marrëdhënie juridike-civile.

**Neni 51**

**Të ardhurat/përfitimet**

Të ardhurat/përfitimet janë frutet e një sendi ose të drejtës dhe përfitimet që rrjedhin nga përdorimi i sendit ose i të drejtësdhe duhet te përdoren sipas mënyrës se parapare me ligj.

**Neni 52**

**Rimbursimi i shpenzimeve për fruta**

Një person që ka për detyrë t'i dorëzojë frutat mund të kërkojë rimbursimin e shpenzimeve të prodhimit të frutave në atë masë që nuk mund ta kalojnë vlerën e frutave.

**Kapitulli IV** - **Punët Juridike**

**Neni 53**

**Kuptimi i punëve juridike**

1. Puna juridike është shprehja e ligjshme e vullnetit të personit fizik ose juridik, me qëllim që të krijojë, të ndryshojë ose të shuajë të drejta ose detyrime civile.
2. Puna juridike mund të jetë e njëanshme ose e dyanshme.

**Neni 54**

**Forma e punëve juridike**

1. Puna juridike mund të kryhet me shkrim, me gojë dhe me çdo lloj shfaqje tjetër të padyshimtë të vullnetit.
2. Puna juridike mund të jetë në formë të shkresës ose në formë të aktit noterial.
3. Puna juridike me shkresë duhet të nënshkruhet nga personi që e kryen atë.
4. Puna juridike që ka për objekt bartjen e pronësisë mbi paluajtshmëri dhe krijimin e të drejtat tjera sendore duhet të bëhet në formë noteriale.

**Neni 55**

**Punët juridike me kusht**

1. Puna juridike është me kusht kur krijimi ose shuarja e të drejtave dhe e detyrimeve të parashikuara në të, varen nga një ngjarje e cila nuk dihet nëse do të ndodhë.
2. Kushti është pezullues kur të drejtat dhe detyrimet krijohen po të ndodhë ngjarja.
3. Kushti është zgjidhës kur të drejtat dhe detyrimet shuhen po të ndodhë ngjarja.
4. Kur vërtetimi i kushtit është ndaluar me keqbesim nga pala që do të përfitonte nga mos vërtetimi i tij, kushti konsiderohet se është vërtetuar.
5. Kur vërtetimi i kushtit është shkaktuar me keqbesim nga pala që do të përfitonte nga vërtetimi i tij, kushti konsiderohet se nuk është vërtetuar.
6. Kur e drejta që varet nga vërtetimi i kushtit cenohet ose humbet nga veprimet e palës së detyruar me kusht, kjo duhet të shpërblejë dëmin e shkaktuar në rast se kushti vërtetohet.

7. Pasojat që lidhen me vërtetimin e kushtit fillojnë nga çasti që është vërtetuar kushti, përveç kur nga përmbajtja e veprimit juridik del se këto pasoja duhet të fillojnë në një kohë të mëparshme.

**Neni 56**

**Punët juridike me afat**

1. Afati i punës juridike është momenti i caktuar kohor, nga i cili fillon ose pushon puna juridike ose disa nga efektet e saj.
2. Kur afati është caktuar me ditë, nuk llogaritet dita në të cilën ndodh ngjarja ose koha nga e cila ai duhet të fillojë.
3. Afati që është caktuar në javë, në muaj ose në vite, mbaron me kalimin e asaj dite të javës së fundit ose të muajit të fundit që ka të njëjtin emër ose numër me atë të ditës që ai ka filluar. Kur një ditë e tillë mungon në muajin e fundit, afati mbaron me kalimin e ditës së fundit të këtij muaji.
4. Kur dita e fundit e një afati bie në ditë pushimi, afati mbaron në ditën e punës që vjen pas asaj të pushimit.

**Neni 57**

**Pavlefshmëria absolute e punëve juridike**

1. Punët juridike absolutisht të pavlefshme nuk krijojnë pasoja juridike. Të tilla janë ato që:
   1. janë në kundërshtim me një dispozitë detyruese të ligjit;
   2. janë në kundërshtim me rendin juridik;
   3. janë në kundërshtim me moralin shoqëror;
   4. kryhen nga të miturit nën moshën katërmbëdhjetë vjeç;
   5. kruhen nga personat qe iu është hequr plotësisht zotësia e veprimit;
   6. bëhen në marrëveshje të palëve pa pas për qëllim që të sjellin pasoja juridike (fiktive ose të simuluara).

**Neni 58**

**Pavlefshmëria relative e punëve juridike**

1. Relativisht te pavlefshme janë punët juridike të cilat prodhojnë efekte juridike (konsiderohen te vlefshme) gjersa gjykata me kërkesën e palës se interesuar i shpall të pavlefshme. Të tilla janë punët juridike të kryera nga:
   1. të miturit mbi katërmbëdhjetë vjeç, kur puna juridike është kryer pa lejen apo pëlqimin e prindit ose të kujdestarit;
   2. personat, të cilët për shkak sëmundje psikike ose zhvillimi të metë mendor u është kufizuar zotësia për të vepruar, kur punën juridike e kanë kryer pa pëlqimin e kujdestarit;
   3. personat, të cilët në kohën e kryerjes së punës juridike nuk ishin ne gjendje te kuptojnë rëndësinë e veprimeve të tyre, megjithëse në atë kohë nuk u ishte hequr zotësia për të vepruar;
   4. personi që ka kryer punën juridike duke qenë i mashtruar, i kanosur, në lajthim ose për shkak të nevojës ekstreme.

**Neni 59**

**Kanosja**

1. Kanosja mund të shkaktojë që puna juridike të shpallet e pavlefshme, kur është e tillë sa të frikësojë personin se ai vetë, bashkëshorti, pasardhësit ose paraardhësit e tij do të pësojnë një dëm fizik ose material të padrejtë dhe të rëndë.
2. Kanosja mund të kryhet edhe nga një person i tretë që nuk merr pjesë në lidhjen e punës juridike.

**Neni 60**

**Lajthimi**

1. Lajthimi mund të shkaktojë që puna juridike të shpallet e pavlefshme vetëm në qoftë se lidhet me cilësinë e sendit, me identitetin ose cilësitë e personit tjetër, apo me rrethana aq thelbësore sa që pa ato, pala nuk do të kishte kryer punën juridike.
2. Lajthimi në llogaritje nuk sjell shpalljen e punës juridike si të pavlefshëm, por vetëm korrigjimin e tij, përveç kur gabimi në sasi ka qenë përcaktues për marrëveshjen.

**Neni 61**

**Mashtrimi**

1. Mashtrimi mund të shkaktojë që puna juridike të shpallet e pavlefshme, kur mashtrimi i përdorur nga njëra palë me qellim për ta venë në gabim palën tjetër, është e tillë që pa atë pala nuk do ta kishte kryer punën juridike.
2. Kur mashtrimi është bërë nga një person i tretë, pala e mashtruar mund të kërkojë shpalljen e pavlefshmërisë së punës juridike vetëm kur në kohën e kryerjes së tij pala tjetër ka ditur ose duhej të dinte mashtrimin.

**Neni 62**

**Kontrata**

Kontrata është një marrëveshje ndërmjet dy ose më shumë palëve e cila ka për qëllim të krijojë, ndryshoj ose shuaj një marrëdhënie juridike detyruese midis tyre, apo të ketë ndonjë efekt tjetër juridik.

**Neni 63**

**Testamenti**

1. Testamenti është shprehje e fundit e vullnetit të trashëgimlënësit e dhënë në formën e paraparë me ligj, me të cilin trashëgimlënësi urdhëron si të veprohet me pasurinë e tij pas vdekjes së tij.
2. Çështjet tjera rregullohen me Librin 5 të këtij Kodi.

**Neni 64**

**Premtimi publik i shpërblimit**

1. Premtimi i shpërblimit i bërë me anë të shpalljes publike për atë që kryen një veprim të caktuar, arrin ndonjë sukses, gjendet në situatë të caktuar ose në qoftë se premtimi është bërë në ndonjë kusht tjetër, e detyron premtuesin që të përmbushë premtimin.
2. Çështjet tjera rregullohen me Librin 2 të këtij Kodi.

**Kapitulli** **V - Përfaqësimi**

**Neni 65**

**Përfaqësimi**

1. Me përfaqësimin personi (përfaqësuesi) kryen brenda autorizimeve që i janë dhënë nga ligji, akti themelues, kontrata - prokura ose nga gjykata, veprime juridike në emër e për llogari të një personi fizik ose juridik tjetër (i përfaqësuari).
2. Përfaqësimi nuk lejohet kur veprimi juridik duhet të kryhet sipas ligjit nga vetë personi.
3. Nuk mund të veprojë si përfaqësues personi që nuk ka zotësi të plotë për të vepruar.
4. Përfaqësues mund të jenë personat fizik dhe juridik.

**Neni 66**

**Kufijtë e përfaqësimit**

1. Autorizimet e përfaqësimit ligjor caktohen nga dispozitat e ligjit që i japin këtë cilësi, ndërsa autorizimet e përfaqësuesit të emëruar nga i përfaqësuari caktohen me prokurë.
2. Autorizimet e përfaqësuesit mund të nxirren edhe nga rrethanat, në të cilat kryhen veprimet juridike përkatëse.

**Neni 67**

**Efektet dhe pasojat e përfaqësimit**

Veprimet juridike të kryera nga përfaqësuesi, brenda autorizimeve që i janë dhënë, krijojnë pasoja drejtpërdrejt për të përfaqësuarin.

**Neni 68**

**Kufizimet e përfaqësimit**

Përfaqësuesi nuk mund të kryejë veprime juridike në emër të të përfaqësuarit as për veten e tij dhe as me persona të tjerë të përfaqësuar prej tij, përveç kur i përfaqësuari e ka lejuar këtë shprehimisht, ose kur përmbajtja e veprimit juridik nuk cenon interesat e të përfaqësuarit.

**Neni 69**

**Përfaqësimi nga shumë persona**

Kur për kryerjen e një veprimi juridik janë caktuar dy ose më shumë përfaqësues, secili prej tyre mund ta kryejë atë pa pjesëmarrjen e përfaqësuesve të tjerë, përveç kur në prokurë është parashikuar ndryshe.

**Neni 70**

**Përgjegjësitë e përfaqësuesit**

1. Përfaqësuesi detyrohet të veprojë personalisht dhe nuk mund të emërojë zëvendës të tij, përveç kur është lejuar nga i përfaqësuari, kur pasuria që përmendet në prokurë ndodhet jashtë territorit të komunës ku banon përfaqësuesi, si dhe kur caktimi i zëvendësit konsiderohet i nevojshëm për mbrojtjen interesave të të përfaqësuarit.
2. Përfaqësuesi duhet të njoftojë menjëherë të përfaqësuarin për zëvendësin që ka caktuar, përndryshe ai përgjigjet për veprimet e zëvendësit. Zëvendësi mund të hiqet në çdo kohë nga i përfaqësuari ose nga përfaqësuesi që e ka caktuar.

**Neni 71**

**Shuarja e përfaqësimit**

1. Përfaqësimi shuhet me:

1.1. kalimin e afatit. Ne rast kur nuk është caktuar afati me këtë kod ose ligj të vecantë, autorizimi nuk mund të jetë më i gjatë se 10 vite;

1.2. vdekjen e personit fizik;

1.3. shuarjen e personit juridik;

1.4. revokim;

1.5. denoncim.

2. Përfaqësimi mund të shuhet edhe në rastet tjera të parapara me ligj.

**Kapitulli** **VI** - **Parashkrimi**

**Neni 72**

**Rregullat e përgjithshme të parashkrimit**

1. Parashkrimi është institut juridik me anë të së cilit fitohet ose humbet një e drejtë me kalimin e një afati kohor te caktuar me ligj.
2. Të drejtat sendore nuk parashkruhen, përveç nëse ndryshe përcaktohet me ligj.
3. Të drejtat e detyrimeve shuhen kur të ketë kaluar afati i caktuar, brenda të cilit kreditori ka mundur të kërkojë përmbushjen e detyrimit.
4. Parashkrimi i plotësuar (i arritur) nuk mund të merret parasysh nga gjykata ose organi tjetër kompetent me nismën e vet, por vetëm me kërkesën e palës së interesuar.
5. Marrëveshja e palëve për ndryshimin e afateve të parashkrimit është e pavlefshme.
6. Kur parashkruhet kërkesa kryesore, atëherë parashkruhen edhe kërkesat akcesore në kuptim të këtij kodi.

**Neni 73**

**Arritja e parashkrimit**

Parashkrimi arrin kur të ketë skaduar dita e fundit e kohës së caktuar me ligj.

**Neni 74**

**Fillimi i parashkrimit**

1. Afati i parashkrimit fillon rrjedhë (të ecë) nga dita kur subjektit i ka lindur e drejta e kërkesës, të cilën mund ta kërkojë në rrugë gjyqësore duke u bazuar në ligji.

2. Për kërkesat e vecanta dhe periodike, afati fillon të rrjedhë prej momentit të arritjes së seciles kërkesë.

**Neni 75**

**Ndalimi i ndryshimit të afatit të parashkrimit**

1. Me punë juridike nuk mund të caktohet një kohë më e gjatë ose më e shkurtër e parashkrimit se sa koha e caktuar me ligj.

2. Me punë juridike nuk mund të caktohet që parashkrimi të mos rrjedhë për një kohë.

**Neni 76**

**Afati i parashkrimit**

1. Afati i përgjithshëm i parashkrimit në marrëdhëniet me karakter detyrimor është 5 (pesë) vite.
2. Afat i veçantë i parashkrimit caktohet ne pjesët tjera të këtij kodi ose me ligj të veçantë.

**Neni 77**

**Llogaritja e afateve të parashkrimit**

1. Afati i parashkrimit që është caktuar në javë, në muaj ose në vite mbaron me kalimin e asaj dite të javës së fundit apo të muajit të fundit që ka të njëjtin emër ose numër me atë të ditës në të cilën ka filluar afati dhe, kur një ditë e tillë mungon në muajin e fundit, afati mbaron me kalimin e ditës së fundit të këtij muaji.
2. Fillimi i muajit shënon ditën e parë të muajit, mesi i muajit me pesëmbëdhjetë (15) të muajt, dhe fundi i muajit në ditën e fundit të muajit, në qoftë se diçka tjetër nuk rezulton nga qëllimi i palëve, nga natyra e marrëdhënies, ose nga doket (praktikat) e mira afariste.
3. Afati i caktuar në ditë fillon të rrjedhë ditën e parë pas ngjarjes nga e cila mund të llogaritet afati, ndërsa përfundon me skadimin e ditës së fundit, të afatit.
4. Kur dita e fundit e afatit të parashkrimit bie në një ditë pushimi, quhet si e fundit ajo ditë pune që vjen pas asaj të pushimit.

**Neni 78**

**Ndërprerja e parashkrimit**

1. Parashkrimi mund të ndërpritet në rastet e parapara me këtë kod.
2. Në qoftë se parashkrimi nuk ka mundur të fillojë të rrjedhë për arsye të ndonjë shkaku ligjor, ai fillon të rrjedhë posa ai shkak të ketë pushuar së ekzistuari.
3. Në qoftë se parashkrimi ka filluar të rrjedhë përpara se të ketë ndodhur shkaku i cili e ka ndalur rrjedhën e tij të mëtejshëm, ai vazhdon të rrjedhë kur të pushojë së ekzistuari ai shkak, ndërsa koha që ka kaluar para ndaljes llogaritet në afatin e caktuar ligjor për parashkrim.
4. Parashkrimi i ndërprerë kundër njërit prej debitorëve solidarë ose njërit prej bashkëshortëve të një detyrimi të papjesëtueshëm, shtrihet edhe ndaj secilit nga këta debitorë të tjerë.

**Neni 79**

**Pezullimi i parashkrimit**

1. Parashkrimi mund të pezullohet në rastet e parapara me këtë kod.
2. Koha e pezullimit nuk llogaritet në afatin e parashkrimit. Kur pas shuarjes së shkakut pezullues, koha që mbetet për t’u plotësuar parashkrimi është më e shkurtër se gjashtë muaj, ajo zgjatet deri në gjashtë muaj.

**Neni 80**

**Heqja dorë nga parashkrimi**

Heqja dorë nga parashkrimi lejohet vetëm pasi të jetë plotësuar afati i tij.

**Neni 81**

**Kur nuk zbatohen rregullat për parashkrimin**

Rregullat për parashkrimin nuk zbatohen në rastet kur me ligj janë caktuar afatet brenda të cilave duhet të paraqitet padia ose të kryhet një veprim, nën kërcënim të humbjes së të drejtave.

**BOOK TWO - OBLIGATIONS**

## PART ONE – GENERAL PROVISIONS

**Chapter I – Basic Principles**

**Article 1**

**Definition of obligation**

1. An obligation is a duty to perform, when one party is in a legal relationship, the debtor, owes to another party, the creditor.

2. An obligation may arise from a contract, damage caused to another [unlawful act], unjust enrichment, management of another’s affairs, unilateral acts and any other fact which is capable of generating it according to the law.

3. Parties to an obligation may be either natural or legal persons.

**Article 2**

**Freedom of contract**

1. Parties are free to regulate their contractual relations according to their will, subject to the limits established by mandatory provisions, public order and good custom.

2. Within the limits referred to in paragraph 1, parties may conclude contracts other than those foreseen by law and determine their contents.

**Article 3**

**Good faith**

1. Parties should act in good faith while fulfilling their obligations,

2. Good faith refers to a standard of conduct characterized by honesty, openness and consideration for the interests of the other party to an obligation.

**Article 4**

**Duty of cooperation**

1. Parties to an obligation have a duty to cooperate with each other in the performance of their obligations.

2. Parties in an obligation relationship must refrain from any action that hinders the fulfillment of the obligations of other parties.

**Article 5**

**Prohibition of abuse of rights**

1. It is forbidden to exercise rights from the relationship of obligations contrary to the purpose for which they are established or recognized by law.

2. When the parties exercise their rights in the relationship of obligations, they must refrain from acts which make it difficult to fulfill the obligations of other parties.

3. Any behavior through which the rights holder acts openly for the sole purpose of inflicting harm to another is considered to be an abuse of rights.

**Article 6**

**Duty of care**

1. Parties to an obligation must act with the diligence required by the nature of their obligations and which can reasonably be expected in the circumstances.

2. When fulfilling obligations deriving from their professional activity, parties to an obligation must exercise the higher duty of care required by law. If they are members of a group of professionals for which standards have been set by a relevant authority or by the group itself, they must exercise the care expressed in those standards.

**Article 7**

**Other legal affairs**

Unless otherwise provided by law, provisions regulating contracts are applied to the possible extent with other legal issues.

**Article 8**

**Scope of application**

The provisions of this Book shall apply to obligations regulated by other laws to the extent that such laws do not govern matters which are governed by this Book.

**Chapter II – SOURCES OF OBLIGATION**

**SubChapter I – General Provisions for Contracts**

**Article 9**

**Definition of contract**

The contract is an agreement between two or more parties which is intended to create, amend or terminate a binding legal relationship between them, or have any other legal effect.

**Article 10**

**Effects of a contract**

1. A contract creates rights and obligations for the contracting parties.

2. A contract may grant a right in favor of a third person.

**Article 11**

**Expression of will**

1. The will to conclude a contract can be expressed in words, with common signs or with any other behavior from which it can be concluded with certainty about its existence.

2. Expression of will must be free and genuine.

**Article 12**

**Negotiations**

1. The parties are free to negotiate and are not responsible for not reaching an agreement.

2. A party that has negotiated with no real intention of reaching an agreement with the other party shall be liable for any damage caused during negotiations.

3. Responsibility for damages is borne by the other party who negotiated with the purpose of concluding the contract, and after that gave up the conclusion of contract without any justified reason and thus caused damage to the other party.

4. Unless otherwise agreed, each party shall bear its own costs in connection with the preparation for the conclusion of the contract, and the joint costs shall be borne in equal shares.

**Article 13**

**Mandatory content of a contract**

Legal provisions which partially or completely set the content of a contract are an integral part of these contracts, so they complement them or are used instead of contractual provisions that are inconsistent with them.

## SubChapter II – Essential Elements

## Article 14

## Essential elements

1. A contract is not concluded until the parties have reached an agreement on all essential elements of the contract.
2. The essential elements of of a contract are:

2.1. Consent of the will of the parties;

2.2. The subject of the contract;

* 1. The basis of the contract;
  2. The form, when required by law and without prejudice to Article … *[Fulfillment of the contract lacking the required form]*.

3. The parties, after having agreed on the essential elements of the contract, may continue with the agreement on the secondary terms. However, in the event of a failure to reach an agreement on such terms, the court will determine them in the light of the rules for the interpretation of the contracts.

## Article 15

## Time and place of conclusion of a contract

1. A contract is concluded when and at the place where the party who made the offer receives the acceptance of the other party.

2. In the case of acceptance by means of performance, the contract is concluded when notice of commencement of performance reaches the bidder. If, at the request of the bidder, by the nature of the contract, or by the virtue of practices which the parties have established between themselves, or by use, the other party may accept the bid without notifying the bidder, the contract is concluded when the bid's performance begins.

3. In the case when a contract is concluded through electronic means, the contract is considered to be concluded at the place where the bidder has his registered office or place of residence.

**Article 16**

**Consent of a third party**

1. If a third party's consent is required for the conclusion of a contract, such consent may be granted prior to the conclusion of the contract unless otherwise foreseen by law.

2. The consent of a third party must be given in the form prescribed for the contract for which it is required.

**SubChapter III - Offer**

**Article 17**

**Offer**

1. An offer is a proposal aiming to the conclusion of a contract.

2. The proposal constitutes an offer if it is made to one or more persons and contains the essential elements of the contract.

3. A proposal made to the public and which contains the essential elements of the contract shall be considered as an offer, unless it is different from the circumstances or use.

**Article 18**

**Display of goods**

The display of goods labelled with a price, and the proposal to supply goods from stock at a stated price made in a public advertisement, whether via broadcast, print, telephone or any other means such as the Internet, are treated as an offer until the stock of goods is exhausted, unless the circumstances or use indicate otherwise.

# Article 19

# Catalogues and other notices

1. Catalogues, price lists, tariffs and other notices that are sent by post shall not be deemed offers for the conclusion of a contract, but merely invitations to make an offer.

2. However, the sender of such calls shall be liable for the damage which the Bidder would incur, if the sender, without any reasonable cause, has not accepted the Bidder's offer.

# Article 20

**Revocation of offer**

An offer may be revoked until the contract is concluded; however, the revocation is ineffective if the offer indicates that it is irrevocable, or if the offer states a fixed time for its acceptance.

# Article 21

**The death or incapacity of a party**

The offer does not lose its effect if the death or incapacity of a party has arisen before its admission unless the opposite results from the purpose of the party, the habit or the nature of the work.

# SubChapter IV – Acceptance

# Article 22

# Acceptance

1. Acceptance is any statement or conduct which indicates the addressee’s assent to the offer.

2. The addressee’s silence or inactivity does not in itself amount to acceptance. However, if the addressee was obliged to not remain silent or inactive pursuant to the law or by agreement between the parties, by virtue of practices which the parties have established between themselves or of usages, the silence or inactivity of the addressee amounts to acceptance.

3. Without prejudice to Article … *[Contract binding on bidder only]*, any clause in an offer whereby the silence or inaction of the addressee will be construed as acceptance of the offer shall be ineffective,

# Article 23

# Mandatory contract only for the bidder

An offer for the conclusion of a contract that creates obligations only for the bidder is irrevocable as soon as it comes to the knowledge of the addressee. The latter can reject the offer within the time required by the nature of the contract or by use. In the absence of such rejection the contract is deemed concluded.

# Article 24

# Form of offer

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1. The contract offer for which the law requires a specific form obligates the bidder only if it is done in this form.

2. This rule shall also apply to the acceptance of the offer.

**Article 25**

**Deadline for acceptance**

1. Acceptance of an offer is effective only if it is submitted to the Bidder within the time determined by the Bidder, or as required by the nature of the Contract or by use.

2. Subsequent acceptance is however effective if the Bidder immediately notifies the other party that it has been treated as an effective admission.

3. If it is evident from the document containing a late acceptance that it would have reached the offeror in due time had there been no delays in its transmission, the late acceptance is effective as an acceptance, unless the bidder immediately gives notice to the other party that he considers his offer as ineffective.

**Article 26**

**Acceptance with different or additional terms**

1. Acceptance which declares or implies additions or changes that substantially alter the terms of the bid is considered as a new offer.

2. If the additions or modifications stated or implied by an acceptance do not substantially alter the terms of the offer, the additional or different terms become part of the contract, unless the offer expressly limits acceptance to the terms of the offer or if the bidder objects immediately.

3. Additions or modifications relating to the price, payment, quality and quantity of performance, place and time of delivery, extent of one party’s liability to the other or the settlement of disputes are considered to alter the terms of the offer substantially.

**SubChapter V – Precontract**

# Article 27

# Definition

1. Pre-contract is a contract under which the parties assume the obligation to conclude the main contract in the future. Pre-contract may be mandatory for one or both parties.

2. The pre-contract shall contain the essential elements of the definitive contract.

# Article 28

# Pre-contract form

Provisions on the form of the main contract are also valid for the pre-contract, if the foreseen form is a condition of the contract's validity.

# Article 29

# Deadline

1. The pre-contract shall stipulate the deadline for the conclusion of the definitive contract. If no deadline is stipulated, or the party enChapterd to set it under the pre-contract fails to do so, an appropriate deadline for performance is set by the court, failing an agreement between the parties.

2. The deadline for the conclusion of the definitive contract shall not be deemed essential, unless it is different from the intention of the parties or the nature of the contract.

3. If a party fails to comply with the obligation to conclude the main contract, the other party may request the court to order the other party to enter into the main contract within an appropriate deadline.

4. The right provided for in paragraph 3 shall expire six (6) months from the lapse of the deadline set for the conclusion of the main contract.

**Chapter IV - Object**

# Article 30

**Object of the contractual obligation**

1. A contractual obligation may consist of giving, acting, non-execution or endurance.
2. Obligation should be possible, permissible, fixed or definable.

# Article 31

# Null contract

A contract shall be null if the subject of the obligation is absolutely impossible, unlawful, unspecific or unspecifiable.

# Article 32

# Subsequent possibility

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

# Article 33

**Unlawful object**

The object of an obligation shall be deemed unlawful if it is contrary to mandatory provisions, public order and good custom.

# Article 34

**When the object of an obligation is specifiable**

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

2. If such third person does not want or cannot specify the subject of the obligation, the contract shall be absolutely null.

**Chapter V – Cause**

**Article 35**

**Lawful cause of contract**

1. A contract must have a lawful cause.

2. The cause is unlawful if it is contrary to mandatory provisions, public order, or good custom.

3. Unless proved otherwise, it shall be presumed that each contract has a lawful cause.

4. If there is no cause or the cause is unlawful, the contract is null.

# Article 36

**Motives for concluding contract**

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

**Chapter VI – Contract Form**

**Article 37**

**Informality of contract**

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

2. A contract may be modified or terminated by the mere agreement of the parties, except when a specific form is required by law.

**Article 38**

**Form required by law**

1. When the law requires a specific form to conclude a contract, such requirement applies to all subsequent modifications to the contract.

2. A contract may only be terminated by the parties in the same form required by law for its conclusion.

3. Contracts must be drafted in the form of notary acts in the cases provided by law.

**Article 39**

**Agreed form**

1. Contracting Parties may agree that a special form shall be a condition for the validity of their contract.

2. The special form of contract may be selected, supplemented or otherwise amended in any other way by an informal agreement.

3. If the contracting parties have provided the form designated solely to provide proof of the conclusion of their contract or to achieve something else, the contract shall be deemed to have been concluded when the consent to its content has been reached. While for the contractor is the obligation to give the contract the foreseen form.

**Article 40**

**Sanction for lack of necessary form**

1. Unless the law provides otherwise, a contract which is not concluded in the form prescribed by law is null.

2. When the parties agree that the contract must be concluded in a specific form, it shall be presumed that the contract is not intended to be legally binding unless it is in that form.

# Article 41

# Doubts over completeness of document

1. If a contract is concluded in a special form either pursuant to law or at the will of the parties only that which is expressed in such form shall apply.
2. Simultaneous verbal agreements on accessory points about which nothing is mentioned in the formal contract shall be valid if not in contravention of the content thereof or in contravention of the purpose for which the form is prescribed.
3. Subsequent simultaneous verbal agreements to reduce or alleviate the obligation of either or both of the parties shall also be valid if the special form is prescribed solely in the interest of the contracting parties.

# Article 42

# Drafting of document

1. When the drafting of a document is required to enter into a contract, the contract is considered concluded when the document is signed by all parties.
2. A contracting party who does not know to write on his own (illiterate) shall sign by placing his fingerprint on the document, to be verified by two witnesses, the court, or another authoritative institution.

3. For the conclusion of bilateral contract, it is sufficient that both parties sign a document, or that each party signs a copy of a document destined for the other party.

4. The requirement of written form is met if the parties exchange letters or agree through other means that enable both the content and the person who made the statement(s) be established with certainty.

5. If the law does not provide otherwise, the form in writing may be replaced by electronic means, for which the provisions of the special law shall apply.

# Article 43

# Performance of a contract lacking the required form

1. A contract for which a particular form is required by law shall be deemed valid even if not concluded in such form where the parties fully perform the obligations arising from the contract.

2. The provision of paragraph 1 shall not apply if a contract lacks the notarial form required by law.

**Chapter VII – Accidental Elements**

**SubChapter I – Conditions**

**Article 44**

**Conditions and their effects**

1. A contract shall be deemed to have been concluded under a condition if its initiation or termination is dependent on an uncertain event.
2. If a contract is concluded under a suspensive condition and the condition is fulfilled the contract shall take effect from the moment of conclusion, unless foreseen otherwise by law, the nature of the contract or the parties’ intention.
3. If a contract is concluded under a dissolving condition, the contract shall cease to be valid if the condition is fulfilled.
4. A condition shall be deemed to have been fulfilled if in contravention of the principle of fairness the party upon whom the burden was defined prevents it from being realised, and shall be deemed not to have been fulfilled if in contravention of the principle of conscientiousness and fairness the party for whom the benefit was defined causes it to be realised.

**Article 45**

**Retrospective effect**

If according to the content of the contract, the consequences that are created with the fulfillment of condition have an effect from an earlier period, in the event of the fulfillment of the present condition, participants are obliged to enable to each other what has been enabled to them, also as if the consequences have arisen at an earlier moment.

**Article 46**

**Unlawful or impossible condition**

1. A contract subject to a suspensive or dissolving condition which is contrary to mandatory provisions, public order and good custom shall be null.
2. A contract concluded under an impossible suspensive condition shall be null; an impossible dissolving condition shall be deemed non-existent.

**Article 47**

**Securing of conditioned right**

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

**Article 48**

**Protection of conditional right**

1. The beneficiary of the legal affair concluded under the delayed condition, may in the event of the fulfillment of the condition seek the compensation of damage from the other party if before the fulfillment of condition with his fault he has prevented or limited the realisation of the right deriving from this condition.
2. In case of the contract entered into under the termination condition, he/she in favor of whom the previous legal situation is restored enjoys the same right.

**Article 49**

**Invalidity of availability during the duration of the condition**

1. If someone has in his availability the object under the suspensive condition, then every other availability which is assumed before the fulfillment of a condition becomes null at the moment of the fulfillment of condition, as far as the availability will prevent or damage the realisation of the purpose deriving from that condition.
2. The same applies to the termination condition for the availability, which ceases for the fulfillment of this condition.

3. Provisions on the protection of the rights of third persons in good faith shall be applied with the necessary changes (*mutatis mutandis)*.

**SubChapter II – Deadline**

**Article 50**

**Deadline to the contract’s effects**

1. Unless the law provides otherwise, the contracting parties shall have the right to agree a time period after which the contract shall have effect or at the end of which the contract shall cease to have effect.

2. For the calculation of deadline, the provisions of Article *…. [Calculation of prescriptions periods]* shall apply.

**SubChapter III – Earnest and Penalty clause**

**Article 51**

**Confirmative earnest**

1. If at the time of conclusion of a contract one party gives the other party a sum of money or other fungible object as a confirmation of the intention to honor the contract, earnest must be returned or imputed to the performance of his obligation.

2. If the party that provided earnest is in default the other party may withdraw from the contract and retain the earnest, or he may request the performance of the contract and the compensation of damages with the earnest being retained in account of damages to be compensated by the court.

3. If the party that received the earnest is in default, the other party may withdraw from the contract and claim double the earnest, or he may request the performance of the contract and the compensation of damages with the earnest being retained in account of damages to be compensated by the court.

**Article 52**

**Earnest for withdrawal from the contract**

1. If it is foreseen that the earnest enChapters one or both parties to waive the contract, it is considered that the earnest is granted in exchange for the right to withdraw from the contract.

2. The party that withdraws from the contract shall forfeit the earnest provided or must return double the earnest received.

3. The right of a party to withdraw from the contract is exercised by giving notice to the other party. The party that withdraws from the contract shall provide the earnest at the same time as exercising the withdrawal. The withdrawal right may not be exercised if the party that is enChapterd to withdraw from the contract begins to perform the obligation or accepts performance by the other party.

4. In the case of doubt, the earnest that one party provided to the other shall be deemed confirmative.

5. If the parties have not stipulated until when the right to withdraw from the contract may be exercised, such right may be exercised at any time within the deadline for performance.

**Article 53**

**Partial fulfillment**

1. The contract must clearly indicate the intention of one party to provide earnest to the other party. In case of doubt, the sum of money or other fungible object that one party gives the other party shall be treated as part performance.

2. In the case of non-performance of the contract, the payment made by the debtor as part performance of his obligation shall not be retained by the creditor if he terminates the contract, without prejudice to the right to claim compensation of damages.

**Article 54**

**Penalty clause**

1. The clause whereby the parties agree that in the case of non-performance or delay in performance, [even if the stipulated deadline is not essential,] one or both of them shall pay a sum of money or perform another obligation in favour of the other party, has the effect of limiting the compensation of damages, unless the parties agree for the compensation of additional damages. In the case of doubt, the penalty clause shall be deemed to have been stipulated only for a delay in performance.

2. The penalty is payable regardless of the proof of damages.

3. The creditor may not request both performance of the obligation and the payment of the penalty, unless the penalty clause was stipulated only for a delay in performance. If a penalty clause was stipulated for the case of non-performance, the creditor may not request the performance of the obligation after he requested the payment of the penalty.

4. The creditor may not request the penalty if the non-performance or delay occurred through no fault of the debtor.

5. If the penalty is excessive having regard to the interest of the other party to the performance of the contract, the damage actually resulting from non-performance or delay in performance, and to other circumstances, including part performance of the debtor’s obligation, the court may *ex officio* reduce the penalty to an equitable amount.

6. The penalty agreement is accessory to the principal obligation.

**Chapter VIII – Representation**

**SubChapter I – Representation in General**

**Article 55**

**Sources of representation**

1. Contracts may be concluded through a representative.

2. The authorization for representation can be based on the law or conferred by the represented person.

3. Legal persons may also be granted an authorization for representation.

**Article 56**

**Effects of representation**

1. A contract concluded by a representative on behalf of a represented person, and within the limits of the representative’s authorization, shall be directly binding for the represented person.

2. Unless the law provides otherwise, the representative must expressly act in the name and on behalf of the represented person.

3. If the representative fails to expressly act on behalf of the represented person, the contract shall nonetheless be binding for the represented person if the other party knew or should have known from the circumstances that the representative was acting as a representative.

**Article 57**

**Transfer of authorization**

1. Representative may not transfer his authorization to another person unless permitted to do so by law or by contract.
2. In exceptional cases they may do so if circumstances prevent them from conducting a contract in person and the interests of the represented person request that the contract be conducted without delay.

**Article 58**

**Breach of authorization**

1. If a representative exceeds the authorization the represented person shall only be bound insofar as the latter approves the transgression.
2. If the represented person fails to approve the contract within the period customarily required for a contract to be studied and assessed approval shall be deemed not to have been given.
3. The approval specified in the previous paragraph shall have retrospective effect unless the parties stipulate otherwise.
4. If the other party did not know and was not obliged to know about the transgression of authorization, upon learning of them such party may immediately declare that the contract is not felt to be binding without waiting for the represented person to say anything on the matter.
5. If the represented person does not wish to approve the contract the representative and the represented person shall be jointly and severally liable for damage incurred by the other party if it did not know and was not obliged to know about the transgression of authorization.

**Article 59**

**Contract concluded by an unauthorized person**

1. A contract concluded by a person as a representative of another person without an authorization shall not be directly binding for the person represented without an authorization, unless the latter subsequently ratifies it. Ratification must be in the same form as required for the conclusion of the contract.

2. Notwithstanding the provision of paragraph 1, the person represented without an authorization shall be bound by the contract if he culpably ingenerated in the other party the belief that an authorization for representation was conferred to the person acting as a representative, provided that the error the other party incurred was excusable.

3. The party with whom the contract was concluded may request that the person represented without an authorization declare whether the contract is ratified within a reasonable deadline.

4. If the person represented without an authorization fails to ratify the contract by the set deadline the contract shall be deemed null.

5. Failing ratification by the represented person, the person that concluded a contract without an authorization shall be obliged to compensate the damages suffered by the other party, provided that the latter did not know and should have not known about the lack of authorization for representation.

6. Upon ratification, the contract is considered as having been concluded originally with an authorization for representation, without prejudice to the rights of third parties.

**Article 60**

**Conflict of interest**

1. If a contract is concluded by the representative in a conflict of interest with the represented person, the represented person may request the annulment of the contract, if the third party knew or should have known of the conflict of interest.

2. There is presumed to be a conflict of interest where the representative concluded the contract with himself, in his own name or as representative for the third party, unless the representative acted with the specific authorization of the represented person, or was under an obligation to conclude the contract, or the content of the contract is determined in such a way as to exclude a conflict of interest, or the contract concluded by the representative is not otherwise detrimental to the interests of the represented person.

**SubChapter II – Specific Provisions Regarding Proxy**

**Article 61**

**Proxy**

1. Proxy is the legal act through which a person confers upon another person the authorization for representation in the conclusion of contracts or other legal transactions.

2. The party contracting with a representative may always request that the conferral of a proxy be proven and, if the proxy is conferred in writing, a copy of the proxy signed by the represented person is given to him.

3. If a proxy is conferred in writing, the resulting document must be returned to the represented person when the proxy is terminated.

**Article 62**

**Specific form of authorization**

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

**Article 63**

**Extent of authorization**

1. An authorized person shall only be allowed to conclude those contracts or other legal transactions which the authorization was given for.
2. A person that holds a general authorization shall only be allowed to conclude those contracts or other legal transactions which can be regarded as falling within the sphere of ordinary business.
3. A contract or other legal transaction not falling within the sphere of regular business may be undertaken by the authorized person only after he has been specifically authorized to conclude such contract or transaction.
4. Without a special authorization for each individual case authorized persons may not assume an obligation under a bill of exchange, conclude a contract of surety, a contract of settlement, or a contract regarding the alienation or encumbrance of immovable property, become involved in a dispute, conclude an arbitration agreement, or waive any right without remuneration.

**Article 64**

**Revocation and limitation of authorization**

1. Authorizers may of their own volition narrow or revoke an authorization, even if such a right has been waived by contract.
2. The authorizer may revoke or narrow any authorization through a declaration of no special form.
3. If the revocation or restriction of the proxy violates the contract on the decree or contract on the deeds or any other contract, the authorized person has the right to seek compensation for any damage incurred.

**Article 65**

**Termination and restriction of a proxy**

1. The revocation and restriction of a proxy shall be communicated to third parties or publicized by appropriate means.

2. The revocation and restriction of a proxy shall have no effect in respect of a third party that did not know and should have not known that the proxy was revoked or restricted.

3. It is presumed that the third party knew that the proxy was revoked or restricted if the revocation and restriction of the proxy was communicated or publicized in the same way as it was originally communicated or publicized.

4. The provisions set forth in the preceding paragraphs shall apply to other cases of termination of a proxy.

**Article 66**

**Other cases of termination of authorization**

1. Authorization shall terminate with the winding-up of the authorized person if such is a legal person, unless stipulated otherwise by law.
2. Authorization shall terminate with the death of the authorized person.
3. Authorization shall terminate with the winding-up or death of the person that issued it, unless the contract or other legal transaction concluded cannot be interrupted without damage to the legal successors, or the authorization also applies in the event of death of the person that issued it, according to his intention or having regard to the nature of the contract.

**SubChapter III – Special types of Proxy**

**Article 67**

**Authorization to the employee**

1. Persons who, on the basis of a contract of employment with a business organization, perform work involving the sale of goods or services inside the business premises, shall have the right to conclude and perform contracts related to the sale of such goods and services, subject to any conditions or limitations specified in the proxy.

2. The persons referred to in paragraph 1 shall have the right to accept declarations regarding faults in goods and services and other complaints in connection with the performance of a contract concluded by them, and to take precautionary measures in the interest of the business organization they work for.

**Article 68**

**Travelling sales representatives**

1. Unless expressly authorized, a travelling sales representative shall not have the right to conclude contracts, but he shall only promote and receive orders from customers.

2. Even when authorized to conclude contracts, a travelling sales representative shall not request or collect the sale price, give a discount or defer payment, or derogate to the general conditions of contract, unless specifically authorized.

**Chapter IX – Interpretation of Contract**

**Article 69**

**Common intention of contracting parties**

1. In interpreting a contract it is necessary to ascertain the common intention of the parties rather than adhering to the literal meaning of the words.

2. The common intention of the parties may be inferred from the conduct of the parties, even subsequent to the conclusion of the contract.

3. If, after having applied the provisions of this article, the meaning of the contract is still unclear, the provisions of the subsequent articles apply.

**Article 70**

**Interpretation of the contract as a whole**

Contractual clauses shall be interpreted by means of each other, giving each clause the meaning which results from the contract as a whole.

**Article 71**

**Polysemous terms and expressions**

1. Terms and expressions which may have more meanings shall be interpreted in the sense which is more suitable to the nature and object of the contract.

2. If one party intended a term or expression used in the contract to have a particular meaning, and the other party knew or should have known of the first party’s intention, the term or expression is to be interpreted in the way intended by the contractors.

**Article 72**

**Practices established between parties and local customary practices**

Ambiguous terms and expressions of a contract shall be interpreted in the light of the practices which the parties have established between themselves, or, in case there is still any doubt, according to the customary practices of the place where the contract was concluded.

**Article 73**

**Interpretation against the author of the clause**

In case of ambiguity, the clauses included in the general conditions of contract or other printed forms drafted by one of the parties shall be interpreted in favour of the other party.

**Article 74**

**Supplementary rules**

1. Contractual clauses shall be interpreted in the sense that is less burdensome for the debtor, if the contract is gratuitous; if the contract is onerous, contractual clauses shall be interpreted in a sense that strikes a fair balance between the interests of the parties.

2. If there is doubt as to the meaning of a term in a consumer contract, the interpretation that is most favorable to the consumer shall prevail.

3. The contract must be interpreted in good faith.

**Chapter X – Invalidity of Contract**

**SubChapter I – Nullity**

**Article 75**

**Definition**

1. A contract which is contrary to mandatory provisions, public order or good custom is null, unless otherwise foreseen by law.

2. The contract is null in any other case foreseen by law.

**Article 76**

**Effects of nullity**

1. Unless the law foresees otherwise, a null contract does not produce any effects for the period prior to the declaration of nullity.

2. If a contract is null each party must return whatever he has received from the other party; if it is not possible, a monetary equivalent shall be provided to the other party.

3. Where there has been performance under a contract infringing good custom, public order or mandatory provisions, restitution may only be granted where this would be reasonable in the circumstances. In determining what is reasonable, regard is to be had to the purpose of the rule infringed and any sanction that may be imposed under such rule, the seriousness of the infringement, and whether both parties knew or should have known of the infringement.

4. Unless provided otherwise, the restitution of what has been transferred or supplied under a null contract is regulated by the rules on unjust enrichment, which shall apply *mutatis mutandis*.

**Article 77**

**Partial nullity**

1. The contract shall not be null because of the nullity of any contractual provision if it can stand without the null provision and if the provision was not a contractual condition or a decisive motive by reason of which the contract was concluded.

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

**Article 78**

**Conversion of a null contract**

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

**Article 79**

**Cessation of the ground of nullity**

A null contract shall not become valid if the ground of nullity ceases to exist after the conclusion of contract, unless the law provides otherwise.

**Article 80**

**Liability for nullity of contract**

1. The party that culpably caused the contract to be null shall be obliged to compensate the damages suffered by other party because of the nullity of the contract, if the latter did not know and should have not known of the grounds of nullity.

2. The party that knew or should have known of the grounds of nullity of the contract but did not inform the other party, shall compensate the damages suffered by the latter for having relied, without fault, on the validity of the contract.

3. The liability for the nullity of the contract is limited to the expenses and losses suffered by the contracting party in relying on the validity of the contract.

**Article 81**

**Legitimacy to claim or declare nullity**

Unless the law provides otherwise, the nullity of the contract may be claimed by any person having an interest and can be declared *ex officio* by the court.

**Article 82**

**Unlimited request for nullity**

The right to request the declaration of nullity of a contract is not subject to prescription.

**Subttile II – Annuallability**

**Article 83**

**Annullable contracts**

1. Unless the law provides otherwise, a contract concluded by a party incapable of contracting shall be annullable.

2. A contract is also annullable if the will of a party was defective.

3. A contract is annullable in any other case foreseen by law.

**Article 84**

**Annulment of contract**

1. The party in whose interest the annullability of the contract is stipulated may request that the contract be annulled by the court.

2. The party that is enChapterd to request the annulment of the contract may validate *[confirm its intention to be legally bound by]*, expressly or impliedly, the contract. If validation *[confirmation]* is made in writing, it must contain the details of the contract to be validated *[confirmed]*, the grounds of annullability and the intention of the party to confirm it.

3. The other party may request that the party in whose interest the annullability of the contract is stipulated validates *[confirms its intention to be legally bound by]* the contract within a reasonable deadline.

4. If the party that is enChapterd to request the annulment of the contract validates *[confirms its intention to be legally bound by]* the contract, the contract is deemed valid from the beginning.

**Article 85**

**Effects of annulment**

1. The annulment by a court of a contract has retrospective effect.

2. Unless provided otherwise, the restitution of what has been transferred or supplied under a contract which has been annulled is regulated by the rules on unjust enrichment, which shall apply *mutatis mutandis*.

3. The annulment which is not based on incapacity to contract does not affect the rights acquired by onerous Chapter by third parties acting in good faith, subject to the effects of registration of the lawsuit for annulment.

4. If the contract is annulled due to the incapacity of one of the parties, such party shall be obliged to return whatever he has received only to the extent that he benefited from performance of the obligation of the other party.

**Article 86**

**Annulment of a multilateral contract**

If a ground of annulment relates to the obligations of only one party to a multilateral contract, the contract may not be declared null, unless the participation of this party has to be regarded as substantial in the circumstances.

**Article 87**

**Liability for annulment of contract**

1. The party that culpably caused the contract to be annullable shall be obliged to compensate the damages suffered by other party as a result of the annulment of the contract, if the latter did not know and should have not known of the grounds of annullability.

2. The party that knew or should have known of the grounds of annullability of the contract but did not inform the other party, shall compensate the damages suffered by the latter for having relied, without fault, on the validity of the contract.

3. The liability for the annulment of the contract is limited to the expenses and losses suffered by the contracting party in relying on the validity of the contract.

**Article 88**

**Prescription of the right to claim annulment**

1. The right to request the annulment of a contract shall prescribe one (1) year from the day the party in whose interest the annullability of the contract is stipulated learnt of the grounds of annullability, or one year after the end of threat.

2. In any case, this right prescribes three (3) years after the day the contract was concluded.

3. By way of derogation from paragraph 2, in the case of a person subject to incapacity, the period of prescription does not expire before six (6) months have passed after the incapacity has ended or a representative has been appointed, regardless of the date when the contract was concluded.

4. The party against which the performance of a contract is requested may always claim the annullability of the contract, even where the right to claim the annulment is prescribed.

**SubChapter III – Incapacity**

**Article 89**

**Capacity to contract**

1. In order to conclude a valid contract, contracting parties must have the capacity to act required by law.

2. A person subject to incapacity may only conclude those contracts the law permits him to conclude without the prior consent of his legal representative. However, the legal representative may subsequently approve the contract concluded without his prior consent.

3. A contract concluded by a party incapable of contracting shall be annullable, if the law does not permit him to conclude the contract, provided that the contract was not subsequently approved by his legal representative.

4. The party contracting with a person without the capacity to conclude the contract may request that the latter’s representative declare whether the contract is approved. If the personal representative fails to approve the contract within thirty (30) days of such request the approval shall be deemed not to have been given.

**Article 90**

**Right of withdrawal of the party contracting with a person without capacity to contract**

1. The party contracting with a person without the capacity to conclude the contract may withdraw from the contract if he did not know and should not have known of the latter’s incapacity to conclude the contract without the prior consent of his representative.

2. If the party contracting with a person without the capacity to conclude the contract was misled into believing that the latter had been given prior consent by his representative, he shall have the same right provided in paragraph 1.

3. The right provided in paragraph 1 shall expire thirty (30) days after the contracting party learns of the other party’s incapacity to conclude the contract or learns that the latter’s representative has not given his prior consent; it shall also expire if the representative approves the contract.

**Article 91**

**Acquiring capacity to contract after the conclusion of a contract**

Where a party acquires the capacity to contract after the contract was concluded without the prior consent of his representative, he may request that the contract be annulled by the court within (3) three months of acquiring the capacity to contract, provided that the contract was not approved by his representative.

**SubChapter IV – Defective will**

**Article 92**

**Threat**

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

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

**Article 93**

**Significant mistake**

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

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

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

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

**Article 94**

**Mistake in motive for gratuitous contract**

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

**Article 95**

**Indirect declaration**

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

**Article 96 Deceit**

1. If one party causes the other party to be mistaken or keeps the other party mistaken for the purpose of leading the latter to conclude a contract, the other party may request the annulment of the contract even when the mistake is not significant.
2. A party that was deceived in concluding the contract shall have the right to request the reimbursement of any damage that occurs.
3. Deceit enacted by a third person shall only affect a contract if the other contracting party knew or should have known thereof when the contract was concluded.
4. A gratuitous contract may also be annulled if the deceit was enacted by a third person, irrespective of whether the other contracting party knew or should have known thereof when the contract was concluded.

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**Article 97**

**Sham contract**

1. A sham contract shall have no effect between the contracting parties.
2. If a sham contract conceals any other contract the latter shall be valid if the conditions for its legal validity are fulfilled.
3. It shall not be possible to apply the sham nature of a contract in respect of a third person.

**Chapter XI – Bilateral Contracts**

**SubChapter I – Liability for Material and Legal Errors in Performance**

**Article 98**

**Liability for material and legal errors**

1. In a bilateral contract each contracting party shall be liable for material errors in the party’s own performance.
2. A contracting party shall also be liable for legal errors in performance, and must protect the other party against the rights and claims of third persons by which the party’s right would be excluded or restricted.
3. Unless stipulated otherwise by law, the provisions regulating the seller’s liability for material and legal errors shall apply to the obligations of the debtor, as far as practicable.

**SubChapter II – Objection to Non-performance of Contract**

**Article 99**

**Rule of simultaneous performance**

1. In bilateral contracts neither party shall be obliged to perform their own obligations if the other party is not simultaneously performing the latter’s obligations or is unwilling to do so, unless agreed otherwise or stipulated otherwise by law, or unless it follows otherwise from the nature of the contract.
2. If one party claims in court that such party was not obliged to perform the obligations until the other party performed the other party’s obligations the court shall instruct the former to perform the obligations when the latter does so.

**Article 100**

**If performance of obligations by one party is uncertain**

1. If it is agreed that one party will perform such party’s obligations first and after the contract is concluded the material circumstances of the other party deteriorate to the extent that it is uncertain that the latter will be able to perform the latter’s obligations, or this is uncertain for other serious reasons, the party that undertook to perform the obligations first shall defer performance until the other party performs the other party’s obligations or until the other party provides sufficient security that the obligations will be performed.
2. This shall also apply if the material circumstances of the other party were so serious before the contract was concluded and the other party did not know and was not obliged to know of such.
3. In such cases the party that undertook to perform the obligations first may request security by a suitable deadline; if the deadline is not met the party may withdraw from the contract.

**SubChapter III – Termination of Contract due to Non-performance**

**Article 101**

**Rights of a party in case of non-performance of the other party**

1. If a party to a bilateral contract fails to perform an obligation the other party may either request the performance of the obligation or terminate the contract, without prejudice to the right to claim compensation of damages.

2. The right of a party to terminate the contract is exercised by giving notice to the other party.

3. A contract cannot be terminated if non-performance of a party is insignificant, having regard to the interest of the other party.

**Article 102**

**Breach of deadline for performance**

1. If a party fails to perform an obligation by the stipulated deadline, the other party shall have the right to terminate the contract if an additional period of time for performance was granted to the other party.

2. In derogation to paragraph 1, a party may terminate the contract without granting an additional period of time if:

2.1. the other party has expressed his intention not to perform;

2.2. it appears from the circumstances that the other party will not be able to perform in the additional period of time;

2.3. the stipulated deadline was deemed essential in the interest of the party that intends to terminate the contract.

3. If the other party fails to perform within the additional period of time, the contract shall be deemed to be terminated by operation of law, unless the party that granted the additional period of time confirms within three (3) days his interest in the performance of the obligation of the other party.

**Article 103**

**Essential deadline**

1. The contracting parties may agree that the deadline for performance of the obligation of one party shall be deemed essential in the interest of the other party.

2. The party that intends to request the performance of the obligation despite the expiry of the deadline shall give notice to the other party within three (3) days, failing which the contract shall be deemed to be terminated by operation of law.

**Article 104**

**Effects of termination**

1. If a bilateral contract is terminated due to non-performance, both parties are released from the obligations arising from the contract.

2. A party that has fully or partly performed the contract shall have the right to request the restitution of whatever it supplied. In the case both parties have a right to request the restitution of whatever they supplied, the rules on performance of bilateral contracts shall apply.

3. Termination does not affect any clause in the contract governing the settlement of disputes or any other term of the contract which shall operate after termination.

4. Termination does not affect the rights acquired by third parties in good faith, unless the law provides otherwise.

5. A party returning a sum of money shall pay interest from the day the payment was received.

**SubChapter IV – Rescission or Amendment of Contract owing to a change of circumstances**

**Article 105**

***Rebus sic stantibus***

1. If after the conclusion of a contract circumstances arise that render the performance of obligations by one party more difficult or owing to which the purpose of the contract cannot be achieved and in both cases to such an extent that the contract clearly no longer complies with the expectations of the contracting parties and in the general opinion it would be unjust to retain it in force as it is, the party whose obligations have been rendered more difficult to perform or the party that owing to the changed circumstances cannot realize the purpose of the contract may request the rescission or the revision of the contract.
2. It shall not be possible to request the rescission of a contract if the party making reference to the changed circumstances should have taken such circumstances into consideration when the contract was concluded, or could have avoided them or could have averted the consequences thereof.
3. The party requesting the rescission of the contract may not make reference to changed circumstances that arose after the deadline stipulated for the performance of such party’s obligations.
4. A contract shall not be rescinded if the other party offers to amend equitably the relevant terms of the contract.
5. When rescinding a contract because of changed circumstances, the court may order the party requesting rescission to reimburse the other party of any expenses incurred prior to the rescission of the contract.

**Article 106**

**Obligation to notify**

A party that owing to changed circumstances is enChapterd to request the rescission of a contract must notify the other party regarding the intention to request the rescission as soon as the former learns that such circumstances have arisen. A party that fails to do so shall be liable for any damage incurred by the other party.

**Article 107**

**Circumstances significant to court decision**

When deciding on a request to rescind or amend a contract due to a change of circumstances the court shall primarily take into consideration the purpose of the contract, the risks customary for contracting parties in during the performance of contracts of the same type, and the balance of the interests of the two contracting parties.

**Article 108**

**Waiver of reference to changed circumstances**

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

**SubChapter V – Impossibility of Performance**

**Article 109**

**Impossibility of performance for which neither party is responsible**

1. If the performance of obligations becomes impossible for one party to a bilateral contract because of a event for which neither of the parties was responsible, the obligation of the former shall expire while the party performing his obligation may request restitution according to the rules on unjust enrichment.
2. Should partial impossibility of performance be due to events not attributable to either party, one party may rescind the contract if partial performance fails to meet his needs; otherwise the contract shall remain valid, while the other party shall be enChapterd to request proportionate reduction of his obligation.

**Article 110**

**Impossibility of performance for which party is responsible**

1. If the performance of obligations becomes impossible for one party to a bilateral contract because of a development for which the other party was responsible the obligation of the former shall expire while the former’s claim on the other party shall remain; the claim shall be reduced only insofar as the former benefited from being released of the obligation.
2. In addition all the rights that the former would have held in respect of third persons in connection with the subject of the obligations whose performance became impossible must be ceded to the other party.
3. If the performance of obligations becomes impossible for one party to a bilateral contract because of a development for which such party was responsible the other party may choose to request compensation for non-performance or to withdraw from the contract and request compensation of damage.

**SubChapter VI – Rescission of Contract due to Unfair Exploitation**

**Article 111**

**Excessive disproportion between respective obligations**

1. If there is an excessive disproportion between the obligations of the contracting parties at the time of conclusion of the contract, the injured party may request that the court rescind the contract, provided that:

1.1. the party was in economic distress or in a state of need when concluding the contract; and

1.2. the other party knew or should have known this and took advantage of the situation to gain a benefit.

2. The disproportion is presumed to be excessive if the economic imbalance between the respective obligations is greater than half of the value of the obligation of the injured party.

3. The rescission of the contract may be avoided by the party against which it is requested by offering to modify the contract to remove the excessive disproportion between the respective obligations.

4. The right to request the rescission of contract shall expire one (1) year after the contract is concluded.

5. Aleatory contracts and contracts concluded on the basis of a public auction may not be rescinded.

6. The rescindable contract may not be validated *[confirmed]*.

7. The waiver of the right to request the rescission of contract shall be ineffective.

8. The rescission of contract does not affect the rights acquired by third parties, subject to the effects of registration of the lawsuit for rescission.

**SubChapter VII – General Conditions of Contract**

**Article 112**

**Incorporation of general conditions into the contract**

1. General conditions are terms of contract which are supplied by one party and which are not individually negotiated with the other party.

2. A term supplied by one party is not individually negotiated if the other party has not been able to influence its content, in particular because it has been prepared in advance for general and repeated use.

3. General conditions are binding on the other party if he knew or should have known of them at the time of conclusion of the contract.

4. The party supplying the general conditions must take reasonable steps to draw the other party’s attention to them when the contract is concluded.

**Article 113**

**Nullity**

1. A term provided in the general conditions shall be null if, given the circumstances existing at the time the contract was concluded, nature of the contract and all the other terms of the contract, such term is grossly unfair to the party which the general conditions have been supplied to.

2. For the purpose of paragraph 1, a clause which limits or excludes one’s party’s liability for non-performance or which permits one party to render performance substantially different from what the other party reasonably expected is presumed to be grossly unfair.

3. The provision of paragraph 1 does not apply to the adequacy in value of one party's obligations compared to the value of the obligations of the other party.

4. General conditions incorporated into consumer contracts shall be subject to the provisions of Sub-charter IX of this Chapter I.

**Article 114**

**Conflict between terms of contract**

In case of conflict between a general condition and another term of contract the latter shall prevail.

**SubChapter VIII – Transfer of Contract**

**Article 115**

**Conditions for transfer**

1. Either party to a bilateral contract may transfer the contract to a third person, who shall thereby become the holder of all the former’s rights and obligations deriving from the contract, if the other party consents there to.
2. Through the transfer of a contract the contractual relationship between the transferring party and the other party shall pass to the recipient and the other party when the other party consents to the transfer; if the consent is given in advance the transfer shall be deemed to take place when the other party is notified of the transfer.
3. Consent to the transfer of a contract shall only be valid if given in the form prescribed by law for the conclusion of the transferred contract.
4. The meanings of the provisions on parties’ rights in connection with a contract on takeover of debt shall also apply to the transfer of a contract.

**Article 116**

**Transferring party’s responsibilities**

1. The transferring party shall be liable to the recipient for the validity of the transferred contract.
2. The transferring party shall not guarantee to the recipient that the other party will perform the other party’s obligations deriving from the transferred contract, unless the transferring party specifically undertakes to do so.
3. The transferring party shall not guarantee to the other party that the recipient will perform the contractual obligations, unless the transferring party specifically undertakes to do so.

**Article 117**

**Objections**

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

**Chapter XII – Contract in Favour of a Third Person**

**Article 118**

**Direct right of third person**

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

**Article 119**

**Revocation of right in favor of third person**

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

**Article 120**

**Debtor’s objections against third person**

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

**Article 121**

**Refusal by third person**

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

**Article 122**

**Promise of action by third person**

1. A promise made to another that a third person will do something or refrain from something shall not bind the third person; the person that made the promise shall be liable for any damage incurred by the other person because the third person did not wish to commit to doing such or refraining from such.
2. The person that makes the promise shall not be liable if the promise made to the other person was solely that the former would endeavor to have the third person undertake to do something or refrain from something and in the event the person failed despite all the necessary endeavors.

**Chapter XIII – Cause of Damage**

**SubChapter I – General Principles**

**Article 123  
The basis of responsibility**

1. A person who causes unfair [legally relevant] damage to the other is liable to compensate him unless it is established that the damage was caused without his fault.

2. Persons are responsible for activities that result in environmental damage, regardless of guilt.

3. Persons are also liable, regardless of guilt, in any other case specified by law.

4. Civil liability for defamation and insult is regulated by a special law.

**Article 124  
Damage**

1. The damage is to diminish one's wealth (ordinary damage) and to prevent its growth (loss of profit), as well as causing the other's physical pain, psychic suffering or fear (immaterial damage).

2. Material damage includes expenses incurred, loss of earnings or profits, damage to property or impairment of its value, life, body or health injuries.

3. The moral damage involves pain and suffering, and damage to the quality of life.

**Article 125  
The future damage**

1. The future damage may be compensated if it is shown that there is a reasonable probability that may occur as a result of established facts, according to the regular course of events.

2. The amount of compensation for future damage can be determined equally and based on the assumed future circumstances.

**Article 126  
Unfair Damage [legally relevant damage]**

1. The damage, whether material or moral, is unfair [legally relevant] if it arises from a violation of a legal provision or a right acquired by the Constitution or by law.  
  
2. The damage, whether material or moral, is also unfair [legally relevant] if it arises from a breach of a legitimate interest in legal protection, provided that it is fair and reasonable to have compensation.  
  
3. When determining whether an interest is valuable for legal protection, taking into account the source of liability, the nature of the damage, the expectations of the person suffering the damage and its relationship with the person causing the damage, as well as the public policy considerations.  
  
4. For the purposes of this article, any deterioration of the nature that are part of the environment, such as air, water, soil, flora and fauna, is an unfair [legally relevant] damage to the State.

**Article 127  
Request** **for Removal of Damaging Risk**

1. Anyone may require from the other to avoid the source of the risk of significant damage to him or to the undetermined number of persons and to refrain from activities which result in the disturbance or the risk of harm if the onset of the disturbance or damage cannot be prevented by appropriate measures.  
  
2. The court shall order, upon the request of the person concerned, that appropriate measures be taken to prevent the occurrence of harm or distress, or to avoid the source of risk at the expense of the risk source holder, if that person does not do this.  
  
3. If the damage is caused in the exercise of the activity of general interest for which the permission of the competent body has been obtained, only compensation of damage exceeding the normal limits may be required.  
  
4. However, in this case, it may be required to take socially reasonable measures to prevent or reduce the damage.

**Article 128  
Request** **for termination of the act that violates** **personality rights**

1. Everyone has the right to request from the court or other competent authority to order the termination of the act that violates the integrity of the person's personality of personal and family life and other personality rights of his personality.  
  
2. The court or other competent authority may order that the action be terminated under the threat of payment of a fixed or total sums or in instalments for the benefit of the damaged party.

**SubChapter II – Responsibility Based on the Guilt**  
**Article 129  
Guilt**

The guiltexists when the damaged party caused the damage intentionally or due to the negligence.

**Article 130  
Persons who are not responsible**

A person who, due to mental development disorders or other mental disorders is not capable of trial, will not be held responsible for the damage caused to another person.

**Article 131**

**Responsibility of persons with temporary abilities to trial**

1. Whoever causes damage to the other in a state of temporary disability is liable for it, unless it proves that without its fault it is brought to such a state.  
  
2. If this is caused by someone's fault, the one who caused that state of mind/disability will be the one responsible for the damage.

**Article 132**

**Responsibility of the minor**

1. A minor up to the age of seven (7) years shall not be liable for the damage caused to the other.  
  
2. A minor from the age of seven (7) years, up to the age of fourteen (14), shall not be liable for the damage caused, unless it is proved that during the damage he has been able to adjudicate.  
  
3. The minor, after having completed fourteen (14) years, responds to the general rules for liability for damage.

**Article 133**

**Necessary protection**

Person who, in the necessary protection, causes damage to the attacker, is not obliged to compensate the damage except in the case of exceeding the necessary protection.

**Article 134**

**Condition of need, avoidance of damage from the other**

1. If a person causes damage to a person in a state of extreme need to save himself from a risk to life, bodily harm or damage to health or property, or any other fundamental right, and the risk could not be eliminated without causing damage, it is obliged to pay the indemnity in the amount determined by the court.  
  
2. The provision of paragraph 1 shall also apply if the damage is caused to preserve a third person from the inevitable danger of life, body or health damage, property, or any other fundamental right of such third person.

**Article 135**

**Consent of the damaged party**

1. Whoever at his own damage, allows another to undertake any action, cannot claim from him the compensation of the damage caused by such action.  
  
2. The statement of the damaged party with which he/she has given consent to cause the damage with the act prohibited by law shall be invalid.  
  
3. The provision from paragraph 1 shall also apply if the person who is suffering the damage has voluntarily taken that risk knowing the risk of the damage sustained.

**Article 136**

**Contribution to guilt by the damaged party**

When the damaged party contributes to the occurrence of the damage, the compensation is reduced according to the degree of guilt.

**SubChapter III – Liability for Others**

**Article 137**  **Liability for damages caused by persons with mental disorders**

**or other mental health problems**

If the damage is caused by a person who is incapable of trial because of mental development disorders or other mental disorders, the compensation is made by the persons who were obliged to supervise such person, unless it is shown that the supervision was performed with due care or the damage could not have been avoided.

**Article 138**

**Parental responsibility**

1. Parents or other persons legally required to provide parental care to a minor under seven (7) years are liable for any damage caused by him to another person.  
  
2. If the minor is over seven (7) years old, but under fourteen (14) years, the persons referred to in paragraph 1 are exempt from liability if the minor child was able to judge when the damage was caused.  
  
3. If the person who has suffered the damage cannot obtain compensation from the minor, the court may, subject to the financial conditions of the parties and all other circumstances, order the persons referred to in paragraph 1 to pay equal compensation.

**Article 139**

**Responsibility of schools, bodies and other institutions**

If, at the time when the damage was caused, the minor was entrusted to a school, body or institution, that school, body or institution shall be liable for any damage caused by the minor while he was under their supervision, except if it is shown that supervision was carried out with due care or that the damage could not have been avoided.

**SubChapter IV – Liability of Employer for Employees**

**Article 140  
Employer liability**

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

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

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

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

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

**Article 141**

**Legal person’s liability for damage inflicted by body thereof**

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

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

3. This right shall expire six (6) months after the day the compensation was paid.

**SubChapter V- Liability for Damages Caused by Dangerous Object or Activities**

**Article 142**

**Liable persons**

1. The owner or possessor of a dangerous object shall be liable for any damage resulting from such object.

2. A person entrusted with the use of a dangerous object, or a person responsible for overseeing it who is not employed by the owner or possessor, shall be liable for any damage resulting from such object, unless it is shown that the damage was the result of concealed defects or hidden attributes of the object.

**Article 143**

**Exemption from liability**

1. The persons shall be exempted from liability if it is shown that the damage was exclusively caused by an act that could not have been foreseen or avoided.

2. The possessor of the object is relieved of liability even if it is proved that the damage was caused only by the action of the damaged party or the third person which he could not foresee and whose consequences could not have been avoided.

3. The possessor is partially released from liability if the damaged party has partially contributed to causing the damage.

4. If the third party contributed partially to the damage caused, he/she responds to the damaged party in solidarity with the possessor of the object.

5. A person assisting the owner or possessor in the use of the object shall not be deemed as a third person.

**Article 144**

**Unlawful removal of a dangerous object from holder**

If a dangerous object was removed unlawfully, the person who removed the dangerous object shall be liable for any damage resulting from it.

**Article 145**

**Dangerous activities**

1. The person who carries on a dangerous activity shall be liable for any damage originating from such activity.

2. An activity is dangerous if it creates a significant risk of damage even when conducted with due care and it is not a matter of common usage. A risk of damage may be significant having regard to the seriousness or the likelihood of the damage.

3. Civil liability for damage resulting from activities dangerous to the environment shall be regulated by special law.

**SubChapter VI – Liability for Damages Caused by Motor Vehicles**

**Article 146**

**Damage caused by motor vehicles**

1. The driver of a motor vehicle shall be obliged to compensate damages caused by fault.

2. Except in the case of exclusive fault of one driver, each driver shall be liable in proportion to his respective fault.

3. Unless proved otherwise, it is presumed that each driver equally contributed to cause the accident.

4. The owner of the vehicle or its possessor is jointly and severally liable with the driver, unless he proves that the vehicle was used without his authorization.

5. The owner of the vehicle or its possessor is liable for damages arising from defects in the maintenance or the manufacture of the vehicle, without prejudice to the right of redress against the manufacturer.

**SubChapter VII – Liability for Defective Products**

**Article 147**

**Scope of application**

When a defective product causes a person’s death, bodily injury or health, or damage to his property, the producer of the product shall be obliged to compensate the damage caused.

**Article 148**

**Product**

For the purpose of this Sub-chapter, a product is any movable property, even though incorporated into another movable property or into an immovable property.

**Article 149**

**Defect**

1. A product has a defect when it does not provide the safety which a person is enChapterd to expect, taking all circumstances into account, including its presentation, the use to which it could reasonably be expected to serve, and the time when it was put into circulation.

2. A product is not defective for the sole reason that a better product is subsequently put into circulation.

**Article 150**

**Producer**

1. For the purpose of this Sub-chapter, a producer is a person who has produced the final product, a raw material or a component part. A producer is also anyone who by putting his name, trademark or other distinguishing feature on the product presents himself as its producer.

2. A producer is also anyone who imports a product for sale, hire, leasing or any form of distribution with an economic purpose in the course of his business.

3. Where the producer of the product cannot be identified, each supplier of the product shall be deemed to be its producer unless he informs the injured person within one (1) month of his request of the identity of the producer or of the person who supplied him with the product. The same rule shall apply, in the case of an imported product, if this product does not indicate the identity of the person referred to in paragraph 2, even if the name of the producer is known.

**Article 151**

**Damage** **due to faulty products**

1. For the purpose of this Sub-chapter, damage means:

1.1. damage caused by death or by personal injuries; and

1.2. damage or destruction of any property other than the defective product itself, provided that this other property is of a type ordinarily intended for private use or consumption, and was used by the damaged person mainly for his own private use or consumption.

**Article 152**

**Two or more parties liable to pay monetary compensation**

If two or more producers are liable to pay monetary compensation for the same damage, they shall be liable jointly and severally.

**Article 153**

**Reduced liability**

1. The liability of the producer shall be reduced when the damage is caused both by a defect in product and by the act or omission of a third party.

2. The liability of the producer may also be reduced when, having regarding all the circumstances, the damage is caused both by a defect in product and by the fault of the damaged person or any person for whom the damaged person is responsible.

**Article 154**

**When the producer is not liable to pay monetary compensation**

1. The producer’s liability is excluded if:
   1. he did not put the product into circulation;
   2. under the circumstances it is probable that the defect which caused the damage did not exist at the time when the producer put the product into circulation;
   3. the product was neither manufactured by him for sale or any other form of distribution for economic purpose nor manufactured or distributed by him in the course of his business;
   4. the defect is due to compliance of the product with laws and regulations; or
   5. the state of scientific and technical knowledge at the time when the producer put the product into circulation was not such as to enable the defect to be discovered.

2. The obligation to pay monetary compensation of the producer of a component part is also excluded if the defect is attributable to the design of the product in which the component has been fitted or to the instructions given by the manufacturer of the product.

**Article 155**

**Burden of proof of the injured person**

The injured person bears the burden of proving the defect, the damage and the causal relationship between defect and damage.

**Article 156**

**Burden of proof of the producer**

The producer bears the burden of proving the grounds for exclusion of liability referred to in Article … *[‘When the producer is not liable to pay monetary compensation’].*

**Article 157**

**Prescription**

1. The compensation claim shall prescribe after three (3) years from the day on which the party enChapterd to compensation became aware, or should have become aware, of the damage, the defect and the identity of the party liable to pay monetary compensation.

2. In any event, the claim shall expire 10 (ten) years from the day when the producer put into circulation the product that caused the damage, unless the injured person has in the meantime instituted legal proceedings against the producer.

**Article 158**

**Mandatory nature**

The liability of the producers may not be excluded or limited in advance. Any agreements to the contrary shall be null.

**SubChapter VIII – Special Cases of Liability**

**Article 159**

**Event organisers’ liability**

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

**Article 160**

**Liability arising from animals**

1. The keeper of a dangerous animal shall be liable for any damage caused by it.
2. The keeper the domestic animal shall be responsible for any damage caused by it, unless it is shown that he has acted with due care.

**Article 161**

**Liability arising from buildings**

1. The owner or possessor of a building or other structure shall be liable for any damage originating from the ruins or collapse of such building or structure, unless it is shown that the damage was not the result of neglected maintenance or inadequate quality of construction and that the owner or possessor acted with due care.

2. The owner or possessor of a building or other structure shall be liable for any damage originating from objects which have fallen down from the building and which were incautiously positioned.

**Article 162**

**Liability because of omission of emergency aid**

1. Any person who without any risk to himself fails to aid anyone whose life or health is endangered shall be liable for the damage suffered by, if the circumstances of the case the damage should have been foreseen.
2. The court may exempt such person from compensating the damage if the circumstances of the case so require.

**Article 163**

**Liability arising in connection with the obligation to conclude a contract**

Any person obliged by law to conclude a contract must compensate any damage caused by failure to conclude such contract in due time at the request of the interested person.

**Article 164**

**Liability in connection with performance of transactions of general importance**

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

**Chapter XIV – Compensation of Damage**

**SubChapter I – General Provisions for Material Damage**

**Article 165**

**Restoration of original situation and monetary compensation**

1. The liable person shall be obliged to restore the situation existing prior to the occurrence of the damage.

2. If restoration of the original situation is totally or partially impossible, the liable person shall be obliged to pay monetary compensation.

3. If the injured person so requests, the liable person shall be obliged to pay monetary compensation, unless the circumstances of the case justify the restoration of the original situation.

**Article 166**

**When the obligation to compensate arises**

The obligation to compensate arises at the moment when the damage occurred.

# SubChapter II – Rules for Determining the Amount of Compensation

**Article 167**

**Actual loss and lost profit**

1. The damaged party shall have the right to compensation of the loss which such party has suffered (actual loss) and gain of which he has been deprived (lost profit).

2. The amount of compensation provided shall be calculated according to the market values and prices at the time when the court decision is issued, unless stipulated otherwise by law.

3. When estimating the amount of profit lost, consideration is given to the profit that could have been expected based on the regular flow of objects or under special circumstances and whose performance has been hampered by the act of the doer or by the omission to take action.

4. When the object is destroyed or damaged by a criminal offense committed intentionally, the court may determine the amount of remuneration according to the value of the property for the damaged party.

**Article 168**

**Damage arising from non-performance or delay in performance** **of an obligation**

1. In the case of non-performance or delay in performance of an obligation, compensation shall put the creditor as nearly as possible into the position in which he would have been if the obligation had been duly performed.

2. The debtor is liable only for the damage that he foresaw or should have foreseen at the time when the obligation was incurred, unless the non-performance or delay in performance was intentional or grossly negligent.

3. The debtor is not liable for damage suffered by the creditor to the extent that the creditor contributed to the non-performance or delay in performance of the obligation.

4. The debtor is not liable for damage suffered by the creditor to the extent that the creditor could have reduced the loss by taking reasonable steps. The creditor is enChapterd to recover any expenses reasonably incurred in attempting to reduce the damage.

**Article 169**

**Reduction of compensation**

1. If the damage was caused when acting for the benefit of the injured party, the court may order the injurer to pay reduced compensation, taking into consideration whether the injurer acted with due care.

2. Where the fault of the person suffering the damage contributes to the occurrence or extent of damage, compensation is to be reduced according to the degree of such fault.

3. The court may also reduce the compensation if the person suffering the damage, knowing the risk of damage of the type caused, voluntarily takes that risk and is to be regarded as accepting it.

**Article 170**

**Shared liability**

1. The injured party, who has contributed to the damage created, or made the damage greater than it would be otherwise, has the right only to accordingly lower compensation.
2. For the previous paragraph, the provisions on the liability of the legal representative and his assistant shall apply *mutatis mutandis*.
3. When it is impossible to verify which part of the damage results from the action of the damaged party, the court shall rule on compensation by taking the circumstances of the case into account.
4. The injurer and the injured party bear the burden of proof of each’s contribution to the damaged caused, and the causality of the contribution to the damage and its weight.

**SubChapter III – Special Rules for Compensation in the Event of Death, Bodily Injury and Damage to Health**

**Article 171**

**Compensation of damage in case of death, bodily injury and damage to health**

1. Whoever causes bodily injury to another person or harms his health is obliged to compensate for the costs of treatment and other necessary expenses associated with this as well as lost earnings due to inability to work during the time of treatment.

2. If the injured party due to partial or partial inability to work loses profit or needs are added continuously, or opportunities for further development and progress have disappeared or are diminished, the person in charge has a duty to pay the injured persona a fixed amount of money in return for this damage.

**Article 172**

**Extent of liability in the case of death**

1. In the case of death, compensation shall be made by reimbursing the costs of an attempted cure as well as the losses incurred by the deceased party because of the suspension or reduction of his earning capacity or the resulting increase in his needs for the duration of the period of illness preceding his death.

2. If at the time of the injury, the deceased party maintained a relationship with a third party by virtue of which he was under the legal obligation to maintain or support this third party and if the third party was deprived of the right to maintenance or support as a result of the death, the party liable to pay monetarycompensation shall compensate the third party in the form of an annuity. Liability for damages shall also be enforced if, at the time of injury, the third party had been conceived but not yet born.

3. Any person that causes the death of another shall be obliged to compensate the funeral costs of the deceased party.

**Article 173**

**Extent of liability in the case of bodily injury or damage to health**

In the case of injury to a person’s body or damage to his health, compensation shall be made by reimbursing the costs of the treatment as well as the losses incurred by the injured party as a result of the temporary or permanent suspension or reduction of his earning capacity or the resulting increase in his needs.

**Article 174**

**Compensation in the form of annuity**

1. In the event of death, physical injury or damage to health the compensation shall as a rule have the form of an annuity, either lifelong or for a specific period.

2. An annuity awarded as compensation shall be paid monthly in advance, unless the court decides otherwise.

3. The creditor shall have the right to request the necessary security for the payment of the annuity, unless such would not be justified given the circumstances of the case.

4. If the debtor fails to provide the security stipulated by the court the creditor shall have the right to request that a one-off sum be paid thereto instead of the annuity; this shall be levied in respect of the size of the annuity and the creditor’s probable lifespan, with a rebate for the appropriate interest.

5. On serious grounds the creditor may also request that the debtor immediately or subsequently pay a one-off sum instead of the annuity in other cases.

**Article 175**

**Change in circumstances**

The court may increase an annuity at the request of the injured party or may reduce or revoke it at the request of the injurer if there is a substantial change in the circumstances that were taken into consideration at the time when compensation of damage was awarded.

**Article 176**

**Non-transferability of rights**

1. It shall not be possible to transfer a right to compensation in the form of an annuity for the death of a person or for bodily injury or damage to health to another person.
2. Sums of compensation that have fallen due may be transferred to another person if the compensation sum was set by a written agreement between the parties or by a final court decision.

**SubChapter IV – Moral Damage**

**Article 177**

**Modalities of reparation**

1. Moral damage may be compensated through monetary compensation or other form of reparation equivalent to monetary compensation.

2. Compensation for moral and material damage caused by defamation and insult shall be regulated by special law.

**Article 178**

**Monetary compensation**

1. In the assessment of moral damage, all circumstances of the case, including the gravity, duration and consequences of the damage, have to be taken into account.

2. The law may determine how compensation for moral damage is to be quantified.

**Article 179**

**Moral damage suffered by third persons as a result of another’s death, bodily injury or damage to health**

1. If moral damage is inflicted on a third person as a result of another’s death, bodily injury or damage to health, the person liable for such damage shall be obliged to provide monetary compensation to the third person if at the time of death, injury or damage that person is in a particularly close personal relationship to the injured person.

2. The relationship referred to in paragraph 1 shall be presumed to exist, unless the contrary is proved, between the deceased or injured person and his spouse, children, parents and siblings.

**Article 180**

**Compensation for the victim of a criminal offence**

Any suffering of the victim which is the result of a criminal offense shall be compensated by the offender.

**Article 181**

**Inheritance and assignment of claim for compensation of moral damage**

1. A claim for the compensation of moral damage shall pass to heirs only if it was established by a final court decision or a written agreement.
2. Such a claim may be the subject of assignment, compensation and execution under equal conditions.

**Article 182**

**Shared liability and reduced compensation**

The provisions on shared liability and reduced compensation applying to material damage shall also apply to moral damage as far as practicable.

**SubChapter V – Several Person’s Liability for the Same Damage**

**Article 183**

**Joint and several liability**

1. All those involved shall be jointly and severally liable for damage caused by several persons together.
2. Those who aid or abet the liable person or who help the liable person evade detection shall be jointly and severally liable therewith.
3. All those that caused damage but acted independently shall also be jointly and severally liable for the damage caused, if it is not possible to determine their share of the damage caused.
4. If there is no doubt that damage was caused by one of two or more specific persons that are in some way connected and it cannot be determined which of them caused the damage such persons shall be jointly and severally liable.

**Article 184**

**Joint and several liability of contracting authority and contractor**

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

**Article 185**

**Payer’s recourse**

1. A jointly and several debtor that pays more than such person’s share of the damage may request that each of the other debtors reimburse the payment made therefor.
2. The size of the share of each individual debtor shall be stipulated by the court with regard to the gravity of such person’s fault and the gravity of the consequences following from such person’s actions.
3. If it is impossible to determine the debtors’ shares each shall have an equal share, unless the circumstances of the case require otherwise.

**Chapter XV – Unjust Enrichment**

**SubChapter I – General Provisions**

**Article 186**

**Definition of unjust enrichment**

1. Any person that unjustly becomes enriched to the detriment of another shall return whatever he has received or shall otherwise indemnify the other for his loss.

2. If the enrichment consists in a benefit, the benefit received is to be returned by transferring it or, to the extent that the benefit is not transferable, by paying its value. The obligation to return a benefit extends to any fruits and interest received from the benefit.

3. A person may be enriched by an increase in assets or a decrease in liabilities, receiving a service or having work done, or use of another’s assets.

**Article 187**

**When enrichment is unjust**

1. An enrichment is unjust when the enriched person is not enChapterd to the enrichment against the disadvantaged person by virtue of a contract or other legal act, court ruling, or pursuant to the law. However, if such contract or other legal act, court ruling or rule of law is null, annulled or otherwise rendered ineffective retrospectively, the enriched person is not enChapterd to the enrichment on that basis.

2. An enrichment is also unjustified if the disadvantaged person conferred it for a purpose which is not achieved or with an expectation which is not realised, provided that the enriched person knew or should have known of such purpose or expectation and accepted or could reasonably be assumed to have accepted that the enrichment must give rise to restitution in such circumstances.

3. An enrichment is not unjust if the disadvantaged person consented to it freely and without error.

**SubChapter II – Rules of Restitution**

**Article 188**

**When restitution may not be requested**

Any person that pays an amount of money despite knowing there is no obligation to pay shall not have the right to request the return of the payment made, unless he has reserved the right of restitution at the time of payment or the payment was made under threat of violence.

**Article 189**

**Performance of a natural obligation or moral duty**

There is no obligation to return what has been provided to perform a natural obligation or moral duty.

**Article 190**

**Restitution of monies**

1. Whoever makes an undue payment shall have the right to request the restitution of what he paid. He shall also be enChapterd to receive the fruits and interest from the day of payment, if the person who received it was in bad faith, or from the day of the request, if the latter was in good faith.

2. If, due to an excusable mistake, a person pays the debt of another believing that he is the debtor, he shall have the right to request the restitution of what he paid, provided that the creditor did not transfer in good faith the Chapter or sureties of the credit. The creditor shall also be obliged to return the fruits and interest from the day of payment, if he was in bad faith, or from the day of the request, if he was in good faith. When restitution is not possible, the person who paid in the place of a debtor may be subrogated to the rights of the creditor.

**Article 191**

**Restitution of object**

1. Whoever receives unduly an object shall be obliged to return it. If the object is lost or destroyed, even as a result of force majeure, the person who received it in bad faith shall be obliged to pay the equivalent value. If the object is only deteriorated, he shall be obliged to pay the equivalent value, or alternatively return it and provide indemnification for the loss of value.

2. The person who received the object in good faith shall be liable for its loss, destruction or deterioration to the extent of his enrichment, even where he caused the loss, destruction or deterioration of the object.

**Article 192**

**Return of unduly paid compensation**

There is no obligation to return compensation unduly paid for physical injury, damage to health or death if the recipient acted in good faith, even where the payment was made on the basis of a judicial decision that was later revised or annulled.

**Article 193**

**Use of object for another’s benefit**

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

**Article 194**

**Expenses incurred for another**

Any person who incurs expenses in doing something that another would be obliged to do according to the law shall have the right to request reimbursement of the expenses incurred.

**Article 195**

**Use of another’s object for one’s own benefit**

If a person used an object of another person for his own benefit the latter may request the benefit acquired from the use of such object, without prejudice to compensation for damages.

**Chapter XVI – Management without Mandate**

**SubChapter I – General Rule**

**Article 196**

**Definition and conditions**

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

**Sub-chapter II – Rights and Obligations of Manager without Mandate**

**Article 197**

**Obligations of manager without mandate**

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

**Article** 198

**Due diligence and liability**

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

**Article 199**

**Rights rights of manager without mandate**

1. A manager without mandate that acted throughout as was necessary and did what was requested by the circumstances shall have the right to request that the person whose transaction was conducted release the former from all liabilities taken on because of the transaction, take over all liabilities concluded in the latter’s name and reimburse all the necessary and beneficial expenditure and the damage that occurred, even if the anticipated successful outcome was not achieved.
2. If the manager without mandate averted damage from the person whose transaction was conducted or acquired a benefit therefor that entirely accords with the latter’s intentions and needs, the former shall be due an appropriate payment for such endeavours.

**Article 200**

**Performance of works to assist another party**

Whoever performs work to assist another party, when the conditions for performance of works without an order have not yet been fulfilled, he or she is enChapterd to the reimbursement of expenses incurred, but not more than the value of the gain realised by the other party.

**Article 201**

**Removal of additions**

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

**Sub-chapter III**

**Conduct of Another’s Transactions despite Prohibition**

**Article 202**

**Rights pertaining to a manager without mandate**

1. Any person that interferes with the transaction of another despite a prohibition from the person whose transaction was embarked upon and that knew or should have known of the prohibition shall not have the rights pertaining to a manager without mandate.
2. Such person shall be liable for damage inflicted by the interference in the transactions of another, even if it occurs through no fault of the former.
3. If the prohibition from conducting a transaction contravenes the law or morality, particularly if someone prevented another from performing any legal obligation that could not be deferred, the general rules on management without mandate shall apply.

**Sub-chapter IV – Unauthorized Conduct of Transactions for Personal Benefit**

**Article 203**

**False management**

1. Any person that conducts the transaction of another with the intention of keeping all the benefits achieved despite knowing that the transaction is another’s must at the request of the person whose transaction was conducted provide a bill as a manager without mandate and must deliver all the benefits achieved to the latter.
2. A person whose transaction was conducted by another may also request the return of objects to the previous situation and the reimbursement of damage.

**Sub-chapter V - Approval**

**Article 204**

**Approval**

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

**Chapter XVII – Unilateral Declaration of Intention**

**Article 205**

**Binding effect**

The unilateral promise to perform an obligation is binding on the person making it in the cases provided by law.

**Chapter XVIII – Public Promise**

**Article 206**

**Binding promise**

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

2. Any person that promises a reward or makes an invitation to a prize competition must stipulate a deadline for the competition. If no deadline is stipulated, or a deadline does not result from the nature or purpose of the promise, the obligation of the person that made it shall terminate one (1) year after the public promise was made.

3. If several persons perform the action or accomplish separately the goal provided in the promise, the promised obligation shall be performed in favour of the person who notified the promisor first. If several persons perform the action simultaneously each shall have a share of the reward If the reward is indivisible, the rules on indivisible reward shall apply.

**Article 207**

**Revocation of promise**

1. A public promise may be revoked before the expiry of the deadline referred to in Article … *[‘Binding promise’]* only if there are justifiable grounds, provided that the revocation is made in the same form as the promise.

2. The revocation is ineffective if the person who performed the action or accomplished the goal provided in the promise did not know and should have not known that the promise had been revoked.

3. Those who sustained expenses before the revocation in order to perform the action or accomplish the goal provided in the promise shall have the right to be reimbursed, unless the person that made the promise proves that such expenses were unnecessary.

**Chapter XIX – Acknowledgement of Debit**

**Article 208**

**Effects**

1. The acknowledgment of debt exempts the person in favor of whom it was made from the burden of proving the existence of the debt.

2. The debt is presumed to exist unless there is proof to the contrary.

**Chapter XX – Securities**

**Article 209**

**Definition**

1. A security is a transferrable document by which the issuer undertakes to perform the obligation recorded thereon to the lawful possessor.

2. Securities issued in relation to trade of goods and services, debt securities issued by the Central Bank of Kosovo, and other financial instruments shall be regulated by special law.

**Chapter XXI – Effects of Obligations**

**Sub-chapter I – Right to Compensation of Damage**

**Article 210**

**Performance of obligations and consequences of non-performance**

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

**Article 211**

**Release of debtor’s liability**

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

**Article 212**

**Contractual expansion of liability**

A debtor’s liability may be expanded by contract to cover a case in which the debtor would otherwise not be liable, unless this is not in contravention of the principle of conscientiousness and fairness.

**Article 213**

**Limitation and exclusion of liability**

1. It shall not be possible to exclude the debtor’s liability for intent or gross negligence in advance by contract.
2. At the request of an interested party the court may also annul a contractual provision on the exclusion of liability for slight negligence if such an agreement derives from the debtor’s monopoly position or in any way from the unequal nature of the relationship between the contracting parties.
3. A contractual provision that stipulates the maximum amount of compensation shall be valid if the amount stipulated is not in clear disproportion to the damage or unless stipulated otherwise by law.
4. In the case of limitation of the level of compensation the creditor shall have the right to full compensation if the debtor caused the incapacity to perform intentionally or out of gross negligence.

**Article 214**

**Amount of compensation**

1. The creditor shall have the right to the compensation of ordinary damage and lost profit that the debtor should have expected upon breach of contract as potential consequences of the breach of the contract given the facts that were known or should have been known.
2. In the case of fraud, intentional non-performance or non-performance owing to gross negligence the creditor shall have the right to request that the debtor reimburse all the damage that occurred because of the breach of contract, irrespective of whether the debtor knew of the particular circumstances for which reason it occurred.
3. If during a breach of on obligation any benefit accrued to the creditor in addition to the damage it shall be necessary to take the benefit into suitable consideration when levying the compensation.
4. A party that makes a reference to a breach of contract must take all reasonable measures to reduce the damage caused by the breach; otherwise the other party may request reduced compensation.
5. The provisions of this article shall also apply, as far as practicable, to the non-performance of obligations that did not arise from a contract, unless stipulated otherwise by law.

**Article 215**

**Creditor’s responsibility**

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

**Article 216**

**Liability for issuance of notice**

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

**Article 217**

**Application of provisions on compensation of damage**

Unless stipulated otherwise by law, the provisions on the compensation of non-contractual damage shall apply as far as practicable to the compensation of damage resulting from the breach of an obligation.

**Sub-chapter II – Challenge of Debtor’s Legal Actions**

**Article 218**

**General rule**

1. Any creditor whose claim has fallen due for payment may, irrespective of when it arose, challenge a legal act by the debtor that was done to the detriment of creditors.
2. A legal act shall be deemed to have been done to the detriment of creditors if because of the act the debtor does not have sufficient assets to fulfill the creditor’s claim.
3. The term “legal act” shall also cover an omission for reason of which the debtor lost any material right or through which any material obligation arose therefore.

**Article 219**

**Conditions for objection**

1. Lucrative disposal may be challenged if during disposal the debtor knew or should have known that creditors were thereby being damaged and if the third person with whom or for whose benefit the legal act was done knew or should have known of such.
2. If the third person is the debtor’s spouse or is related in a direct line of descent or indirectly to the level of three (3) times removed or directly or indirectly by marriage to the level of once removed it shall be presumed that such person knew that through such disposal the debtor was acting to the detriment of creditors.
3. For gratuitous disposal and equivalent legal acts the debtor shall be deemed to have known that such disposal was to the detriment of creditors, and the matter of whether the third person knew or should have known of such shall not be a requirement for a challenge thereto.
4. The waiver of an inheritance shall be deemed gratuitous disposal.

**Article 220**

**Deadline for filing of action**

1. A challenging action may be filed within a year in the case of disposal specified in the first paragraph of the previous article, and within three (3) years in other cases.
2. The deadline specified in the previous paragraph shall be deemed to be from the day the challenged legal act was done or from the day it was necessary to do the omitted act.

**Article 221**

**Exclusion of objection**

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

**Article 222**

**How to make an objection**

1. A challenge may be made via a suit (action) or an objection.
2. A challenging action shall be filed against the third person with whom or for whose benefit the legal act was done or against the universal legal successors thereto.
3. If the third person alienates the benefit acquired through the challenged disposal via a lucrative transaction an action may only be filed against the acquirer if the latter knew that the acquisition by the predecessors could be challenged; if the benefit is alienated via a gratuitous transaction an action may be filed against the acquirer even if the latter did not know of such.
4. The defendant may avoid the challenge if the defendant performs the debtor’s obligation.

**Article 223**

**Effect of objection**

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

**Sub-chapter III – Right of Retention**

**Article 224**

**Execution of right of retention**

1. The creditor of a claim that has fallen due shall have the right to retain anything of the debtor that is in the creditor’s hands until the claim is paid thereto.
2. If the debtor becomes insolvent the creditor shall have the right of retention, even if the claim has not yet fallen due.
3. The right of retention of item shall also continue after the expiry of statute of limitation of the request.

**Article 225**

**Exceptions**

The creditor shall not have the right of retention if the debtor requests the return of an object that against the debtor’s will is no longer in the debtor’s possession or if the debtor requests the return of an object that was delivered to the creditor for safekeeping or for loan use.

**Article 226**

**Mandatory return of object before performance of obligation**

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

**Article 227**

**Effect of right of retention**

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

**Sub-chapter IV – Creditor’s Rights in Special Cases**

**Article 228**

**When obligation is composed of objects on kind**

When the obligation is composed of objects on kind and the debtor becomes delayed the creditor may, having informed the debtor of such in advance, buy an object of the same type and quality according to the creditor’s choice and request that the debtor reimburse the price and the damage, or the value of the objects owed and the compensation of damage.

**Article 229**

**Obligation to provide a service**

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

**Article 230**

**When obligation is omission**

1. When the obligation is an omission the creditor shall have the right to the compensation of damage if the debtor acts in contrary to the obligation.
2. If anything was constructed in contravention of the obligation the creditor may request that this be removed at the debtor’s expense and that the debtor reimburse the damage incurred by the creditor in connection with the construction and removal.
3. If the court finds that such is clearly of greater benefit it may rule, having taken the general interest and the creditor’s justified interest into consideration, that what was constructed should not be demolished but that the creditor should have the damage reimbursed in cash.

**Article 231**

**Right to request compensation instead of court decision**

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

2. After the additional deadline passes the creditor may only request compensation for non-performance.

**Article 232**

**Judicial penalties**

1. If the debtor fails to perform any non-pecuniary obligation on time as determined by a final court decision, the court may at the creditor’s request set an appropriate additional deadline therefore and in order to exert influence thereon, irrespective of any damage, pronounce that should the debtor fail to perform the obligation by such deadline the debtor will have to pay the creditor a specific sum of money for each day of delay from the day the deadline past or for any other unit of time.
2. If the debtor subsequently performs the obligation the court may reduce the sum so stipulated, taking the purpose for which the payment was ordered into consideration in so doing.

**Chapter XXII – Termination of Obligation**

**Sub-chapter I – General Provisions**

**Article 233**

**Termination of obligation**

1. An obligation shall terminate when it is performed or in other cases provided by law.
2. Surety, pledge and other accessory rights shall expire upon the termination of the principal obligation.

**Sub-chapter II – Performance**

**Article 234**

**Performance by the debtor or third person**

1. An obligation may be performed by the debtor and also by a third person.
2. The creditor shall be obliged to accept performance from any person that has any legal interest in the obligation being performed, even if the debtor opposes such performance.
3. The creditor shall be obliged to accept performance from a third person if the debtor consents thereto, unless according to the contract or the nature of the obligation itself the debtor must perform the obligation in person.
4. The creditor may accept performance from a third person without the debtor’s conscientiousness, even if the creditor has been notified that the debtor does not wish any other person to perform the obligation.
5. The creditor may not accept performance from a third person if the debtor has proposed thereto that the debtor will perform the obligation.

**Article 235**

**Performance by person with incapacity to act**

1. A debtor with incapacity to contract may validly perform an obligation if the existence of the obligation is not in doubt and if the deadline for the performance thereof has fallen due.
2. Nevertheless it shall be possible to challenge performance if such a person repays a statute barred debt or a debt deriving from gaming or betting.

**Article 236**

**Costs of performance**

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

**Article 237**

**Performing with transferring the rights to performer**

1. When performing the obligation of another any performer may prior to or during performance agree with the creditor that the fulfilled claim be transferred thereto with all or some of the accessory rights.
2. The creditor’s rights may also be transferred to the performer by a contract between the debtor and the performer concluded prior to performance.
3. The subrogation of the performer in respect of the creditor’s rights in these cases shall occur upon performance.

**Article 238**

**Subrogation by law**

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

**Article 239**

**Subrogation during part performance**

1. During part performance of the creditor’s claim the accessory rights by which the performance of the claim is secured shall be transferred to the performer only insofar as they are not required for the performance of the remainder.
2. The creditor and the performer may agree to exploit guarantees in proportion to their claims, and may also agree that the performer will have priority in repayment.

**Article 240**

**Evidence and means of security**

1. The creditor shall be obliged to deliver to the performer means by which the claim can be evidenced or secured.
2. Exceptionally the creditor may deliver to the performer an object received as a lien from the debtor or from any other person, but only if the lien consents thereto; otherwise the object shall remain in the creditor’s possession to be kept safe for the performer.

**Article 241**

**How much can be requested from debtor**

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

**Article 242**

**Exclusion of creditor’s liability for existence and collectability of claim**

1. A creditor that accepted performance from a third person shall not be liable for the existence or collectability of the claim upon performance.
2. The application of the rules on unjust enrichment shall not be excluded thereby.

**Sub-chapter III – For Whom Performance is Made**

**Article 243**

**The authorized person**

1. An obligation must be performed for the creditor or a person designated by law, a court decision or a contract between the creditor and debtor or designated by the creditor alone.
2. Performance shall also be valid when made for a third person if the creditor subsequently approves thereof or makes use thereof.

**Article 244**

**Performance for creditor with incapacity to act**

1. A debtor shall only be released by performance for a creditor with incapacity to act if the performance was beneficial to the creditor or if the subject of performance is still in the possession thereof.
2. A creditor with incapacity to act that acquires the capacity to act may then approve performance received when the creditor had the incapacity to act.

**Sub-chapter IV – Subject of Performance**

**Article 245**

**Exact performance**

1. The debtor shall be obliged to perform that which is the exact content of his obligation.

2. Unless the creditor agrees otherwise, performance is not deemed to have occurred if the debtor delivered a good or service other than that which is the object of his obligation.

3. In the case provided for in paragraph 2, the creditor shall have the right to refuse performance and return that which was delivered to him. He shall also have the right to request the good or service which is the object of the debtor’s obligation.

**Article 246**

**Substitutional performance**

1. The obligation shall terminate if in agreement with the debtor the creditor accepts anything else in place of that which was owed thereto.
2. In this case the debtor shall be liable as a seller for material and legal errors in the object provided in place of the object owed.
3. Nevertheless the creditor may request from the debtor, but no longer from the surety, the fulfillment of the original claim and compensation in place of a claim from the debtor’s liability for material and legal errors in the object.

**Article 247**

**Delivery for sale**

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

**Article 248**

**Part performance**

1. The creditor shall have the right to refuse part performance of an obligation, even where the obligation is divisible, unless the law provides otherwise.

2. Unless the creditor agrees otherwise, acceptance of part performance does not extinguish the debtor’s obligation, which shall only be reduced as a result of such acceptance.

**Article 249**

**Obligation to provide an object in kind**

1. If objects are defined by type alone the debtor must provide an object of medium quality.
2. The debtor must provide objects of appropriate quality if the debtor is aware of their purpose.

**Sub-chapter V – Accounting of Performance**

**Article 250**

**The order of calculation**

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

**Article 251**

**Calculation of interest and costs**

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

**Sub-chapter VI – Time of Performance**

**Article 252**

**Deadline**

1. If a deadline is established for performance, it is presumed to be in favour of the debtor unless it appears to have been established in favour of the creditor or of both.

2. For the calculation of deadline s, the same rules of Article …. *[Calculation of prescriptions periods]* apply.

**Article 253**

**If no deadline is stipulated**

1. If no deadline is stipulated, the creditor may immediately request performance of the obligation, unless the nature of the contract, the mode and place of performance or other circumstances require a specific deadline for performance. In this case, failing an agreement between the parties, an appropriate deadline for performance is set by the court.

2. Where stipulation of the deadline for performance is left to the will of the creditor or the debtor and the enChapterd person does not stipulate it upon request of the other party, the court sets an appropriate deadline for performance.

**Article 254**

**Early performance**

1. If the deadline was stipulated in favour of the debtor, the creditor shall not be enChapterd to request performance of the obligation before the expiry of the deadline, unless the debtor has become insolvent or has, by its own act, reduced the security which he had provided or has failed to provide the security which he had promised.

2. Where the debtor offers early performance of the obligation, the debtor cannot seek reimbursement for payments which he has made in advance, even if he was not aware of the existence of the deadline. However, the debtor may seek reimbursement, within the limits of the loss incurred, of the amount by which the creditor has been enriched by reason of the early performance.

3. If the deadline was stipulated in favour of the creditor, the creditor shall be enChapterd to request performance of the obligation before the expiry of the deadline.

4. If the deadline was stipulated in favour of both the debtor and the creditor, neither shall be enChapterd to offer or request performance of the obligation before the expiry of the deadline.

**Article 255**

**Pecuniary obligations**

1. If paid through the mediation of a bank or other organisation at which the creditor has an account and unless stipulated otherwise by the contracting parties a debt shall be deemed to have been settled when a money transfer in favor of the creditor or an order from the debtor’s bank or organisation to approve the amount stated therein for the creditor’s account reaches the bank or organisation at which the creditor has an account.
2. If payment by post is agreed upon by contract the parties shall be presumed to have agreed that by paying the stipulated sum in at the post office the debtor will have settled the liability to the creditor; if such a manner of payment is not agreed the debt shall be settled when the creditor receives the money transfer.

**Sub-chapter VII – Place of Performance**

**Article 256**

**General rules**

1. The debtor shall be obliged to perform the obligation and the creditor shall be obliged to accept it at a place stipulated by the legal transaction or by law.
2. If the place of performance is not stipulated and cannot be stipulated according to the purpose of the transaction, the nature of the obligation or any other circumstances it shall be necessary to perform the obligation in the place where the debtor had a head office or residence when the obligation originated, and if the residence is missing the place where the person resides will be considering.
3. If the debtor is a legal person or sole trader that has units in different areas the place of performance shall be deemed to be the seat of the unit that must do what is required for the performance of the obligation if when the contract was concluded the creditor knew or should have known of this circumstance.

**Article 257**

**Place of performance of pecuniary obligations**

1. Pecuniary obligations shall be performed in the place where the creditor has a head office or residence, and if the residence is missing the place where the person resides will be considering
2. If the payment is made by order the pecuniary obligations shall be performed at the head office of the organisation where the creditor’s cash funds are.
3. If the creditor changes the place where the creditor had a head office or residence when the obligation originated and the costs of performance increase for this reason the increase in costs shall be at the creditor’s expense.

**Sub-chapter VIII – Receipt**

**Article 258**

**Presumptions in connection with receipt**

1. Any person that fully or partly performs an obligation shall have the right to request that the creditor issue a receipt at the expense of the latter.
2. A debtor that pays a pecuniary obligation via a bank or post office may only request a receipt from the creditor if there are justifiable grounds for so doing.
3. If a receipt is issued for the full payment of a principal, it shall be presumed that the interest and any court costs and other costs have also been paid.
4. If a debtor with periodic charges such as rent and other claims charged periodically such as claims originating from the use of electricity, water or telephone has a receipt for payment of claims due later it shall be presumed that those falling due for payment before have been paid.

**Article 259**

**Refusal of receipt**

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

**Sub-chapter IX - IOU**

**Article 260**

**Return of IOU**

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

**Sub-chapter X – Debtor’s Delay**

**Article 261**

**Definition**

1. The debtor shall be deemed to be in delay if the debtor fails to perform the obligation by the deadline stipulated for performance.
2. If no deadline for performance is stipulated the debtor shall be deemed to be in delay when, verbally or in writing, or by initiating any procedure whose purpose is to achieve the performance of the obligation, the creditor requests that the debtor perform the obligation.

**Sub-chapter XI – Creditor’s Delay**

**Article 262**

**Definition**

The creditor shall be in delay where without justifiable grounds he refuses to accept performance, prevents it by his actions, or does not do what is necessary for the debtor to perform his obligation.

**Article 263**

**Effects**

1. When the creditor is in delay, the debtor’s delay shall terminate and interest shall cease to accrue from the day the creditor is in delay.

2. The risk of accidental destruction or damage of the object shall be transferred to the creditor.

3. A creditor in delay shall be obliged to compensate any damage suffered by the debtor because of the delay, and to reimburse any costs borne by him in connection with the custody of the object.

**Sub-chapter XII – Formal Offer**

**Article 264**

**Formal offer**

The effects referred to in Article … *[‘Effects’]* arise only after a formal offer is made in accordance with the provisions of this Section and the creditor has still refused to accept performance.

**Article 265**

**Requirements for the validity of the offer**

1. The offer shall be valid if:

1.1. it is made to a creditor capable of receiving, or to a person who has the authorization to receive for him;

1.2. it is made by a person capable of performing the obligation;

1.3. it consists of the entire sum or objects owed, along with interest and liquidated damages, and a sum for unliquidated damages, saving any further amount due, where appropriate;

1.4. the obligation has fallen due;

1.5. the condition upon which the performance of the obligation depends is fulfilled;

1.6. the offer is made to the creditor in person or to his residence or emplacement;

1.7. the offer is drafted by a notary or another person authorized by law.

2. The debtor may make the offer conditional upon the creditor giving his consent to release the object from real guarantees or other sureties limiting the right to dispose of them.

**Article 266**

**Offer for movables**

1. Where the obligation has as object money, securities or other movables that must be delivered at the residence or emplacement of the creditor, the offer shall be made through the physical delivery of the movables (real offer). The real offer shall be made by a notary or bailiff in accordance with the law.

2. If the movables must be delivered at a different place, the offer shall consist in summoning the creditor to receive them, and shall indicate the time and place where the debtor will deliver the movables. The summons shall be made by a bailiff *[and notary?]* in accordance with the law.

**Article 267**

**Offer of immovable property**

1. Where the object of the obligation is the delivery of an immovable property, the creditor shall be summoned to take possession of the property.

2. The summons is made by a bailiff *[and notary?]* in accordance with the law.

**Article 268**

**Enforcement measures**

The creditor shall not take enforcement measures during the time he is in delay.

**Sub-chapter XIII – Deposit of Objects**

**Article 269**

**Deposit with the court**

1. The debtor shall have the right to deposit the object owed, or request that a third party be appointed by the court for safekeeping it, only after a formal offer is made in accordance with Article … *[‘Formal offer’]*, except where:

1.1. the creditor is unknown;

1.2. his whereabouts are unknown; or

1.3. he is not capable of receiving and does not have a representative who can receive for him.

2. The debtor shall be obliged to notify the creditor regarding the deposit or appointment of a third party for safekeeping, if the debtor knows who the creditor is and the residence or emplacement of the creditor is known.

**Article 270**

**Competent court**

1. An object shall be deposited with the court of jurisdiction in the place of performance, unless the circumstances require that the deposit be made with the court of jurisdiction in the place where the object is located.
2. Any other court of jurisdiction must accept the object for safekeeping, and the debtor must provide the creditor with compensation if any damage is incurred thereby through the deposit of the object at the other court.

**Article 271**

**Appointment of a third party for safekeeping**

1. Where the object of the obligation is the delivery of an immovable property, or any other object that cannot be deposited with the court, the debtor may request that a third party be appointed by the court for safekeeping in the interest of the creditor.

2. In the case of immovable property, the third party shall act as a custodian.

3. The court may order that the owed object be delivered to a public warehouse.

4. The appointment of a third party for safekeeping shall have the effect of deposit with the court.

**Article 272**

**Effect of deposit**

If the deposit object is accepted by the creditor, or a final court decision determines that the requirements for the validity of the formal offer and the deposit are fulfilled, the debtor shall be released from his obligation.

**Article 273**

**Retrieval of deposit**

1. The debtor may retrieve the deposit until the creditor declares that the deposited object is accepted or a final court decision determines that the requirements for the validity of the formal offer and the deposit are fulfilled.

2. The debtor must inform the creditor that the object has been retrieved.

3. If the debtor retrieves the deposited object the deposit shall be deemed to have never occurred.

**Article 274**

**Costs of deposit**

The costs of a deposit validly made shall be borne by the creditor.

**Article 275**

**Sale instead of deposit of object**

1. If an object is not suitable for deposit or safekeeping, or if the costs of deposit or safekeeping are excessive in comparison to its value, the debtor may request from the court to be authorized to sell it at a public auction and, after deducting the costs of the sale, to deposit the amount so obtained with the court.
2. If the object has a daily price or if it is of little value in comparison to the cost of a public auction the debtor may sell it out of hand.
3. If the object is such that it could be rapidly destroyed or spoilt the debtor must sell it without delay in the most suitable manner.
4. In each case the debtor must whenever possible notify the creditor regarding the intended sale and, after the sale, regarding the price obtained and the deposit thereof with the court.

**Article 276**

**Sale to cover costs of safekeeping**

1. If the costs of safekeeping are not paid by an appropriate deadline the court shall at the request of the depositary order the sale of the object and shall stipulate the manner of sale.
2. The costs of the sale and the costs of safekeeping shall be deducted from the sum obtained and the remainder shall be deposited with the court for the creditor.

**Chapter XXIII – Other Modalities of Termination of an Obligation**

**Sub-chapter I – Compensation**

**Article 277**

**General Conditions**

1. Where two parties owe each other money or other replaceable objects of the same type and the same quality [fungible objects], either of them may compensation its obligation against that of the other party if both obligations are ascertained as to their existence and value [amount] and have fallen due.

2. Even if the conditions of this article are not met, the parties may effect the compensation by agreement.

**Article 278**

**Effects**

1. Compensation extinguishes the obligations of the parties up to concurrence of the lesser obligation from the time of their coexistence.

2. If compensation is invoked in a legal proceeding, the compensation is effective from the date when the court decides the merits of the dispute. *[However, if the counterclaim of the party invoking compensation was not contested by the other party, the provision of paragraph 1 applies].*

3. Compensation cannot be invoked *ex officio* by the court.

**Article 279**

**Notice of compensation**

1. Compensation is effected by notice to the other party. *[The notice shall be effective when it reaches the other party]*.

2. Where the party giving notice of compensation has two or more obligations against the other party, the notice is effective only if it specifies the obligation to which the compensation relates.

**Article 280**

**Lack of reciprocity**

1. The guarantor shall have the right to compensation the debtor’s obligation to the creditor against the creditor’s obligation to the debtor.

2. The same right is granted to the third party that has established a lien or mortgage on his own property as security for the obligation of another.

**Article 281**

**Prescribed claim**

1. A debt may be compensated by a statutory requirement only if this statutory requirement has not been complied with at the time when the conditions for compensation existed.

2. If the conditions for compensation are established after one of the requirements has been prescribed, the compensation shall not be incurred if the debtor of the statutory claim has emphasized the objection to prescription.

**Article 282**

**Compensation in foreign currency**

Where parties owe each other money in different currencies, each party may compensation that party’s right against the other party’s right, unless the parties have agreed that the party declaring compensation is to pay exclusively in a specified currency.

**Article 283**

**Compensation against assigned claim**

1. The debtor of an assigned claim may exercise with the recipient a compensation of the debtor’s claims that could have been set off with the assignor prior to notification of assignment.

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

3. A debtor that without reservation declares to the recipient consent to the assignment may no longer exercise a compensation therewith of any of the debtor’s claims against the assignor.

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

**Article 284**

**When compensation is excluded**

1. The following may not terminate via compensation:
   1. claims that cannot be seized (sequestrated);
   2. claims for objects or the value of objects that were placed with debtor for safekeeping or made available for loan for the debtor, or that the debtor unlawfully took or retained;
   3. claims arising through the intentional infliction of damage;
   4. compensation claims for damage done with damage to health or cause of death;
   5. claims deriving from a lawful obligation for maintenance.

**Sub-chapter II – Release from Debt**

**Article 285**

**Agreement**

1. An obligation shall terminate if the creditor declares to the debtor that the creditor will not request performance thereof and the debtor consents to such.
2. It shall not be necessary for the agreement to be concluded in the form in which the transaction from which the obligation originated was concluded for it to be valid.

**Article 286**

**Surety’s release from debt**

1. The release from debt of the surety shall not release the principal debtor; upon the release from debt of the principal debtor the surety shall be released.
2. If there are several sureties and the creditor releases one of them from the obligation the others shall remain bound; however, their obligation shall be reduced by the part falling to the released surety.

**Article 287**

**General release from debt**

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

**Sub-chapter III – Novation**

**Article 288**

**Conditions for novation**

1. An obligation shall terminate if the creditor and the debtor agree to replace the existing obligation with a new obligation, and if the new obligation has a different subject or a different legal basis.
2. Agreements between the creditor and the debtor by which a provision on the deadline , the place or the manner of performance are changed, much later agreements on interest, penalty, security for performance or on any other accessory provision, and agreements on the issue of a new debt document shall not be deemed novation.
3. The issue of a bill of exchange or a cheque for reason of any previous obligation shall not be deemed novation, unless such is agreed.

**Article 289**

**Intention to enact novation**

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

**Article 290**

**Effects of novation**

1. Through a contract of novation the previous obligation shall terminate and a new obligation shall originate.
2. Both pledge and surety shall terminate with the previous obligation, unless otherwise agreed with the surety or pledger.
3. This shall also apply to other accessory rights in connection with the previous obligation.

**Article 291**

**If there was no previous obligation**

1. The novation shall be ineffective if the previous obligation was null or had already expired.
2. If the previous obligation was merely challengeable the novation shall be valid, if the debtor knew of the grounds for challenge.

**Article 292**

**Effect of invalidity**

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

**Sub-chapter IV – Confounding**

**Article 293**

**Confounding**

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

**Sub-chapter V – Impossibility of Performance**

**Article 294**

**Termination of the obligation due to impossibility to perform**

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

**Article 295**

**If the object of an obligation is an object of a specific type**

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

**Article 296**

**Cession of rights against third person responsible for impossibility of performance**

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

**Sub-chapter VI – Mutual Dissent, Expiration and Notice of Termination**

**Article 297**

**Termination by mutual agreement**

1. By their mutual agreement, the parties are free to terminate the contract at any moment.

2. Unilateral termination is only allowed in respect of contracts for an indefinite period and in other cases provided by law.

**Article 298**

**Expiry date and automatic renewal**

1. A contract for a definite period ceases to produce its effects at the time agreed by the parties, unless the contract provides for the automatic renewal of the contract. In this case, the contract is tacitly prolonged if a party fails to give notice of cancellation to the other party within the deadline specified in the contract.

2. In case of automatic renewal of the contract, the contract is prolonged for a period equal to the original duration of the contract, unless the contract or the law provide otherwise.

**Article 299**

**Notice of termination**

1. Unless the law provides otherwise, either party to a contract for an indefinite period may terminate the contract by giving advance notice to the other.

2. The contract shall be deemed terminated when the notice period specified in the contract or in the law expires. If no such period exists, the contract shall be deemed terminated after the expiry of the period required according to usages, or of an appropriate deadline having regard to the nature of the contract.

**Article 300**

**Effects of termination**

Unless the parties agree otherwise, termination of the contract through mutual agreement or a notice of termination, or due to the expiration date, does not affect the performance of any obligation performance of which was due before termination.

**Sub-chapter VII – Death**

**Article 301**

**Death**

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

**Kapitulli XXIV – Pecuniary Obligations**

**Sub-chapter I – Monetary Obligations**

**Article 302**

**Principle of monetary nominalism**

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

**Article 303**

**Revaluation of pecuniary obligations**

1. The contracting parties may agree that the amount of the debtor’s pecuniary obligation be stipulated in respect of changes in the price of goods and services expressed by the retail price index determined by the authorized organisation (index-linking clause), in respect of fluctuation in a foreign exchange rate (foreign currency clause), or in respect of changes in other prices, unless such an agreement is in contravention of the law.
2. If the contracting parties agree on the revaluation of pecuniary obligations the revaluation shall be performed for the period from the origin of the obligation to the performance of the obligation, unless the parties agree otherwise.

**Article 304**

**Early payment**

1. The debtor may perform a pecuniary obligation early.

2. A contractual provision by which the debtor waives this right shall be null.

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

**Sub-chapter II – Interest**

**Article 305**

**Default interest**

1. A debtor who is in delay in the payment of a sum of money or any part thereof shall owe default interest to the creditor on the unpaid part of that sum from the time when payment is due to the time of payment, unless otherwise agreed or provided by law.

2. The rate of the default interest payable on a debt shall be determined by law.

3. The creditor and the debtor may agree a default interest rate other than that determined by law.

**Article 306**

**Compensation of damage**

The creditor shall be enChapterd to default interest irrespective of any damage incurred as a result of the debtor’s delay.

**Article** **307**

**Prohibition** **of interest on interest**

1. No default interest shall run on interest that has fallen due for payment but has not been paid, unless stipulated otherwise by law.
2. A contractual provision that interest shall run on interest that has fallen due shall be null.

3. Default interest may be requested on the unpaid amount only from the date when the request for its payment has been submitted to court.

**Article 308**

**Usurious interest**

1. If the interest rate agreed by the parties is fifty percent (50%) higher than the default interest rate calculated according to the following article, such an agreement is considered as usurious, unless the creditor proves he has not exploited the debtor's unfavorable state of affairs, the difficulty of his financial situation, his reluctance or his dependence, or that the benefits reserved to the creditor or third person are not in infringement of what the creditor has offered or has undertaken to offer or to do.

2. The above mentioned paragraph 1 do not apply to commercial contracts.

**Article 309**

**Interest delay**

1. The debtor who is late in fulfilling the monetary obligation debits the principal debt and the interest.  
  
2. The interest rate delay is eight per cent (8%) per annum, unless otherwise provided by a special law

**Article 310**

**Remunerative *[contractual]* interest**

1. The contracting parties may agree that in addition to the principal debt the debtor shall owe interest to the creditor at the rate specified in the contract.

2. If the contract does not stipulate otherwise, the interest shall be payable at the rate determined by law.

**Sub-chapter I – Alternative Obligations**

**Article 311**

**Right to choose**

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

**Article 312**

**Irrevocability and effect of choice**

1. The choice is made and may no longer be altered when the party that has such right notifies the other party regarding the choice made.
2. Once the choice is made the obligation shall be deemed to have been simple from the beginning and the object chosen shall be deemed to have been the object of the obligation from the beginning.

**Article 313**

**Duration of right**

1. The debtor shall have the right to choose at any time until one of the owed objects is fully or partly delivered to the creditor in compulsory execution at the latter’s choice.
2. If the creditor has the right to choose but fails to pronounce thereon by the deadline stipulated for performance the debtor may request that the creditor choose, stipulating an appropriate deadline for such; after such deadline passes the right to choose shall pass to the debtor.

**Article 314**

**Choice entrusted to third person**

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

**Article 315**

**Limitation to remaining object**

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

**Article 316**

**Limitation in event of one party’s responsibility**

1. If any object of an obligation becomes impossible because of a development for which the debtor is responsible and the debtor has the right to choose the obligation shall be limited to the remaining object; if the creditor has the right to choose the creditor may choose to request the remaining object or compensation.
2. If any object of an obligation becomes impossible because of a development for which the creditor is responsible the debtor’s obligation shall terminate; however, if the debtor has the right to choose the debtor may request compensation and perform the obligation with the remaining object, and if the creditor has the right to choose the creditor may provide compensation and request the remaining object.

**Sub-chapter III – Facultative Obligations**

**Article 317**

**Debtor’s right in facultative obligation**

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

**Article 318**

**Creditor’s right in facultative obligation**

1. In a facultative obligation the creditor may only request the object of the obligation from the debtor, not any other object by which the debtor could perform the obligation should the latter so desire.
2. If the object of the obligation becomes impossible because of a development for which the debtor is responsible the creditor may only request compensation; however, the debtor may discharge the obligation by delivering an object that the debtor was enChapterd to deliver instead of the owed object.

**Sub-chapter IV – Facultative Claims**

**Article 319**

**General rule**

1. If the contract or the law stipulates that the creditor may instead of the owed object request any other specific subject from the debtor, the debtor shall obliged to deliver such object to the creditor if requested thereby.
2. The appropriate rules on facultative and alternative obligations shall otherwise apply to such facultative claims with regard to the contracting parties’ intent and the circumstances of the transaction.

**Sub-chapter V – Divisible Obligations**

**Article 320**

**Division of obligations and claims**

1. An obligation shall be deemed divisible if that which is owed can be divided into and performed in parts that have the same attributes as the entire object, and if none of its value is lost through such a division; otherwise it shall be deemed indivisible.
2. If there are several debtors for a divisible obligation and division is not otherwise stipulated the obligation shall be divided among them into equal parts, and they shall each be responsible for their own part of the obligation.
3. If there are several creditors for a divisible obligation, unless stipulated otherwise, the claim shall be divided among them into equal parts, and each creditor may only request such creditor’s own part of the claim.

**Article 321**

**Presumption of joint and several liability**

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

**Sub-chapter VI – Joint and Several Liability**

**Article 322**

**Content of debtors’ joint and several liability**

1. Each debtor of a joint and several obligation shall be liable to the creditor for the entire obligation and the creditor may request its performance from any co-debtor at any time until it is fully performed. However, the obligation shall terminate and all the co-debtors shall be released from it if any of them performs such obligation.
2. Among several joint and several debtors each may owe with a different deadline for performance, under different conditions and with various deviations in general.

**Article 323**

**Compensation**

1. Each joint and several debtor may make reference to the compensation of a co- debtor.
2. Each joint and several debtor may compensation a co-debtor’s claim on the creditor against a claim by the creditor, but only in the amount of that part of the co-debtor’s debt in the joint and several obligation.

**Article 324**

**Release from debt**

1. Upon any of the joint and several debtors being released from the debt under an agreement all the other debtors shall be released from the obligation.
2. If the purpose of the release was solely to release the debtor that was released from the debt from the obligation, the joint and several obligation shall be reduced by the part that with regard to the mutual relations among the debtors fell thereto, and the other debtors shall be jointly and severally liable for the remainder of the obligation.

**Article 325**

**Novation**

1. Through a novation concluded by the creditor with any of the joint and several debtors the other debtors shall be released.
2. If the creditor and the debtor restricted the novation to the part of the obligation falling to the debtor the obligation of the others shall not terminate but shall be reduced by such part.

**Article 326**

**Settlement**

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

**Article 327**

**Confusion**

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

**Article 328**

**Creditor’s delay**

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

**Article 329**

**One debtor’s delay and acknowledgement of debt**

1. A delay on the part of one joint and several debtor shall have no effect against the other debtors.
2. The same shall apply to a debt acknowledged by one of the joint and several debtors.

**Article 330**

**Suspension and discontinuance of prescription and waiver of prescription**

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

**Article 331**

**Performer’s right to reimbursement**

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

**Article 332**

**Division into equal parts and exception**

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

**Sub-chapter VII – Joint and Several Creditors**

**Article 333**

**Non-presumption of joint and several liability**

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

**Article 334**

**Content of joint and several liability**

1. Each joint and several creditor shall have the right to request from the debtor the performance of the entire obligation; however, the obligation shall also terminate against the other creditors when one of them is repaid.
2. The debtor may perform the obligation for a creditor of the debtor’s own choosing at any time until a particular creditor requests performance.

**Article 335**

**Compensation**

1. The debtor may compensation his obligation against a claim of the creditor that requests performance therefrom.
2. The debtor may only compensation the debtor’s obligation against another creditor’s clam up to the amount of that part of the joint and several claim pertaining to such creditor.

**Article 336**

**Release from debt and novation**

Through a release from debt and a novation between the debtor and one creditor the joint and several obligation shall be reduced by the amount of the creditor’s share in the claim.

**Article 337**

**Settlement**

A settlement concluded by one of the joint and several creditors with the debtor shall have no effect against the other creditors; however, they shall have the right to accept it, unless it only relates the share of the creditor with whom it was concluded.

**Article 338**

**Confoundation**

If the person of one joint and several creditor also combines the attributes of the debtor, each of the other solidary creditors can only ask for his share of the claim.

**Article 339**

**Delay**

1. A debtor that is in delay against one joint and several creditor shall be in delay against the other creditors.
2. A delay on the part of one joint and several creditor shall have an effect against the other creditors.

**Article 340**

**Acknowledgement of debt**

The acknowledgement of a debt to one creditor shall be in favour of all the creditors.

**Article 341**

**Prescription**

1. If one creditor discontinues prescription or the prescription period is not running there against, this shall not benefit the other creditors and the prescription period shall continue to run against them.
2. The waiver of prescription against one creditor shall be in favour of all the creditors.

**Article 342**

**Relationship among creditors after performance**

1. Each joint and several creditor shall have the right to request that the creditor that received performance from the debtor deliver thereto the share pertaining thereto.
2. Unless it follows otherwise from the relationship among the creditors an equal share shall go to each joint and several creditor.

**Sub-chapter VIII – Indivisible Obligations**

**Article 343**

**Indivisible Obligations**

1. The provisions on joint and several obligations shall apply to indivisible obligations with multiple debtors.
2. If in the case of an indivisible obligation there are several creditors among whom joint and several liability is neither agreed by contract nor provided by law, an individual creditor may only request performance from the debtor if the other creditors have authorized acceptance by such creditor; otherwise each creditor may request that the debtor perform the obligation for all of them together or deposit it with the court.

**Chapter XXV – Change of Creditor or Debtor**

**Sub-chapter I – Assignment of Claim by Contract**

**Article 344**

**Which claims may be transferred by contract**

1. Through a contract concluded with a third person the creditor may transfer the creditor’s claim thereto, with the exception of claims whose transfer is prohibited by law and those that are connected to the creditor’s personality or whose nature opposes transfer to another.
2. If the debtor and the creditor agreed that the creditor could not transfer the claim to another the transfer shall have no legal effect.
3. If upon transfer a document was submitted demonstrating the existence of a claim from which no prohibition of transfer derives the transfer shall have effect if the recipient did not know and was not obliged to know of a prohibition of transfer.
4. If the debtor and the creditor from a commercial contract agreed that the creditor could not transfer a pecuniary claim to another the transfer shall nevertheless have effect. In this case the debtor shall also be released from the obligation if it is performed for the assignor of the claim.

**Article 345**

**Accessory rights**

1. The accessory rights, such as the right to priority repayment, a mortgage, pledge, the right from the surety contract, the right to interest and the right to penalty, shall be transferred to the recipient with the claim.
2. The assignor may only deliver a lien object to the recipient if the lien consents thereto; otherwise the object shall remain with the assignor, in safekeeping for the recipient.
3. It shall be presumed that interest that has fallen due but has not been paid is assigned with the principal claim.

**Article 346**

**Notification of debtor**

1. The debtor’s consent shall not be required for the transfer of a claim, but the assignor must notify the debtor regarding the assignment.
2. Performance for the assignor prior to the notification of assignment shall be valid, and the debtor shall thereby be released from the obligation, but only if the debtor did not know of the assignment; otherwise the obligation shall remain and the debtor must perform it for the recipient.

**Article 347**

**Multiple assignment**

If the creditor assigned the same claim to various persons the claim shall pertain to the recipient regarding whom the creditor first notified the debtor or that first made himself/herself/itself known to the debtor.

**Sub-chapter II – Relationship Between Recipient and Debtor**

**Article 348**

**Relationship between recipient and debtor**

1. The recipient shall have the same rights against the debtor as those held there against until the assignment by the assignor.
2. In addition to the objections held against the recipient the debtor may also exercise there against those objections that could have been exercised against the assignor until the debtor learnt of the assignment.

**Sub-chapter III – Relationship Between Assignor and Recipient**

**Article 349**

**Delivery of IOU**

1. The assignor must deliver an IOU to the recipient if the assignor holds such, and other evidence on the assigned claim and accessory rights.
2. If the assignor only transfers part of the claim to the recipient the assignor must deliver thereto a certified transcription of the IOU proving the existence of the assigned claim.
3. At the request of the recipient the assignor must issue certified confirmation of the assignment thereto.

**Article 350**

**Liability for existence of claim**

If the claim is assigned by a lucrative contract the assignor shall be liable for the existence of the claim when it was assigned.

**Article 351**

**Liability for collectability**

1. The assignor shall be liable for the collectability of the assigned claim if such was agreed, but only up to the amount received from the recipient, and for the collectability of interest, costs in connection with assignment and costs in proceedings against the debtor.
2. It shall not be possible to agree on greater liability for an assignor acting in good faith.

**Sub-chapter IV – Special Cases of Assignment of Claim**

**Article 352**

**Assignment in lieu of performance or for collection purposes**

1. If the debtor assigns a claim or a part thereof to the creditor instead of performing the debtor’s obligation, the obligation for the amount of the claim assigned shall expire when the assignment contract is concluded.
2. If the debtor assigns a claim to the creditor for collection purposes only, the obligation shall only expire or be reduced when the creditor collects the assigned claim.
3. In the first and second cases the recipient must deliver to the assignor that which was collected in excess of the claim there against.
4. In assignment for collection the debtor of the assigned claim may also perform the obligation for the assignor, even if notified regarding the assignment.

**Article 353**

**Assignment as security**

If a claim is assigned as security for the recipient’s claim against the assignor the recipient shall be obliged to act with due care in collecting the assigned claim, and after collection to deliver the surplus to the assignor once the amount required for repayment of the recipient’s claim there against has been kept.

**Sub-chapter V – Change of Debtor**

**Article 354**

**Definition**

1. A debt assumption contract is a contract between the debtor and a third person, to which the creditor consents, whereby the third person undertakes to fulfill the debtor’s obligation towards the creditor.
2. Either party may notify the creditor of the conclusion of the contract, or the creditor may consent to the assumption of the debt to either party.
3. A creditor that without restrictions accepts any performance from the recipient performed in the recipient’s own name shall be presumed to have given consent.
4. The contracting parties may together or separately request that the creditor pronounce by a stipulated deadline whether the takeover of the debt is consented to; if the creditor fails to pronounce by the stipulated deadline consent shall be deemed not to have been given.
5. A contract on takeover of debt shall have the effect of a contract on takeover of performance until the creditor consents thereto or if the creditor denies consent.

**Article 355**

**Debt secured by mortgage**

1. If during the alienation of any real estate under mortgage it is agreed between the acquirer and the alienator that the acquirer will take over the debt against the mortgage creditor, the mortgage creditor shall be deemed to have consented to the contract on takeover of debt if no denial of consent is issued thereby within three (3) months of a written request by the alienator.
2. In the written request it shall be necessary to draw the creditor’s attention to such consequence, otherwise the request shall be deemed not have been made.

**Sub-chapter VI – Effects of Contract on Takeover of Dept**

**Article 356**

**Change of debtor**

1. Through the takeover of a debt the recipient shall take the place of the previous debtor, and the latter shall be released from the obligation.
2. If when the creditor consented to the contract on takeover of debt the recipient was over indebted and the creditor did not know and was not obliged to know of such, the previous debtor shall not be released from the obligation, and the contract on takeover of debt shall have the effect of a contract on accession to debt. It is presumed that at the time of consent on takeover of debt the creditor was not aware that the recipient was heavily indebted.
3. The same obligation that existed until then between the previous debtor and the creditor shall exist between the recipient and the creditor.

**Article 357**

**Accessory rights**

1. The accessory rights that existed until then in addition to the claim shall remain; however, sureties and liens provided by third persons shall terminate unless the sureties and lien consented to their being liable for the new debtor. The consent is provided in the form applicable for the legal transaction by which the accessory right is created
2. Unless agreed otherwise, the recipient shall not be liable for uncollected interest that fell due prior to the takeover. The same is applied for the contracted penalty that fell before the takeover of debt was final.

**Article 358**

**Objections**

1. Against the creditor the recipient may exercise all the objections deriving from the relationship between the previous debtor and the creditor from which the debt taken over originates and the objections that the recipient himself /herself/ itself holds against the creditor.
2. Against the creditor the recipient may not exercise any objections deriving from the relationship between the recipient and the previous debtor that was the basis for the takeover of the debt.

**Sub-chapter VII – Accession to Debt**

**Article 359**

**Debt accession contract**

1. A debt accession contract is a contract between the creditor and a third person by which the third person undertakes to fulfill the debtor’s obligation towards the creditor.

2. Unless the creditor accepts expressly to release the original debtor from his obligation, the latter shall be jointly and severally liable with the third person.

**Sub-chapter VIII – Takeover of Performance**

**Article 360**

**Takeover of performance**

1. Performance may be taken over through a contract between the debtor and a third person by which the third person undertakes to perform the debtor’s obligation towards the creditor.
2. The third person shall be liable to the debtor if he fails to perform the obligation in favour of the creditor on time and the creditor requests performance from the debtor.
3. The third person shall neither take over nor accede to the debt, and the creditor shall hold no right against it.

**PART II**

**SPECIFIC CONTRACTS**

**Chapter I – Sales Contract**

**Sub-chapter I – General Provisions on Sales Contract**

**Article 361**

**Definition**

1. Though a sales contract the seller undertakes to deliver the object being sold to the buyer such that the latter acquires the right of ownership; the buyer undertakes to pay price to the seller.

2. The seller of any right shall undertake to supply the sold right to the buyer; if the exercise of this right requires possession of an object the seller shall deliver such to the buyer.

**Article 362**

**Risk**

1. Until the delivery of the object to the buyer the risk of accidental destruction of or damage to the object shall be borne by the seller; upon the delivery of the object the risk shall be transferred to the buyer.
2. The risk shall not be transferred to the buyer if for reason of any defect in the delivered object the buyer has withdrawn from the contract or requested the replacement of the object.

**Article 363**

**Transfer of risk when buyer is in delay**

1. If an object was not delivered because the buyer was in delay the risk shall be transferred to the buyer when the buyer became delayed.
2. When the object of the contract is objects of a specific type the risk shall be transferred to a buyer in delay if the seller separated objects that were clearly intended for delivery and sent the buyer notification of such.
3. When the nature of the objects of a specific type is such that the seller cannot separate a part thereof it shall suffice if the seller does everything necessary for the buyer to be able to take them and sends the buyer notification of such.

**Sub-chapter II – Object**

**Article 364**

**General rule**

1. An object involved in a contract must be marketable. A sales contract for an object that is not marketable shall be null.
2. For the sale of items, whose transaction is limited, special provisions shall apply.
3. A sale may also relate to a future object.

**Article 365**

**If object is destroyed before contract**

1. A sales contract shall be null if the object involved in the contract had already been destroyed when the contract was concluded.
2. If the object was only partly destroyed when the contract was concluded the buyer may withdraw from the contract or remain in the contract with a proportionate reduction in the price.
3. The contract shall remain valid and the buyer shall only have the right to a reduction of the price if the partial destruction of the object does not disrupt the contract in achieving its purpose or if such is customary in legal transactions for the object in question.

**Article 366**

**Sale of another’s object**

The sale of another’s object shall be binding for the contracting parties; however, a buyer that did not know and was not obliged to know that the object was another’s may withdraw from the contract if for this reason the purpose thereof cannot be achieved, and may request compensation.

**Article 367**

**Sale of disputed right**

1. A disputed right may be the object of a sales contract.

2. The contract by which a judge, lawyer, bailiff, judicial clerk or other court officer purchases, even through intermediaries, a disputed right shall be null where such right is the subject of litigation in the court where they are employed or within the jurisdiction of which they exercise their profession or functions.

**Sub-chapter III – Price**

**Article 368**

**If price is not stipulated**

1. If the price is not stipulated in a contract and there is not sufficient information therein based on which it would be possible to stipulate it the contract shall be deemed not to have originated.
2. If the price is not stipulated in a commercial sales contract and there is not sufficient information therein based on which it would be possible to stipulate it the buyer must pay the price customarily charged by the seller upon the conclusion of the contract, or appropriate price if there is no customary charge.
3. A price shall be considered reasonable if it is a current price at the time of entering into contract, and should it be impossible to determine, the court shall determine the price in conformity to the circumstances of the case.

**Article 369**

**Prescribed price**

If the agreed price is greater than the price prescribed for the particular type of object by the relevant authority the buyer shall only owe the prescribed price; if the agreed price has already been paid the buyer shall have the right to request the return of the difference.

**Article 370**

**If daily price is agreed**

1. If a daily price is agreed the buyer shall owe the price determined using the official record on the market in the seller’s area when the obligation should be performed.
2. If there is no such record the daily price shall be stipulated on the basis of the elements customarily used to stipulate prices on the market.

**Article 371**

**If stipulation of price is entrusted to third person**

If the stipulation of the price was entrusted to a third person that cannot or does not wish to stipulate the price, and the contracting parties do not subsequently reach agreement thereon but do not annul the contract, appropriate price shall be deemed to have been agreed.

**Article 372**

**If stipulation of price is left to contracting party**

If there is a contractual provision by which the stipulation of the price is left to one of the contracting parties the price shall be deemed not to have been agreed. The buyer in such a case shall owe a price as if no price has been determined.

**Sub-chapter IV – Seller’s Obligations for Delivery of the Object**

**Article 373**

**Time and place of delivery**

1. The seller shall be obliged to deliver the object to the buyer at the time and place stipulated in the contract.
2. The seller shall as a rule be deemed to have performed the obligation of delivery to the buyer when he (seller) delivers to the buyer the object or the document by which the object can be taken over.

**Article 374**

**Object of delivery**

1. Unless agreed otherwise or it follows otherwise from the nature of the transaction, the seller shall be obliged to deliver the object to the buyer in working order, together with all the accessories.
2. The fruits and other benefits from the object shall pertain to the buyer from the day when the seller was obliged to deliver the object thereto.

**Article 375**

**If delivery within specific period is agreed**

If it is agreed that the object will be delivered within a specific period but it is not stipulated which party will have the right to stipulate the day of delivery within the limits of this period, the seller shall have this right, unless it follows from the circumstances of the case that stipulation of the day was left to the buyer.

**Article 376**

**If day of delivery is not stipulated**

If the day of delivery to the buyer is not stipulated the seller must deliver the object within a suitable period of the contract being concluded, with regard to the nature of the object and other circumstances.

**Article 377**

**If place of delivery is not stipulated in contract**

1. If the place of delivery is not determined by the contract, the delivery of the object shall be done at the place of the seller's domicile or residence at the moment of entering into contract or, should there be no such domicile, and the seller has entered into contract while performing his regular business activity, the delivery place shall be his business address.
2. If when the contract was concluded it was known to the contracting parties where the object was or where it was to be made it shall be necessary to deliver the object at such place.

**Article 378**

**Delivery to transporter**

If under the contract an object must be transported and the place of performance is not stipulated in the contract, delivery shall be deemed to have been performed upon delivery of the object to the transporter or to the person organizing dispatch.

**Article 379**

**Organization of transport**

A seller that is obliged to send the object to the buyer must conclude the contracts required for transportation to the specific place in the customary manner and under the customary conditions.

**Article 380**

**Costs**

The costs during and prior to delivery shall be borne by the seller, and the costs of removing the object and all other costs after delivery shall be borne by the buyer, unless agreed otherwise.

**Article 381**

**Deferral of delivery until payment of price**

Unless agreed otherwise or it customarily follows otherwise, the seller shall not be obliged to deliver the object if the buyer fails to or is not ready to pay the price at the same time; however, the buyer shall not be obliged to pay the price before having the opportunity to inspect the object.

**Article 382**

**Deferral of delivery during transport of the object**

1. When an object is being delivered by delivery to a transporter the seller may defer the dispatch of the object until the payment of the price or may send the object while reserving the right to dispose of it during transport.
2. If the right to dispose of the object during transport is reserved the seller may request that the object not be delivered to the buyer at the intended place until the price is paid; the buyer shall not be obliged to pay the price before having the opportunity to inspect the object.
3. If payment upon the delivery of an appropriate document is envisaged in the contract the buyer shall not have the right to refuse to pay the price because the buyer had no opportunity to inspect the object.

**Article 383**

**Prevention of delivery of dispatched object**

1. If after the dispatch of an object it is shown that the buyer’s pecuniary circumstances have changed sufficiently for there to be a justifiable doubt as to whether the buyer will be able to pay the price, the seller may prevent the delivery of the object to the buyer even when the document by which the buyer is enChapterd to request the delivery of the object is already in the buyer’s hands.
2. The seller may not prevent delivery if requested by a third person with the correct document that gives such person the right to request delivery of the object, unless the document contains reservations regarding the effect of the transfer or if the seller shows that the holder of the document knowingly acted to the detriment of the seller when acquiring the document.

**Sub-chapter V – Liability for Material Defects**

**Article 384**

**Defects for which the seller is liable**

1. The seller shall be liable for material defects of the object sold, regardless of whether he was aware of such defects, in accordance with the provisions of this sub-section.

2. A material defect is any defect that would substantially reduce the value of the object or make it unfit for its designated purpose. In particular, a defect shall be deemed material if:

2.1. the object does not have the agreed quality;

2.2. it is not is suitable for its customary use or for the special use intended under the contract;

2.3. it does not possess the attributes and features that were specifically agreed upon.

**Article 385**

**Defects for which seller is not liable**

1. The seller shall not be liable for any material defects of the sold object mentioned in paragraphs 1 and 3 of the previous article if they were known or could be easily known to the buyer when the contract was concluded.

2. A defect could be easily known to the buyer if a person acting with due care would have noticed it during the inspection, unless the seller reassured the buyer that the object was without any defects.

**Article 386**

**Inspection and patent defects**

1. The buyer shall inspect the object received as soon as feasible and shall notify the seller of any defects noticed during the inspection.

2. If the buyer dispatches the object onward without repacking it and when the contract was concluded the seller knew or should have known of the possibility of such onward dispatch the inspection is deferred until the object reaches its final destination.

3. The notification of any patent defects shall be made immediately where inspection is conducted in the presence of both parties. In all other cases notification must occur within eight (8) days from the inspection.

4. Where the buyer fails to notify the seller of any defects noticed during the inspection, the object shall be deemed accepted.

**Article 387**

**Latent defects**

1. If any defects that could not be noticed during inspection are discovered at a later moment, the buyer shall give notice to the seller within eight (8) days from the day the defects were discovered. Failing such notification the object shall be deemed accepted.

1. The seller shall not be liable for defects that appear more than six (6) months after the object was delivered, unless the law or the contract provide otherwise.

**Article 388**

**Notification**

1. Where inspection is not conducted in the presence of both parties, the notification of a defect shall be made in writing to the seller and must accurately describe the defect and invite the seller to inspect the object.

2. Notification is deemed effected on time if dispatched within the set deadlines by registered letter, telegram or fax or any other reliable means of communication.

**Article 389**

**Importance of the fact that the seller was aware of the defect**

The buyer does not lose the right to invoke to any defect even when he does not perform his obligation to see the object without delay or the obligation to notify the seller on the existence of the defect within the deadline and when the defect is displayed only after six (6) months from the delivery of the object if the seller was aware or could have been aware of this.

**Article 390**

**Exclusion or limitation of the seller’s liability for material defects**

1. Contractors may limit or completely exclude seller's liability for material defects in the item.  
  
2. The provision of the contract on the limitation or exclusion of liability for the defects of the object is null and void if the defect has been known to the seller, whereas he has not notified the buyer about it and when the seller has imposed this provision using the dominant position.

3. The buyer who has waived the right to terminate the contract due to the defects of the object holds the rights other than the defective.

**Article 391**

**Forced prescription**

The possessor, whose object is sold at a forced public auction, is not responsible for the defects of the object.

**Sub-chapter VI – Buyer’s Rights**

**Article 392**

**Buyer’s rights**

1. The buyer that notifies the seller in due time of a material defect shall have the right to:
   1. request that the seller remove or repair the defect, or deliver an equivalent object without the defect;
   2. request that the purchase price be reduced; or
   3. withdraw from the contract.

2. The buyer shall lose the right to withdraw from the contract if the object was destroyed or damaged owing to his fault or as a result of force majeure, or if the buyer transformed the object or transferred it to a third party. In such cases, the buyer shall only be enChapterd to a reduction of the purchase price.

3. In any event, the buyer shall have the right to compensation of damages suffered as a result of the material defects of the object.

**Article 393**

**Failure to meet the contract within a reasonable time**

If the buyer fails to meet the contract's performance within a reasonable time, he or she shall be enChapterd to contract termination or reduction of the price.

**Article 394**

**When the buyer can terminate the contract**

1. The buyer may only terminate the contract if he has previously left the seller a reasonable deadline for the performance of the contract.  
  
2. The buyer may terminate the contract without leaving the additional deadline if the seller, after notification of the defect, has communicated that he will not complete the contract or if it is clear from the circumstances of the case that the seller could not fulfill the contract either in the supplementary term.

**Article 395**

**Failure to fulfill the contract in the supplementary term**

If the seller fails to complete the contract in the supplementary term, the contract is terminated in accordance with the law, but the buyer may hold the contract in force if he promptly declares to the seller that the contract is in force.

**Article 396**

**Partial Defects**

1. Where only part of the item submitted is defective or when only part of the item is delivered or less than the contracted amount, the buyer may terminate the contract in the sense of the foregoing articles only in respect of the part which is defected or only in relation to the missing parts or quantities.  
  
2. The buyer may terminate the contract in its entirety only if the quantity contracted or the delivered item constitutes a whole, or if the buyer has a reasonable interest to receive the contracted item or the quantity as a whole.

**Article 397**

**If seller gave a larger quantity to buyer**

1. In commercial contracts, when the seller of objects of a specific type gives the buyer a larger quantity than that agreed and the buyer fails to declare within an appropriate period that the surplus is being refused the buyer shall be deemed to have also accepted the surplus and must pay therefore at the same price.
2. The seller must reimburse the damage to a buyer that does not wish to accept the surplus.

**Article 398**

**Stipulated price for several objects**

1. If several objects or a group of objects are sold through a single contract and for a single sum of price and only some of the objects have defects the buyer may only withdraw from the contract in respect of the objects with a defect; not for the other.
2. If the objects constitute a whole such that it would be damaging to separate them the buyer may withdraw from the entire contract; if the buyer nevertheless only withdraws from the contract in respect of the objects with a defect the seller may also withdraw from the seller’s side of the contract in respect of the other objects.

**Article 399**

**Deprivation of the right to terminate the contract due to defects**

1. The buyer is deprived of the right to terminate the contract due to defective items when it is impossible to return the item or return it to the condition it has received.
2. The buyer can terminate the contract due to the defects of the item. If the object is completely or partially erased, or it has been damaged due to the defects justifying the termination of the contract, or due to any event that does not result from him or any other person for whom he is responsible.
3. The same applies if the item has disappeared or is completely or partially damaged, having in mind that it is the buyer's obligation to control the item, or if the buyer prior to the defective defect has consumed or changed a part of the item during its normal use, as well as if damage or change is irrelevant.

**Article 400**

**Preserving other rights**

The buyer who, due to the inability to return the object or return it to the condition in which he has obtained and he has lost the right to terminate the contract, he has other rights that the law gives to him because of the existence of any defects.

**Article 401**

**Effects of contract termination due to defects**

1. The termination of the contract due to the defects of the object has the same effects as the settlement of the bilateral contracts due to non-performance.  
  
2. The buyer debits the seller compensation for the usefulness of the object even when it is impossible to return completely or part of it, whereas the contract is however terminated.

**Article 402**

**Reduced price**

The price shall be reduced in relation to the value of the object without defects and the value of the object with the defect when the contract was concluded.

**Article 403**

**Gradual discovery of defects**

A buyer who has made a deduction of the price due to the existence of any defects may terminate the contract or request a new rebate if another defect is subsequently discovered.

**Article 404**

**Loss of rights**

1. The rights of a buyer that notified the seller regarding a defect on time shall expire one (1) year from the day the notification was sent, unless the buyer was unable to exercise them due to the seller’s deception.
2. After this deadline passes a buyer that notified the seller regarding a defect on time and has not yet paid the price may, as an objection to the seller’s claim to be paid the price, exercise a claim for the price to be reduced or the damage to be reimbursed.

**Sub-chapter VII – Warranty for Unimpaired Functioning of Sold Object**

**Article 405**

**Liability of seller and manufacturer**

1. If the seller of any machine, engine, item of apparatus or similar object classed as technical goods delivers a warranty document to the buyer by which the manufacturer guarantees the unimpaired functioning of the object during a specific period counted from delivery to the buyer and the object does not function unimpaired the buyer may request from either the seller or the manufacturer that the object be repaired within an appropriate period or, should the seller or manufacturer fail to do so, that an object that functions unimpaired be delivered in its place.
2. These rules shall not encroach upon the rules on the seller’s liability for material defects.

**Article 406**

**Request for repair or replacement**

1. If the object does not function correctly the buyer may within the warranty period request from the seller or the manufacturer that that object be repaired or replaced, irrespective of when the defect in functioning showed itself.
2. The buyer shall also have the right to the compensation of damage incurred thereby because of being unable to use the object, from the moment the request for repair or replacement was made until fulfillment of the request.

**Article 407**

**Extension of warranty period**

1. During a minor repair the warranty period shall be extended by the amount of time the buyer was unable to use the object.
2. If an object is replaced or undergoes significant repairs because of incorrect functioning the warranty period shall recommence from the replacement or return of the repaired object.
3. If only a part of an object is replaced or essentially repaired the warranty period shall only recommence for such part.

**Article 408**

**Withdrawal from contract and reduction of price**

If the seller fails to repair or replace the object within an appropriate period the buyer may withdraw from the contract or reduce the price and request compensation.

**Article 409**

**Costs and risk**

1. The seller or the manufacturer shall be obliged at such person’s own expense to move the object to the place where it is to be repaired or replaced, and to return the repaired or replaced object to the buyer.
2. During this time the seller or manufacturer shall bear the risk of the destruction of or damage to the object.

**Article 410**

**Liability of cooperating parties**

If several independent manufactures are involved in the making of individual parts of an object or in individual actions their liability deriving from such parts or such actions towards the final manufacturer for the incorrect functioning of the object shall terminate when the liability of the final manufacturer towards the buyer or the object terminates.

**Article 411**

**Loss of rights**

The buyer’s rights towards the manufacturer deriving from the warranty documentation shall expire one (1) year after the day the buyer requested the repair or replacement of the object therefrom.

**Sub-chapter VIII – Liability for Legal Defects**

**Article 412**

**Legal defects**

1. The seller shall be liable if any right is held on the sold object by a third person that excludes, reduces or restricts a right of the buyer, and the buyer was not informed of such and did not consent to taking the object encumbered with the right.
2. The seller of any other right guarantees for the existence thereof and for there being no legal obstacle to the exercise thereof.
3. If in the public records the right of the third person has been recorded, which in reality does not exist, the seller is obliged, on its own expense, to perform the deletion of the right.

**Article 413**

**Notification of seller**

If it is shown that a third person lays a claim to any right on an object, the buyer must notify the seller of such, unless the seller already knows of such, and shall request that the object be released from the right or claim within an appropriate period; if the object of the contract are objects of a specific type the seller must deliver another without legal defects.

**Article 414**

**Sanctions for legal defects**

1. If the seller fails to act according to the buyer’s request and someone takes the object from the buyer the contract shall be rescinded by law alone; if the buyer’s right is reduced or restricted the buyer may choose to withdraw from the contract or request a proportionate reduction in the price.
2. If the seller fails to accede to the buyer’s request to release the object from the third person’s right or claim within an appropriate period, the buyer may withdraw from the contract if for this reason the buyer’s purpose cannot be fulfilled.
3. The buyer shall in any case be enChapterd to compensation of damage.
4. If when the contract was concluded the buyer knew of the possibility of the object being taken or the buyer’s rights being reduced or restricted, the buyer shall not have the right to compensation if this possibility is realised, but shall have the right to request the return of or a reduction in the price.

**Article 415**

**If buyer fails to notify seller**

A buyer that enters into a dispute with a third person without notifying the seller and loses the dispute may nevertheless make a reference to the seller’s liability for legal defects, unless the seller shows that the seller had the means available to refute the third person’s claim.

**Article 416**

**If third person’s right is patently well-founded**

1. The buyer shall also have the right to make a reference to the seller’s liability for legal defects when the buyer recognizes the patently well-founded right of the third person without the seller’s notification and without a dispute.
2. If the buyer pays out a specific sum of cash to the third person so that the latter waives the well- founded right the seller may be released from the liability by reimbursing the buyer for the sum paid out and the damage incurred.

**Article 417**

**Contractual limitation or exclusion of seller’s liability**

1. The seller’s liability for legal defects may be limited by contract or entirely excluded.
2. If when the contract was concluded any defect in the seller’s rights was known or could not have remained unknown to the seller a contractual provision on the limitation or exclusion of liability for legal defects shall be null.

**Article 418**

**Limitations of public-legal nature**

The seller shall also be liable for special limitations of a public law nature that were not known to the buyer if the seller knew of such or knew that such could be expected and failed to inform the buyer of such.

**Article 419**

**Loss of right**

1. The buyer’s right deriving from legal defects shall expire one (1) year after the day the buyer learnt of the third person’s right.
2. If the third person initiates a dispute before this deadline passes and the buyer requests that the seller intervene therein the buyer’s right shall only expire six (6) months after the final outcome of the dispute.

**Sub-chapter IX – Buyer’s Obligations**

**Article 420**

**Time and place of payment**

1. The buyer must pay the price at the time and place stipulated in the contract.
2. Unless agreed otherwise or it is customary otherwise, it shall be necessary to pay the price upon delivery in the place the object is delivered.
3. If it is not necessary to pay the price upon delivery it must be paid at the seller’s place of residence or head office.

**Article 421**

**Interest if sale is financed with lending**

If an object sold on credit yields fruits or other benefits the buyer shall owe interest from when the object was delivered, irrespective of whether the price had fallen due for payment.

**Article 422**

**Payment of price during serial supply**

1. During serial supply the buyer must pay the price for each supply when delivery is taken, unless agreed otherwise or it follows otherwise from the circumstances of the transaction.
2. If the buyer provided an advance payment in a contract with serial supply the first supplies shall be charged from the advance payment, unless agreed otherwise.

**Article 423**

**Takeover of Object**

1. The takeover of the object shall comprise the actions necessary to facilitate delivery and out of which the buyer can remove the object.
2. If without justifiable grounds the buyer refuses to take an object whose delivery was offered on time in the agreed or customary manner, the seller may withdraw from the contract if there is a reasonable doubt as to whether the buyer will pay the price.

**Sub-chapter X – Obligation for Safekeeping of Object for Contracting Party**

**Article 424**

**Cases of obligatory safekeeping**

1. If because the buyer is in delay the risk is transferred thereto before the object is delivered thereto, the seller must act with due care to keep the object safe and take appropriate measures to this end.
2. This shall also apply to the buyer if the object was delivered thereto and the buyer wishes to return it to the seller either because the buyer has withdrawn from the contract or because another object has been requested in its place.
3. In both the first and second cases the contracting party that must take the necessary measures for storing the object shall have the right to the return of the necessary costs of storage.

**Article 425**

**If buyer refuses to accept sent object**

A buyer that refuses to accept an object sent thereto at the intended destination and made available there must take it on behalf of the seller if the latter is not at the intended destination and there is no other there that could take it on the seller’s behalf, but under the condition that this is possible without paying the price and without any major inconveniences or excessive costs.

**Article 426**

**Right of party obliged to keep object safe**

A contracting party that under the previous provisions is obliged to take measures to keep an object safe may, under the conditions and with the consequences stipulated in the provisions on deposit with the court and on the sale of an owed object, deposit the object with the court, deliver it to another for safekeeping or sell it for the account of the other party.

**Sub-chapter VI – Compensation of Damage if the Sales Contract is Terminated**

**Article 427**

**General rule**

If a sales contract was terminated because one of the contracting parties breached the contract the other party shall have the right to the compensation of damage incurred for this reason under the general rules on the compensation of damage caused by a breach of contract.

**Article 428**

**If object has daily price**

1. If the contract was rescinded because one of the contracting parties breached the contract and the object has a daily price the other party may request the difference between the price stipulated in the contract and the daily price as at the day when the contract was rescinded on the market in the place in which the transaction was conducted.
2. If on the market in which the transaction was conducted there is no daily price, the daily price on the market that in the case in question can stand in shall be taken for calculating the refund; the difference in transport costs must be added to this price.

**Article 429**

**If objects are sold or bought for coverage**

1. If the object of the sale is a certain quantity of objects of a specific type and one party fails to perform the obligation on time the other party may sell or buy them for coverage and may request the difference between the price stipulated in the contract and the price in the covering sale or covering purchase.
2. Sale and purchase for coverage must be performed within an appropriate period and in an appropriate manner.
3. The creditor must notify the debtor regarding the intended sale or purchase.

**Article 430**

**Compensation of other damage**

In addition to the right to the compensation of damage under the rules specified in the previous articles a party that remains faithful to the contract shall have the right to the compensation of any major damage.

**Sub-chapter XII – Right of Pre-emption**

**Article 431**

**Definition**

Through a contractual clause on the right of pre-emption, a buyer shall be bound to notify a seller of his intention to sell the object to a specific person, as well as on the terms of such sale, and to offer him to purchase the object at the same price

**Article 432**

**Deadline for right and for payment of price**

1. The seller shall be bound to notify the buyer in a reliable way on his decision to use the right of pre- emption within thirty (30) days, counting from the day of buyer's notification of intended sale to a third party.
2. At the same time as declaring the purchase of the object the pre-emption beneficiary must pay the price stipulated in the owner’s notification of the intended sale or deposit it with the court.
3. If the owner stipulated a specific deadline for payment of the price in the conditions of sale the pre-emption beneficiary may only exploit this deadline by providing sufficient security.

**Article 433**

**Possibility of inheritance and alienation**

The right of pre-emption in movables may not be inherited or alienated, unless stipulated otherwise by law.

**Article 434**

**During compulsory public auction**

1. During a compulsory public auction the pre-emption beneficiary may not make a reference to the right of pre-emption.
2. A pre-emption beneficiary whose right of pre-emption is recorded in a public register may request the invalidation of an auction if not specially invited thereto.

**Article 435**

**Duration of right of pre-emption**

1. The right of pre-emption shall expire at the time stipulated by contract.
2. If the duration is not stipulated the right of pre-emption shall expire five (5) years after the contract was concluded.

**Article 436**

**If transfer of property was performed without pre-emption beneficiary being notified**

1. If the seller sells an object and transfers the ownership to a third person without notifying the pre-emption beneficiary and the beneficiary’s right of pre-emption was known or could not have remained unknown to the third person, the pre-emption beneficiary may within six (6) months of learning of the sales contract request that the contract be annulled and the object be sold thereto under the same conditions.
2. If the seller erroneously notifies the pre-emption beneficiary regarding the conditions of the sale to the third person and this was known or could not have remained unknown to the third person the six (6) month deadline shall run from the day the pre-emption beneficiary learnt of the true contractual conditions.
3. The enChapterment shall in any case terminate five (5) years after the transfer of the property to the third person.

**Article 437**

**Statutory right of pre-emption**

If a person holds the right of pre-emption pursuant to the law, the provisions on the contractual right of pre-emption of this Sub-Charter shall apply to the statutory right of pre-emption as far as practicable, unless the law provides otherwise.

**Sub-chapter XIII – Purchase for Testing**

**Article 438**

**Definition**

1. If it is agreed that the buyer takes the object under the condition that the buyer tests it to determine whether it complies with the buyer’s requirements, the buyer must notify the seller whether the contract is being adhered to by the deadline stipulated in the contract or by the customary deadline, but by an appropriate deadline stipulated by the seller; otherwise the buyer shall be deemed to have withdrawn from the contract.
2. If the object was delivered to the buyer on testing until a specific deadline and the buyer fails to return it without delay after the deadline passes or fails to declare to the seller that the buyer is withdrawing from the contract the buyer shall be deemed to be adhering to the contract.

**Article 439**

**Objective testing**

If the testing was agreed in order to determine whether the object has a specific attribute or is suited to a specific use the existence of the contract shall not depend on the buyer’s discretion but on whether the object in fact has the attribute or is suited to the specific use.

**Article 440**

**Risk**

The risk of the accidental destruction of or damage to an object that was delivered to the buyer on testing shall be borne by the seller until the buyer declares that the contract is being adhered to, or until the deadline by which the buyer was obliged to return the object passes.

**Article 441**

**Purchase after checking and purchase by reserving the right to test**

The provisions on purchase on testing shall apply, as far as practicable, to purchase after checking and to purchase by reserving the right to test.

**Sub-chapter XIV – Sale by Sample or Model**

**Article 442**

**Sale by sample or model**

1. In a sale by sample or by model the seller shall be liable if the object delivered to the buyer does not conform to the sample or model, under the regulations on the seller’s liability for material defects in the object if it is a matter of a commercial contract or under the regulations on liability for non-performance of obligations in other cases.
2. The seller shall not be liable for non-conformity if the sample or model was only shown to the buyer to provide information and so that the buyer could approximately determine the attributes of the object without any promise of conformity being made.

**Sub-chapter XV – Sale by Specification**

**Article 443**

**Sale by specification**

1. If in the contract the buyer reserves the right to subsequently stipulate the form, size or any other detail of the object and the buyer fails to do so by the agreed date or by an appropriate deadline counted from the seller’s request to do so, the seller may withdraw from the contract or perform the specification in respect of that which was known about the buyer’s requirements.
2. A seller that performs the specification alone must inform the buyer of the details thereof and stipulate an appropriate period for the buyer to stipulate otherwise.
3. If the buyer fails to make use of this opportunity the specification made by the seller shall be binding.

**Sub-chapter XVI – Conditional Sale**

**Article 444**

**Conditions**

1. The seller of a specific item of movable property may via a special contractual provision reserve Chapter to the object once delivered to the buyer until the buyer pays the price.
2. The reservation of Chapter shall have effect against a buyer’s creditor only if the buyer’s signature on the contract containing the provision on the reservation of Chapter was notarized prior to the buyer’s bankruptcy or the attachment of the movable property.
3. Chapter to objects on which special public registers are administered may only be reserved if so stipulated by the regulations on the organization and administration of such registers.

**Article 445**

**Risk**

The risk of the accidental destruction of or damage to the object shall be borne by the buyer from when the object is delivered.

**Sub-chapter XVII – Sale by Installments**

**Article 446**

**Definition**

Through a contract on sale by installments the seller undertakes to deliver to the buyer a specific item of movable property before the price is fully paid, and the buyer undertakes to repay in installments at specific intervals.

**Article 447**

**Form of contract**

A contract on sale by installments must be compiled in written form.

**Article 448**

**Essence of contract**

In addition to the object and its price the contractual documentation must for a cash sale cite the total amount of all repayments, including those paid when the contract is concluded, the amount of individual installments, the number thereof and the payments therefore.

**Article 449**

**Withdrawal from contract and request for full payment of purchase price**

1. The seller may withdraw from the contract if the buyer is in delay with the initial installment.
2. After payment of the initial installment the seller may withdraw from the contract if the buyer is in delay with at least two successive installments that entail at least one-eighth of the price.
3. In exceptional cases the seller may withdraw from the contract if the buyer is only in delay with a single installment when no more than four installments were envisaged for paying the price.
4. In the cases specified in the paragraphs 2. and 3. of this article the seller may instead of withdrawing from the contract request that the buyer pay the entire remainder of the price, but must allow the buyer an additional fifteen-day period before doing so.

**Article 450**

**Consequences of annulled contract**

1. If a contract is annulled the seller must return the received installments to the buyer together with interest from the day they were received and return the necessary costs the buyer had for the object.

2. The buyer must return the object to the seller in the state in which it was when delivered and must provide recompense for the use thereof until the annulment of the contract.

**Sub-chapter XVIII – Sales Order**

**Article 451**

**Definition**

1. Through a sales order contract the recipient of the order undertakes to sell a specific object delivered by the mandator for specific price by a specific deadline or to return the object by the deadline.
2. It shall not be possible to cancel a sales order.

**Article 452**

**Risk of destruction and damage of object**

The object delivered to the recipient of the order shall remain the mandator’s and the mandator shall bear the risk of it being accidentally destroyed or damaged; however, it shall not be at the disposal of the mandator until returned thereto.

**Article 453**

**When recipient of order is deemed to have purchased object**

1. If the recipient of the order fails to sell the object or to deliver the stipulated price to the mandator by the stipulated deadline and fails to return it by this deadline the recipient shall be deemed to have purchased the object.
2. The recipient’s creditors may not sequestrate the object until the price is paid to the mandator.

**Chapter II – Contract of Exchange**

**Article 454**

**Definition**

1. Through a contract of exchange each contracting party undertakes in respect of the other contracting party to deliver an exchanged object thereto such that the latter acquires the Chapter.
2. Other transferable rights may also be the subject of an exchange.

**Article 455**

**Effects of contract of exchange**

The obligations and rights originating for the seller via a sales contract shall originate for each contracting party via a contract of exchange.

**Chapter III – Gift Contracts**

**Sub-chapter I – General Provisions**

**Article 456**

**Definition**

1. Through a deed of gift one person (the donor) undertakes to transfer Chapter or any other right free of charge to the donee or in any other manner enrich the donee at the expense of the donor’s assets, and the donee declares to consent to such.
2. The waiver of a right shall also be deemed a deed of gift if the obliged person consents to such.
3. The waiver of a right regarding which there is no obliged person and that is not ceded to another shall not be deemed a deed of gift.

**Article 457**

**Gratuity**

A contract concluded by a donor out of gratitude or any other moral obligation shall be deemed a deed of gift if the donee did not have the right to request the gift through a lawsuit.

**Article 458**

**Mixed gift**

If under the same contract or another contract the donee is obliged to enrich the donor it shall be a matter of a deed of gift only in respect of the surplus value.

**Article 459**

**Periodic performance**

If the donor’s obligation comprises periodic performance it shall expire upon the donor’s death.

**Article 460**

**Donor’s liability for damage**

1. Any person that knowingly gives another’s object and conceals this circumstance from the donee shall be liable for the damage.
2. If the gifted object has a defect or a dangerous attribute owing to which damage is incurred to the donee, or to a third party injured, the donor shall be liable for the damage if the donor knew or should have known of the defect or dangerous attribute and failed to warn the donee.

**Sub-chapter II – Form**

**Article 461 Form**

1. If the donor does not immediately transfer the object or right to the donee such that the latter is able to freely dispose of it the deed of gift must be concluded in written form.

2. If the deed of gift is not concluded in the form specified in the previous paragraph the donee may not request the performance thereof via a claim.

**Sub-chapter III – Revocation**

**Article 462**

**Revocation because of constraint**

1. A donor that after the conclusion of the deed comes to a position whereby the donor’s existence is endangered may revoke the deed of gift.
2. The revocation specified in the previous paragraph shall not be possible if the donee would thereby come to a position in which the donee’s existence would be threatened.
3. The donee may keep a gift if the donee ensures the donor’s existence.

**Article 463**

**Revocation because of gross ingratitude**

1. The donor may also revoke the deed of gift because of gross ingratitude if after the conclusion thereof the donee behaves towards the donor or a person close thereto such that according to fundamental moral principles it would be unjust for the donee to keep that which was received.
2. The deed may also be revoked by the donor’s heir for reason of the behavior towards the donor.
3. Revocation because of the donee’s behavior shall also be possible against the donee’s heir.
4. Revocation shall not be possible if the donee’s behavior towards the donor ceases.

**Article 464**

**Revocation because of subsequent births**

A donor who has a child after the deed was concluded and had none before may revoke the gift of deed.

**Article 465**

**Consequences of revocation**

1. Through the declaration of revocation the donor shall request the return of the gifted object or right or the payment of the value by which the donee was enriched on the basis of the deed of gift.
2. If the deed of gift has not yet been performed revocation shall have the consequence of the termination of the donor’s obligation.

**Article 466**

**Deadline s for revocation**

A deed of gift may be revoked within one (1) year of the day the donor learnt of the reason for revocation.

**Article 467**

**Waiver of revocation**

A waiver of revocation shall be null.

**Sub-chapter IV – Gift in Case of Death**

**Article 468  
Gift in case of death**

The gift contract that should be completed after the death of the donor is valid only if it is done in the form of a notarial act and if the document for the contract of the gift is delivered to the donor.

**Chapter IV – Contract of Lifelong Maintenance**

**Article 469**

**Definition**

1. Through a contract of lifelong maintenance a contracting party (the maintaining party) undertakes to support the other contracting party or any other person (the maintained party), and the other contracting party declares that he/she will leave the former all or part of his/her property comprising real estate and the movable property intended for the use and enjoyment of the real estate, whereby the delivery thereof is deferred until the deliverer’s death.
2. Such a contract may also cover other movable property of the maintained party, which must be cited in the contract.
3. Contracts by which against a promise of inheritance a union for life or a community of property is agreed or one contracting party agrees to take care of and protect the other, work his/her estate and attend to a funeral after his/her death or anything else for the same purpose shall also be deemed contracts of lifelong maintenance.

**Article 470**

**Form**

A contract of lifelong maintenance must be composed in the form of a notarial protocol.

**Article 471**

**Prohibition of disposal in favour of maintaining party**

The maintained party may waive the disposal of the property that is the subject of the contract of lifelong maintenance in favour of the maintaining party.

**Article 472**

**Liability for debts**

After the maintained party’s death the maintaining party shall not be liable for the debts thereof, but it may be stipulated in the contract that the maintaining party will be liable for the maintained party’s existing debts to specific creditors.

**Article 473**

**Annulment of contract**

1. The contracting parties may by agreement annul a contract of lifelong maintenance, even after they have begun to perform it.

2. If under a contract of lifelong maintenance the contracting parties cohabit and their relationship deteriorates such that communal life becomes intolerable each party may request that the court annul the contract.

3. Each party may request that the contract be annulled if the other party fails to perform such party’s obligations.

**Article 474**

**Changed circumstances**

1. If after the contract is concluded the circumstances change such that the performance of the contract becomes significantly more difficult the court shall at the request of one of the parties renew their relationship or annul it, having taken all the circumstances into consideration.

2. The court may alter the maintained party’s right into an annuity for life, if this suits the two parties.

**Article 475**

**Termination of contract**

1. If the maintaining party dies the obligations thereof shall be transferred to his/her spouse and to those descendants, adopted children and adopted children’s descendants called to inherit if they consent thereto.

2. If they do not consent to the continuation of the contract of lifelong maintenance the contract shall be annulled and they shall have no right to request compensation for previous maintenance.

3. If the spouse, descendants, adopted children or adopted children’s descendants cannot take over the contractual obligations they shall have the right to request compensation from the maintained party.

4. The court shall set such compensation at its own discretion, having taken the financial circumstances of the maintained party and those enChapterd to continue the contract of lifelong maintenance into consideration.

**Chapter V – Contract for Submission and Division of Property**

**Article 476  
Definition**

Upon delivery contract, the handler undertakes to hand over and allocate the property to his / her offspring, adopted children, and offspring of adopted children.

**Article 477  
Conditions for validity**

1. The contract is valid only if consent is given from the offspring, adoptive children, and offspring of adopted children who under the law would be called to inherit on the basis of the contract (successor).  
  
2. The contract must be concluded in the form of a notarial act.  
  
3. Any successor who does not consent can do so later in the same form.  
  
4. Delivery and separation remains valid even if a successor who has not consented dies before delivery without leaving any successor if he renounces the inheritance, whether he is exempt from inheritance or is not worthy to inherit.

**Article 478  
Subject of submission and division of property**

1. Only the existing property of the handler, in whole or in part, may be included in delivery and division.  
  
2. The provision on the manner of the division of property that is part of the general possessor's property is void.

**Article 479  
The position of the asset delivered**

1. If the ancestor who has handed over and divided his or her property during the time he or she has been alive dies, his or her general wealth consists only of property which is not included in the delivery and division and the property acquired on after.  
  
Property acquired by his or her descendants by handover and division is not classified as part of his or her general assets nor is it taken into account when determining the value of such property.

**Article 480  
Consent of Heirs**

1. If any of the offspring has not consented to surrender and partition, those portions of property surrendered to other offspring will be considered gifts and after the death of the ancestor are treated as gifts made to the heirs by the forerunner.  
  
2. The provision of the preceding paragraph shall apply mutatis mutandis even if after delivery and separation, for which consent has been given by all descendants, a child is born to the consignor or a successor who was found after the declaration of death.

**Article 481  
Preservation of rights in delivery**

1. When submitting and disposing of the property, the consignor may retain for himself or her, his or her spouse or spouse or any other person the right of usufruct over all the property or part of the property submitted or request a life rent in cash or in work, life imprisonment or any other compensation.  
  
2. If the agreement on the usufruct or the living allowance has been reached for the consignor and his or her spouse or spouse together, then in the event of the death of one of them usufruct or life rent belongs to the other in its entirety until the death of unless otherwise provided by agreement or unless otherwise provided by the circumstances of the case.

**Article 482  
The right of the spouse of the consignor**

1. During delivery and separation, the handler may also consider the spouse or spouse. To do so, it is necessary to give consent to the spouse or spouse.  
  
2. If the spouse or spouse is not taken into account, her or her rights to the compulsory part remain inviolable.  
  
3. In such case, surrender and severance remain valid but in determining the value of the general property on the basis of which the compulsory part of the spouse or spouse who has been living has been determined, those parts of the inheritance property submitted to his or her offspring will be considered gifts.

**Article 483  
Debtors of the guarantor**

1. The successor to whom the Sender has submitted his or her property is not responsible for the debts of the Sender, unless otherwise provided in the Delivery and Allocation Agreement.  
  
2. Sender's creditors may prohibit the surrender and assignment under the terms and conditions applicable to the prohibition of misinformation.

**Article 484**

**Guarantee**

The guarantee obligation arising after the separation between the heirs should also flow between successors after the delivery and division of the property submitted and separated by the ancestor or adoptive parent.

**Article 485  
Revocation of Delivery**

1. The Recipient may revoke the Contract for reasons of profound ingratitude if, following the affiliation of a successor, he or she moves towards the Provider or to a person close to him in such a way that according to the fundamental principles of morality it would be unfair to carry what he or she is get.  
  
2. The Provider has the same right if the successor fails to offer to him or her or another person the holding for which they have agreed with the delivery and separation contract or fails to pay the debtor's debts when the contract has charged the successor with the payment of such debts.  
  
3. In other cases of non-fulfillment of the obligations assumed by the contract of delivery and division, the court shall decide whether the handler has the right to request the return of the given property or just the right to request the fulfillment of the obligations, considering the amount of the debtor's debts as well as the other circumstances of the case.

**Article 486  
The rights of offspring, adopted children, and offspring of adopted children after revocation**

1. A successor who has had to return to the deliverer what has been received during the delivery and division may request his or her compulsory part after the death of the handler, unless he is excluded from the inheritance or is not worthy to inherit from the handler, or unless it has renounced the inheritance.  
  
2. When calculating the compulsory part, those portions of property submitted and distributed by the decedent during his/her life to other offspring are considered gifts.

**Chapter VI – Loan Contract   
  
  
Sub-chapter I – General Provisions**

**Article 487  
Definition**

1. Through a loan contract the lender undertakes to deliver to the borrower a specific sum of money or a specific quantity of other replaceable objects, and the borrower undertakes to return the same sum of money or an equal quantity of objects of the same type and quality thereto.

2. The borrower shall acquire Chapter to the objects received.

**Article 488**

**Interest**

1. The borrower may undertake to owe interest in addition to the principal.
2. In commercial contracts the borrower shall owe interest unless agreed otherwise.

**Sub-chapter II – Lender’s Obligations**

**Article 489**

**Delivery of promised objects**

1. The lender must deliver the stipulated objects at the agreed time, or when the borrower requests if the deadline for delivery is not stipulated.
2. The borrower’s right to request the delivery of the stipulated objects shall expire three (3) months after the lender becomes delayed, and in any case one (1) year after the conclusion of the contract.

**Article 490**

**Borrower’s diminished pecuniary circumstances**

1. If it is shown that the borrower’s pecuniary circumstances are such that it is uncertain as to whether the borrower will return the loan the lender may refuse to deliver the promised objects if the lender did not know of such when the contract was concluded or if the borrower’s pecuniary circumstances diminished after the conclusion of the contract.
2. However the lender must perform the obligation if the borrower or another provides adequate security thereof.

**Article 491**

**Damage because of defects in loaned objects**

1. The lender must reimburse the borrower for any damage caused because of material defects in the loaned objects.
2. In the case of a gratuitous loan the lender need only to reimburse the damage when the defects were known or could not have remained unknown to the lender and the lender failed to inform the borrower.

**Sub-chapter III – Borrower’s Obligations**

**Article 492**

**Deadline for return of loan**

1. The borrower must return the same quantity of objects of the same type and quality by the deadline stipulated.

2. If the contracting parties did not stipulate a deadline for the return of the loan and it cannot be determined from the circumstances, the borrower must return the loan after the passing of an appropriate deadline, which may not be shorter than two months counted from the lender’s request for the return of the loan.

**Article 493**

**Choice in return of loan**

1. If cash was not loaned and it was agreed that the borrower would return the loan in cash the borrower shall nevertheless be enChapterd to choose to return the loaned objects or a cash sum that accords to the value thereof at the time and place stipulated in the contract for the return.
2. This shall also apply if it is impossible to return the same quantity of objects of the same type and quality.

**Article 494**

**Withdrawal from contract**

The borrower may withdraw from the contract before the lender delivers the promised object thereto; if the lender incurs any damage for this reason the borrower must reimburse it.

**Article 495**

**Early return of loan**

The borrower may return the loan before the deadline stipulated for the return, but must notify the lender regarding this intention and reimburse any damage.

**Sub-chapter IV – Loan for Specific Purpose**

**Article 496**

**Loan for Specific Purpose**

If the contract stipulated the purpose for which the borrower may use the loaned cash and the borrower uses it for any other purpose the lender may withdraw from the contract.

**Chapter VII – Loan for Use Contract**

**Sub-chapter I – General Provisions**

**Article 497**

**Definition**

Through a loan for use contract the lender undertakes to deliver an object to the borrower for gratuitous use, and the borrower undertakes to return the object.

**Sub-chapter II – Borrower’s Obligations**

**Article 498**

**Use of object**

1. The borrower may use the object solely for the purpose stipulated by the contract.
2. If the purpose of use is not stipulated by the contract the borrower may use the object with due care in accordance with its nature and purpose.
3. A borrower that uses the object in a manner not permitted shall be liable for any accidental destruction or damage.

**Article 499**

**Maintenance of object**

1. The borrower shall bear the costs of regularly maintaining the object.
2. The borrower may request the refund of extraordinary maintenance costs according to the rules of management of another’s affairs. Upon the termination of the loan the borrower may remove the equipment used to supply the object that can be separated.

**Article 500**

**Transfer of use**

The borrower may not cede the use of the object to a third person without the lender’s permission.

**Article 501**

**Return of object**

1. The lender must return the object at the time agreed.
2. If the duration is not stipulated the contract shall terminate as soon as the borrower uses the object for the purpose stipulated by the contract or at the end of the period in which such use can be carried out.
3. If the duration and purpose are not stipulated the lender may request the object whenever the lender so wishes.

**Article 502**

**Termination of contract**

1. The lender may terminate the contract without notice and request the immediate return of the object if:

1.1. The borrower dies;

1.2. The borrower uses the object in contravention of the contract or cedes use to a third person without enChapterment;

1.3. The lender requires the object owing to unforeseen circumstances.

**Article 503**

**Liability**

The lender shall not be liable for any deterioration or alteration of the object that is a customary consequence of use in accordance with the contract.

**Sub-chapter III – Lender’s Obligations**

**Article 504**

**Damage owing to defects**

If the loaned object has a defect or a dangerous attribute owing to which damage was caused to the borrower, or to a third party as injured, and the lender knew or should have known of the defect or dangerous attribute but failed to warn the borrower the lender shall be liable for the damage.

**Chapter VIII – Rent Contract**

**Sub-chapter I – General provisions**

**Article 505**

**Definition**

1. Through a lease (rental) contract the lessor undertakes to deliver a specific object to the lessee for use, and the lessee undertakes to pay a specific rent for this.
2. The use shall comprise usufruct of the object (collection of fruits), unless otherwise agreed or unless the custom is otherwise.

**Sub-chapter II – Lessor’s Obligations**

**Article 506**

**Delivery of object**

The lessor must deliver the leased object to the lessee together with its accessories and fittings.

**Article 507**

**Maintenance of object**

1. During the lease the lessor must maintain the object and repair it as required.

2. The lessor must reimburse the lessee for the costs of maintaining the object paid thereby in place of the lessor.

3. Costs for minor repairs caused by the customary use of the object and the costs of use itself shall be charged to the lessee.

4. The lessee must notify the lessor regarding necessary repairs.

**Article 508**

**Withdrawal from contract and reduction of rent because of repairs**

1. If necessary repairs to the leased object hinder its use to a considerable degree and for a lengthy period the lessee may withdraw from the contract.
2. The lessee shall have the right to a reduction in rent in proportion to how much the use of the object was limited because of such repairs.

**Article 509**

**Changes in leased object**

1. During the lease the lessor may not make any changes to the leased object without the lessee’s consent if the changes would hinder the use thereof.
2. If the changes in the object reduce the lessee’s use to a certain degree the rent shall be reduced by an appropriate proportion.

**Article 510**

**Liability for material defects**

1. The lessor shall be liable to the lessee for all defects in the leased object that hinder its agreed or customary use, irrespective of whether the lessor knew of them, and for deficient attributes or features that were expressly or tacitly agreed upon.
2. Insignificant defects shall not be taken into consideration.

**Article 511**

**Defects for which lessor is not liable**

1. The lessor shall not be liable for defects in the leased object that were known or could not have remained unknown to the lessee when the contract was concluded.
2. The lessor shall also be liable for a defect in the leased object that remained unknown to the lessee out of gross negligence, if the lessor knew of the defect and intentionally kept silent towards the lessee.

**Article 512**

**Extension of liability for material defects**

A lessor that stated the object has no defects of any kind shall be liable for all defects in the leased object.

**Article 513**

**Contractual exclusion or limitation of liability**

1. Liability for material defects in the leased object may be excluded or limited by contract.
2. A contractual provision by which such liability is excluded or limited shall be null if the lessor knew of the defects and failed to inform the lessee, if the defect is such that it prevents the use of the leased object, or if the lessor imposed this provision by exploiting its dominant position.

**Article 514**

**Notification of lessor regarding defects and dangers**

1. The lessee shall be obliged to notify the lessor regarding any defect in the leased object that shows itself during the lease without unnecessary delay, unless the lessor already knows of it.
2. The lessee shall also be obliged to notify the lessor regarding any unforeseen danger that threatens the leased object during the lease so that the latter may take appropriate measures.
3. A lessee that fails to notify the lessor regarding a defect or occurring danger of which the lessor did not know shall lose the right to the compensation of damage incurred because of the defect or danger, and must reimburse the damage incurred for this reason by the lessor.

**Article 515**

**Lessee’s rights if object has defect**

1. If upon delivery the leased object has any defect that cannot be rectified the lessee may choose to withdraw from the contract or request a reduction in the rent.
2. If the object has any defect that can be rectified without major inconvenience for the lessee and the delivery of the object by a specific deadline was not an essential component of the contract the lessee may request that the lessor rectify the defect by an appropriate deadline or reduce the rent.
3. If the lessor fails to rectify the defect by the appropriate additional deadline stipulated by the lessee the lessee may withdraw from the contract or request a reduction in the rent.
4. In each case the lessee has the right to the compensation of damage.

**Article 516**

**If defect occurs during lease and if object does not have agreed or customary attributes**

1. The provisions of the previous article shall also apply if during the lease a defect occurs in the leased object.
2. They shall also apply if the leased object does not have an attribute that it should have under the contract or that is customary, or if it loses such an attribute during the lease.

**Article 517**

**Lessor’s liability for legal defects**

1. When a third person owns any right on the leased object or a part thereof and turns to the lessee with the claim or arbitrarily takes the object from the lessee the third person must inform the lessee of such, unless the lessee already knows of such; otherwise the third person shall be liable for damage.
2. If it is found that a third person has any right that totally excludes the lessee’s right to use the object the lease contract shall be rescinded by law alone and the lessor must reimburse the damage to the lessee.
3. If the third person’s right merely limits the lessee’s right the lessee may choose to withdraw from the contract or request a reduction in the rent; in any case the lessee may request the compensation of damage.

**Sub-chapter III – Lesee’s Obligations**

**Article 518**

**Use of object pursuant to contract**

1. The lessee shall be obliged to use the object with due care.
2. The lessee may only use it as stipulated by the contract or in line with the purpose of the object.
3. The lessee shall be liable for damage incurred because the leased object was used in breach of the contract or contrary to its purpose, irrespective of whether it was used by the lessee, a person working under the lessee’s mandate, a sub-lessee or any other person allowed to use the object by the lessee.

**Article 519**

**Termination because of use contrary to contract**

If after a notice by the lessor the lessee continues to use the object contrary to the contract or its purpose or if the lessee neglects the maintenance of the object and there is a danger of considerable damage being incurred by the lessor, the lessor may terminate the contract without notice.

**Article 520**

**Payment of rent**

1. The lessee shall be obliged to pay the rent by the deadline s stipulated by the contract or by law that is by the deadline s customary in the place where the object was delivered to the lessee.
2. Unless agreed otherwise or is customary otherwise in the place of delivery, rent shall be paid every six (6) months for an object leased for one or more years; if the object is leased for a shorter period it shall be paid after such period.

**Article 521**

**Termination because of unpaid rent**

1. The lessor may terminate the lease contract if the lessee fails to pay the rent, even in the fifteen (15) day deadline after lessor requests the payment from him.
2. The contract shall remain valid if the lessee pays the rent owed before receiving notice of the termination.

**Article 522**

**Return of leased object**

1. The lessee shall be obliged to keep the leased object safe and to return it undamaged after the lease ends.
2. The object shall be returned at the place it was delivered to the lessee.
3. The lessee shall not be liable for wear and tear to the object owing to customary use, or for damage incurred because the object has reached the end of its useful life.
4. If during the lease the lessee made any changes to the object the lessee shall be obliged to return it to the state it was in when received for leasing.
5. The lessee may take any additions added to the object if such can be separated without damaging the object; however, the lessor may keep them by compensating the lessee for their value upon return.

**Article 523**

**Termination because of non-permitted sublease**

The lessor may terminate the lease contract if the lessee subleases the leased object without the lessor’s permission when such is required by law or by the contract.

**Article 524**

**Lessor’s direct request**

In order for the lessor’s claims arising from the lease to be repaid the lessor may directly request from the sub-lessee the payment of the amount the latter owes the lessee from the sublease.

**Article 525**

**Termination of sublease by law alone**

A sublease shall terminate in any case when the lease terminates.

**Sub-chapter IV – Alienation of Leased Object**

**Article 526**

**Alienation after delivery for leasing**

1. In the alienation of an object that prior to this was delivered to another for leasing the acquirer of the object shall assume the place of the lessor; thenceforth the rights and obligations deriving from the lease shall exist between the acquirer and the lessee.
2. The acquirer may not request and that the lessee deliver the object prior to the end of the period for which the lease was agreed, or the end of the period of notice if the duration of the lease is not stipulated by the contract or by law.
3. For the obligations of the acquirer from the lease, the transferor is liable as solidary surety.

**Article 527**

**Right to rent**

1. The acquirer of a leased object shall have the right to the rent from the first period after acquiring the object, unless agreed otherwise; if the lessor received this rent in advance the lessor must deliver it to the acquirer.
2. The lessee must pay the rent solely to the acquirer from the moment of being notified of the alienation of the leased object.

**Article 528**

**Alienation of leased object prior to delivery to lessee**

1. If the object about which a lease contract was concluded is delivered to the acquirer and not the lessee the acquirer shall assume the place of the lessor and take over the lessor’s obligations towards the lessee if when the contract on alienation was concluded the acquirer knew of the lease contract.
2. An acquirer that did not know of the lease contract when the contract on alienation was concluded shall not be obliged to deliver the object to the lessee; the lessee may only request the compensation of damage from the lessor.
3. For the obligations of the acquirer from the lease towards the lessee, the transferor is liable as solidary surety.

**Article 529**

**Termination of contract because of alienation of object**

If because of the alienation of a leased object the lessor’s rights and obligations were transferred to the acquirer the lessee may in any case terminate the contract, but in so doing must observe the legal periods of notice of termination.

**Sub-chapter V – Termination of Lease**

**Article 530**

**End of stipulated period**

1. A lease contract concluded for a stipulated period shall terminate at the end of the period for which it was concluded.
2. This shall also apply in cases when the contracting parties did not declare their intentions and the duration of the lease was provided by law.

**Article 531**

**Tacitly renewed lease**

1. If following the end of the period for which the lease contract was concluded the lessee continues to use the object and the lessor does not oppose such, a new lease contract for an indefinite period shall be deemed to have been concluded with the same terms and conditions as the previous contract.
2. Security provided by third persons for the first lease shall expire at the end of the period for which the lease was concluded.

**Article 532**

**Termination**

1. A lease contract whose duration is not stipulated and cannot be determined from the circumstances or local customs shall terminate through notice of termination, which each party may give to the other, observing the stipulated period of notice of termination.
2. If the period of notice of termination is not stipulated by the contract, by law or according to local customs, it shall amount to eight days; provided the notice shall not be given at an inappropriate time.
3. If the leased objects are a health hazard the lessee may terminate the contract without notice, even if this was known when the contract was concluded.
4. The lessee may not waive the right specified in paragraph 3 of this Article.

**Article 533**

**Destruction of object by force majeure**

1. The lease shall terminate if the leased object is destroyed by force majeure.
2. If the leased object is partly destroyed or merely damaged the lessee may withdraw from the contract or may remain with the lease and request an appropriate reduction in the rent.

**Article 534**

**Death**

If the lessor or the lessee die and it is not agreed otherwise the lease shall continue with their heirs.

**Chapter IX – Contract for Work**

**Sub-chapter I – General Provisions**

**Article 535**

**Definition**

Through a contract for work the contractor undertakes to perform a specific work or service such as the manufacture or repair of an object, or physical or intellectual work, and the ordering party undertakes to pay the contractor for this.

**Article 536**

**Relationship to sales contract**

1. A contract by which one party undertakes to make a specific movable object from the party’s own material shall in case of doubt be deemed a sales contract.
2. A contract shall remain a contract for work if the ordering party undertook to supply the essential part of the material required to make the object.
3. In any case a contract shall be deemed a contract for work if the contracting parties primarily had contracted work in mind.

**Article 537**

**Quality of contractor’s material**

1. If it is agreed that the contractor will make the object using the contractor’s own material and the quality thereof is not stipulated, the contractor shall be obliged to provide material of medium quality.
2. He is liable to the ordering party for the quality of the material in the same way as the seller.

**Sub-chapter II – Supervision**

**Article 538**

**Supervision**

The ordering party shall have the right to supervise the transaction and to provide instructions if this suits the nature of the transaction; the contractor must facilitate this.

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**Sub-chapter III – Conclusion of Contract after Bidding**

**Article 539**

**Invitation to bid for cost of work**

1. An invitation to bid for the execution of specific works according to specific conditions and with specific guarantees addressed to a specific or indefinite number of persons shall bind the inviting party to conclude a contract for such works with the person that offers the lowest price, unless such obligation was excluded in the invitation to bid.

2. If the obligation to conclude a contract was excluded, the invitation to bid shall be deemed an invitation

to interested parties to prepare offers for the contract according to the published conditions.

**Article 540**

**Invitation to bid for artistic or technical solutions for intended works**

An invitation to bid for artistic or technical solutions for intended works addressed to a specific or indefinite number of persons shall bind the inviting party to conclude a contract under the conditions contained in the invitation with the bidding participant whose solution is approved by a commission whose composition is published in advance, unless such obligation was excluded in the invitation to bid.

**Sub-chapter IV – Contractor’s Obligations**

**Article 541**

**Defects in material**

1. The contractor shall be obliged to draw the ordering party’s attention to any defects in the material that the ordering party delivered and that the contractor noticed or should have noticed; otherwise the contractor shall be liable for any damage.
2. If the ordering party requested that the object be made from material with defects to which the contractor had drawn attention the contractor must act in accordance with this request, unless it is clear that the material is not suitable for the work ordered or if making the object from the requested material could damage the contractor’s reputation; in this case the contractor may withdraw from the contract.
3. The contractor shall be obliged to draw the ordering party’s attention to any deficiencies in the order and to other circumstances of which the contractor knew or should have known and that could be significant to the ordered work or the execution of the work on time; otherwise the contractor shall be liable for any damage.

**Article 542**

**Obligation to execute work**

1. The contractor shall be obliged to execute the work according to the agreement and according to the rules of the transaction.
2. The contractor must execute the work by the deadline stipulated, or in the time reasonably required for such transactions if no deadline is stipulated.
3. The contractor shall not be liable for any delay occurring because the ordering party failed to deliver the material thereto on time, because the ordering party requested changes or because the ordering party failed to settle an owed advance payment, or in general for any delay occurring because of the ordering party’s action.

**Article 543**

**Withdrawal from contract because of deviation from agreed conditions**

1. If during the execution of the work it is shown that the contractor is not keeping to the contractual conditions and is not in general working as the contractor should and that the work executed will have defects, the ordering party may warn the contractor of this and stipulate a deadline by which the work should be adapted to the obligations.
2. If the contractor fails to fulfil the ordering party’s requirements by this deadline the ordering party may withdraw from the contract and request the reimbursement of damage.

**Article 544**

**Withdrawal from contract prior to deadline**

1. If the deadline is an essential component of the contract and the contractor is so delayed in starting or finishing off the transaction that it is clear that it will not be completed on time the ordering party may withdraw from the contract and request the reimbursement of damage.
2. The ordering party shall also have this right when the deadline is not an essential component of the contract if for reason of the delay the ordering party no longer has an interest in the contract being performed.

**Article 545**

**Entrustment of execution of transaction to third person**

1. Unless it follows otherwise from the contract or the nature of the contract, the contractor shall not be obliged to perform the transaction in person.
2. The contractor shall remain liable to the ordering party even if not performing the transaction in person.

**Article 546**

**Liability for associates**

The contractor shall be liable for persons that worked on the accepted transaction under the contractor’s orders as if the contractor had done the work in person.

**Article 547**

**Direct claim on ordering party by contractor’s associates**

The associates may turn directly to the ordering party for their claims towards the contractor and request that the ordering party settle their claims from the sum owed at that moment to the contractor if they are acknowledged.

**Article 548**

**Delivery of manufactured object to the ordering party**

1. The contractor shall be obliged to deliver the manufactured or repaired object to the ordering party.
2. The contractor shall be released from this obligation if the object that was manufactured or repaired was destroyed for a reason for which the contractor is not liable.

**Sub-chapter V – Liability for Defects**

**Article 549**

**Inspection of executed work and notification of contractor**

1. The ordering party shall be obliged to inspect the executed work as soon as this is possible following the ordinary course of events and to notify the contractor without delay regarding any defects identified.
2. If upon the contractor’s request to inspect and accept the executed work the ordering party fails to do so without justifiable grounds the work shall be deemed to have been accepted.
3. After the inspection and acceptance of the performed work the contractor shall no longer be liable for defects that could have been noticed during a customary inspection, unless the contractor knew of them and failed to show them to the ordering party.

**Article 550**

**Latent defects**

1. If any defect that could not have been noticed during a customary inspection later shows itself the ordering party may make reference thereto under the condition that the contractor is notified thereof as soon as possible, that is within a month of the defect being discovered.
2. The ordering party may no longer make any reference to defects once two (2) years have passed from the transaction being performed.

**Article 551**

**Expiry of right**

1. An ordering party that notified the contractor on time regarding defects in an executed transaction may no longer exercise rights in court proceedings one year after such notification.
2. If the ordering party notified the contractor on time regarding defects, after such deadline passes the ordering party may exercise the right to a reduction in the payment and a compensation of damage via an objection to the contractor’s claim for payment.

**Article 552**

**When contractor does not have right to make reference to previous articles**

The contractor may not make any reference to any provision of the previous articles if the defect relates to facts that were known or could not have remained unknown thereto and the contractor failed to report them to the ordering party.

**Article 553**

**Right to request rectification of defects**

1. An ordering party that notified the contractor on time that the executed work had a defect may request that the contractor rectify the defect and may stipulate an appropriate deadline thereof.
2. The ordering party shall also have the right to the reimbursement of damage incurred for this reason.
3. If the rectification of the defect would require excessive costs the contractor may refuse to do the work, but in this case the ordering party may choose to reduce the payment or withdraw from the contract, and shall have the right to the reimbursement of damage.

**Article 554**

**Special case of withdrawal from contract**

If the performed transaction has such a defect that the work is useless or if it was performed in breach of express contractual conditions the ordering party may withdraw from the contract and request the reimbursement of damage without previously requesting the rectification of the defect.

**Article 555**

**Ordering party’s right regarding other defects in executed transaction**

1. If the executed transaction has such a defect that the work would not be useless or if the transaction was not executed in breach of express contractual conditions the ordering party shall be obliged to allow the contractor to rectify the defect.
2. The ordering party may stipulate an appropriate deadline for the contractor for the rectification of the defect.
3. If the contractor fails to rectify the defect by this deadline the ordering party may choose to rectify the defect at the contractor’s expense, to reduce the payment or to withdraw from the contract.
4. The ordering party may not withdraw from the contract over the matter of an insignificant defect.
5. In any case the ordering party shall have the right to the reimbursement of damage.

**Article 556**

**Reduction of payment**

The payment shall be reduced in proportion to the value of the executed work without defects when the contract was concluded and the value that the executed work with the defect would then have had.

**Sub-chapter VI – Ordering Party’s Obligations**

**Article 557**

**Obligation to accept the work**

The ordering party shall be obliged to accept work executed according to the provisions of the contract and the rules of the transaction.

**Article 558**

**Stipulation and execution of payment**

1. The payment shall be stipulated by contract unless stipulated by a mandatory tariff or any other binding legal act.
2. If the payment is not stipulated the court shall stipulate it such that it accords with the value of the work, the time customarily required for such a transaction and the customary payment for the type of work.
3. The ordering party shall not be obliged to make the payment before inspecting and approving the executed work, unless agreed otherwise.
4. This shall also apply if the execution and delivery of the work in parts was agreed.

**Article 559**

**Estimate with express guarantee**

1. If the payment was agreed on the basis of an estimate with the contractor’s express guarantee as to its accuracy, the contractor may not request a higher payment even if more work was invested in the transaction and execution required higher expenditure than was anticipated.
2. This shall not exclude the application of the rules on the rescission and amendment of the contract for reason of changed circumstances.
3. If the payment was agreed on the basis of an estimate without the contractor’s express guarantee as to its accuracy and during the work it is shown that overspending is unavoidable, the contractor must notify the ordering party of such without delay; otherwise the contractor shall lose any claim for higher costs.

**Sub-chapter VII – Risk**

**Article 560**

**If material was provided by contractor**

1. If the material for making an object was provided by the contractor and the object was damaged or destroyed for any reason prior to delivery to the ordering party this shall be a matter of the contractor’s risk, and the contractor shall not have the right to a refund for the material provided or to payment for the work.
2. If the ordering party has inspected and approved the executed work the object shall be deemed to have been delivered thereto and to have remained in safekeeping with the contractor.
3. If the ordering party is in delay because of failure to accept the offered object the risk of accidental destruction or damage shall be transferred to the ordering party.

**Article 561**

**If material was provided by ordering party**

1. If the material for making an object was provided by the ordering party the ordering party shall assume the risk of its accidental destruction or damage.
2. The contractor shall have the right to payment only if the object was accidentally destroyed or damaged after the ordering party became delayed, or if the ordering party failed to respond to a correct invitation to inspect the object.

**Article 562**

**Risk during delivery in parts**

If it is agreed that the ordering party will inspect and accept individual parts as they are made the contractor shall have the right to payment for making the parts the ordering party has inspected and approved, even if they were destroyed in the contractor’s possession through no fault of the contractor.

**Sub-chapter VIII – Pledge**

**Article 563**

**Contractor’s pledge**

In order to secure payment for the work, recompense for the material used and other claims deriving from a contract for work, the contractor shall have a pledge on the objects made or repaired and on other objects delivered thereto by the ordering party in connection with the work, as long as they are in the contractor’s possession and the contractor does not relinquish them voluntarily.

**Sub-chapter IX – Termination of Contract**

**Article 564**

**Termination of contract by ordering party’s wish**

Until the ordered transaction is completed the ordering party may withdraw from the contract whenever such party wishes; however in this event the ordering party must pay the agreed payment to the contractor, minus the costs not incurred by the contractor that would have been incurred had the contract not been rescinded, and also that which was earned elsewhere and that which the contractor had no intention of earning.

**Chapter X – Building Contract   
  
Sub-chapter I – General Provisions**

**Article 565**

**Definition**

1. A building contract is a contract for work through which the contractor undertakes to build a specific structure on specific land according to a specific plan by a specific deadline or to carry out any other construction work on such land or on an existing structure, and the ordering party undertakes to pay the contractor a specific fee for the work.

# 2. A building contract must be concluded in written form.

**Article 566  
Structure**

The term “structure” in this Chapter means buildings, dams, bridges, tunnels, water pipes, sewage ducts, roads, railways, wells and other built structures that require major, requesting work to make.

**Article 567  
Supervision of works and quality control of material**

The contractor shall be obliged to facilitate for the ordering party constant supervision of the works and control over the quality and quantity of the material used.

**Article 568  
Deviation from plan**

1. The contractor must have written approval from the ordering party for any deviation from the construction plan or the contracted works.  
  
2. The contractor may not request an increase to the agreed fee for works performed without such approval.

**Article 569  
Urgent unforeseen works**

1. The contractor may also carry out urgent unforeseen works without the ordering party’s prior approval if this cannot be supplied because of the urgency of the works.

2. Unforeseen works are those that had to be performed urgently to ensure the stability of the structure or to prevent the occurrence of damage, and that were caused by the unexpectedly heavy nature of the land, unexpected water or any other extraordinary, unexpected development.

3. The contractor must notify the ordering party without delay regarding such phenomena and the measures taken.

4. The contractor shall have the right to fair payment for the unforeseen works it was necessary to perform.

5. The ordering party may withdraw from the contract if the agreed fee would be considerably higher owing to such works; the ordering party must notify the contractor of such without delay.

6. In the event of withdrawal from the contract the ordering party must pay the contractor an appropriate part of the fee for the work already performed, and a fair reimbursement of the necessary costs.

**Article 570  
Fee for works**

The fee for works may be stipulated for a unit of measurement of agreed works (unit fee) or in a total sum for the entire structure (total agreed fee).

**Article 571  
Change in fee**

1. Unless stipulated otherwise in the contract regarding a change in the fee, a contractor that performs the obligation by the contractual deadline may request a higher fee for the works if between the conclusion and the performance of the contract the price of elements on which the fee was based rises such that the fee should be more than (2%) two per cent higher.

2. If the contractor fails to carry out the works by the contractual deadline for reasons for which the contractor is liable, the contractor may request a higher fee for the works if between the conclusion of the contract and the day the works under contract were due to be completed the price of elements on which the fee was based rises such that under the new prices for such elements the fee should be more than five per cent higher.

3. In the cases specified in the previous two paragraphs the contractor may only request the shortfall in the fee for the works that exceeds two or five per cent respectively.

4. The contractor may not make reference to a higher price for elements on which the fee for the works was based if the prices rose after the contractor became delayed.

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**Article 572  
Provision on invariability of fee**

1. If it was agreed that the fee for the works would not be changed when the prices for elements on which the fee was based rise after the contract was concluded, the contractor may request such a change despite such a contractual provision if the prices for elements rise such that the fee for the works should be more than ten per cent (10%) higher.

2. However in this case the contractor may only request the shortfall in the fee for the works that exceeds ten per cent, unless the prices for such elements rose after the contractor became delayed..

**Article 573  
Withdrawal from contract because of higher fee**

1. If in the cases specified in the previous articles the agreed fee would rise significantly the ordering party may withdraw from the contract.

2. In the event of withdrawal from the contract the ordering party must pay the contractor an appropriate part of the agreed fee for the work performed to date, and a fair reimbursement for necessary costs.

**Article 574  
Ordering party’s right to request reduction in agreed fee**

1. If in the time between the conclusion of the contract and the performance of the contractor’s obligation the prices for elements on which the fee was based fell by more than two per cent and the work was performed by the agreed deadline the ordering party shall have the right to request an appropriate reduction in the agreed fee for the works above such a percentage.

2. If it was agreed that the fee for the works would not be changed and the work was performed by the agreed deadline the ordering party shall have the right to a reduction in the agreed fee when the prices for elements on which the fee was based fell such that the fee would be more than ten per cent lower, the reduction being for the difference above (10%) ten per cent.

3. If the works contractor is in delay the ordering party shall have the right to a proportionate reduction in the fee for the works for each fall in the price of elements on which the fee was based.

**Sub-chapter II – Building Contract with Special Provisions   
  
Article 575  
Fee stipulated with turnkey clause**

1. If a building contract contains a ‘turnkey’ provision or any similar provision the contractor independently undertakes to carry out all the works required for the construction and use of a specific structure.

2. In this case the agreed fee shall also cover the value of unforeseen and excess works, and shall exclude the influence of missing works thereon.

3. If several contractors participate as contracting parties in a turnkey contract their liability towards the ordering party shall be joint and several.

**Article 576  
Application of rules on contract for work**

Unless stipulated otherwise in this Chapter, the appropriate provisions from the Chapter of the present code on the contract for work shall apply to liability for defects in a structure.

**Article 577  
Transfer of rights from liability for defects**

The ordering party’s rights against the contractor for reason of defects in a structure shall also be transferred to all subsequent acquirers of the structure or parts thereof, although such that a new period for notification and suit shall not run for subsequent acquirers; the predecessors’ period shall count towards theirs.

**Sub-chapter IV – Liability of Contractor and Designer for Solidity of Structure**

**Article 578**

**Where liability lies**

1. The contractor shall be liable for any defects in the execution of the structure concerning its solidity if such defects show themselves within ten years of the delivery and takeover of works.

2. The contractor shall also be liable for any deficiencies in the land on which the structure is built that show themselves within ten years of the delivery and takeover of works, unless a specialist organisation gave an expert opinion that the land was suitable for construction and during construction no circumstances arose to awaken any doubt over the justification of the expert opinion.

3. This shall also apply to the designer, if the defect in the structure originates from any defect in the plan.

4. Under the provisions of the previous paragraphs the two shall be liable not only to the ordering party, but also to any other acquirer of the structure.

5. It shall not be possible to exclude or limit their liabilities by contract.

**Article 579  
Obligation to notify and loss of rights**

1. The ordering party or other acquirer shall be obliged to notify the contractor and designer regarding defects within six months of discovering the defect; otherwise the ordering party or acquirer shall lose the right to make reference thereto.

2. The right of the ordering party or other acquirer against the contractor or designer deriving from their liability for defects shall expire one year after the day the contractor or designer was notified regarding the defect.

3. The contractor or designer may not make reference to the provisions of the previous paragraphs if the defect relates to facts that were known or could not have remained unknown thereto and that they failed report to the ordering party or other acquirer, or if through their action they misled the ordering party or other acquirer into failing to exercise the rights on time.

**Article 580  
Reduction and exclusion of liability**

1. The contractor shall not be released from liability if the defect occurred because during the execution of individual works the contractor acted according to the ordering party’s requirements.

2. However if prior to the execution of individual work according to the ordering party’s requirements the contractor warned the former regarding the risk of defects occurring the contractor’s liability shall be reduced, and may also be excluded under the circumstances of the case in question.

**Article 581**

**Recourse**

1. If in the relationship with the ordering party the contractor and designer are liable for a defect their liability shall be joint and several.

2. A designer that formulated the plan for the structure and that was entrusted with supervising the execution of the works shall also be liable for defects in the executed works that occurred because of reasons for which the contractor is liable if they could be noticed during customary and appropriate supervision of the works, but shall have the right to request appropriate reimbursement from the contractor.

3. A contractor that reimbursed damage inflicted because of a defect in the executed works shall have the right to request reimbursement from the designer in the extent to which the defects in the executed works originate from defects in the plan.

4. If a person entrusted with part of the transaction by the contractor is liable for a defect the contractor must, if intending to request reimbursement therefrom, notify such person regarding the defect within two months of being notified by the ordering party.

**Chapter XI – Contract of Carriage**

**Article 582**

**Definition**

1. Through a contract of carriage a carrier undertakes to transport a person or an object to a specific place, and the passenger or sender undertakes to make a specific payment thereto for this.
2. Carrier shall mean both a person dealing with carriage as his regular business activity, and any other person assuming an obligation by contract to perform carriage for remuneration.

**Article 583**

**Carrier’s obligations in route transport**

1. A carrier that performs transport on a specific route (route transport) shall be obliged to regularly and correctly maintain the published route.
2. A carrier shall be obliged to accept for transport any person and anything that fulfills the conditions stipulated in the published general terms and conditions.
3. If the carrier’s ordinary means of transport do not suffice for all the required transport priority shall be given to persons and objects for which priority is stipulated in special regulations, and further priority shall be stipulated in the order of the requests; in so doing the longer transport shall be decisive in ascribing priority to requests made simultaneously.

**Article 584**

**Withdrawal from contract**

1. The sender or passenger may withdraw from the contract before it begins to be performed, and must reimburse the damage incurred for this reason by the carrier.
2. If at the beginning of transport the carrier is so delayed that the agreed transport no longer has any meaning for the other party or if the carrier cannot or does not wish to perform the agreed transport the other party may withdraw from the contract and request the return of that which was paid for the transport.

**Article 585**

**Amount of payment for transport**

1. If the amount of the payment for transport is stipulated by a tariff or any other published binding legal act, a higher payment may not be pronounced by the contract.
2. If the amount of the payment for transport is not stipulated by a tariff, any other published binding legal act or by the contract the carrier shall have the right to the customary payment for the type of transport.
3. The provisions on payment on the contract for work shall apply to other matters as far as practicable.

**Article 586**

**Limitation of application of provision of this part**

The provisions of this Chapter shall apply to all types of transport, unless stipulated otherwise by law.

**Sub-chapter I – Contract on Carriage of Freight**

**Article 587**

**Delivery of object**

The carrier shall be obliged to deliver the object accepted for transport to the sender or a specific person (the recipient) in a specific place.

**Article 588**

**Regarding what sender must notify carrier**

1. The sender must notify the carrier regarding the type of consignment and the contents and quantity thereof, and must report where the consignment is to be transported, the name and address of the recipient, the name and address of the sender and everything else necessary for the carrier to be able to perform the obligation without delay or obstacles.
2. If the consignment contains valuables, securities or other expensive objects the sender must notify the carrier of such when handing it over for transport and must report the value thereto.
3. If it is a matter of the transport of a dangerous object or an object that requires special conditions of transport the sender must notify the carrier of such on time so that the carrier is able to take appropriate measures.
4. A sender that fails to provide the carrier with the information specified in paragraph 1. and 3. of this Article or provides erroneous information shall be liable for damage incurred for this reason.

**Article 589**

**Bill of freight**

1. The contracting parties may agree to compile a bill of freight on a consignment handed over for transport.
2. The bill of freight must contain the name and address of the sender and the carrier, the type, contents and quantity of the consignment, the value of any valuables and other expensive objects, the place of destination, the sum of payment for the transport or a note that payment was made in advance, a provision on the amount by which the consignment was encumbered, and the place and day of issue of the bill of freight.
3. Other provisions of the contract of carriage may be recorded in the bill of freight.
4. Both contracting parties must sign the bill of freight.
5. The bill of freight may contain a “by order” provision or may be made out to the bearer.

**Article 590**

**Contract of carriage and bill of freight**

The existence and validity of the contract of carriage shall be independent of the existence and correctness of the bill of freight.

**Article 591**

**Confirmation of acceptance for transport**

If a bill of freight is not issued the sender may request that the carrier issue a confirmation of the acceptance of the consignment for transport with the information that must be contained in the bill of freight.

**Sub-chapter II – Relationship between Sender and Carrier**

**Article 592**

**Packing**

1. The sender shall be obliged to pack the object in the prescribed or customary manner such that no damage will occur and the safety of people and property will not be threatened.
2. The carrier shall be obliged to draw the sender’s attention to any deficiencies in packing that can be noticed; otherwise the carrier shall be liable for damage to the consignment caused for this reason.
3. The carrier shall not be liable for damage to the consignment if despite being warned regarding deficient packing the sender requests that the carrier accept the consignment for transport with the deficiencies.
4. The carrier shall be obliged to refuse the consignment if the deficiencies in the packing there of are such that they could endanger people or property or cause any damage.
5. The carrier shall be liable for damage inflicted on third persons for reason of deficiencies in packing while the object is with the carrier, but shall have the right to request compensation from the sender.

**Article 593**

**Payment for transport and costs in connection with transport**

1. The sender shall be obliged to pay the carrier for transport and costs in connection with transport.
2. If the bill of freight does not cite that the sender is paying for transport and the other costs in connection with transport the sender shall be presumed to have instructed the carrier to charge such costs to the recipient.

**Article 594**

**Disposal of consignment**

1. The sender may dispose of the consignment and alter the order specified in the contract, and may instruct the carrier to cease further transport of the consignment, return it thereto, deliver it to another recipient or send it to any other place.
2. The sender’s right to alter the order shall expire when the consignment reaches the place of destination, when the carrier delivers the bill of freight to the recipient, when the carrier requests that the recipient accept the consignment, or when the recipient requests the delivery thereof.
3. If the bill of freight was issued by order or to the bearer the holder of the bill of freight shall exclusively hold the sender’s rights specified in the previous paragraph.
4. An enChapterd person that exploits the right and gives the carrier a new order must reimburse the costs and damage incurred by the carrier because of this, and at the carrier’s request shall give a guarantee that the costs and damage will be reimbursed thereto.

**Article 595**

**Direction of transport**

1. The carrier must perform the transport according to the agreed route.

2. If it was not agreed along which route the transport must be performed the carrier must perform the transport along the route that best suits the interests of the sender.

**Article 596**

**Obstacles to transport**

1. The carrier must notify the sender regarding all circumstances that could influence the transport, and act according to the sender’s instructions.
2. The carrier shall not be obliged to act according to the sender’s instructions if the fulfillment of such instructions could endanger people or property.
3. If it is not possible to wait for the sender’s instructions, the carrier shall notify the sender and request the sender’s further instructions. While awaiting the sender’s instructions, the carrier must act with due care.
4. The carrier shall have the right to reimbursement of the costs incurred because of obstacles arising through no fault of the carrier.

**Article 597**

**Payment during interruption in transport**

1. If for any reason for which the carrier is liable the transport is interrupted, the carrier shall have the right to a proportion of the payment for the transport performed, but must reimburse any damage incurred by another party because of the interruption.
2. If the transport was interrupted for a reason for which none of the parties concerned was liable the carrier shall have the right to the difference between the agreed payment for the transport and the transport costs from the place where the transport was interrupted to the place of destination.
3. The carrier shall not have the right to a part of the payment if during transport the consignment was destroyed because of force majeure.

**Article 598**

**If consignment cannot be delivered**

1. If it is not possible to notify the recipient regarding the arrival of the consignment, if the recipient does not wish to accept it, if it is not possible to deliver the consignment or if the recipient fails to pay the carrier the payment owed and other sums charged on the consignment, the carrier must notify the sender of such, request the sender’s instructions and take all measures necessary to ensure the safekeeping of the object at the sender’s expense.
2. If an enChapterd person fails to take any measures in respect of the consignment by an appropriate deadline the carrier shall have the right to sell the object under the rules on the sale of an indebted object in the event of the creditor’s delay and to pay off the claims from the revenue acquired; the remainder must be deposited with the court for the enChapterd person.

**Article 599**

**Carrier’s liability towards sender**

A carrier that delivered the consignment to the recipient but failed to charge the sum that was charged on the consignment must pay the sum to the sender, but shall have the right to request reimbursement from the recipient.

**Sub-chapter III – Relationship between Carrier and Recipient**

**Article 600**

**Recipient’s notification of consignment’s arrival**

1. The carrier must notify the recipient without delay that the consignment has arrived, place it at the latter’s disposal as agreed and submit the bill of freight, if issued, to the latter.
2. If the bill of freight was issued by order or to the bearer the carrier shall only be obliged to act according to the previous paragraph if the bill of freight cites the person at the place of destination that must be notified regarding the consignment’s arrival.

**Article 601**

**Delivery of consignment if duplicate bill of freight issued**

The carrier may refuse to deliver the consignment unless a duplicate of the bill of freight, on which the recipient confirmed delivery of the consignment thereto, is delivered to the former at the same time.

**Article 602**

**Recipient’s right to request delivery of consignment**

1. The recipient may exercise against the carrier the rights specified in the contract of carriage and request that the carrier deliver the bill of freight and consignment thereto as soon as the consignment arrives at the place of destination.
2. Before the consignment arrives at the place of destination the carrier shall only be obliged to deliver it to the recipient at the latter’s request if so authorized by the sender.
3. The recipient may only exercise the rights specified in the contract of carriage and request that the carrier deliver the consignment if the recipient fulfils the conditions stipulated in the contract of carriage.

**Article 603**

**Identification and determination of state of consignment**

1. The enChapterd person shall have the right to request that using an official record the consignment be identified and, if the consignment is damaged, the nature of the damage be stated.
2. If it is determined that the consignment is not that which was delivered to the carrier or that the damage is greater than is stated by the carrier, the costs of determination shall be borne by the carrier.

**Article 604**

**Recipient’s obligation to pay for transport**

1. Unless stipulated otherwise in the contract of carriage or the bill of freight, the recipient shall upon accepting the consignment and any bill of freight undertake to pay the carrier for transport and the sums charged on the consignment.

2. If the recipient does not feel obliged to pay the carrier as much as requested the recipient may only exercise the rights in the contract by depositing the disputed sum with the court.

**Sub-chapter IV – Carrier’s Obligation for Loss, Damage, or Delay of Consignment**

**Article 605**

**Loss or damage of consignment**

1. The carrier shall be liable for any loss of or damage to the consignment during the time between accepting it and delivering it, unless it is a consequence of the action of the enChapterd person, an attribute of the consignment, or external causes that could not be anticipated and could not be avoided or averted.
2. Provisions of the contract of carriage, the general terms and conditions of transport, tariffs or any other legal act that limit such liability shall be null and void.
3. However a provision by which the maximum sum of compensation is stipulated in advance under the condition that it is not in clear disproportion to the damage shall be valid.
4. This limitation of compensation shall not be valid if the carrier inflicted the damage intentionally or out of gross negligence.
5. Unless agreed otherwise, the compensation shall be levied using the market price of the consignment at the time and place of handover for transport.

**Article 606**

**Loss of or damage to consignment of expensive objects**

1. If a consignment containing valuables, securities or other expensive objects is lost or damaged the carrier shall only be obliged to reimburse the damage incurred if when the objects were handed over for transport the carrier was informed of the nature and value of the objects or if the carrier caused the damage intentionally or out of gross negligence.
2. If other objects were present in the consignment with the stated objects the carrier shall be liable for the loss thereof or damage thereto under the general rules on the carrier’s liability.

**Article 607**

**Refund of payment for transport**

If the consignment is totally lost the carrier shall in addition to the damage be obliged to refund to the sender that which was paid for transport.

**Article 608**

**If recipient accepts consignment without objection**

1. If the recipient accepts the consignment without objection and pays the carrier’s claim to the carrier, the carrier’s liability shall terminate, unless damage to the consignment was stated by official record prior to the acceptance of the consignment.
2. The carrier shall remain liable for damage to the consignment that could not be noticed during delivery if the recipient notifies the carrier of such immediately upon discovering the damage; however this must be within eight (8) days of delivery.

**Article 609**

**Carrier’s liability for delay**

The carrier shall be liable for the damage incurred because of a delay, unless the reason for the delay is any fact that excludes the carrier’s liability for the loss of or damage to the object.

**Article 610**

**Liability for assistants**

The carrier shall be liable for persons working during the transport at the carrier’s orders.

**Sub-chapter V – Involvement of Several Carriers in Transport of Consignment**

**Article 611**

**Joint and several liability**

1. A carrier that entrusts the complete or partial transport of a consignment accepted for transport to any other carrier shall continue to be liable for the transport thereof from acceptance to delivery, but shall have the right to reimbursement from the carrier entrusted with the consignment.
2. However, if the other carrier accepts the consignment from the first with a bill of freight, the former shall become a party to the contract of carriage with the rights and obligations of a joint and several debtor and a joint and several creditor; their shares shall be proportional to their involvement in the transport.
3. This shall also apply when for the transport of a certain consignment the same contract binds several carriers that will be sequentially involved in the transport.
4. Each of the several carriers shall have the right to request the determination of the state of the consignment when it is delivered thereto for performing the carrier’s part of the transport.
5. Joint and severally liable carriers shall bear the damage in proportion to their share in the transport, with the exception of any carrier that shows that the damage did not occur when the consignment was being transported thereby.
6. Objections against a subsequent carrier shall also take effect against all the previous carriers.

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**Article 612**

**Carriers’ shared liability**

When several carriers stipulated by the sender are sequentially involved in the transport of the same consignment they shall each be liable solely for their part of the transport.

**Sub-chapter VI – Pledge**

**Article 613**

**When carrier has right on pledge**

1. In order to secure payment for the transport and the refund of the necessary costs incurred by the transport the carrier shall have a pledge on the objects handed over thereto for transport and in connection with the transport as long as they are in the carrier’s possession or as long as the carrier holds documentation that allows the disposal thereof.
2. If several carriers were involved sequentially in the transport their claims in connection with the performed transport shall be secured with such a pledge, and the final carrier shall be obliged to charge all claims according to the bill of freight, unless the bill of freight states otherwise.
3. The claims of the previous carrier and the pledge thereof shall be transferred by law alone to the subsequent carrier that pays such claims thereto.
4. This shall also apply if the carrier pays a freight forwarding agent’s claim.

**Article 614**

**Conflict of pledges**

1. When in addition to a carrier’s pledge there are at the same time pledges held by the commission agent, the freight forwarding agent and the warehouser on the same object, the priority of claim shall go to any of these creditors originating through dispatch and transport in the reverse order to that in which they originated.

2. Other claims by the commission agent and the warehouser and claims by the freight forwarding agent and the carrier originating because of advance payments shall only be settled after the claims cited in the previous paragraph, and in the order they originated.

**Sub-chapter VII – Passenger Transport Contract**

**Article 615**

**General provision**

The carrier shall be obliged to perform passenger transport with the means of transport stipulated in the passage contract and under the conditions of comfort and hygiene deemed necessary with regard to the means of transport and the length of journey.

**Article 616**

**Passenger’s right to designated place**

The carrier shall be obliged to give the passenger the place on the means of transport as agreed.

**Article 617**

**Carrier’s liability for delay**

1. The carrier shall be obliged to bring the passenger to the specified place on time.
2. The carrier shall be liable for any damage incurred by the passenger owing to a delay, unless the delay arose on grounds that the carrier could not have averted acting with due care.

**Article 618**

**Carrier’s liability for passenger safety**

1. The carrier shall be liable for the safety of the passengers from the beginning to the end of transport, in the case of both lucrative and free-of-charge transport, and must reimburse the damage arising because of damage to the health of, injury to or the death of a passenger, unless it arose because of the passenger’s action or for an external reason that could not be anticipated, avoided or averted.
2. Provisions of a contract, the general conditions of carriage, the tariff or any other legal act by which this liability is reduced shall be null and void.

**Article 619**

**Liability for luggage handed over for transport and for other objects**

1. The luggage handed over to the carrier by the passenger must be taken together with the passenger and delivered to the passenger after transport is completed.
2. The carrier shall be liable for the loss of or damage to luggage handed over thereto by the passenger according to the provisions on the transport of freight.
3. The carrier shall be liable for damage to the objects a passenger has on his/her person according to the general rules on liability.

**Chapter XII – Contract of Deposit**

**Sub-chapter I – General Provisions**

**Article 620**

**Definition**

1. Through a contract of deposit the depositary undertakes to accept an object from the depositor, to keep it safe and to return it thereto when requested thereby.
2. Only movable property may be the object of a contract of deposit.

**Article 621**

**Safekeeping of another’s object**

1. A valid contract of deposit may also be concluded in such person’s own name by a person that is not enChapterd to dispose of an object or is not the owner of the object, and the depositary must return the object thereto unless the depositary learns that the object was stolen.
2. If a third person files a suit requesting the object from the depositary and states that such person is enChapterd to dispose thereof or is the owner thereof, the depositary must report to the court the identity of the person from whom the object was received and must inform the depositor of the suit filed.

**Sub-chapter II – Depository’s Obligation**

**Article 622**

**Obligation of safekeeping and notification**

1. The depositary shall be obliged to keep the object safe and act with the due care.
2. If the place and manner of safekeeping are stipulated in the contract the depositary may only change them if so requested by altered circumstances; otherwise the depositary shall also be liable for the accidental destruction of or damage to the object.
3. The depositary must inform the depositor of any change noticed in the objects and of any danger that could lead the object to be damaged in any way.

**Article 623**

**Delivery of object to another for safekeeping**

The depositary may not deliver the entrusted object to another for safekeeping without the depositor’s consent or without being forced to do so; otherwise the depositary shall also be liable for the accidental destruction of or damage to the object.

**Article 624**

**Use of object**

1. The depositary shall not have the right to use the object entrusted thereto for safekeeping.
2. A depositary that uses the object without permission shall owe the depositor appropriate compensation and in so doing shall be liable for the accidental destruction of or damage to the object.
3. If any kind of non-consumable object was placed in safekeeping and the depositary was permitted to use it, the rules of a loan contract shall apply to the relationship between the contracting parties, and the contract shall be judged solely with regard to the time and place of the return of the object according to the rules of a contract of deposit, unless the contracting parties stipulated otherwise in this respect.

**Article 625**

**Use of object and delivery thereof to another**

If the depositary uses the object without the depositor’s consent and without being forced to so in contravention of the contract, changes the place or manner of the safekeeping or delivers the object to another, the depositary shall not be liable for the accidental destruction of or damage to the object that would have occurred even if the depositary had acted in accordance with the contract.

**Article 626**

**Return of object**

1. The depositary shall be obliged to return the object as soon as the depositor requests, including all the fruits and other benefits therefrom.

2. If a deadline is stipulated for the return of the object the depositor may request the return of the object before the deadline, unless the deadline was not agreed exclusively in the interest of the depositor.

3. It shall be necessary to return the object at the place it was delivered to the depositary, unless another place is stipulated in the contract; in such a case the depositary shall have the right to the reimbursement of the costs of transporting the object.

**Sub-chapter – Depositary’s Rights**

**Article 627**

**Reimbursement of costs and damage**

The depositary shall have the right to request that the depositor reimburse the justifiable costs incurred by the depositary in keeping the object and the damage incurred because of safekeeping.

**Article 629 Payment**

The depositary shall not have the right to payment for the depositary’s endeavors, unless payment was agreed, the depositary’s activities comprise the acceptance of objects for safekeeping, or payment could be expected given the circumstances of the transaction.

**Article 630**

**Return of object during gratuitous safekeeping**

1. A depositary that undertook to keep an object free of charge for a specific period may return it to the depositor before the agreed deadline if the object itself is threatened with destruction or damage or if damage could be incurred by the depositary because of further safekeeping.
2. If a deadline was not agreed the depositary specified in the previous paragraph may withdraw from the contract at any time, but must stipulate an appropriate deadline for the depositor to take the object.

**Sub-chapter IV – Special Cases of Safekeeping**

**Article 631**

**False safekeeping**

If replaceable objects were placed in safekeeping with the depositary having the right to consume them and the obligation to return the same quantity of objects of the same type, the rules of a loan contract shall apply to the depositary’s relationship with the depositor; the rules of a contract of deposit shall only apply with regard to the time and place of the return of the object, unless the contracting parties stipulated otherwise in this respect.

**Article 632**

**Emergency safekeeping**

A person to whom an object was entrusted in an emergency, such as in the event of a fire, an earthquake or a flood, must keep it safe with high diligence.

**Chapter XIII – Contract of Storage**

**Sub-chapter I – General Provisions**

**Article 633**

**Definition**

1. Through a contract of storage the warehouser undertakes to accept and store specific goods, do all that is necessary or agreed upon to preserve them in the specific state and to deliver them at the request of the depositor or any other enChapterd person, and the depositor undertakes to make a specific payment thereto for such.
2. When handing over the goods the depositor must provide all the necessary information thereon and state the value thereof.

**Article 634**

**Exclusion of liability and certain warehouser obligations**

1. The warehouser shall be liable for damage to the goods, unless it is shown that the damage occurred owing to circumstances that could not be avoided or averted, or occurred through the depositor’s fault, because of faults in the goods or the dangerous properties of the goods, or because of poor packaging.
2. The warehouser shall be obliged to draw the depositor’s attention to faults in the goods or the dangerous properties of the goods or to poor packaging because of which damage to the goods could occur as soon as the warehouser notices or should have noticed such.
3. If unpreventable changes begin to occur to the goods that threaten to spoil or destroy the goods the warehouser must sell the goods without delay in the most appropriate manner when the depositor would be unable to do such on time at the warehouser’s request.
4. The warehouser shall be obliged to do everything necessary to uphold the depositor’s right against a carrier that delivered the goods for the depositor in a damaged or deficient state.

**Article 635**

**When goods must be insured**

1. The warehouser shall only be obliged to insure the goods accepted for safekeeping if such is agreed.
2. Unless it is stipulated in the contract which risks must be covered by the insurance, the warehouser shall be obliged to insure against the customary risks.

**Article 636**

**Limitation of compensation**

The compensation that must be paid by the warehouser because of the destruction or diminution of the goods or damage thereto during the period between acceptance and delivery may not exceed the actual value of the goods, unless the damage was caused intentionally or out of gross negligence.

**Article 637**

**Mixing of replaceable objects**

1. The warehouser may not mix accepted replaceable objects with objects of the same type and same quality unless the depositor consented thereto or it is clear that it is a matter of objects that can be mixed without the risk of any damage being inflicted on the depositor.
2. If the objects are mixed the warehouser may at the request of an enChapterd person deliver the part thereto pertaining from the mix of replaceable objects without the involvement of other enChapterd persons.

**Article 638**

**Inspection of goods and and removal of samples**

The warehouser shall be obliged to allow an enChapterd person to inspect the goods and remove samples thereof.

**Article 639**

**Warehouser’s claim and pledge**

1. In addition to the right to payment for safekeeping the warehouser shall also have the right to the reimbursement of the necessary costs for preserving the goods.
2. The warehouser shall have a pledge on the goods for the claims deriving from the contract of storage and other claims originating in connection with the safekeeping of the goods.

**Article 640**

**Collection of goods and sale of uncollected goods**

1. The depositor may collect the goods before the agreed deadline.
2. If the depositor fails to collect the goods after the agreed deadline or if a year passes and no deadline for the safekeeping was stipulated in the contract the warehouser may sell the goods at a public auction for the depositor’s account; however, the warehouser must first notify the depositor of this intention and allow an additional period of at least eight (8) days for the depositor to collect the goods.

**Article 641**

**Defects during reception of goods**

1. The recipient of the goods must inspect the goods at the moment they are received.
2. If during the reception of the goods the recipient notices any defects the recipient must immediately inform the warehouser of such; otherwise the goods shall be deemed to have been received in order.
3. The recipient must notify the warehouser in a reliable manner regarding defects that could not be noticed when the goods were received within seven days of the goods being received; otherwise the goods shall be deemed to have been received in order.

**Article 642**

**Application of rules on safekeeping**

The sense of the rules on safekeeping shall apply to contracts of storage, unless regulated otherwise by the rules on warehousing.

**Sub-chapter II – Warehouse Receipt**

**Article 643**

**Obligation to issue warehouse receipt**

A warehouser that performs warehousing activities as a registered activity shall be obliged to issue a warehouse receipt to the depositor at the request thereof for the goods accepted into the warehouse.

**Article 644**

**Composition and content of warehouse receipt**

1. The warehouse receipt shall be composed of a receipt and a pledge document.
2. The following information must be cited in the receipt and the pledge document: the business name or name of the depositor, the head office address of place of residence thereof, the warehouser’s business name and head office address, the warehouse receipt’s date and number, the location of the warehouse, the type, state and quantity of goods, indication of the amount for which the goods are insured, and other information required for identifying the goods and for determining the value thereof.
3. The receipt and pledge document must make reference to each other.

**Article 645**

**Warehouse receipt for parts of goods**

1. The depositor may request that the warehouser divide the goods into specific parts and issue a separate warehouse receipt for each part.
2. A depositor that has already obtained a warehouse receipt for the whole quantity of goods may request that the warehouser divide the goods into specific parts and issue a separate warehouse receipt for each part in place of the warehouse receipt already received.
3. The depositor may request that the warehouser issue a warehouse receipt solely for a part of the replacement goods stored therewith.

**Article 646**

**Rights of holder of warehouse receipt**

1. The holder of the warehouse receipt shall have the right to request the delivery of the goods cited to therein.
2. The holder of the warehouse receipt may only dispose of the goods cited in the warehouse receipt by producing the warehouse receipt.

**Article 647**

**Transfer of receipt and pledge document**

1. The receipt and lien document may only be transferred by endorsement, either together or separately.
2. It shall be necessary to inscribe the date thereon upon each transfer.
3. At the request of the recipient of the receipt or pledge document the transfer thereto shall be inscribed in the warehouse register, whereby the recipient’s head office address or place of residence shall also be recorded therein.

**Article 648**

**Rights of holder of receipt**

1. The transfer of the receipt without the pledge document shall give the recipient the right to request the delivery of the goods only if such person pays the holder of the pledge document the sum that should be paid on the day the claim falls due or deposits such with the warehouser.
2. If the sum to which the holder of the pledge document has the right can be paid using the price obtained, the holder of the receipt may request that the goods be sold, and the surplus be delivered thereto.
3. If it is a matter of replaceable objects the holder of the receipt without the pledge document may request that the warehouser deliver part of the goods thereto, under the condition that the former deposit with the warehouser the appropriate sum of cash for the holder of the pledge document.

**Article 649**

**Rights of holder of pledge document**

1. The transfer of the pledge document without the receipt shall give the recipient a pledge on the goods.
2. Upon the first transfer the business name or name and head office address or place of residence of the creditor, the amount of the creditor’s claim including interest and the day payment falls due must be inscribed on the lien document.
3. The first recipient of the pledge document must notify the warehouser without delay of the pledge document’s transfer thereto, and the warehouse must inscribe this transfer in its register and mark the inscription on the pledge document itself.
4. Unless that which is stipulated in the previous paragraph is done the pledge document may not be transferred onwards by endorsement.
5. A pledge document on which the creditor’s claim is not cited shall tie the entire value of the object cited therein in favour of the creditor.

**Article 650**

**Protest over non-payment and sale of goods**

1. A holder of a pledge document without a receipt that at the deadline has not been paid the claim secured by the lien document must lodge a protest according to the bill of exchange act; otherwise the holder shall lose the right to request payment from the recipients.
2. A holder of a pledge document that has filed a protest may request the sale of the goods under the pledge eight days after the claim fell due; a recipient that paid the claim secured by the pledge to the holder of the pledge document shall have the same right.
3. An amount required for the coverage of the sales costs, the warehouser’s claim deriving from the contract of storage and other claims by the warehouser shall be removed from the sum obtained from the sale; the secured claim of the holder of the pledge document shall then be paid therefrom, while the remainder shall go to the holder of the receipt.

**Article 651**

**Request for payment from recipients of pledge document**

1. The holder of the pledge document may only request payment from the recipient if unable to gain full payment through the sale of the goods under the pledge.
2. This must be requested within the period stipulated in the bill of exchange for a claim against an endorser, which shall begin to run on the day the goods were sold.
3. The holder of the pledge document shall lose the right to request payment from the recipients unless the former requests the sale of the goods within one (1) month of the protest.

**Chapter XIV – Contract of Mandate**

**Sub-chapter I – General Provisions**

**Article 652**

**Definition**

1. Through a contract of mandate the mandate recipient undertakes to the mandator to perform specific transactions therefor.
2. At the same time the mandate recipient shall acquire the right to perform the transactions.
3. The mandate recipient shall have the right to payment for such person’s endeavors, unless agreed otherwise or it follows otherwise from the nature of the mutual relationship.

**Article 653**

**Persons obliged to respond to offered mandate**

Any person that performs another’s transactions as a profession or any person that publicly offers to do so must notify the other party without delay should the former refuse to accept a mandate relating to such transactions; otherwise the former shall be liable for the damage incurred by the latter for this reason.

**Sub-chapter II – Mandate Recipient’s Obligation**

**Article 654**

**Execution of mandate as declared**

1. The mandate recipient must execute with due care the mandate according to the instructions received. He shall remain within the mandate recipient’s boundaries and at all times attend to the mandator’s interests.
2. If the recipient is of the opinion that the execution of the mandate according to the instructions obtained would harm the mandator the former must warn the latter of such and request new instructions.
3. If the mandator did not provide specific instructions on a transaction that must be performed the recipient shall be obliged to act with due care, taking the mandator’s interests into consideration, and as the recipient would act in the recipient’s own affairs if it is a matter of a gratuitous mandate.

**Article 655**

**Deviation from mandate and instructions**

1. The mandate recipient may only deviate from the mandate and instructions obtained with the mandator’s consent; if because of a shortage of time or for any other reason the recipient cannot ask for consent the recipient may only deviate from the mandate and instructions if, all the circumstances having been assessed, there is justification in thinking that such is requested by the mandator’s interests.
2. A recipient that transgresses the boundaries of the mandate or deviates from the instructions obtained without it being a case specified in the previous paragraph shall not be deemed a recipient but a manager without mandate, unless the mandator later approved what was done

**Article 656**

**Substitution**

1. The recipient must execute the mandate in person.
2. The recipient may only entrust execution of the mandate to another if the mandator allows such or if circumstances compel such.
3. In such cases the recipient shall only be liable for the choice of substitute and for the instructions provided thereto.
4. In other cases the recipient shall be liable for the substitute’s work and for the accidental destruction of or damage to the object therewith.
5. In any case the mandator may request directly of the substitute that the latter perform the obligation deriving from the mandate.

**Article 657**

**Issue of invoice**

The mandate recipient must provide an invoice on the transaction performed and deliver everything received from performing the entrusted transactions to the mandator without delay, irrespective of whether any person owed that which was received for the mandator.

**Article 658**

**Reporting**

At the mandator’s request the mandate recipient must report thereto on the state of the transactions and provide an invoice thereto before the stipulated time.

**Article 659**

**Liability for use of mandator’s money**

A mandate recipient that uses money received for the mandator for the former’s own purposes must pay interest thereto at the highest permitted contractual interest rate, charged from the day use began, and must pay default interest on other owed money that could not be delivered thereto on time, charged from the day it should have been delivered.

**Article 660**

**Joint and several liability of mandate recipients**

If through the same mandate a transaction was entrusted to several people to be performed together they shall be jointly and severally liable for the obligations deriving from such a mandate, unless agreed otherwise.

**Sub-chapter III – Mandator’s Obligations**

**Article 661**

**Monetary advance**

The mandator must at the mandate recipient’s request provide a specific sum of money thereto for the anticipated expenses.

**Article 662**

**Reimbursement of expenses and takeover of obligations**

1. The mandator must reimburse the mandate recipient for all the necessary costs the latter had in performing the mandate, together with interest charged from the day they were paid, even if through no fault of the latter the latter’s endeavors were in vain.
2. The mandator must take over the obligations taken on by the mandate recipient in the latter’s name when performing the transactions entrusted thereto, or must release the latter from such obligations in any other manner.

**Article 663**

**Reimbursement of damage**

The mandator shall be obliged to reimburse the mandate recipient for any damage incurred during performance of the mandate through no fault of the latter.

**Article 664**

**Size of payment**

Unless agreed otherwise, the mandator shall owe the customary payment or a fair payment if there is no such custom.

**Article 665**

**Payment**

1. Unless agreed otherwise, the mandator must pay the mandate recipient after the transaction is performed.
2. A mandate recipient that through no fault of such person only performs the mandate in part shall have the right to a proportionate amount of the payment.
3. If the payment agreed in advance would be in clear disproportion to the services performed the mandator may request a reduction therein.

**Article 666**

**Pledge**

For securing the payment and costs the mandate recipient shall hold a pledge on the mandator’s movable property acquired thereby on the basis of the mandate, and also on monetary sums received for the mandator.

**Article 667**

**Joint and several liability of mandators**

If several persons entrust the execution of a mandate to a recipient they shall be jointly and severally liable thereto.

**Sub-chapter IV – Termination of Mandate**

**Article 668**

**Withdrawal from contract**

1. The mandator may withdraw from the contract.
2. In the event of withdrawal from a contract under which a payment pertains to the mandate recipient for the latter’s endeavors the mandator must pay an appropriate part of the payment and reimburse the damage incurred by the latter because of the withdrawal from the contract, unless there were justifiable grounds for withdrawal.

**Article 669**

**Notice of termination**

1. The mandate recipient may terminate the mandate whenever such person so desires, but not at an inappropriate time.
2. The recipient must reimburse the mandator for damage incurred thereby because of the termination of the mandate at an inappropriate time, unless justifiable grounds were given for the termination.
3. Even after the termination the recipient must continue those transactions that cannot be deferred, until the mandator has the opportunity to take over concern therefor.

**Article 670**

**Death, winding-up of legal person**

1. The mandate shall terminate upon the death of the recipient.
2. The recipient’s heirs shall be obliged to inform the mandator of the recipient’s death at the earliest opportunity and to do everything necessary to protect the mandator’s interests until the mandator is capable of taking over concern therefor.
3. The mandate shall only terminate upon the death of the mandator if so agreed or if the recipient received the mandate in respect of the recipient’s personal relationship with the mandator.
4. The mandate recipient must in this case continue with the transactions entrusted thereto if damage would otherwise be inflicted on the heirs, for as long as they are incapable of taking over concern therefor.
5. If the mandator or the recipient is a legal person the mandate shall terminate when such person is wound up.

**Article 671**

**Bankruptcy, loss of capacity to contract**

The mandate shall terminate if the mandator or mandate recipient goes into bankruptcy or partly or wholly loses the capacity to contract.

**Article 672**

**When mandate terminates**

1. If the mandator withdraws from the contract, dies, goes into bankruptcy or partly or wholly loses the capacity to contract the mandate shall terminate when the mandate recipient learns of the development owing to which the mandate is to terminate.
2. If the recipient obtained a written authorization it must be returned after the termination of the mandate.

**Article 673**

**Exceptions**

If the mandate was issued so that the recipient could achieve the fulfillment of certain of the latter’s claims against the mandator, the latter may not withdraw from the contract and the mandate shall not terminate upon either the death or bankruptcy of the mandator or recipient or if one of the two partly or wholly loses the capacity to contract.

**Chapter XV – Contract of Partnership   
  
Article 674  
Definition**

Through a contract of partnership two or more persons undertake to endeavour to achieve a common purpose permitted by law using their contributions as stipulated in the contract.

**Article 675  
Contributions**

1. Each partner shall be obliged to contribute that which is stipulated by the contract (the contribution) to the partnership.

2. A contribution may be money, an object, a right, a claim, or a service, allowance or omission with assets value.

3. Unless stipulated otherwise by the contract, the partner’s contributions shall be equal.

4. Property may also be given solely for use or enjoyment as a contribution to the partnership.

5. If any of the partners is ensured benefit alone without an obligation to supply a contribution, the contract shall not be deemed to be a contract of partnership.

6. If such is required to preserve assets within the partnership or to avert damage, each partner shall be obliged, in addition to the contribution stipulated in the contract, to contribute a proportionate part of that required for preserving the assets or preventing the damage.

7. Each partner shall be liable as a seller or lessor for legal and material defects in the contribution.

**Article 676  
Decision-making and management**

1. Each partner shall have one vote. The contract may stipulate a different number of votes for the partners.

2. The partners shall decide on partnership matters unanimously; the partners shall in particular decide in such a manner on the use of the profit and other benefits, the manner in which loss is covered, the entry of a new partner or exclusion of a current partner, claims against any partner for settlement of damage to the partnership, revocation of management, termination of the contract and other issues encroaching on management.

3. The contract may stipulate that the partners are to decide on the matters specified in the previous paragraph by a majority of votes. In such a case a majority or at least two-thirds of the votes of all the partners shall be required for a decision.

4. The partners shall conduct the management jointly and equally.

5. It may be stipulated by the contract that each of the partners conduct management independently, or that management be conducted by only some of the partners jointly or independently, just one of the partners, or one or more other persons appointed unanimously by the partners.

6. The partners may on justifiable grounds revoke management by any of the partners.

7. The sense of the provisions of the present code on a contract of mandate shall apply to managers.

8. The manager shall have the right to payment for such person’s efforts, if the contract so stipulates.

9. Each partner shall have the right to be informed of the partnership’s transactions and matters.

**Article 677  
Exercise of rights and obligations in partnership**

1. Each partner must perform the partnership’s transactions and be concerned therewith with the diligence and in the manner applied to the partner’s own transactions.

2. If the purpose of the partnership is connected to the partners’ activities or profession, they shall be obliged to act with the diligence of a good businessperson or the diligence of a good expert.

3. A partner may not do anything that would diminish the possibility of achieving the common purpose.

**Article 678  
Benefits and loss**

1. Each partner shall be enChapterd to part of the benefit achieved in the partnership, unless stipulated otherwise by the contract.

2. Each partner shall be obliged to bear part of the loss incurred by the partnership’s functioning.

3. Unless stipulated otherwise by the contract, the partners shall participate in the benefits and loss with shares equal to their shares in the contributions.

**Article 679  
Appearance against third persons**

1.A partner or manager that appears against third persons in such person’s own name and for the account of the partnership shall alone acquire the rights and obligations in relation to the third person.

2. If a partner or manager appears in the name of the partnership or the partners the provisions of the present code on representation in general shall apply.

3. In the case specified in the second paragraph of this article all the partners shall become joint and several creditors or debtors and the provisions of the present code on joint and several liability shall apply; an agreement among the partners stipulating otherwise shall have no legal effect in respect of third persons.

4. The partners’ obligations pursuant to this article towards third persons shall not terminate with the winding-up of the partnership.

**Article 680  
Assets in partnership**

The partners shall hold equal co-ownership and other co-holding shares in the assets of the partnership originating through the partners’ contributions or the partnership’s operations, unless stipulated otherwise by the contract.

**Article 681  
Relationship among partners**

1. If the costs and obligations towards third persons are not settled from the assets of the partnership, the partners shall be obliged to do so in equal parts; the contract may also stipulate different parts.

2. A partner that for the implementation of a contract settled any cost or any obligation of the partnership or other partners towards third persons in excess of the amount the partner was obliged to settle by contract shall have the right to request the reimbursement of a proportionate part from the other partners.

**Article 682  
Change in partner**

1. If the contract so allows, a new partner may enter the partnership.

2. Unless stipulated otherwise by the contract, a partner that enters the partnership anew shall be obliged to provide the same contribution as the other partners and shall be enChapterd to the benefit originating after such partner’s entry into the partnership.

3. The new partner shall only be liable towards third persons for obligations incurred after such became a partner.

4. A partner may not transfer such partner’s position to a third person, but may transfer it to another partner if the contract so allows and under the conditions stipulated by the contract.

**Article 683**

**Exclusion of partner**

1. On justifiable grounds partners may request the exclusion of a partner via a suit. The contract may also stipulate that the partners themselves decide on exclusion. In such a case the partner so affected may via a suit request the annulment of the resolution if such partner feels it to be unjustified.

2. The excluded partner shall have the right to reimbursement of the market value of such partner’s share at the time of exclusion.

3. The other partners must pay out this value within three years of the exclusion.

4. If the other partners request compensation from the excluded partner, they may retain the value of the excluded partner’s share until the judgement becomes final or an agreement is reached with the excluded partner.

**Article 684  
Winding-up of partnership**

1. A partnership shall be wound up:  
     
   1.1. when the period for which it was founded ends;

1.2. when it achieves the purpose for which it was founded or when achieving this purpose becomes impossible’

1.3. if the partners so conclude;

1.4. if a partner dies or loses the capacity to contract, or if bankruptcy, liquidation or composition proceedings are introduced against a partner as a sole trader;

1.5 if a partner ceases to exist as a legal person owing to changes in status, or if bankruptcy, liquidation or composition proceedings are introduced there against;

1.6. if after execution a partner’s share is acquired by a third person;

1.7. if through an act by a national authority a partner is prevented from performing activities that are vital to achieving the common purpose;

1.8. if a partner terminates the contract.

2. If after the period specified in point 1.1. of the paragraph 1 of this Article, the partners continue to implement the contract of partnership, the contract shall be deemed to have been concluded for an indefinite period.

3. If the contract so stipulates, a contract of partnership shall apply to the remaining partners even after an individual partner no longer participates in the partnership for any of the reasons specified in points 1.4. to 1.8. of the first (1) paragraph of this Article.

**Article 685  
Termination of contract**

1. A partner may terminate the contract if such is stipulated in the contract.

2. Irrespective of the previous paragraph a partner may terminate a contract concluded for an indefinite period; a three-month period of notice shall apply to termination in this case.

3. On justifiable grounds a partner may via a suit request the termination of a contract concluded for a definite period before the end of this period and with no period of notice.

**Article 686  
 Liquidation**

1.If the partnership is wound up the partners shall be obliged to perform liquidation, in particular such that obligations towards third persons are settled, the partners are compensated for the costs and payments that exceed the amount they are obliged to pay under the contract, and the remainder of the assets is divided among the partners in parts equal to those applying to the contributions; the contract may stipulate different parts.

2. If the partnership’s assets are not sufficient to cover the costs and obligations the missing amount must be covered by the partners in the ratio applying to their contributions.

**Chapter XVI – Community   
  
Article 687  
Definition**

If any right pertains to several persons together the provisions of this Chapter shall apply, unless stipulated otherwise by law.

**Article 688  
Shares**

1.In case of doubt, each participant shall have an equal share in the right that is the subject of the community.

2. Each participant may freely dispose of such person’s own share.

3. If a participant transfers the share to another person the resolutions and obligations that applied to the first participant before transfer shall apply to the latter.

4. All the participants shall unanimously dispose of the subject of the community as a whole.

**Article 689  
Participants’ obligation**

1. Participants shall use and enjoy the subject of the community and shall decide on common matters in a manner that suits the nature and purpose of the subject of the community and ordinary management.

2. If the participants fail to act in accordance with the first paragraph or cannot reach agreement on common matters, each participant may request that the court appoint an administrator in non- litigious proceedings to decide on common matters.

**Article 690  
Use and enjoyment**

1. If the subject of the community is divided in kind, each participant shall use and enjoy such participant’s part, but such that the other participants and the subject as a whole are not affected.

2. The subject of a community that is not divided in kind and is intended for all the participants shall be used and enjoyed by each participant in accordance with the purpose of the subject and such that there is no detriment to simultaneous use by the other participants and to the subject as a whole.

3. It shall not be possible to limit participant’s rights pursuant to the first and second paragraphs without the consent thereof.

**Article 691  
Decision-making on common matters**

1.The number of votes appropriate to the share thereof shall pertain to each participant.

2. The participants in a community shall decide by a majority of votes on the ordinary management, use and enjoyment of the subject of the community.

3. The participants may decide with a two-thirds (2/3) majority votes on the improvement of the subject of the community, on better use thereof or on measures important to increasing the value of the subject. If such a decision would limit the rights of any participant or would entail very high costs for the participants, the decision may only be adopted unanimously.

4. The participants in a community may agree that the matters specified in the second paragraph will be decided upon by one participant alone, certain participants alone or third persons. Such participants or third persons shall be elected with a majority of votes.

5. Irrespective of the second paragraph each participant may do whatever is required to avert the direct threat of major damage to the subject of the community, if such measures are not taken by participants or third persons pursuant to the second and fourth paragraphs.

6. The participants may not request any significant changes to the subject of the community or decide on such. Such a request or decision shall be deemed to be a request or decision to terminate the community.

**Article 692  
Community’s costs**

1. Each participant shall be obliged to bear the costs of the subject of the community in proportion to such participant’s share, particularly the costs of maintenance, management and joint use.

2. Each participant shall be obliged to bear a proportionate part of the costs arising because of a decision to improve the subject of the community, to use it better or to take measures important to increasing the value of the subject.

**Article 693  
Request for termination**

1. Each participant may at any time request the termination of the community.

2. By agreement the participants may permanently or for a definite period exclude the right to request the termination of the community or stipulate a period of notice.

3. In cases specified in the second paragraph of this article it shall also be possible to request the termination of the community if there are justifiable grounds for such.

4. The termination of the community pursuant to the first and third paragraphs may also be requested by a court-appointed administrator.

5. Irrespective of the second paragraph the participants may at any time unanimously decide to terminate the community.

6. A community shall also be terminated if the participants alienate the subject of the community as a whole or if the subject of the community no longer exists.

7. It shall not be possible by agreement to limit the rights of a participant or administrator pursuant to the first, third and fourth paragraphs.

**Article 694  
Consequences of termination**

1. If such is possible without harming the value of the subject of the community, upon termination division in kind shall be carried out.

2. If division in kind is not possible the subject of the community shall be sold. From the proceeds the joint obligations towards third persons and participants that settled such obligations for the account of other participants shall be settled first. The remaining proceeds shall be divided among the participants in the community with regard to their shares.

3. If the subject of the community is real estate it shall be sold at a public auction.

4. In the purchase pursuant to the second and third paragraphs one or more of the current participants shall have priority under the same conditions as third persons.

5. The sense of the second paragraph shall also apply if the termination occurs because the participants alienated the subject of the community as a whole or if the subject of the community no longer exists.

6. If the sale does not succeed the community shall not be terminated.

**Article 695  
Founding of partnership**

1.If such is not contrary to law, the community may also be terminated by the participants concluding a contract of partnership pursuant to the provisions of the present code or pursuant to the provisions of the act regulating companies.

2. When the community is terminated pursuant to the first paragraph of this article, the division shall not be carried out if the entire subject of the community is invested in the partnership.

3. Even after the founding of a partnership the participants in the community shall be liable to third persons as before the founding. Through the contract on partnership the mutual obligations incurred while the community existed may be regulated differently.

**Chapter XVII – Surety**

**Sub-chapter I – General Provisions**

**Article 696**

**Definition**

Through a contract of surety the surety undertakes to a creditor to perform a valid and due obligation of the debtor if the debtor has failed to do so.

**Article 697**

**Form**

A contract of surety shall only be binding for the surety if such makes the declaration of surety in writing.

**Article 698**

**Capacity to stand surety**

Only a person with full capacity to contract may be bound by a contract of surety.

**Article 699**

**Surety for person with incapacity to contract**

Any person that as surety undertakes to perform the obligation of any person with incapacity to contract shall be liable to the creditor in the same manner as the surety of a person with capacity to contract.

**Article 700**

**Subject of surety**

1. Surety may be stood for any valid obligation, irrespective of its content.
2. It shall also be possible to accept surety for a conditional obligation and for a specific future obligation.
3. Surety for a specific future obligation may be revoked before the obligation originates, if no deadline by which it should originate is stipulated.
4. Surety may also be stood for the obligation of another surety (surety’s surety).

**Article 701**

**Extent of surety’s obligation**

1. The surety’s obligation may not be larger than the obligation of the principal debtor; if it was agreed to be larger it shall be reduced to the size of the debtor’s obligation.
2. The surety shall be liable for the performance of the entire obligation for which surety was accepted, unless the surety’s obligation is limited to any part thereof or is otherwise tied to easier conditions.
3. The surety must reimburse the necessary costs incurred by the creditor in collecting the debt from the principal debtor.
4. The surety shall also be liable for any increase in the obligation incurred by the debtor’s delay or through the fault of the debtor, unless agreed otherwise.
5. The surety shall only be liable for the contractual interest falling due after the contract of surety is concluded.

**Article 702**

**Transfer of creditor’s rights to surety (subrogation)**

A creditor’s claim settled by the surety shall be transferred to the latter with all the accessory rights and guarantees for the fulfillment thereof.

**Sub-chapter II – Relationship between Creditor and Surety**

**Article 703**

**Forms of surety**

1. The performance of the obligation may only be requested of the surety when the principal debtor fails to perform it by the deadline stipulated in a written request (subsidiary surety).
2. The creditor may request that the surety perform the obligation, even if the creditor has not previously requested performance from the principal debtor, if it is clear that performance cannot be achieved from the assets of the principal debtor or if the principal debtor goes bankrupt.
3. A surety that is bound as surety and payer shall be liable to the creditor as the principal debtor for the entire obligation, and the creditor may request performance thereof from either the principal debtor or the surety, or from both at once (joint and several surety).
4. The surety shall be liable as surety and payer for an obligation originating from a commercial contract, unless agreed otherwise.

**Article 704**

**Joint and several liability of sureties**

Several sureties for a specific debt shall be jointly and severally liable, irrespective of whether they undertook to stand surety together or each of them made an undertaking to the creditor separately, unless their liability is regulated differently by the contract.

**Article 705**

**Loss of right to deadline**

If the debtor has lost the right to the deadline stipulated for the performance of the debtor’s obligation the creditor nevertheless may not request performance from the surety before the deadline passes, unless agreed otherwise.

**Article 706**

**Bankruptcy of principal debtor**

1. In the bankruptcy of the principal debtor the creditor shall be obliged to register the claim and notify the surety of such; otherwise the creditor shall be liable to the surety for the damage incurred thereby for this reason.

2. The reduction of the principal debtor’s obligation in bankruptcy or composition proceedings shall not entail a corresponding reduction in the surety’s obligation, and the surety shall therefore be liable to the creditor for the whole amount of the surety’s obligation.

**Article 707**

**Case of reduced liability for debtor’s heir**

The surety shall be liable for the whole amount of the obligation for which the surety was accepted, even if the payment of only that part thereof that corresponds to the value of the inherited property could be requested from the debtor’s heir.

**Article 708**

**Surety’s objections**

1. The surety may exercise all the principal debtor’s objections against the creditor’s claim, including an objection to compensation, but may not exercise the debtor’s personal objections.
2. The debtor’s waiver of objections and the debtor’s acknowledgement of the creditor’s claim shall have no effect in respect of the surety.
3. The surety may also exercise the surety’s personal objections against the creditor, for example nullity of the contract of surety, statute-barring of the creditor’s claim there against, and an objection to the offsetting of mutual claims.

**Article 709**

**Obligation to inform surety of debtor’s failure**

If the debtor fails to perform the debtor’s obligation on time the creditor must inform the surety of such; otherwise the creditor shall be liable for the damage incurred by the surety for this reason.

**Article 710**

**Release of surety because of creditor’s delay**

1. The surety shall be free of the obligation if at the request thereof after the claim falls due the creditor fails to claim performance from the principal debtor within one (1) month of the request.
2. When the deadline for performance is not stipulated the surety shall be free of the obligation if at the request thereof after the passing of one (1) year from the conclusion of the contract of surety the creditor fails to provide the necessary declaration for stipulating the day of performance within one (1) month of the request.

**Article 711**

**Release of surety because of abandonment of guarantees**

1. If the creditor abandons a pledge or any other right by which the performance of the claim was secured, or loses such because of the creditor’s own gross negligence, and thus prevents the transfer of the right to the surety, the surety shall be free of the obligation towards the creditor in the amount that would have been gained through the exercise of the right.
2. The rule specified in the previous paragraph shall apply both if the right originated before the contract of surety was concluded and if it originated after the contract of surety was concluded.

**Sub-chapter III – Relationship between Surety and Debtor**

**Article 712**

**Right to request reimbursement from debtor**

1. A surety that pays the creditor’s claim thereto may request that the debtor reimburse all that was paid for the debtor, and interest charged from the day of payment.
2. The surety shall have the right to the reimbursement of the costs incurred in any dispute with the creditor from when the debtor was informed of the dispute, and also to the reimbursement of any damage.

**Article 713**

**Right of surety to joint and several debtor**

A surety to one among several joint and several debtors may request that any of them reimburse the surety for that which was paid to the creditor and the costs.

**Article 714**

**Surety’s right to security in advance**

Before repaying the creditor a surety that stood with the knowledge or approval of the debtor shall have the right to request the necessary security from the debtor for the surety’s potential claims in the following cases: if the debtor failed to perform the debtor’s obligation when it fell due, if the creditor requested payment from the surety through court proceedings, or if the debtor’s pecuniary situation after concluding the contract of surety deteriorates significantly.

**Article 715**

**Loss of right to reimbursement**

1. Against a surety that paid the creditor’s claim without the debtor’s knowledge the debtor may exercise all legal means by which at the time of payment the debtor could have refused the creditor’s claim.
2. A surety that paid the creditor’s claim and failed to inform the debtor of such, whereby the debtor did not know of the payment and paid the same claim again, may not request reimbursement from the debtor, but shall have the right to request that the creditor return that which was paid thereto.

**Article 716**

**Right to return of that paid**

A surety that without the debtor’s knowledge paid a creditor’s claim that was subsequently annulled at the debtor’s request or expired through compensation may request the return of that paid from the creditor alone.

**Sub-chapter IV – Payer’s Recourse against Sureties**

**Article 717**

**The right of reimbursement from other sureties**

If there are several sureties and one of them pays a due claim, such person shall have the right to request from the other sureties that they reimburse the part pertaining to them.

**Sub-chapter V – Statute of Limitation**

**Article 718**

1. Upon the statute-barring of the principal debtor’s obligation the surety’s obligation shall also become statute-barred.
2. If the statute-barring period of the principal debtor’s obligation is longer than two years the surety’s obligation shall become statute-barred two years after the principal debtor’s obligation falls due, unless the surety is jointly and severally liable with the debtor.
3. A discontinuance of the statute-barring of a claim against the principal debtor shall only take effect against the surety if the statute-barring was discontinued by any action taken by the creditor before the court or any other administrative authority to determine, secure or collect the claim against the principal debtor.
4. The suspension of the statute-barring of the principal debtor’s obligation shall have no effect against the surety.

**Chapter XIII – Settlement**

**Article 719**

**Definition**

1. Through a contract of settlement persons between whom there is a dispute or uncertainty in respect of any legal relationship end the dispute or remove the uncertainty by making mutual concessions, and stipulate their mutual rights and obligations.
2. An uncertainty shall be deemed to be in effect whenever the exercise of a specific right is uncertain.

**Article 720**

**Where mutual concessions lie**

1. A concession may inter alia lie in the partial or total acknowledgement of any claim by the other party or in the waiver of the party’s own claim, in the takeover of any new obligation, in the reduction of an interest rate, in the extension of a deadline, in consent to repayment in part or in a given right to withdrawal money.
2. A concession may be conditional.
3. If only one party is making concessions to the other, for example acknowledging a right of the other party, this shall not be deemed settlement and the rules on settlement shall not apply.

**Article 721**

**Capacity**

In order to conclude a contract of settlement the capacity to dispose of the right that is the object of the settlement shall be required.

**Article 722**

**Subject**

1. Any right that a person can dispose of may be the subject of settlement.
2. Settlement on the pecuniary consequences of a criminal act shall be valid.
3. Disputes concerning status relationships may not be the subject of settlement.

**Article 723**

**Application of provisions on bilateral contracts**

1. The general provisions on bilateral contracts shall apply to a contract of settlement, unless stipulated otherwise by law.
2. If under the name of settlement the contracting parties perform any other transaction the provisions of law applying to settlement shall not apply to their relationship, but rather those applying to the transaction actually performed.

**Article 724**

**Excessive deprivation**

The annulment of settlement may not be requested for reason of excessive deprivation.

**Article 725**

**Effect of settlement against surety and pledger**

1. If through settlement a novation of an obligation is carried out the surety shall be free of the obligation for the performance thereof, and any pledge provided by a third person shall expire.
2. Otherwise the surety and third person that pledged an object shall remain bound; their liability may be reduced through settlement, but may not be increased unless they consent to the settlement.
3. If through settlement a debtor acknowledges a disputed claim the surety and the pledger shall retain the right to exercise against the creditor any objections waived by the debtor through the settlement.

**Article 726**

**Settlement on transaction that can be annulled**

1. Settlement on a legal transaction whose annulment could be requested by one party shall be valid if the party knew of the possibility when the settlement was concluded.
2. However, settlement on a null legal transaction shall be null, even if the contracting parties knew of the nullity and wished to eliminate it through settlement.

**Article 727**

**Nullity of settlement**

1. Settlement shall be null if it is based on an erroneous belief by the two contracting parties that there is a legal relationship that in reality does not exist, and without such an erroneous belief there would be no dispute or uncertainty between them.
2. This shall also apply if the contracting parties’ erroneous belief relates to ordinary facts.
3. The waiver of the right to exercise nullity shall have no legal effect, and that which was provided for the account of performance of an obligation deriving from such settlement may be requested back.

**Article 728**

**Nullity of provision of settlement**

The provisions of settlement shall be interpreted as a whole, and the entire settlement shall therefore be null if an individual provision is null, unless it can be seen from the settlement alone that it is composed of independent parts.

**Chapter XIX – Transitional Provisions**

**Article 729**

**Pre-existing obligations and contracts**

1. The provisions of the Book on Obligations shall not apply to obligations which arose before the entry into force of the present Civil Code.

2. Contracts in existence when the Civil Code comes into force must be amended in accordance with the new provisions within one year. After this deadline expires, the provisions hereof also apply to contracts entered into previously.

**Article 730**

**[New Chapter] Zbatimi lidhur me dëmin**

For the applicability of the provisions of this Civil Code on liability and compensation it is decisive whether the damage occurred before or after the entry into force of the Civil Code or whether the injury has become known before or after the entry into force of the Civil Code.

**Article 731**

**Applicable law for non-performance**

If a debtor has failed to perform before the present Civil Code came into force the consequences of the failure of performance are not regulated according to the provisions of the Civil Code, even if the failure of performance is continued thereafter.

**Article 732**

**Abrogation of other laws**

1. Upon entry into force of this Civil Code, Law No. 04/L-077 On Obligational Relationships shall be abrogated, unless the following provisions provide otherwise.
2. Article 1058, paragraph 3 of Law No. 04/L-077 On Obligational Relationships shall continue to be applicable until the matter of banking contracts is regulated by special law.
3. Sub-charter 2 of Chapter 5 of Part II of Book 1 (Articles 217 to 244) shall continue to be applicable until abrogated or superseded by a new law covering the subject maatter of securities.
4. Article 381, Article 382 and Article 385 shall continue to be applicable until the statutory rate of usurious, default and remunerative interest is regulated by special law.
5. Articles 645 to 661 shall continue to be applicable until the matter of building contracts is regulated by special law.
6. Article 700 to 725 shall continue to be applicable until the matter of license agreements is regulated by special law.
7. Articles Article 700 to 725, Article 785 to 789, Article 804 to 833, Articles 834 to 847, Article 848 to 867, Articles 1032 to 1046 shall continue to be applicable until the matter of license agreements, commission agency contracts, commercial agency contracts, brokerage contracts, shipping contracts and transfer orders are regulated by a commercial code.
8. Articles 918 to 986 shall continue to be applicable until the matter of insurance contracts is regulated by special law.
9. Article 880 to 900 and Articles 901 to 905 shall continue to be applicable until the contract on organised travel package and the travel agency contract are regulated by special law.
10. Article 5, Chapter VII, Chapter VIII, Chapter X and Chapter XV of Law No. 04/L-121 On Consumer Protection shall be abrogated upon the entry into force of the present Civil Code.
11. Articles 29 to 37 of the Law No. 2004/18 on Internal Trade as amended by Law No. 04/l-005 on amending and supplementing the Law no. 2004/18 On Internal Trade are abrogated upon the entry into force of the present Civil Code.

**BOOK THREE – PROPERTY AND OTHER REAL RIGHTS**

**PART I – GENERAL PROVISIONS**

**Chapter I – General Provisions**

**Article 1**

**Real right**

1. Real rights can only be created by law. The general provisions and fundamental principles of this Book shall also apply to real rights not referred to in the civil code, unless separate legislation provides otherwise.
2. To regulate real rights taxative listing: 1. Ownership, servitudes, mortgage, pledge, property burdens/charges, construction right and long term lease.

**Article 2**

**Limitation to ownership and other real rights in the public interest**

1. Ownership and other real rights can only be limited or taken away against the lawful holders’ will in accordance with conditions and procedures as defined by the applicable laws.

2. Real rights in public or common assets are subject to specific legislation, unless specifically provided otherwise herein with.

**Article 3**

**Holders of real rights**

1. Any physical and legal person can acquire real rights, unless otherwise provided by law.

2. The holder of a real right can assert this right against any other person, unless otherwise provided by law.

3. Foreign persons may acquire real rights under a condition of reciprocity unless otherwise provided by law. Acquisition of real rights by foreigners is regulated by special law.

**Article 4**

**Priority of real rights**

If several real rights exist in a single asset, their priority is determined in accordance with the time of their creation, unless otherwise provided by law.

**Article 5**

**Good faith**

1. The person is in the good faith when he is holding a right, while he is not aware and he cannot (is not required) to know that the asset or the rights belongs to other person.

2. There is no good faith if one knows or should have known the asset or the rights belongs to other persons.

**Article 6**

**Presumption of good faith**

If the acquisition of a real right depends on the good faith of the acquirer, good faith shall be presumed unless proven otherwise

**Article 7**

**Limited real rights**

1. Real rights can be limited by real rights in other assets as determined by the Civil Code.

2. Limited real rights must be exercised in accordance with the nature of the asset and the principles laid down in the provisions of the Civil Code.

**Article 8**

**Prohibition of abuse**

1. The abuse of a real right is prohibited.

2. A real right is abused if it is exclusively or patently used to damage other persons or their assets.

**Article 9**

**Extinction of real rights**

Real rights are not subject to prescription except if something else is foreseen by law.

**PART II – OWNERSHIP**

**Chapter I – General Provisions**

**Article 10**

**Ownership**

1. Ownership is the comprehensive right over a asset. The owner of a property may, deal with the property in any manner he wishes, in particular possess and use it, to dispose it off and exclude others from any interference, as long as this is not in contrary to the law or with the rights of the other person.

2. The owner of an animal must, when exercising his powers, take in to account the special provisions of the special laws for the protection of animals.

**Article 11**

**Restriction of ownership**

1. The right of the owner of an immovable property extends to the space above the surface and to the subsoil under the surface, for as much as it is necessary for regular use of that immovable property. However, the owner may not prohibit influences that are exercised at such a height or depth of the soil according to the conditions that are set by special law.

2. This provision does not apply to natural resources, cultural objects, waters, utilities installations or other resources or objects foreseen by special legislation.

**Article 12**

**Similar rights**

The provisions of this chapter also apply to intangible rights to the extent they are applicable to such category of rights.

**Chapter II – Neighbouring Rights**

**Article 13**

**Duty of care**

1. Owners of adjoining immovable property are obligated to take the rights and interests of their neighbors into consideration and to exercise their right in a manner which does not impede the rights of their neighbors.

2. The duty of care and principles laid down by this chapter apply to the relations between the owner of an immovable and the owner of a building erected thereupon if, by their nature, they are applicable to this relationship

**Article 14**

**Confusion of boundaries**

1. If, in the case of a confusion of boundaries, the true boundary cannot be established, the relevant provisions of the Law on Cadaster are applicable.

2. If the true boundary cannot be established due to the lack of proper data in the cadaster, the delimitation is determined by possession. If the possession cannot be established, a piece of equal size of the area in dispute must be allocated to each of the plots of land.

3. If a determination of the boundary under these provisions leads to a result that does not correspond to the circumstances determined, in particular with the fixed size of the plots of land, the boundary shall be drawn in a way that is equitable with regard to these circumstances.

**Article 15**

**Boundary markings and boundary structures**

1. Owners of neighboring immovable properties are required to cooperate in erecting fixed boundary marks and, if a boundary mark has moved or become unrecognizable, in the restoration of such marks.

2. The costs of boundary markings are to be borne by the parties in equal parts, unless an existing legal relationship between the neighbors leads to another result.

3. If a boundary structure (in particular a wall, fence, hedge, ditch, earth wall or stone sign) is situated on the boundary between two adjoining immovable properties, it is deemed that the structure is co-owned.

4. If a boundary structure is on one of the immovable properties, it is deemed to be owned by the person who owns the immovable property upon which it is built.

5. The type of markings and the procedure for maintaining such markings are determined in accordance with the common practice in the location of the properties concerned.

6. If a third party suffers damage due to the lack of maintenance of boundary marks, the owners are obliged to compensate for the damage caused.

**Article 16**

**Tree on the boundary**

1. If a tree is standing on a boundary between immovable properties, the fruits from the tree and the tree itself belong to the neighbors in equal shares.

2. Each of the neighbors may require the tree to be removed. The cost of the removal shall be borne by the neighbors in equal shares. The neighbor who demands the removal, however, must bear the cost alone if the other neighbor waives his right to the tree. The claim to removal is excluded if the tree serves as a boundary mark and, in view of the circumstances, cannot be replaced by another appropriate boundary mark.

3. These provisions also apply to a bush and other plants standing on the boundary between immovable properties.

**Article 17**

**Emissions**

1. The owner of an immovable property may not prohibit the introduction of gases, steam, smells, smoke, soot, heat, noise, vibrations and similar interference emanating from another immovable property to the extent that the interference does not materially or completely impede the use of his immovable property. Interference is generally not considered material if the limits or targets laid down in applicable law and regulations are not exceeded.

2. The same applies to a material interference caused by the use of an immovable property which is customary in the location and which cannot be prevented by measures that are financially reasonable for users of this kind.

**Article 18**

**Fruit**

Fruit that fall from a tree or a bush onto a neighboring immovable property are deemed to be the fruit of the owner of the neighboring immovable property at the time the fruits separate from the tree

**Article 19**

**Branches and roots**

1. The owner of an immovable property is enChapterd to cut off branches of a tree or a bush intruding over the boundary from a neighboring immovable property if the owner has set a reasonable period for the possessor of the neighboring immovable property to remove such branches and the removal is not effected within the period set. The owner is not enChapterd to such right if the boundary is in a forest.

2. The owner of an immovable property may only cut roots growing from a neighboring property if the roots threaten to destroy or endanger a structure, a building or a culture of plants on his own property.

**Article 20**

**Access to retrieve animals**

1. Household or farm animals may be pursued by their owners onto neighboring immovable properties. This also applies to a swarm of bees.

2. The owner of the immovable property on which the animals are loitering may deny access if he immediately turns over the animals to their owner.

**Article 21**

**Necessary passage**

1. The necessary passage over an immovable property must be tolerated if the neighboring immovable property has no other access way to a public road, or the connection to a public road involves a significant detour, provided that the benefit to the neighboring property exceeds the disadvantage caused to the immovable property on which the passage occurs.

2. The direction of the necessary passage and the scope of its use are determined by the manner in which the greatest convenience is given to the person requesting it, and the manner in which the least obstruction is imposed on the neighbor granting the passage.

3. The neighbor over whose immovable property the necessary passage occurs must be compensated with periodic payments for the use of the property and for any damage that may be caused by the passage.

4. The right of passage is terminated when the necessity ends.

5. This article also applies to the installation of supply lines.

**Article 22**

**Right of passage for buildings**

The provisions of Article 32 also apply to an owner of a building who requires the necessary passage over the immovable property surrounding it.

**Article 23**

**Temporary use of a neighboring immovable property**

1. The owner of an immovable property can demand from the owner of a neighboring property that temporary access is granted to the neighboring property in order to carry out work provided that the work cannot be carried out in any other manner or only at a disproportionately high cost. The work must be announced with a proper notice period prior to its commencement.

2. After using the neighboring immovable property, it must be restored back to its former condition.

3. The owner who allows the use of his immovable property may require payment of a reasonable fee as compensation for the use. The claim for such compensation expires six (6) months after the work is completed.

**Article 24**

**Collapse of a building**

If there is a serious risk that a building or a part thereof could collapse and endanger a neighboring or surrounding immovable property, the owner of the immovable property that is at risk may require the owner of the building to take all action necessary to ward off such danger.

**Article 25**

**Building over boundary lines**

1. If the owner of an immovable property during the construction of a building constructs a building over a boundary line without an intention or he did this due to the negligence, the owner of the neighboring property does not have to endure such construction over the line.

2. The neighbor shall be indemnified by payment of a rent, provided he objects in writing to the owner of the building that infringes the boundary line. The objection must be made no later than one year after the neighbor learns of the infringement and no later than five years after the infringement. The rent shall be paid after the objection is made.

3. The neighbor of the immovable property where the construction was built may also demand in the objection filed under paragraph 2 from the owner of the building:

3.1. that ownership of the building be divided taking into account the boundary line;

3.2. that the owner of the building remove such part of the building which is located on the neighbor’s immovable property; or

3.3. that the owner purchase the immovable property that has been covered by the infringing part of the building.

4. The neighbor shall exercise any one of the rights provided under sub-paragraph 3.1 and 3.2 above within one year of the objection. Until the right is exercised and the respective action under sub-paragraphs 3.1 to 3.3 is completed by the owner of the infringing building, the rent under paragraph 2 of this article must be paid.

5. If the objection is not filed the owner of the neighboring property must endure such construction.

**Article 26**

**Article 27**

**Article 28**

**Joint use of boundary installations**

If two plots of land are separated by a space, border, corner, a ditch, a wall, hedge, fence or another structure that benefits both plots of land, it is presumed that the owners of the plots of land are jointly enChapterd to use the structure, unless outward features indicate that the structure belongs to one of the neighbors alone.

**Article 29**

**Manner of use and maintenance**

If the neighbors are jointly enChapterd to use one of the installations set out at Article 28, each of them may use them for the purpose indicated by their nature to the extent that the joint use of the other neighbor is not adversely affected. The costs of maintenance are to be borne by the neighbors in equal shares. As long as one of the neighbors has an interest in the continuance of the installation, it may not be removed or altered without his approval. As long as one of the neighbors has an interest in the continuance of the installation, it may not be removed or altered without his approval. Apart from this, the legal relationship between the neighbors is governed by the provisions on co-ownership.

**Article 30**

**Excavation**

There may not be any excavation on an immovable property which may cause the ground of a neighboring immovable property to lose its necessary support, unless care has been taken to provide sufficient reinforcement of another kind.

**Article 31**

**Watercourse**

The owner of an immovable property may not change the watercourse or the amount or quality of a body of water flowing through his immovable property if this would be detrimental to a neighboring property.

**Article 32**

**Neighboring rights claims not subject to the statute of limitations.**

The claims arising from articles xx, xx, xx, xx, are not subject to the statute of limitations.

**Chapter III – Acquisition and Termination of Ownership**

**Article 33**

**Ways of acquiring ownership**

1. Right on ownership may be acquired by a legal transaction, inheritance, court decision or decision of another administrative body

2. The right of ownership is acquired pursuant to paragraph 1 of this article if there are fulfilled all conditions provided by this Code in relation to acquisition of the ownership on movable assets and immovable properties.

**Article 34**

**Acquisition by legal transaction**

1. Ownership passes from the former owner to the acquirer by a valid legal transaction, according to the method laid down by law.

2. Any valid legal transaction the aim of which is to acquire ownership of an immovable property should be in writing in a form of a notarial act.

3. Valid legal transaction is referring to legal transactions set in the Book 2 of this Code, as well as the rules about the will as set in the Book 5 of this Code.

4. The acquisition of ownership by a legal transaction has no impact on the rights of third parties on the property, unless provided otherwise by law in order to protect the person who in good faith relied on the information in the Immovable Property Rights Register or other public records the purpose of which is to make any relevant data available.

**Sub-chapter I – Acquisition and Termination of Ownership of Movable Assets**

**Article 35**

**Acquisition of ownership on movable assets**

1. For acquisition of ownership in movable property, a valid legal work between the transferee passing ownership and the delivery of the movable asset to the person acquiring the ownership are required.

2. If the transferee is in possession of the movable asset, a valid legal transaction passing ownership is sufficient for the transfer of ownership.

3. If the owner is in possession of the movable asset, the delivery may be substituted by a valid legal work between the owner and the transferee by which the transferee obtains indirect possession of the movable asset.

4. If a third party is in possession of the movable asset, then the delivery of the asset may be substituted by the owner assigning to the transferee the claim against the third party for the return of the movable assets.

5. Proposal: registration of certain asset (vehicles) to be set by special law.

**Article 36**

**Good faith acquisition**

1. If transferred movable asset does not belong to the transferor, the transferee nevertheless acquires ownership, unless he is not acting in good faith at the time of the delivery.

2. If movable asset transferred pursuant to Article 44, paragraph 2 does not belong to the transferor, the transferee nevertheless acquires ownership unless he is not in good faith at the time he obtains possession.

3. If a movable asset transferred pursuant to Article 44, paragraph 3 does not belong to the transferor, the transferee nevertheless acquires ownership at the time when the transferor delivers the property, unless the transferee was not in good faith at the time he obtained indirect possession.

4. If a movable asset transferred pursuant to Article 44, paragraph 4 does not belong to the transferor, the transferee nevertheless acquires ownership at the time when the transferor assigns the claim, or when the transferee obtains possession from the third party, unless he is not in good faith at this time.

5. The transferee is not in good faith if he knows, or as a result of gross negligence does not know, that the movable property does not belong to the transferor.

**Article 37**

**No good faith acquisition for the property that is lost against the will of the owner**

1. No good faith acquisition of ownership pursuant to Article 36 is possible, if the asset was stolen from the owner or has been lost in any other way, unless as foreseen in Article 68 of this Book.
2. Dispozitat e paragrafit 1 të këtij neni, nuk zbatohen për të holla, letra me vlerë të prurësit si dhe për rastet tjetërsimit të sendit përmes ankandit publik.

**Article 38**

**Return of national cultural assets**

1. National cultural property are deemed to be property of artistic, historic or archaeological value which are found especially in public institutions such as museums, archives, or libraries.

2. National cultural assets, which have been illegally removed from Kosovo or according to the loan contract have not been returned within the given term, are to be delivered by the possessor to the competent authorities.

3. This article is also applicable on the removal of cultural assets from the territories of other countries on condition that factual reciprocity exists.

**Article 39**

**Presumption of ownership in favor of the possessor**

1. It is presumed that the possessor of a movable asset is the owner of it, unless his is not holding it by any other legal basis. Notwithstanding the foregoing, this is not applicable against a former possessor if the property was stolen from him, he lost it or otherwise involuntarily lost possession over the property, except where the property is either money or bearer instruments.

2. It is presumed that the former possessor was the owner of the movable asset during his possession.

**Article 40**

**Extinction of third parties’ rights**

1. If a transferred movable property is encumbered with a third party’s right, this right is extinguished at the moment of acquisition of ownership toward that property, unless otherwise provided by this Code or by a special law.

2. The right of the third person is not extinct if the acquiring party was not in good faith at the time the ownership is transferred.

**Article 41**

**Acquisition of fruits**

1. The fruits of movable asset belong to the owner of the property, unless otherwise provided by law legal relation.

2. A person who possesses a property as owner acquires ownership of the fruits of the property upon separation of the fruit from that property. Acquisition of ownership to the fruits is not possible if the proprietary possessor is not in good faith at the time when he acquires proprietary possession or learns of the defect of his right before the separation of the fruits from the property.

**Article 42**

**Renouncement over the ownership of the movable asset**

Movable asset is deemed abandoned if the owner unambiguously expresses his intention to irrevocably renounce his ownership over the property.

**Sub-chapter II – Acquisition and Termination of Ownership in Immovable Asset**

**Article 43**

**Acquisition of the ownership on immovable asset**

1. The transfer of ownership of an immovable asset requires a valid legal transaction between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register.

2. The transaction for the transfer of ownership of an immovable property must be concluded in written in the presence of both parties, respectively their representatives before a competent body.

**Article 44**

**Accessories**

Upon the acquisition of the ownership of an immovable property, it is presumed that its accessories are acquired at the same time, unless otherwise provided by legal works or special law.

**Article 45**

**Renouncement of registered ownership**

1. Renouncement from the ownership of an immovable property may done if the owner personally or via authorization that is certified by competent body declares to the competent authorities that he wishes to renounce from the immovable property and such statement shall be registered in the immovable property rights register.

2. If there is renouncement from the immovable property, then the ownership over that immovable property belongs to the competent public body in the territory of which the immovable property is located. The competent public body acquires ownership over that asset by registering the ownership rights at the register of the immovable properties rights.

**Article 56**

**Renouncement of unregistered ownership**

1. Should the immovable property not be registered, it becomes ownerless if the owner, in the intention of renouncing ownership, abandons possession of the property and gives the statement to the competent body.

2. The right to appropriate unregistered abandoned immovable property belongs to the competent public body in the territory where the immovable property is located. The competent public body acquires ownership pursuant to provisions on acquisitive prescription of immovable property.

**Sub-chapter II – Acquisition of Ownership by Acquisitive Prescription**

**Article 47**

**Lawful possession**

In order to be allowed to prescribe, one must have a continuous and uninterrupted, peaceful, public and unequivocal possession.

**Neni 48**

**Fitimi me parashkrim**

1. Personi i cili me mirëbesim e ka njëzet (20) vjet në posedim të pandërprerë një pronë të paluajtshme ose një pjesë të saj, e fiton pronësinë në të.

2. Afati i parashkrimit nga Paragrafi 1 i këtij është 10 vjet në rast se poseduesi krahas kushteve të parapara në paragrafin 1 të këtij neni, ka edhe një titull të vlefshëm juridik mbi të cilin e bazon posedimin pronësor.

**Article 49**

**Acquisition by prescription përmes regjistrimit në regjistrin e drejtave of an immovable property**

1. A person, who without having acquired ownership is registered as the owner of an immovable property in the Immovable Property Rights Register, acquires ownership of that property if the registration has existed for thirty (30) years and the person has the immovable property in proprietary possession during this period. The expiry of the term is suspended for as long as an objection to the accuracy of the registration is entered in the Immovable Property Rights Register.

2. These provisions apply with the necessary modifications if there is a registration in the Immovable Property Rights Register for a person of another real right to which that person is not enChapterd and this right is protected under the provisions governing possession. Registration is conclusive for the priority of the right.

**Article 50**

**Possession entitling to acquisitive prescription of cultural objects**

1. Acquisition of ownership of property qualifying as a “cultural object” in the sense of Article 1.1 of Council Directive 93/7/ EEC, regardless of whether the cultural object has been unlawfully removed before or after 1 January 1993, or not removed from the territory of a Member State at all, requires continuous possession of the goods:

* 1. for a period of thirty (30) years, provided that the possessor, throughout the whole period, possesses in good faith; or
  2. for a period of fifty (50) years.

2. More stringent requirements may be adopted or maintained in force by special legislation

**Article 51**

**Presumption of proprietary possession**

If a person had a property in his proprietary possession at the beginning and at the end of a period of time, it is presumed that his proprietary possession also existed in the intermediate period.

**Article 52**

**Acquisition of movable property by prescription**

1. A person who has a movable property in proprietary possession for a period of ten (10) uninterrupted years acquires ownership of the property at the end of the ten (10) year period if, at the beginning of the ten (10) year period he was not aware that he was not enChapterd to ownership.

2. Prescription is excluded if the person, on acquiring the proprietary possession, was not in good faith or if he discovers during the ten-year period that he is not enChapterd to the ownership of the movable property.

3. Upon the acquisition of ownership by prescription, all third-party rights in the movable property which arose prior to the acquisition by proprietary possession are extinguished, unless the proprietary possessor is not in good faith with regard to these rights while acquiring proprietary possession.

**Article 53**

**Suspension of prescription**

Prescription is suspended if the claim for possession against the proprietary possessor, or in the case of indirect proprietary possession against the possessor who derives his right to possession from the proprietary possessor, is asserted in a manner suitable under provisions on suspension of extinctive prescription provided by the General Part. However, the suspension occurs only for the benefit of the person who causes it.

**Article 54**

**Termination by loss of possession**

1. Prescription is terminated by the loss of proprietary possession.

2. The termination is deemed not to have occurred if the proprietary possessor loses the proprietary possession involuntarily and recovers it within the period of one year or by legal action created within this period.

**Article 55**

**Termination by act of execution**

Prescription is terminated by undertaking or applying for a judicial or official act of execution.

**Article 56**

**Termination effect**

If the prescription period is terminated, the time that passed before the termination is not to be counted; a new prescription period may begin only after the termination of the interruption.

**Article 57**

**Acquisition by prescription and succession in Chapter**

If, as a result of succession in Chapter, the heir enters the proprietary possession of a third party, the prescription period that has passed in the possession of the predecessor in Chapter benefits the third party.

**Article 58**

**Possessor of an inheritance**

The prescription period that has passed for the benefit of a possessor of an inheritance counts in favour of the heir.

**Sub-chapter IV – Acquisition by decision of the Court or Another Authority**

**Article 59**

**Effect of the decision**

1. Ownership is acquired by a decision of the court or another authority in the events provided by law and in the manner and according to the conditions provided by Code or Special law.

2. The right of ownership is acquired at the moment the court decision becomes legally effective, that is, the decision by another authority becomes final, unless provided otherwise by law or unless arising otherwise from the objective because of which the decision was adopted.

3. Real rights on property that belonged to other persons do not terminate following the acquisition of the right of ownership by a decision of the court or another authority, save for those specified in the decision or a particular piece of legislation, or which cannot continue to exist because of the nature of the property.

**Article 60**

**Acquisition of real right by court or another authority decision**

1. Any person who acquires the right of ownership of an immovable asset by a decision of the court or another authority is authorized to obtain entry of the acquired right of ownership in the Immovable Property Rights Register.

2. Ownership of an immovable asset acquired by a decision of the court or another authority may not oppose the right of the person who, having relied on the information in the Immovable Property Rights Register, had entered his right on the real property in good faith before the right acquired by the decision of the court or another authority was entered.

**Sub-chapter V – Acquisition by Inheritance**

**Article 61**

**Acquisition by inheritance**

1. The heir acquires ownership of the property he inherited at the moment of opening the inheritance, unless provided otherwise by law.

2. The heir is authorised to obtain entry of his right of immovable property in the Immovable Property Rights Register.

3. Real rights on the property concerned that belonged to other persons do not terminate following the acquisition of the right of ownership by inheritance, save for those provided by law or which cannot continue to exist because of the nature of the property.

4. Inheritance is regulated by the civil code, book 5.

**Sub-chapter VI – Joining of Movables, Mixing of Properties, Processing, Acquisition of Ownership of Ownerless Movables, Finding Ownerless Treasure**

**Article 62**

**Joining of movable asset**

1. If movable property that belongs to different owners is combined in such a way that they become component parts of a single movable property, the previous owners become co-owners of that property. Their shares are determined in relation to the value of the original movables at the time when these were joined.

2. If one of the movables can be determined to be the main movable property, its owner acquires sole ownership of the new single property. The previous owners whose ownership ceases to exist are enChapterd to compensation from the new owner in an amount equal to the value of their movables.

3. Cessation of ownership rights in a movable property causes the cessation of all other rights in that property. This does not apply if the owner of an encumbered property becomes the owner or a co-owner of the new single property.

**Article 63**

**Mixing of properties**

If movables of different owners are mixed or mingled in a way that they cannot be separated or such separation would entail disproportionately high cost, the provisions of Article 72 of this Book apply *mutatis mutandis*.

**Article 64**

**Processing**

1. A person who creates new movable property through processing or transformation his own materials acquires ownership of the processed or transformed property.

2. A person who creates new movables property through processing or transformation materials of other persons acquires ownership of the new movable property created, unless the value of the processing or transformation activity is substantially less than the value of the materials used to create the new movable property.

3. If the value of the processing or transformation activity is exactly equal to the materials used, the parties involved shall acquire co-ownership over the newly created movable property in equal proportions.

4. The activity of processing includes writing, drawing, painting, printing, engraving or any similar processing of the surface.

5. On the acquisition of ownership of the new movable property, all existing rights in the materials cease. The owner of the new property is obliged to compensate any third parties for the loss of their rights.

**Article 65**

**Acquisition of ownership of ownerless movables**

1. A person who takes proprietary possession of ownerless movable asset acquires ownership of that asset unless the acquisition is prohibited by law.

2. Movable asset becomes ownerless if the owner, with the intention of renouncing his ownership rights, abandons possession of the asset.

3. A domestic animal becomes ownerless if it gives up the habit of returning to the place provided for it.

**Article 66**

**Wild animals**

1. Wild animals are ownerless as long as they are free. Wild animals in zoos and fish in ponds or other self-contained private waters are not ownerless.

2. Where a captured wild animal regains freedom, it becomes ownerless if the owner fails to pursue the animal without undue delay or if he gives up the pursuit.

3. A tamed animal becomes ownerless if it gives up the habit of returning to the place determined for it.

**Article 67**

**Loss of ownership of bee swarms**

1. Where a swarm of bees takes flight, it becomes ownerless if the owner fails to pursue it within 48 hours or if he gives up the pursuit.

2. The owner of the swarm of bees may, in pursuit, enter on plots of land belonging to others. If the swarm has entered an unoccupied beehive belonging to another, the owner of the swarm, for the purpose of capturing it, may open the hive and remove or break out the combs. He must make compensation for the damage caused.

**Article 68**

**Finding of an asset**

1. A person who finds movable asset and takes possession of it must notify the person who lost the property or the owner of that property without undue delay.

2. If the finder does not know the identity or whereabouts of the owner or the person who lost the movable property, the finder must notify the competent authority without undue delay together with the related circumstances. If the movable property is not valued more than ten (10) Euros, no notification is necessary.

3. The finder has a duty to keep the movable asset in safe custody. If it is feared that the movable asset will decay, or if keeping the property in safe custody entails disproportionately great costs, the finder is obliged to deliver the property to the competent authorities for public auction.

4. Upon the expiration of one year after notifying the competent authorities of the find, the finder acquires ownership of the property, unless the person enChapterd to receive the property has before this time become known to the finder or notified the competent authorities of his right. On the acquisition of ownership, all other rights over the asset are going to cease to exist.

5. The finder may demand a finder's reward from the person enChapterd to receive the property. The finder's reward is five per cent of the value of the property up to five hundred (500) Euros.

**Article 69**

**Ownerless Treasure**

1. If a movable property of exceptional value, that was hidden for such a long time that its owner can no longer be ascertained, is found, then the ownership over that property is acquired according to the following division: 1/3 by the discoverer, 1/3 by the owner of the immovable property where the treasure was hidden and 1/3 belongs to the state.

2. If the movable property is of exceptional historic, cultural, archaeological or artistic value, the acquisition of ownership shall be determined by a separate law.

**Chapter IV – Right of Pre-emption**

**Article 70**

**Concept of the right of pre-emption**

1. An immovable property or co-ownership over an immovable asset may be encumbered in such a manner that a person has a right of pre-emption.

2. The right of pre-emption can be established by law or by contract. The contractual right of pre-emption is established by agreement between the owner of the immovable property and the person enChapterd to the pre-emption. The right of pre-emption becomes effective against third parties once it is entered into the immovable property rights register.

3. The right of pre-emption may be granted for one or more instances of purchase, but it is restricted to the sale by the owner who owned the immovable property at the time of the granting of the right of pre-emption, or by his heirs.

**Article 71**

**Encumbrance of a fraction**

A fraction of an immovable property may be encumbered with a right of pre-emption only if it consists of the share of a co-owner.

**Article 72**

**Notification and exercise of right of pre-emption**

The right of pre-emption is exercised by notifying the person obliged by the pre-emption right. The exercise of this pre-emption right has to comply with the formal requirement of a contract for the transfer of immovable property.

**Article 73**

**Effect of a right of pre-emption**

Against third parties the right of pre-emption has the effect of a priority notice given for the purpose of securing a claim for the transfer of ownership of the immovable property.

1. Me ushtrimin e të drejtës së parablerjes bëhet lidhja e kontratës ndërmjet të titullarit të drejtës së  
parablerjes dhe të detyruarit për parablerje nën ato kushte, për të cilat është marrë vesh i detyruari I parablerjes me blerësin.

2. Ndaj personave të tretë e drejta e parablerjes ka efektin e një shënimi për sigurimin e kërkesës për bartjen e pronësisë.

**Article 74**

**Payment of the purchase price**

1. The person enChapterd to the right of pre-emption must pay the purchase price to the seller.

2. If the buyer or his legal successor is registered as the owner, the holder of the right of pre-emption must reimburse the buyer for the purchase price he paid to the seller.

**Article 75**

**Release of pre-emption right holder**

1. To the extent that the holder of the right of pre-emption is required to pay the purchase price to the buyer or the buyer’s legal successor, the holder of the right of pre-emption is released from his obligation to pay the purchase price owed under the pre-emption.

2. If the buyer or his legal successor loses ownership as a result of the exercise of the right of pre-emption, the buyer shall be released from his obligation to pay the purchase price owed by him. The buyer cannot demand restitution or the repayment of a purchase price already paid by him.

**Article 76**

**Preclusion of unknown holder of a right of pre-emption**

If a holder of a right of pre-emption is unknown, he may be precluded from exercising his right, in the same manner as an unknown holder of a priority notice can be precluded from exercising his right pursuant to Article 131 of this Book.

**Article 77**

**Applicability of provisions of the book on obligation**

Any relevant matter that is not provided herein by the present Chapter shall be governed by the Book on Obligations.

**Chapter V – Co-ownership**

**Sub-chapter I – Co-ownership by Defined Shares**

**Article 78**

**Co-ownership by defined share**

1. Where more than one person is jointly enChapterd to ownership or other real right, then, unless the law leads to a different conclusion, the provisions of Articles 79 to 86 of this Book apply.

2. If the shares of the co-owners are not specified, it is presumed that they are equal.

**Article 79**

**Rights of co-owners by defined share**

1. A co-owner by defined shares is enChapterd to possess and use movable or immovable property in proportion to his share to the extent that the right by other co-owners is not impaired.

2. The fruits of immovable property and movable property are divided between the co-owners according to their shares. If the fruits are not divisible, the co-owners acquire co-ownership over the fruits.

3. The co-owners by defined shares may dispose the object of co-ownership by define shares in its entirety only jointly

4. A co-owner by defined shares may dispose of his share without the consent of the other co-owners.

5. If immovable property is the object of co-ownership each co-owner is enChapterd to a right of pre-emption. If more than one co-owner chooses to exercise the right of pre-emption, each co-owner exercising this right shall be enChapterd to a portion of the property which is determined by the size of his share in the immovable property. The right of pre-emption persists even if a court orders the sale of the shares at a public auction. There is no right of pre-emption if a co-owner sells his shares to his heirs.

**Article 80**

**Bearing of charges and costs**

Each co-owner by defined shares is obliged to the other co-owners to bear the charges of the property which is object of co-ownership as well as costs of maintenance, administration and common use according to the proportion of his share

**Article 81**

**Discharge of a joint debt**

1. If the co-owners by defined shares are jointly and severally liable for an obligation that they will have to discharge in the proportion of their shares in accordance with Article 90 of this Book or that they have entered into for the purpose of discharging such an obligation, then each part owner may demand upon cancellation of the co-ownership that the debt is discharged out of the joint object.

2. The claim may also be asserted against successors in interest.

3. To the extent that sale of the joint object is required for discharge of the debt, sale must occur in accordance with rules on sale of a pledge, or in the case of a plot of land by compulsory auction, and by division of the proceeds.

**Article 82**

**Administration of co-ownership**

1. Co-owners by defined shares shall jointly administer the movable or immovable property that is the object of their co-ownership.

2. Ordinary acts taken in the course of administration of co-ownership are void without the consent of co-owners whose shares jointly amount to more than fifty percent (50%).

3. Extraordinary acts of administration, in particular the encumbrance of the co-ownership and the appointment of an administrator, require the consent of all co-owners.

4. Each co-owner by defined shares is enChapterd to take the urgent measures required to maintain the object without approval by the other co-owners; he may demand that the latter grant their consent to such a measure in advance.

5. Decisions taken by co-owners are binding upon a legal successor of a co-owner.

**Article 83**

**Sole successor of co-owner by defined shares**

If co-owners by defined shares of immovable property have permanently or for a limited period of time settled the administration and the use of their immovable property or excluded the termination of their co-ownership by defined shares for a period of time not exceeding ten year, then this agreement is binding against a sole successor of a co-owner by defined shares only if it is registered in the Immovable Property Rights Register.

**Article 84**

**Claims of co-owners by defined shares**

1. Each co-owner by defined shares may file claims against third persons regarding the whole property.

2. Claim for refund and for performances which by their nature are inseparable can be filed by the co-owner by defined shares only in the case when performance is made towards all co-owners.

**Article 85**

**Right to terminate**

1. Co-owners by defined shares may require termination at any time, except when such termination would be detrimental to the interests of other co-owners; however, such a requirement may be made even at such time, if in view of the circumstances it cannot be reasonably expected that the circumstances are to change soon to the extent that the termination would not be detrimental to the interests of other co-owners. The court competent to conduct the termination proceedings decides on objections against termination.

2. Co-owners by defined shares may not waive their right to terminate in advance; however, they may agree to impose limitations on the right to terminate.

3. The right to demand termination may be excluded by agreement for a period of time not exceeding ten years.

4. If the right to demand termination is excluded by agreement, then cancellation may still be demanded if there is a compelling reason to do so.

5. An agreement by which the right to demand termination is excluded or limited contrary to these provisions is void.

**Article 86**

**Ways to terminate co-ownership by defined shares**

1. Co-ownership by defined shares may be terminated in one of the following ways: severance, one or more of the co-owners by defined shares acquiring the entire property, disposal of the movable property, or an auction of the immovable property.

2. If all of the co-owners by defined shares deem the transfer to a third party inappropriate, the property may be sold at a public auction and the proceeds shall be allocated to the co-owners according to their shares.

3. If the termination of co-ownership by defined shares takes place through severance or by one or more of the co-owners acquiring the entire property, the value is determined by an officially appointed appraiser, unless all co-owners wave their right to the official appraisal.

4. If co-owners by defined shares cannot agree on how to proceed with the termination of their co-ownership, a movable property shall be disposed of in accordance with the rules on the disposal of pledged property, and immovable property shall be disposed of through a compulsory auction with the proceeds allocated to the co-owners in accordance with their shares. If an attempt to transfer ownership is unsuccessful, a co-owner may request that an additional attempt to be made, provided that he covers the expenses if this attempt is unsuccessful.

**Sub-chapter II – Co-ownership by Separate Shares**

**Article 87**

**Co-ownership by separate shares**

1. Where more than one person is jointly enChapterd to ownership or other real right in such manner that no shares are determined then the provisions of this article apply.

2. Co-ownership by fractional shares can be established by law or agreement. An agreement creating co-ownership may only be concluded if expressly permitted by law.

3. Co-owners by fractional shares must dispose of their property collectively and are collectively accountable for its liabilities.

4. Where the co-owners of an immovable have arranged the management and use or excluded permanently or for a period of time the right to require the co-ownership to be dissolved, or have laid down a notice period, the provision agreed on has effect against the successor in interest of a co-owner only if it is registered in the Immovable Property Rights Register as an encumbrance of the share.

5. The provisions on co-ownership by defined shares apply to common ownership unless otherwise provided by law.

**Chapter VI – Protection of Ownership**

**Article 88**

**Claim for delivery**

The owner may demand the delivery of a determined property from anyone who is not enChapterd to possess it.

**Article 89**

**Objections of the possessor**

1. The possessor may refuse the delivery of the property, if he or the indirect possessor from whom his right of possession derives, is enChapterd to the possession.

2. If the indirect possessor is not enChapterd to possession as against the owner, the owner may request the direct possessor to deliver the property to the indirect possessor, or, if the indirect possessor does not or cannot take possession of the property, to himself (owner).

**Article 90**

**Fruits after litigation is pending**

1. The possessor must return to the owner the fruits that he receives after litigation is pending.

2. If after litigation is pending the possessor fails to take fruits that he could take under the rules of proper management, he is obliged to reimburse the owner to the extent that he is at fault.

**Article 91**

**Claims against the possessor in good faith**

1. The possessormay demand delivery of the fruits as well as of other advantages which the use of the property affords from the *bona fide* possessor.

2. A person who is obliged to deliver the fruits taken to the owner may demand compensation for his reasonable expenses, he incurred in the production or collection of the fruits, but not for a higher sum than the value of the fruits he had to deliver.

3. The claim for return of fruits and compensation of expenses are prescribed three years after return of the property to the owner.

**Article 92**

**Claims of *bona fide* possessor**

1. The *bona fide* possessor is enChapterd to demand compensation for necessary and useful expenditure insofar as the value of the property has been increased by the expenditure.

2. A necessary expenditure is an expense which, at the moment of its incurrence, was, according to objective standards, essential to maintain or run the property.

3. A useful expenditure is any expense that, according to objective standards, leads to the increase in the value of the property.

4. The *bona fide* possessor is enChapterd to retain the property until the owner has compensated him for the necessary and useful expenditures.

5. The claim for compensation of expenditure prescribes three (3) years after delivery of the property.

**Article 93**

***Mala fide* possessor**

1. A possessor is not in good faith if he or his possessory servant knew or, as a result of gross negligence, did not know that he was not enChapterd to possession

2. The *bona fide* possessor is to be treated as a possessor in bad faith from the moment at which either the claim for delivery or the claim prescribed under Article 101 of this Book has been served on him.

**Article 94**

**Claims against the *mala fide* possessor**

1. The *mala fide* possessor is liable to deliver the proceeds of the property to its possessor as well as compensation for proceeds if he no longer has them or refrained from obtaining them.

2. The *mala fide* possessor is responsible to the owner for the damage caused which due to his fault led to the deterioration or destruction or another reason for which he is unable to deliver the property.

**Article 95**

**Claims of the *mala fide* possessor**

1. The *mala fide* possessor is enChapterd to demand compensation for necessary expenditure made.

2. He is not enChapterd to retain the property on the grounds of this claim.

**Article 96**

**Right of retention of the possessor**

The possessor may refuse the return of the property until he is reimbursed the expenditures due to him. He is not enChapterd to the right of retention if he obtained the property by an intentionally committed tort.

**Article 97**

**Liability of the wrongful possessor**

If the possessor has taken possession by an unlawful interference or by a criminal offense, he is liable to the owner pursuant to the provisions concerning damages for delicts.

**Article 98**

**Exclusion**

The claims of owner and possessor against each other as provided for in Articles 98 to 107 exclude any other claims.

**Article 99**

**Claim for removal and injunction**

1. If ownership is interfered with by removing or retaining possession, the owner may require that such interference with his right ceases forthwith. If further interference is feared, the owner may seek an injunction against such interference.

2. A claim against interference with an owner’s rights cannot be brought if the owner is obliged to tolerate such interference

**PART IV - POSSESSION**

**Chapter I – Possession**

**Article 100**

**Possession**

A person exercising material control over an asset is a direct possessor

**Article 101**

**Acquisition of possession**

Possession of a property is acquired by obtaining material control over such property. An agreement between a previous possessor and a transferee is sufficient for acquiring possession if the transferee is in a position to exercise control over the property at the time of the agreement.

**Article 102**

**Agent in possession**

A person exercising material control over a property on behalf of another person, in another person’s household or in the business of another person or in a similar relationship that requires the person to follow instructions from another person relating to the property, is not deemed possessor.

**Article 103**

**Heritability**

Upon the death of a possessor, possession passes to the heirs.

**Article 104**

**Cease of possession**

1. Possession ceases as a result of the possessor renounces factual control over the property or losing factual control in any other way.

2. Possession does not cease as a result of the possessor being prevented from exercising control in a way that is temporary in nature.

**Article 105**

**Co-possession**

If several persons have co-possession of a property, one person’s right to use the object in relation to the others, and the individual possessor’s protection of his possession, is limited by the right of other persons to use the object as it was intended to be used.

**Article 106**

**Indirect possession**

1. A person granting possession of a property based on a pledge, a lease, a depository or similar agreement or legal relationship that enChapters another person to the possession of such property for a period of time is an indirect possessor.

2. If the indirect possessor derives indirect possession from a legal relationship of the nature set out in paragraph 1 above with a third party, the third party is an indirect possessor.

**Article 107**

**Proprietary possessor**

A proprietary possessor is a person who exercises direct physical control over an asset with the intention of doing so as, or as if he is an owner.

**Article 108**

**Unlawful interference with possession**

1. A person depriving the possessor of possession or interfering with the possessor's possession against the will of the possessor acts unlawfully, except where the deprivation or the interference is expressly permitted by law.

2. Possession obtained as a result of unlawful interference is defective. The successor in such possession must allow the lawful possessor to assert possession against him if the possessor knew about the defective possession of his predecessor at the time the possessor acquired possession or if the defective possession was passed to the possessor by inheritance.

**Article 109**

**Self-help by the possessor**

1. The possessor may use reasonable force as defend against unlawful interference with his possession, provided that the interference is concrete and adequate measures of defense are taken immediately upon occurrence of the interference.

2. If a property is taken away from the possessor by acts of unlawful interference, the possessor may use reasonable force to retrieve the property if the interferer is caught in the act or in pursuit.

3. If the possessor of immovable property is deprived of possession by unlawful interference, the possessor may recover possession immediately after the deprivation of possession by removing the interferer.

4. The rights of a possessor under the paragraphs above may also be exercised by an agent in possession pursuant to Article 102 of this Book.

**Article 110**

**Claim on account of deprivation of possession**

1. If the possessor is deprived of possession by unlawful interference, the possessor may require possession to be restored by the person who is in defective possession in relation to him.

2. The claim is excluded if the possession that was removed was defective in relation to the present possessor or his predecessor in Chapter and was obtained in the last year before the deprivation of possession

**Article 111**

**Claim on account of interference with possession**

1. If the possessor is disturbed in his possession by unlawful interference, he may require the disturber to remove the disturbance. If further disturbances are to be feared, the possessor may seek a prohibitory injunction.

2. The claim is excluded if the possessor possesses the property defectively in relation to the disturber or the predecessor in Chapter of the disturber and the possession was obtained in the last year before the disturbance.

**Article 112**

**Extinction of claims to possession**

1. A claim based on Articles 110 and/or 111 is extinguished at the end of one year after the act of unlawful interference, unless the claim is asserted in a legal action before this date.

2. Extinction also occurs if it is established by a final and absolute judgment that, after the act of unlawful interference takes place, the interferer has a right to the property by virtue of which he may require a possessory status corresponding to his manner of acting to be established.

**PART V - SUBSTANTIVE PROVISIONS FOR REGISTRATION OF RIGHTS ON IMMOVABLES**

**Article 113**

****Rights are subject to compulsory registration****

1. Acquisition, variation, transfer and termination of ownership, a right of pre-emption or any real right relating to immovable property require a legally valid contract and registration of the relevant transaction in the immovable property rights register.

2. Lawsuits having as an object a real right on immovable property are also subject to registration.

3. Registration of entries in the immovable property rights register remains subject to the requirements in the applicable laws on the immovable property rights register.

**Article 114**

**Subsequent limitation of disposal**

If a holder of a right to immovable property submits an application to acquire, vary, or terminate the right, the application remains valid even if the enChapterment to the right becomes restricted after submission of the application.

**Article 115**

**Third party rights**

If a right over immovable property is encumbered with the right of a third party, termination of the encumbrance requires the consent of the third party. If the right to be terminated is held by the owner of another immovable property that is encumbered with the right of a third party, the third party must consent to the termination if the termination affects any of its rights.

**Article 116**

**Ranking of rights**

1. The ranking of several rights encumbering the same immovable property shall be determined according to their date of entry into the register. Rights that were registered on the same day and at the same time have equal ranking.

2. Registration of a right also determines its ranking if the transaction necessary for the acquisition of the right is completed only after the registration.

**Article 117**

**Changing the order of ranks**

1. A change in the order of ranking of rights requires an agreement between the holder of the rights that are affected by the ranking change and registration in the immovable property rights register.

2. If a mortgage is to be lowered in ranking, the consent of the owner of the immovable property is required in addition to the registration. This consent is irrevocable.

3. If a right that is to be ranked lower was encumbered with the right of a third party, the consent of the third party is also required.

4. Other rights ranking between the rights that are changed in ranking are not affected by that change.

**Article 118**

**Reservation of priority ranking**

1. The owner of an immovable property when registering an encumbrance on such property may make a reservation that grants authority to have a different, clearly defined right registered with priority ranking over the encumbrance.

2. Reservations of priority rankings must be registered in the immovable property rights register next to the registrations for the rights that are be lowered in ranking.

3. If a right with a reservation of priority ranking is registered for an immovable property that is already encumbered with another right free of any ranking reservation, the reservation of priority ranking is only effective on the pre-registered right to the extent that this right is not encumbered beyond the lower ranking it will take as a result of the new priority ranking reservation.

**Article 119**

**Registration of reservations**

1. A reservation may be entered in the Immovable Property Rights Register for securing a claim of a right to or for encumbering immovable property or varying the contents or the ranking of such rights. The registration of a reservation is admissible for securing future or conditional claims.

2. The registration of a reservation can also be effected on the basis of a preliminary injunction, as enforcement of a judgment or in the course of insolvency procedures.

3. A transaction made after the registration of a reservation in respect of immovable property or a right to the property, is without effect to the extent that the transaction would adversely affect the claim secured by the reservation. This also applies if the transaction is effected as enforcement of a judgment, by way of preliminary injunction or in the course of insolvency procedures.

**Article 120**

**Effect of reservations**

1. A claimant secured by reservation is enChapterd to demand from any third party acquiring ownership or another right to the immovable property without validity against the secured claimant that the third party consents to any change in the register necessary for the realization of the right secured by the reservation.

2. The ranking of rights to immovable properties secured by reservations registered in the immovable property rights register is determined by the entry of the respective reservations in the register.

3. If a reservation is registered to secure a claim arising in the event of death, the heirs are liable to the person whose claim is secured by the reservation

**Article 121**

**Removal of reservation for barred claims**

1. If the assertion of the claim, which is secured by the priority notice, is permanently precluded, the obliged party may demand the removal of the priority notice from the creditor.

2. If the creditor, whose claim is secured by the priority notice, is unknown, he may be precluded by means of public notice if ten (10) years since the last entry regarding the priority notice in the register have passed and if the obliged party has not acknowledged the claim in this period of time.

**Article 122**

**Legal presumption**

1. If a right has been registered in the Immovable Property Rights Register for the benefit of a person, it is presumed that such person is enChapterd to the right so registered.

2. If a registered right is deleted from the Immovable Property Rights Register, it is presumed that such right does not exist anymore.

**Article 123**

**Correction of the Immovable Property Rights Register**

1. If the contents of the Immovable Property Rights Register are not consistent with the actual legal position with regard to a right in the immovable property, the person whose right is not registered or not correctly registered or is disadvantaged by the registration of an encumbrance that does not exist may require approval of the correction of the Immovable Property Rights Register from the person whose right is affected by the correction.

2. The claims for correction of the Immovable Property Rights Register are not subject to the prescription.

**PART VI - SECURITY OF THE REAL RIGHTS**

**Chapter I – General Provisions**

**Article 124**

**Proprietary security rights**

1. A security of real right enChapters the secured creditor (“Secured Party”), to obtain payment of the secured claim and of interest and costs from the encumbered assets with priority before the other creditors of the party granting security (“Security Grantor”), if the contractually agreed or legally prescribed conditions have occurred, in particular upon maturity of the secured claim.

2. The Security Grantor can create a security right in order to secure a personal debt or as a surety to secure the debt of another person.

**Article 125**

**Legal basis**

Proprietary security rights can be created only pursuant to the provisions of law.

**Article 126**

**Scope of application**

1. The provisions of this Chapter apply to all legal transactions and dispositions, regardless of their form, which have the purpose of creating a proprietary security right. The provisions of this Chapter also apply in particular to:

1.1. a contract through which the seller transfers the sold assets for use to the buyer but subject to the transfer of ownership to the buyer on the condition that the buyer pays the purchase price for the assets acquired (“pledge for the price of purchase”); and

1.2. a lease contract, respectively a leasing contract (financial lease), by which the lessor as owner of the assets leased, respectively given for leasing, transfers these assets to the lessee, respectively financial lessee, for use and subsequent acquisition.

**Article 127**

**Exclusions**

1. The provisions of this Chapter do not apply to:

* 1. the creation of a security right in the salary claims of an employee; and

1.2. the sale of pecuniary claims in the context of the sale of a business organisation.

**Article 128**

**Security agreement**

1. By means of a security agreement, the Security Grantor assumes the obligation to grant a proprietary security right to the secured creditor.

2. The security agreement can be an independent contract or can be included in another contract, in particular in a credit agreement.

3. The Security Grantor may be the debtor of the secured claim or a third party.

**Article 129**

**Void agreements**

1. An agreement, entered into before the secured claim has matured, is void if it provides that upon non-payment after maturity of the secured claim the encumbered assets are to become or to be transferred into the ownership of the secured creditor or the encumbered assets are to be sold at a fixed price.

2. After maturity of the secured claim, the agreements mentioned in the preceding paragraph can validly be concluded.

**Article 130**

**Secured claim**

An security of a real right can be granted for securing present, future and conditional claims.

**Article 131**

**Extinctive prescription of a secured claim**

A security of a real right can be exercised even if the period of extinctive prescription for the secured claim has expired

**Chapter II – Pledge**

**Sub-chapter I – General Provisions**

**Article 132**

**Pledge**

1. "Pledge" means the creation by agreement or by law of an interest in movable asset or over a right, which gives the pledgee the right to take possession of such property or exploit such right for the purpose of satisfying an existing and sufficiently identifiable obligation that is secured by the pledge.

2. The pledge agreement may deviate from the provisions of this Chapter. It may in particular provide for a pledge to secure an obligation that will only come into existence after the conclusion of the pledge agreement.

**Article 133**

**Types of pledge**

1. Unless the pledger and the pledgee agree in the pledge agreement that the pledge is possessory, the pledger retains the right to possess, use and otherwise enjoy all rights in the pledged property in a manner consistent with the ordinary use of such property.

2. A possessory pledge is effective against third parties at the time the pledge agreement is signed and the pledged property has come into the possession of the pledge holder or the pledge holder`s designated agent.

3. Granting co-possession suffices instead of delivery of the pledged property if the property is under the joint control of the pledge holder or, if it is in the possession of a third party, it may be delivered only to the pledger and the pledge holder jointly.

4. A non-possessory pledge is effective against third parties at the time a notification statement is filed in accordance with the law.

5. The creation of pledge over a right requires the registration of the pledge in the pledge register.

**Article 134**

**Statutory pledge**

1. The following provisions also apply to a pledge which is created by operation of the law (statutory pledge).

1. The statutory pledge is effective against third parties at the time a notification statement is filed in accordance with the law.
2. Right of a legal pledge is created by special laws.

**Article 135**

**Pledge agreement**

1. The validity of a pledge agreement requires a written document and shall contain at least the following:

* 1. the name and address of the pledger and if the pledger is a person other than the debtor;
  2. a description of the obligation to be secured;
  3. a description of the pledged property;
  4. a statement that the purpose of the agreement is to create a pledge in favor of the pledge holder;

1.5. the signatures of the parties to the agreement; and

1.6. the date on which the pledger signs the pledge agreement.

2. If the pledge agreement is signed by a person who acts on behalf of the pledger, the pledge is only valid if the person signing the pledge agreement is independent from the pledge holder.

**Article 136**

**Specification of the agreement**

A pledge agreement may, in addition to being subject to the requirements in the preceding article and other mandatory provisions, also contain agreements between the parties with respect to their reciprocal rights and obligations. The agreement may be supplemented, modified or terminated at any time in writing and signed by the parties

**Article 137**

**Pledged asset**

1. Any movable property or right that is lawfully transferable can be pledged.

2. The pledge extends to the products that are separated from the pledged property.

3. If the pledge extends to more than one property, each property covers the entire claim.

4. Licenses and permits to minerals can be pledged in accordance with the provisions for the transfer and encumbrance of minerals contained in special laws.

**Article 138**

**Authority to dispose the pledged asset**

1. The pledger must be the owner of the pledged property at the time the pledge becomes effective. It the pledger is not the owner of the pledged property, he/she must have the legal authority to pledge the property.

2. Property that is co-owned may be pledged only if all co-owners consent to the pledge.

**Article 139**

**Acquisition of pledge right in good faith**

1. If the pledger is not the owner of the pledged asset or does not otherwise have legal authority to pledge the property, the pledge holder acquires the pledge only if at the time the pledge becomes effective the pledger is in possession of the pledged property and the pledge holder could assume in good faith that the pledger is the owner or has legal authority to pledge the property.

2. If the pledged property is encumbered with the right of a third party, the pledge holder acquires the pledge unencumbered only if the pledger is in possession of the pledged property at the time the pledge becomes effective and the pledge holder could assume in good faith that the pledge is unencumbered.

**Article 140**

**Pledge over the mixed assets**

1. In the case of a non-possessory pledge over the assets, if the pledger mixes them inseparably with replaceable assets of the same kind and quality, the pledger shall assess the entire quantity at the time of the pledge and communicate this without undue delay to the pledge holder.

2. The pledge shall consist of a quota in the entire quantity which changes respectively with every variation of the entire quantity.

3. The pledgor is obliged to keep account in written of the additions to and reductions of the entire quantity, and keep the evidence for verification.

4. The preceding rules apply *mutatis mutandis* to a possessory pledge.

**Article 141**

**Pledge of future property and warehouse store**

1. A pledge can extend to such assets as identified in the pledge agreement which comes into the ownership or otherwise under the legal authority of the pledger after the conclusion of the pledge agreement.

2. A pledge can be created over a warehouse store or fungible properties if the location and content of the warehouse store are sufficiently clear described in the pledge agreement. Each property added to the warehouse store over which a pledge is created becomes subject to the pledge from the time it is added to the warehouse store.

**Article 142**

**Secured claim**

A pledge right is only valid and enforceable if the claim that shall be to be secured by the pledge is valid and enforceable.

**Article 143**

**Scope of secured obligation**

1. A pledge secures the entire amount of an claim, including any unpaid principal and interest, penalties, the costs of enforcement, maintenance and sale of the pledged property.

2. If a personal debtor is not the owner of the pledged property, the liability is not extended by a legal transaction entered into by the personal debtor after the pledging.

3. The return of the pledged property with which the performance of an obligation was secured shall not mean that the creditor has waived the right to demand performance thereof.

**Article 144**

**Protection of the pledger**

1. The pledger may assert against the pledgee the protection that is available to a personal debtor against the claim. If the personal debtor dies, then the pledgor may not invoke the fact that his or her heir has only limited liability for the obligation.

2. If the pledger is not the personal debtor, he does not forfeit protection right by the personal debtor waiving it.

**Article 145**

**Change of pledged property or increase of the secured obligation**

Subsequent to the creation of a pledge, the pledger and the pledge holder may agree to increase the secured claim, or to add to the pledged property. Any addition that is not permanently attached or connected to the pledged property is to be treated as the creation of a new pledge.

**Article 146**

**Additional security**

1. The pledge holder may demand additional or adequate security, if the pledged property does not offer a corresponding security for the related obligation and a pledge holder could not be aware of this at the time the pledge agreement was concluded.

2. If the pledger does not grant additional or adequate security, the pledge holder may demand immediate fulfilment of the secured obligation.

**Sub-chapter II – Rights and Obligations of a Pledger and a Pledgee**

**Article 147**

**Right to inspection**

In the case of a non-possessory pledge the pledgee has the right upon reasonable notice to the pledger to inspect the pledged property. In the case of a possessory pledge the pledger has the right upon reasonable notice to the pledge holder to inspect the pledged property.

**Article 148**

**Rights and duties of a pledge holder**

1. In the case of a possessory pledge, the pledge holder shall not use and has to prudently maintain the pledged property. It is presumed that the pledge holder is enChapterd to the fruit of the pledged property if not agreed differently by the parties.

2. Unless otherwise agreed between the parties, the pledge holder may re-pledge the pledged property if he can ensure that the pledged property will be returned to the pledger in accordance with the terms of the pledge agreement. The pledge holder is liable to the pledger for any damage to, the loss or a delay in the return of the pledged property.

**Article 149**

**Rights and obligations of the pledger**

1. For non-possessory pledges, the pledger has the duty to use the pledged property in a manner consistent with the ordinary use of such property of property.

2. For non-possessory pledges which are effective against third parties, the pledger shall retain the right to:

2.1. use the object of pledge in accordance with its intended purpose. Should the pledger fail to settle his obligations to the pledge holder, he shall loose such a right of possession.

2.2. lease the object of pledge and enter into other agreements whereby the object of pledge is transferred to third parties for use and reaping of fruits, unless otherwise stipulated by the agreement;

2.3. re-pledge the object of pledge unless otherwise stipulated by the agreement; or

2.4. dispose of the object of pledge and transfer the right of ownership to a third party. The pledge agreement may withdraw the right of the pledger to dispose of the object of pledge.

3. The pledge agreement may limit the use of the object of pledge and stipulate the way in which the pledger may use it thereafter. The pledge agreement may prohibit particular ways of using the object of pledge.

**Article 150**

**Disposal of the object of non-possessory pledges**

1. The pledger may dispose of the object of pledge and transfer the right of ownership to a third party unless if this right is limited by pledge agreement.

2. The pledger and the new owner shall file a notification statement of the transfer at the Pledge Register at the new owner’s expense and without unjustified delay.

3. The pledger and the new owner of the object of pledge shall be jointly liable to the pledge holder for any damages that may arise as a result of their failure to register the right of pledge at the new owner’s expense in the Pledge Register.

4. The purchaser shall acquire the right of ownership encumbered with the registered right of pledge.

**Article 151**

**Pledge of fruits**

1. The pledge may be created in such a way that the pledge holder is enChapterd to take the fruits of the pledged property.

2. If the pledge holder has the right to take the fruits, he is obliged to attend to the production of the fruits and to render account.

3. The net yield of the fruits is set off against the payment owed and, if costs and interest are payable, against these first.

4. Diverging provisions are admissible.

**Article 152**

**Reimbursement of expenditures**

1. If the pledge holder makes expenditures on the pledged property, the duty of reimbursement of the pledger is determined under the provisions on mandate without authorization.

2. The pledge holder is enChapterd to remove an installation with which he furnished the pledged property.

**Article 153**

**Violation of rights by the pledgee**

1. Where the pledgee violates the rights of the pledger to a substantial degree and where he continues this injurious conduct notwithstanding a warning given by the pledger, the pledger may demand that the pledged property is deposited at the cost of the pledge holder or, if it is not suitable for deposit, that it is delivered to a custodian to be appointed by the court.

2. Instead of the deposit or the delivery of the property to a custodian, the pledger may demand the return of the pledged property in return for the satisfaction of the creditor. If the claim is interest-free and is not yet due, then the pledge holder is enChapterd only to the amount which, with the addition of the statutory interest for the period from the payment until the due date, is equivalent to the amount of the claim.

**Article 154**

**Rights of the pledger in the case of imminent spoilage**

1. If the spoilage of the pledged property or a substantial decrease in its value is to be feared, the pledger may demand the return of the pledged property in return for the provision of some other security; the provision of security by sureties is excluded.

2. The pledge holder must notify the pledger of the imminent spoilage without undue delay, unless notification is impracticable.

**Article 155**

**Rights of the pledge holder in the case of imminent spoilage**

1. If the imminent spoilage of the pledged property or a substantial decrease of its value that is to be feared jeopardizes the security of the pledge holder, the pledge holder may have the pledged property sold by public auction.

2. The proceeds take the place of the pledged property. Upon demand by the pledger, the proceeds are to be deposited.

**Article 156**

**Duty to return the pledged property; right to redeem the pledged property**

1. The pledge holder is obliged to return the pledged property to the pledger after the pledge is extinguished.

2. The pledger may demand the return of the pledged property in return for the satisfaction of the pledge holder as soon as the debtor is enChapterd to perform.

**Article 157**

**Limitation of compensation claims**

1. The compensation claims of the pledger for alternations or deteriorations of the pledged property and the claims of the pledge holder for the reimbursement of outlays or for leave to remove an installation are subject to a six-month limitation period.

2. The limitation period commences, for the pledger’s claim, at the time when the pledged property is returned to the pledger or, for the pledge holder, after the termination of the pledge agreement.

**Sub-chapter III – Pledge and Third Party Rights**

**Article 158**

**Pledge over claim for money**

1. If a claim for money is pledged, the debtor of such claim ("third party debtor") shall discharge the claim according to the agreement with the pledger. If the pledger or the pledge holder has notified the third party debtor of the pledge, the third party debtor has to effect payment to the pledge holder once the pledged claim falls due.

2. The notification to the third party debtor must be in writing, contain the names of the pledger and the pledge holder, identify the claim secured by the pledge and give precise instructions for payment to the pledge holder.

**Article 159**

**Objections of the third party debtor**

The third Party Debtor is enChapterd to the same objections against a payment demand from the pledge holder which he would have against the pledger as the initial creditor of the pledged claim.

**Article 160**

**Satisfaction by set-off**

1. After receiving payment from the Third Party Debtor, the pledge holder is enChapterd to set off from this payment any amount due to him under the obligation secured by the pledged claim. Until the secured obligation falls due the pledge holder has to hold payment received from the third party debtor including any interest accruing thereon as agent on behalf of the pledger.

2. If the amount paid by the third party debtor to the pledge holder exceeds the amount due under the secured obligation, the pledge holder has to pay the surplus amount to the pledger without undue delay.

3. Third party debtor who is required to make payment to the pledge holder shall be notified by the pledge holder if the secured obligation has been discharged before the payment to the pledge holder falls due.

**Article 161**

**Application of the provisions for pledge over claim for money**

The provisions relating to a pledge over a claim for money do also apply for pledge over other rights.

**Article 162**

**Right of pledge over securities**

1. A right of pledge over securities, which have been issued to a holder, is deemed to be a right of pledge over movable asset.

2. The right of pledge over a negotiable instrument to order or over an endorsable securities to a named beneficiary is created by endorsing and delivering the security to the pledge holder. The endorsement must explicitly state that it is an endorsement for a pledge (pledge endorsement).

3. If the pledged security is in the name of the debtor, the right of pledge is created if the pledger notifies the debtor that the claim deriving from the security has been pledged to the pledge holder.

4. The right of pledge over an un-certificated security is created by registration of the right of pledge in the register of the institution in whose register the account for pledged securities is kept.

**Article 163**

**Applicable provisions for the right of pledge over securities**

In all other respects, the provisions regarding the right of pledge over a claim apply *mutatis mutandis*.

**Article 164**

**Multiple pledges and their priority**

1. Unless otherwise agreed, a pledger can grant more than one pledge over the same asset or a same right.

2. Unless the law provides otherwise more than one pledge created over the same assets or the same right are ranked according to the time at which each pledge becomes effective against a third party.

3. A pledge that is effective against a third party always has priority over a pledge that is effective only between the pledger and the pledgee. Several pledges that are not effective against third parties are ranked according to the time at which the pledges become effective against the pledger.

**Article 165**

**Special rules regarding the priority of pledges**

1. A possessory pledge over money, transferable securities, shares of companies, rights to goods or rights to monetary payment, has priority over every other right of pledge over these assets.

2. A right of pledge to secure a claim for the purchase price (purchase money pledge) has priority over every other right of pledge the pledger has granted over the same property, if:

2.1. it is effective against third persons; and

2.2. the pledge holder notifies previous pledge holders of his or her acquisition of a right of purchase money pledge and its priority at the latest after the pledger takes possession of the pledged asset. The purchase money pledge holder must state in the notification that he has such a right of pledge or that he shall acquire it in the near future. In addition, the notification must contain a precise description of the pledged asset over which there exists or shall exist a purchase money pledge.

3. If a new right of pledge is granted according to the paragraph 2, this does not continue the priority of the previous right of pledge.

**Article 166**

**Preserving priority after a change in the form of pledge**

1. If, in the case of a possessory pledge, the pledged asset is returned to the pledger, the right of pledge only preserves its priority if, at the latest when the pledged asset is returned, the conditions for the effectiveness of the non-possessory pledge as against third persons are fulfilled.

2. If the possession of the pledged asset over which an effective non-possessory right of pledge exists, is handed over to the pledgee, the possessory pledge preserves the same priority as the already existing non-possessory pledge.

**Article 167**

**Change in the order of priority**

1. For a change in the order of priority, the provisions of Article 127 of this Book apply *mutatis mutandis* to the Pledge Register.

2. Notwithstanding the foregoing, the signatures of the participating parties do not require certification but only the registration in the Pledge Register is required.

**Article 168**

**Acquisition of pledged property by third party**

1. Subject to the provisions of this Code, a pledged property can only be encumbered or acquired by a third party subject to an existing pledge. A pledged property is acquired free of any pledge, if:

1.1. the pledged property is sold in the ordinary course of the pledger’s business;

1.2. the pledged property is sold with the written consent of all pledge holder having a pledge over the property;

1.3. the pledged property is a share, debt, or security instrument quoted on a recognized market, a negotiable instrument or document of Chapter, or cash; or

1.4. the buyer could assume in good faith at the time of the purchase that the pledged property is not encumbered with a pledge.

2. Property from the inventory sold in the pledger’s ordinary course of business can be acquired free of any pledge, even if the buyer had knowledge of the pledge.

**Article 169**

**Transfer of the secured claim**

1. The transfer of a secured obligation by the pledge holder is deemed a transfer of the pledge securing this obligation. The pledge holder shall notify the pledger of the transfer.

2. If the pledge holder transfers only part of a secured obligation, the transferee becomes enChapterd to the pledge jointly with the pledge holder and up to the amount of the secured obligation that was transferred.

3. The pledger is enChapterd to the same rights against the new pledge holder which he had against the initial pledge holder.

**Article 170**

**Passing of claim to the pledger**

1. If the pledger is not the personal debtor, then, insofar as he satisfies the pledge holder, the claim passes to him or her.

2. The passing of claim may not be asserted to the disadvantage of the creditor. Objections by the personal debtor under a legal relationship existing between him or herself and the creditor are unaffected.

**Article 171**

**Pledge of the share of a co-owner**

1. If there is a pledge relating to the share of a co-owner, the pledge holder exercises the rights that arise from the co-ownership with regard to the management of the pledged object and the nature of its use.

2. The termination of co-ownership may, before the pledge holder’s right of sale comes into existence, be demanded only by the co-owner pledger and the pledge holder jointly. After the right of sale has come into existence, the pledge holder may demand that the co-ownership be dissolved without a need for the approval of the co-owner pledger; the pledge holder is not obliged by an agreement by which the co-owners have permanently or temporarily excluded the right to demand the dissolution of the co-ownership or have determined a period for notice of termination.

3. If the co-ownership is terminated, the pledge holder is enChapterd to a pledge over the property objects that take the place of the share.

4. The right of the pledge holder to sell the share is unaffected

**Article 172**

**Termination of a pledge**

1. A pledge terminates when:

1.1. the pledger and the pledge holder so agree;

1.2. the secured obligation is satisfied or otherwise ceases to exist;

1.3. the pledged property or right or any surrogate replacing it ceases to exist;

1.4. the pledged property or right is changed or incorporated with another property or right such that it ceases to exist in an identifiable or separable form;

1.5. when the pledge holder becomes owner of the pledged property or right;

1.6. in the case of a possessory pledge, the pledge holder's possession of the pledged property ceases;

1.7. the obligation secured by the pledge is transferred, but the transfer does not extend to the pledge;

1.8. a third party validly acquires the pledged property or right pursuant to the provisions of the Civil Code.

2. The pledge holder shall return the pledged property to the pledger upon termination of a possessory pledge.

**Sub-chapter IV – Registration of a Non-possessory Pledge**

**Article 173**

**Filing of a notification statement**

1. The registration of a non-possessory pledge in the Pledge Register is effective by filing a notification statement with the office of the Pledge Register. A notification statement shall include:

1.1. a clear identification of the pledger, the person owing the secured obligation (if not a pledger) and the pledge holder;

1.2. a specific or general identification of the nature of the secured obligation;

1.3. the maximum value of the secured obligation expressed in money terms;

1.4. a specific or general identification of the pledged property;

1.5. a signature by or on behalf of the pledger; and

1.6. the date of the pledge agreement.

2. A pledge shall be deemed to be filed in the Pledge Register when the Notification Statement is presented to the office of the Pledge Register in prescribed form and accompanied by payment of the prescribed fee.

**Article 174**

**Duration of registration and extension**

1. A registration in the Pledge Register is valid for three (3) years from the time of registration.

2. Upon expiry of the three (3) years term the non-possessory pledge becomes ineffective against the third parties, unless the registration is extended or non-possessory pledge is transformed into a possessory pledge

**Article 175**

**Termination of registration**

1. If a non-possessory pledge terminates, the pledge holder shall within a month register the termination in the Pledge Register by submitting a termination statement to the office of the Pledge Register.

2. A termination statement shall contain the pledge holder`s signature and a statement that the pledge holder no longer claims a pledge over a property or right as indicated in the notification statement, which shall be identified by its document number. A termination statement that is signed by person other than the pledge holder shall be accompanied by a written authorization of the pledge holder.

3. A pledge holder who does not or not within the prescribed time file a termination statement is liable to the pledger for the damages caused by delayed or failure to register the termination of the pledge.

**Article 176**

**Establishment of the Pledge Register Office**

The Pledge Register is established by separate legislation.

**Sub-chapter V – Enforcement of the Pledge**

**Article 177**

**Delivery of the pledged property to pledge holder**

1. If the pledger or the debtor of the secured obligation should he be not identical with the pledger, defaults on the secured obligation or the pledge agreement, the pledge holder of a non-possessory pledge can demand delivery of the pledged property.

2. If the pledger of a non-possessory pledge fails to deliver the pledged property, the pledge holder can take possession of the pledged property with the help of a competent body.

**Article 178**

**Court enforcement of the claim for possession**

1. The pledge holder of a non-possessory pledge may file a petition with the competent court to issue an order, ex parte and without notice to the pledger, authorizing the pledged property to be sequestrated and delivered to the pledge holder. Such application shall be adjudicated by the competent court not later than five (5) business days after the date of filing the petition.

2. The procedure of seizure of the object of pledge shall be enforced within three days (3) from the date of issuing the order whereby the petition referred to in paragraph 1 of this article is granted.

3. If the object of pledge is, by its nature, not suitable for transfer of possession, or if it is in the pledge holder’s interest, the court shall, at the pledge holder’s proposal, nominate an administrator who shall be in charge of the object of pledge until the moment of settlement of secured claim.

4. The pledger, or the debtor of the secured obligation, may file a complaint against the order for seizure of the object of pledge from the pledger or person in possession thereof, within three days (3) of the date of receiving the order, stating that the pledgee claim or right of pledge is non-existent, or that the debt has been settled, and if the pledger has incurred damages, and shall enclose written evidence of this.

5. The complaint referred to in paragraph 4 of this article shall not delay execution. Such complaint shall be resolved by the court, in line with the law governing the enforcement procedure.

6. The law governing the enforcement procedure shall also govern the procedure of transfer of possession of the pledged asset, unless otherwise stipulated by law.

**Article 179**

**Disposal of the pledged property**

1. Upon default, a pledge holder may sell, ease or otherwise dispose the pledged property. A sale of a pledged property can be effected by public auction or in any other suitable manner. The pledge holder shall endeavor to achieve a fair market value while disposing the pledged property.

2. The pledge holder must notify the pledger at least fourteen (14) days prior to the sale of the pledged property of the time and place of such sale. The notification shall also be communicated to the debtor of the secured obligation, if he is not identical with the pledger and to all other holders of a pledge over the same pledged property.

3. The pledge holder may, unless otherwise provided, select from more than one pledged property those that are to be disposed. He may only dispose as many pledged property as are required for his or her satisfaction.

4. The proceeds of any disposition of the pledged property shall be applied in the following order:

4.1. to the reasonable expenses incurred by the pledge holder in connection with any enforcement of his right of possession to end disposing of the pledged property;

4.2. to the discharge of the secured obligation;

4.3. to the discharge of any lower ranking pledgee for the same pledged property, if written demand is made by the holder of such pledge prior to the disposition; and

4.4. the remains shall be paid to the pledger.

5. When the pledged property is sold, the pledger is deemed, for the benefit of the pledge holder, to be the owner, unless the pledge holder knows that the pledger is not owner.

6. The pledger remains liable for any deficiency in the amount obtained through the disposal of the pledged property.

**Article 180**

**Restriction to acquire pledged property**

1. The pledge holder may purchase the pledged property only at a public sale or a private sale if the pledge property is sold in a recognized market, or in cases where commonly known standard prices exist for the pledged property.

2. The bid of the pledger may be rejected unless the amount is paid in cash. The same applies to the bid of the debtor if the pledged property is liable for the debt of another.

**Article 181**

**Acceptance of pledged property**

1. A pledge holder may offer to the pledger to accept the pledged property in full or partial discharge of the secured obligation. The offer becomes binding, if the pledger agrees in writing and the debtor of the secured obligation, if he is not identical with the pledger, or any other party with legal interest to fulfil the secured obligation does not object in writing within fourteen (14) days after the offer is received.

2. The pledger, or the debtor of the secured claim, if he is not identical with the pledger or any other party with a legal interest to fulfil the secured obligation, can recover the pledged property after having discharged the secured obligation entirely.

3. The redemption may be made at any time before the pledge holder disposes off or accepts the pledged property as partial or total discharge of the secured obligation.

**Sub-chapter VI – Recognition of Security Rights Created in Foreign Country**

**Article 182**

**Equality of foreign security rights**

1. A foreign security right of any form or denomination which has been validly acquired and is still valid according to right of foreign country, has the effect of a valid and effective right of pledge, if the property encumbered by the security right is brought on the territory of Kosovo.

2. From the time in which the pledged asset is located on the territory of Kosovo, the effect of this security right is determined by the applicable laws of Kosovo.

3. The Pledge Register Office must be notified of a non-possessory right of pledge within three (3) months of the entry of the encumbered asset into the territory of Kosovo. The necessary information provided for in Article 156 must be submitted in certified translations into the official languages of Kosovo as is prescribed by law.

**Chapter III – Mortgage**

**Sub-chapter I – General Provisions**

**Article 183**

**Mortgage**

"Mortgage" means the creation of an interest in immovable property, by agreement or by law, which gives the mortgage creditor the right to initiate foreclosure proceedings for such immovable property for the purpose of satisfying sufficiently identifiable obligation that is secured by the mortgage and has fallen due.

**Sub-chapter II – Creation of the Mortgage**

**Article 184**

**Creation of mortgage with contract**

A mortgage is created upon the agreement between the owner of an immovable property and the mortgage creditor, and the registration of the mortgage in the immovable property rights register.

**Article 185**

**Mortgage agreement**

1. The mortgage agreement shall be in writing. The signature of the owner of the immovable property and the one of the mortgage creditor need to be certified in accordance with the rules applicable to other legal agreements over immovable property.

2. The mortgage agreement shall contain at least the following:

2.1. names and addresses of the owner of the immovable property and of the mortgage creditor as well as of the debtor of the secured claim, unless he is the same person as the owner of the mortgaged immovable property;

2.2. the exact description of the immovable property which is to be encumbered, containing its location, full address; or

2.3. other exact particulars regarding the location and cadastral number;

2.4. a certificate of possession and, if necessary, a certificate regarding the use of the immovable property;

2.5. the amount of the claim secured by the mortgage, including the rate of interest; if applicable, the maximum amount agreed upon;

2.6. a warning in written, that in the case of delayed or failed payment, or other occurrences considered as default pursuant the parties’ agreement, the mortgage creditor may initiate an enforcement procedure which might result in the loss of ownership and eviction from the mortgaged immovable property;

2.7. any further provisions in accordance with the parties’ will or mandatory requirements, which are not in contradiction to applicable laws.

3. The law may establish different requirements for specific kinds of mortgages.

**Article 186**

**Void agreement**

1. Apart from those agreements mentioned in Article 139, an agreement is also void if it is concluded before the maturity of the secured claim and allows the mortgage creditor to use the immovable property.

2. An agreement committing the owner of the immovable property to neither sell nor further encumber the immovable property is also void.

**Article 187**

**Encumbered** **immovable property**

The mortgage encumbers all parts of the immovable property, including the buildings thereupon that are firmly attached to the ground.

**Article 188**

**Extent of mortgage**

1. The mortgage covers all component parts and fruits of the immovable property as long as they are not separated from the principal unit.

2. The mortgage also covers all accessories belonging to the owner of the immovable property.

3. Liability for the mortgage terminates if component parts, fruits or accessories are sold and removed from the immovable property before having been sequestrated in favor of the mortgage creditor. If a party acquiring such objects, removes these from the immovable property after the mortgage creditor has sequestrated them, the sequestration is only valid against the acquiring party if he was aware or should have been aware of the sequestration when removing the objects from the immovable property.

**Article 189**

**Release from liability without disposal**

1. Where the fruits, accessories and components have been separated, within the limits of proper management, from the immovable property, then their liability is extinguished even without disposal if they are removed from the immovable property before they are seized, unless the removal takes place for a temporary purpose.

2. Accessories and fruits are released from liability without disposal if they lose the quality of being, respectively, accessories and fruits, within the limits of proper management, before their seizure

**Article 190**

**Extension to claim for rent**

1. If the immovable property is let on lease, the mortgage extends to the claim for.

2. To the extent that the claim is due, it is released from liability upon the expiry of one year from the due date, unless it is sequestrated in favor of the mortgage creditor prior to this date. If the rent is payable in advance, the release does not extend to the rent for a period later than the calendar month current at the time of the sequestration; if the latter is effected after the fifteenth day of the month, the release also extends to the rent for the following calendar month.

**Article 191**

**Advance disposition of the rent**

1. If the rent is collected before it is attached in favor of the mortgage creditor, or if it is disposed of in another way prior to the sequestration, the disposition is effective in relation to the mortgage creditor. If the disposition consists in the transfer of the claim to a third party, the liability for the claim is extinguished; if a third party acquires a right to the claim, it has priority over the mortgage.

2. The disposition is ineffective in relation to the mortgage creditor to the extent that it relates to the rent for a period later than the calendar month current at the time of the sequestration; however, if the latter is made after the fifteenth day of the month, the disposition is effective insofar as it relates to the rent for the following calendar month.

3. If the immovable property is alienated without the claim, this is equivalent to the transfer of the claim to a third party.

**Article 192**

**Set-off against rent**

To the extent that the collection of the rent is ineffective in relation to the mortgage creditor, the lessee or the lessee may not set off against the mortgage creditor a claim of the lessee against the lessor.

**Article 193**

**Extension to recurring acts of performance**

If a right to recurring acts of performance is connected with the ownership of the immovable property, the mortgage extends to claims for these acts of performance. The provisions of Article 200, paragraph 2 first sentence, Article 201, paragraphs 1 and 3, and Article 202 apply with the necessary modifications. A disposition made before the sequestration in respect of a claim for an act of performance that first becomes due three months after the sequestration is ineffective in relation to the mortgage creditor.

**Article 194**

**Extension to insurance claim**

1. If objects that are subject to the mortgage are covered by insurance for the owner or the owner-occupier of the immovable property, the mortgage extends to a claim against the insurer.

2. Liability for the claim against the insurer is extinguished, if the insured object is restored to its original condition or a replacement is provided for it.

**Article 195**

**Insurance on buildings**

1. If a building is insured, the insurer may not pay the insured sum to the insured with effect in relation to the mortgage creditor until the insurer or the insured has notified the mortgage creditor that the damage has occurred and once one month has passed since the receipt of the notification. The mortgage creditor may, before the expiry of this period, make an objection to the insurer with regard to the payment. The notification may be omitted if it is impracticable; in this case the month is calculated from the point of time at which the insured sum becomes due.

2. Where the mortgage creditor has notified the insurer of his mortgage, the insurer may only pay to the insured, with effect in relation to the mortgage creditor, if the mortgage creditor has given his approval to the payment in writing.

3. Apart from this, the provisions governing a pledged claim apply; the insurer may not, however, plead that he did not know of the mortgage shown in the Immovable Property Rights Register.

**Article 196**

**Other insurance against damage**

If an immovable property object other than a building is insured, the liability for the claim against the insurer is determined in accordance with the provisions of Article 200, paragraph 2, first sentence and Article 201, paragraphs 1 and 3 of this Book.

**Article 197**

**Replacement clause**

If, under the insurance provisions, the insurer is obliged to pay only the insured sum to replace the insured object, a payment to the insured in accordance with these provisions is effective in relation to the mortgage creditor.

**Article 198**

**Immovable property belonging to several persons**

A share of co-ownership can be encumbered with a mortgage without the consent of the other co-owners of the immovable property.

**Article 199**

**General mortgage**

1. A mortgage can be created for the same claim over several immovable property belonging to the same owner or to different owners (blanket mortgage). Each immovable property is liable for the entire claim.

2. The creditor may, at his or her discretion, seek satisfaction from each immovable property in whole or in part

**Article 200**

**Maximum amount mortgage**

1. A mortgage may be created as security of a specific maximum amount (maximum amount mortgage).

2. The maximum amount mortgage can secure an individual claim or all claims deriving from a particular contractual relationship.

3. Interest and expenses of the secured claim or claims are only covered within the maximum amount.

**Article 201**

**Secured claim**

Articles 153 and 154 of this Book are applicable *mutatis mutandis* to the mortgage.

**Sub-chapter III – Effects of Mortgage**

**Article 202**

**Duties of the owner of an encumbered immovable property**

1. The owner shall administrate, use and take care of the encumbered immovable property including as well as the buildings erected upon it, component parts, accessories and fruits in a manner consistent with the ordinary use of such property of property, and provide necessary maintenance to ensure its conservation of value.

2. At the request of the mortgage creditor or if required by the mortgage agreement, the owner of the immovable property shall insure the encumbered property at his or her own expense.

3. The owner of the immovable property shall allow the mortgage creditor, or a third party authorized by the latter, to inspect the encumbered immovable property, if due notice is given.

**Article 203**

**Defect and depreciation of the encumbered immovable property**

1. If the immovable property has a defect which the mortgage creditor did not notice when concluding the mortgage contract and the immovable property therefore does not offer sufficient security for the secured claim, the mortgage creditor may request an additional security or grant reasonable time for the owner to repair the defect.

2. If the encumbered immovable property due to unforeseeable reasons loses value after having been encumbered, paragraph 1 applies *mutatis mutandis*.

3. If after the time granted by the mortgage creditor the defect or depreciation still exists, and if the owner of the immovable property has not provided additional sufficient security, the mortgage creditor may demand immediate payment of the secured claim.

**Article 204**

**Application for an injunction**

1. If the owner or a third party influences the encumbered immovable property in such a way that a deterioration that endangers the security of the mortgage is to be feared, the mortgage creditor may seek a prohibitory injunction.

2. If the influence originates from the owner, the court shall, upon application by the mortgage creditor, order the measures that are required to avert the danger to be taken. The same applies if the deterioration is to be feared because the owner fails to take the necessary precautions against the influence of third parties or against other damage.

**Article 205**

**Depreciation of accessories, component parts and fruits**

Provisions of Articles 213 and 214 apply *mutatis mutandis* if the value of the component parts, accessories and fruits the mortgage extends to, deteriorate or are removed from the encumbered immovable property against the principles of due and regular maintenance.

**Article 206**

**Objections against the secured claim**

1. The owner of the immovable property is enChapterd to raise all objections against the mortgage creditor that a debtor is enChapterd to raise against a creditor as far as they concern the secured claim.

2. The owner of the encumbered immovable property also is enChapterd to raise all objections which a guarantor may raise against a creditor of a secured claim.

3. If the owner of the encumbered immovable property is not the debtor of the secured claim, he may raise an objection that the debtor would have been enChapterd to, even if the debtor renounced his right to do so.

4. If the personal debtor dies, then the owner may not invoke the fact that his heir has only limited liability for the obligation.

**Article 207**

**Indivisibility of the mortgage**

1. The mortgage secures the claim until it is completely paid off. A partial payment does not affect the mortgage.

2. If the immovable property is divided, a blanket mortgage is created which encumbers the immovable property created by the division according to Article 209.

3. If an immovable property is added with another unit in the immovable property rights register, the mortgages in existence on this immovable property unit extend to the added unit.

**Article 208**

**Termination of the mortgage by notification**

1. If the maturity of the secured claim is dependent on a notice of termination, the notice of termination is, if the owner of the encumbered immovable property is not the same person as the debtor of the secured claim, only effective if it is declared by the creditor to the owner of the encumbered property unit or by the owner to the creditor.

2. If the owner of the encumbered immovable property is not resident in Kosovo, or if the person giving notice of termination is unaware of the whereabouts of the person who has to receive the notice, then the court, in whose district the immovable property is located, shall, upon application of the creditor, appoint a representative, to whom the creditor's notice can be served.

**Article 209**

**Owner's right to satisfy the secured claim**

The owner of an encumbered immovable property is enChapterd to satisfy the mortgage creditor if the secured claim has matured.

**Article 210**

**Transfer of claim**

1. If the owner who is not the personal debtor to the claim satisfies the mortgage creditor, the secured claim is transferred to him or her insofar as he satisfied the creditor.

2. The transfer shall not be realized to the disadvantage of the mortgage creditor. Objections based on a contractual relationship between the personal debtor and the owner of the immovable property unit remain unaffected.

3. If a claim is secured by a blanket mortgage, then the provisions of Article 213, paragraph 2 are applicable to it.

**Article 211**

**Passing of the mortgage to the debtor**

If the personal debtor satisfies the creditor, the mortgage passes to him or her to the extent to which he may demand compensation from the owner or from a predecessor in Chapter of the owner. If the personal debtor is to be compensated only in part, the owner may not enforce the mortgage, to the extent that it has passed to him or her, to the disadvantage of the mortgage of the debtor

**Article 212**

**Substitution for the claim**

1. The claim for which the mortgage exists may be replaced by another claim. The alteration requires the agreement of the creditor and the owner of the immovable property and registration in the Immovable Property Rights Register

2. If the claim that is to take the place of the previous claim does not belong to the previous mortgage creditor, his or her approval is required in writing and with certified signature.

**Article 213**

**Satisfaction through one owner in case of blanket mortgage**

1. The owner of an immovable property unit that is encumbered together with further immovable property units by a blanket mortgage (in accordance with the provisions of Article 209) may satisfy the mortgage creditor once the secured claim has matured.

2. If the owner mentioned in paragraph 1 can claim compensation from the owner of one of the other immovable property units, the mortgage encumbering this immovable property unit is transferred to him or her.

3. Paragraph 2 is applicable *mutatis mutandis* if the owner mentioned in paragraph 1 is enChapterd to claims against several owners of the other immovable property units which were encumbered with a blanket mortgage.

**Article 214**

**Extinction of the mortgage**

1. The mortgage becomes extinct by deleting the entry in the Immovable Property Rights Register.

2. Extinction may be applied for if:

2.1. the debtor of a secured claim has satisfied this by payment or in any other way;

2.2. the secured claim ceases to exist for other reasons;

2.3. the mortgage creditor renounces the mortgage in writing and with certified signature;

2.4. the mortgage creditor and the owner of the encumbered immovable property are the same person or come to be the same person; or

2.5. the encumbered immovable property is sold in order to satisfy the secured claim.

**Article 215**

**Extinction by satisfaction from the immovable property**

1. If the creditor is satisfied from the immovable property, the mortgage is extinguished.

2. If the creditor is satisfied from one of the immovable property encumbered with a blanket mortgage, the other are also released.

3. Satisfaction from all the objects to which the mortgage extends is equivalent to the satisfaction from the immovable property itself.

**Sub-chapter IV – Effects of the Mortgage Towards the Third Parties**

**Article 216**

**Effectiveness of the mortgage**

1. A mortgage must be entered into the Immovable Property Rights Register in order to be effective.

2. Procedures and effects of registration follow the applicable laws on establishing an Immovable Property Rights Register.

**Article 217**

**Priority of mortgages**

1. If not otherwise provided for in the Code, the priority of several mortgages is based on the time of their registration in the immovable property rights register.

2. For an amendment of the priorities, the provisions of Article 127 apply.

**Article 218**

**Transfer of mortgaged immovable property**

A mortgage is also valid against a person who acquires the mortgaged immovable property.

**Article 219**

**Transfer of the secured claim**

1. With the transfer of the secured claim, the mortgage is also transferred to the new creditor, unless the parties have agreed to the contrary.

2. The transfer of the mortgage is not effective until entered into the Immovable Property Rights Register.

3. If the owner of the immovable property dies and the encumbered immovable property is transferred to several heirs, a blanket mortgage is created according to Article 209 of this Book.

4. A protection that the owner is enChapterd to assert against the mortgage on the basis of the legal relationship existing between him or her and the previous creditor may also be relied upon in relation to the new creditor

5. Otherwise, the relevant provisions of this Civil Code or any other applicable law shall apply.

**Sub-chapter V – Enforcement of the Mortgage**

**Article 220**

**Breach of contract as precondition**

A breach of contract by the debtor of the secured claim occurs if the debtor is in delay or has defaulted on the agreed payment. For such cases the relevant provisions of the Book on Obligations are applicable.

**Article 221**

**Satisfaction of the mortgage creditor's claim by enforcement**

1. The satisfaction of the creditor from the immovable property and from the objects to which the mortgage extends is regulated by provisions on enforcement procedures against immovable property which lays down conditions and procedures.

2. In case of delay or other breach of contract by the debtor, the mortgage creditor may sell the mortgaged immovable property by civil action in order to satisfy the secured claim in priority (from the proceeds of the sale).

3. If the requirements for a debtor to be in default are satisfied with regards to the owner, the creditor is enChapterd to default interest from the immovable property.

**Article 222**

**Right of redemption of third parties**

1. If the creditor demands satisfaction from the immovable property, anyone who risks losing a right in the object due to enforcement is enChapterd to satisfy the creditor.

2. The satisfaction may also take place by deposit or by set-off.

**Article 223**

**Owner mortgage**

1. If the claim for which the mortgage is created fails to come into existence, the owner of the immovable property is enChapterd to the mortgage. If the claim is extinguished, the owner acquires the mortgage.

**Article 224**

**Protection with a negative effect on a right**

If the owner is enChapterd to a protection that permanently excludes the enforcement of the mortgage, then he may demand that the creditor waive the mortgage.

**Article 225**

**Notification of other parties**

All other persons registered as holders of a proprietary right over the encumbered immovable property shall be notified of the opening of the execution or of an extra-judicial sale of the encumbered immovable property at the same time as its owner.

**PART VII - SERVITUDES**

**Chapter I – Usufruct**

**Sub-chapter I – Usufruct over the Property**

**Article 226**

**Usufruct**

1. Movable and immovable property can be encumbered in such way that a person for whose benefit the encumbrance is made is enChapterd to use and encumber the property (usufruct) provided the substance of the property remains unimpaired.

2. The usufruct may be restricted to exclude specific uses.

**Article 227**

**Transferability of usufruct**

1. A usufruct held by a natural person is not transferable. The encumbered property, however, may be relinquished to another person in order for this person to exercise the usufruct.

2. If a usufruct is held by a legal person or a partnership with legal personality, the usufruct is transferred if the assets of the legal person or the partnership are assigned to another person by way of universal succession.

3. If a business or part of a business operated by a legal person is transferred to another person, a usufruct may be transferred to the acquirer if it is suitable to serve the purposes of the enterprise or of the part of the enterprise

4. Whether these requirements are satisfied is established by a declaration of the competent municipal authority. The declaration binds the courts and the administrative authorities

**Article 228**

**Passing or transfer of usufruct**

1. In the case of the passing or transfer of the usufruct, the acquirer enters into the rights and obligations associated with the usufruct in relation to the owner. If, in view of these rights and duties, agreements have been made between the owner and the legal person enChapterd, these also take effect in favor of and against the acquirer.

2. The passing or the transfer of the usufruct creates a claim to damages neither for the owner nor for other persons with real rights.

**Article 229**

**Creation of usufructs**

Usufructs may be created by contract or court decision

**Article 230**

**Establishment of usufruct in movables**

For the creation of usufructs in movable property, the owner has to deliver the property to the beneficiary (usufructuary) and both have to agree that the usufruct passed to the usufructuary.

**Article 231**

**Establishment of usufruct in immovable property**

For the creation of usufructs in immovable property, a written contract stating that the owner and the usufructuary intend to establish the usufruct and the registration of the usufruct in the Immovable Property Rights Register are required.

**Article 232**

**Extension to accessories**

1. A usufruct in immovable property extends to the accessories of the property without the requirement for the accessories to be delivered to the usufructuary.

2. The owner and the usufructuary may agree otherwise.

**Article 233**

**Right of possession of usufruct**

The usufructuary is enChapterd to possess the property encumbered by the usufruct.

**Article 234**

**Exercise of usufruct**

1. In exercising the right of use, the usufructuary must maintain the current economic purpose of the property and must proceed in compliance with the rules of proper management.

2. The usufructuary is not enChapterd to transform the property or substantially change it.

3. If, at the time the usufruct was established, the immovable property is used for the exploitation of raw materials such as stone, gravel, sand, loam, clay, marl, peat or other, the usufructuary may construct or otherwise erect new installations to extract such raw materials except where the economic purpose of the property is materially altered as a result of such installation.

**Article 235**

**Maintenance of property**

1. The usufructuary must provide for the maintenance of the property in order for its substance to remain unimpaired.

2. The usufructuary is obligated to carry out repairs and renovations only to the extent that these are part of the normal maintenance of the property.

3. The usufructuary is not responsible for alterations or deterioration of the property that are caused by the proper exercise of the usufruct.

4. The usufructuary is not obligated to carry out extraordinary repairs and renovations, but must permit the owner to undertake such repairs or renovations.

**Article 236**

**Compensation for expenditures**

If the usufructuary incurs expenses for the property beyond what is necessary for maintaining the substance of the property, the owner is obliged to reimburse the usufructuary based on the provisions applicable for expenditures incurred by unauthorized agents.

**Article 237**

**Duty of notification by the usufructuary**

If the property is destroyed or damaged or if an extraordinary repair or renovation or a precautionary measure for protection of the property against unforeseen hazards becomes necessary, the usufructuary must notify the owner without undue delay. A third party claiming a right to the property has to be informed in the same way.

**Article 238**

**Payment of charges**

1. For the duration of the usufruct, the usufructuary is obligated to pay all ordinary public charges due for the property, such as taxes and fees. The usufructuary is further obligated to pay private charges that were levied on the property as of the date the usufruct was created, in particular interest on a mortgage and charge on lands.

2. Extraordinary public charges aiming at the original value of the property need not be paid for by the owner.

**Article 239**

**Protection of owner’s rights**

1. If the conduct of the usufructuary, in particular relating to its obligation to maintain and return the property, threatens a material impairment of the owner’s rights, the owner may demand an insurance. If the usufructuary does not provide such security, the usufruct is deemed to be cancelled.

2. The insurance must be taken out in such a way that the claim against the insurer belongs to the owner.

3. If the usufruct is deemed to be cancelled, the usufructuary is enChapterd to compensation for the uncollected benefits of the usufruct.

**Article 240**

**Application prohibitory injunction**

If the usufructuary uses the property in an unauthorized manner, the owner may issue a warning to the usufructuary. If the usufructuary continues the unauthorized use notwithstanding that a warning was issued, the owner may seek an injunction against the usufructuary prohibiting the unauthorized use.

**Article 241**

**Protection of usufruct**

The usufructuary is enChapterd to the same rights as the owner against any third party interference with the usufruct.

**Article 242**

**Extinctive prescription of claims for compensation**

The compensation claim of the owner for modifications or deterioration of the property, and the claim of the usufructuary for reimbursement of expenses or permission to remove an installation are subject to a one year prescription, form the time of vulnerability… to explain when the time starts counting.

**Article 243**

**Usufructuary obligation to return the property**

The usufructuary is required to return the property after the usufruct has terminated.

**Article 244**

**Death of the usufructuary**

1. The usufruct terminates:

1.1. with the death of the usufructuary, if the usufructuary is natural person.

1.2. in the case that the usufructuary is a legal entity with its termination.

**Article 245**

**Termination of usufruct abandoned by usufructuary**

1. A usufruct in immovable property terminates when the usufructuary gives the owner a notice of termination and the termination is registered into the immovable property rights register.

2. A usufruct in movable property terminates when the usufructuary declares to the owner that the usufruct is abandoned.

**Article 246**

**Usufruct in share of co-ownership**

1. If a usufruct is established in the share of a co-owner, the usufructuary may administer and use the property in the same manner as the co-owner.

2. A request to terminate co-ownership in property for which a usufruct is established must be made jointly by the co-owner and the usufructuary.

3. If the co-ownership is cancelled, the usufructuary has a right to the usufruct in the objects that take the place of the share.

**Article 247**

**Usufruct in consumable assets**

If consumable asset is subject to a usufruct, the usufructuary becomes the owner of the property. After the termination of the usufruct, the usufructuary must reimburse the previous owner for the value that the asset had at the time the usufruct was granted. Both, the previous owner and the usufructuary, at their own expenses may have the value of the property established by experts. The previous owner and the usufructuary may enter into an agreement setting out different conditions for the usufruct.

**Sub-chapter II – Usufruct in Rights**

**Article 248**

**Usufruct in Rights**

1. The subject of the usufruct may also be a right.

2. Usufruct in rights is governed by the provisions on usufruct in assets with the necessary modifications, except to the extent that relevant lead to a different conclusion.

**Article 249**

**Creation of a usufruct in a right**

1. The creation of a usufruct in a right is governed by the provision applicable for the transfer of the right, with the necessary modifications.

2. A usufruct may not be created in a right that is not transferable.

**Article 250**

**Usufruct in right to a performance**

If a right under which performance may be demanded is encumbered with a usufruct, the legal relationship between the usufructuary and the person obliged to perform is governed by the provisions that apply to the legal relationship between the person enChapterd to demand a performance and the person obliged to perform with the necessary modifications.

**Article 251**

**Termination or alteration of encumbered right**

A right encumbered by a usufruct may only be altered or terminated by a legal transaction with the approval of the usufructuary.

**Article 252**

**Usufruct in a claim; notice and collection**

1. The usufructuary of a claim is enChapterd to collect the claim and, if the due date is dependent on notice by the creditor, to give notice of termination. He must ensure proper collection. He is not enChapterd to make other dispositions of the claim.

2. The provisions of paragraph 1 applies also to usufruct in a charge on land.

**Article 253**

**Effect of performance**

1. Upon performance by the obliged party to the usufructuary, the creditor of the claim for performance acquires ownership of the property and the usufructuary acquires a usufruct in the property.

2. If consumable property is delivered, the usufructuary acquires the ownership.

**Article 254**

**Usufruct in interest bearing claims**

1. If an interest bearing claim is the subject of a usufruct, the following provisions apply:

1.1. The debtor may pay the capital only to the usufructuary and the creditor jointly. Each of them may require that payment be made to them jointly; each may require, instead of payment, deposit for both of them.

1.2. The usufructuary and the creditor may give notice only jointly. The notice of the debtor is effective only if it is declared to the usufructuary and the creditor.

1.3. Where the claim is due, the usufructuary and the creditor are obliged to one another to cooperate in collection. If the due date depends on notice, either party may require the cooperation of the other in the notice, if the collection of the debt is necessary by reason of danger to its security under the rules of proper management of assets.

1.4. The usufructuary and the creditor are obliged to each other to cooperate in order that the capital collected is invested for the benefit of the usufructuary. The nature of the investment is determined by the usufructuary.

**Article 255**

**Usufruct in bearer instruments or instruments made out to order**

1. If a bearer instrument or an instrument made out to order and bearing a blank endorsement are the subjects of a usufruct, the usufructuary and the owner are jointly enChapterd to possession of the instrument and the renewal certificate for the instrument. The usufructuary is enChapterd to possess the interest, annuity or dividend coupons.

2. The usufructuary or the owner may request that the instrument and the renewal certificate be deposited at a depository institution with the stipulation that delivery may be requested only by the usufructuary and the owner jointly.

3. The usufructuary and the owner of the instrument are obligated to cooperate for the purpose of collecting the capital due, obtaining new interest, annuity or dividend coupons and undertaking other measures that are necessary for proper asset management.

**Article 256**

**Usufruct in assets, inheritance and enterprises**

A usufruct in the assets of a person, an inheritance or an enterprise may be created only in such a way that the usufructuary obtains the usufruct in the individual property constituting such assets, inheritance, or enterprise.

**Article 257**

**Rights of creditors of the usufructuary**

1. Creditors of the owner of assets encumbered by a usufruct may, to the extent that their claims arose before the usufruct was granted, satisfy their claims out of the property encumbered by the usufruct.

2. If the property encumbered with usufruct is consumable, the creditors of the owner may claim compensation for the value of the property from the usufructuary; satisfaction of claims out of the property encumbered by the usufruct is excluded.

**Article 258**

**Relationship between usufructuary and owner of assets**

1 The owner may, if a claim that arose before the grant is due, require the usufructuary to return the objects necessary to satisfy the creditor. He has the right of selection; however, he may select only the objects that are primarily suitable. To the extent that the objects returned are sufficient, the owner is obliged in relation to the usufructuary to satisfy the creditor.

2 The usufructuary may satisfy the obligation by providing the object owed. Where the object owed is not among the assets that are subject to the usufruct, the usufructuary is enChapterd, for the purpose of satisfying the creditor, to alienate an object among the assets, if it is not possible without risk to await satisfaction by the owner. He must select an object that is primarily suitable. If he is obliged to reimburse the value of consumable property, he may not undertake a disposal.

**Article 259**

**Liability of the usufructuary**

1. The creditors of the owner whose claims were already subject to interest at the time of the grant may for the duration of the usufruct also require the interest from the usufructuary. The same applies to other recurrent payments that in the case of proper management are satisfied from the income of the assets, if the claim arose before the usufruct was granted.

2. The liability of the usufructuary may not be excluded or restricted by agreement between him and the owner.

3. The usufructuary is obliged in relation to the owner to satisfy the creditors with regard to the claims set

out in paragraph 1.

4. The owner may require the return of objects for the purpose of satisfaction only if the usufructuary is in default in fulfilling this obligation.

**Article 260**

**Usufructs in enterprises**

1. The creation of a usufruct in an enterprise must also be entered into the Companies Register.

2. The usufructuary is enChapterd to the use and operation of all assets of the enterprise and becomes the ultimate beneficiary of all claims the enterprise has against third parties, unless owner and usufructuary agree otherwise.

3. The usufructuary must manage the enterprise with the due care and diligence of an ordinary businessman.

4. The usufructuary is enChapterd to all profits of the enterprise. Annual financial statements of the enterprise determine the amount of profit available to the usufructuary. The financial statements must be prepared in accordance with the relevant legislation not taking into account that the enterprise is encumbered with the usufruct. All financial statements must determine the amounts of depreciation and reserves appropriate for the enterprise.

5. At the time the usufruct terminates, the usufructuary must return the enterprise and all its assets to the owner. If the value of all current assets returned to the owner is lower that their value at the time of the creation of the usufruct, the usufructuary must compensate the owner accordingly.

**CHAPTER II - REAL SERVITUDES**

**Article 261**

**Real Servitude**

1. An real servitude is an encumbrance of an immovable property (subservient plot) that grants the owner of another immovable property (dominant plot) the right to use the subservient plot in a specific manner, or to require that particular acts are not undertaken on the subservient plot, or to exclude the exercise of a right arising from the ownership of the subservient plot in relation to the dominant plot.

2.A real servitude should provide any benefit for the use of the servient plot to the person enChapterd is impermissible.

3. A real servitude cannot commit the owner of the subservient plot to any specific act.

**Article 262**

**Establishment of an easement**

1. A real servitude may be established by a legal transaction, a decision of a state body or by law.

2. A contract establishing a real servitude requires the written agreement of the parties setting out the content of the real servitude and the entry of the real servitude in the immovable property rights register. The contract must contain the agreement of the parties that they want to establish an real servitude and its content.

3. Provisions in paragraph 1 and 2 of this article shall apply in all cases unless by the administrative decisions or by separate law is provided otherwise.

**Article 263**

**Considerate exercise of the real servitude**

1. A person enChapterd to a real servitude must exercise it in a manner that affects the subservient immovable property as modestly as possible.

2. When exercising a real servitude, the person enChapterd must observe the interest of the owner of the subservient plot as far as possible unless this would limit the exercise of the real servitude.

**Article 264**

**Duty of maintaining installations**

1. If the exercise of an easement includes the use of an installation on a subservient plot, the beneficiary of the easement must maintain such installation. If the installation is maintained on the subservient plot for the mere purpose of exercising the easement, the beneficiary of the easement must keep the installation in proper condition to the extent that the interest of the owner of the subservient plot requires this.

2. Notwithstanding paragraph 1, the parties may agree that the owner of the subservient plot must maintain the installation to the extent that the interest of the beneficiary of the easement requires this.

3. If the owner of the subservient plot is also enChapterd to use the installation, it can be agreed that the beneficiary of the easement must maintain the installation to the extent necessary for the exercise of the owner's right of use.

4. For the duties of maintenance, the provisions on charge on lands apply accordingly.

**Article 265**

**Moving the encumbrance**

1. If the exercise of an easement is restricted to a part of the subservient plot, the owner of the plot may require the use to be moved to another place on the subservient plot in order to reduce the burden on the plot, provided that this does not limit the essential interest of the beneficiary of the easement.

2. The right to request such move may not be excluded or restricted by legal transaction.

**Article 266**

**Division of plot**

1. If the dominant plot is divided, the real servitude continues to exist for the separated parts. If the easement benefits only one part, it is extinguished for the other parts. The use of the real servitude after such division may not place an additional burden on the subservient plot.

2. If the subservient plot is divided, the real servitude continues to encumber the separated parts.

3. If the use of the easement is restricted to a particular part of the subservient plot, the parts that lie outside the area of use are released from the easement.

**Article 267**

**Protection of the real servitude**

If the exercise of easement is interfered with, the beneficiary of the real servitude has the rights set out in Article 109 of this Book.

**Article 268**

**Protection of lawful possessor**

If the possessor of a dominant plot is disturbed in the use of the real servitude registered in the immovable property rights register, the provisions applying to the protection of a possessor are applicable with necessary modifications if the easement was used within one year before the interference, even if only once.

**Article 269**

**Termination of easements**

1. The termination of an easement requires the owner of the dominant plot to give notice of the intent to terminate the easement and an entry into the Immovable Property Rights Register.

2. The owner of the subservient plot can demand the termination of an easement if it is no longer necessary for the use of the dominant plot or if the circumstances since the creation of the easement have otherwise substantially changed. An entry into the immovable property rights register is required.

**Chapter III – Limited Personal Servitudes**

**Article 270**

**Right of use (Usus)**

1. The right of use confers in favor of a person (person having the right of use) a specified use of a property (servient property) in accordance with its purpose, while preserving its substance.

2. The right of use may exist on servient property that is non-consumable, regardless whether it is movable or immovable, as well as on several movables together; it may not exist on consumables even in the form of a quasi-right of use.

3. The right of use may exist on a right that yields fruits or other benefits, in which case the right is taken to be a property, and the provisions on property under paragraph 2 of this article apply accordingly.

4. The subject matter of any right of use is property within the meaning of paragraphs 2 and 3 of this article, together with all their component parts.

5. The right of use may not be enjoyed by several people, except when their relationship is such that the right of use belongs to them jointly.

6. The right of use is governed accordingly by the usufruct rules, unless provided otherwise by law or by the nature of such right of use.

**Article 271**

**Scope**

1. The person having the right of use is authorized to use the servient property for his needs by holding it, to the determined extent, in possession, using it and gathering its revenues, while preserving its substance.

2. The owner of servient property has to suffer the performance of the powers of the person having the right of use on the property, and may enforce his right of ownership only if that shall not result in a violation of the right of the person having the right of use; accordingly, all benefits arising from the property without disturbing the person having the right of use belong to the owner.

**Article 272**

**The right of Residence**

1. The right of residence enChapters its holder (person having the right of residence) to use a house or a part thereof of another intended for habitation (servient property) in accordance with its purpose, while preserving its substance.

2. The right of residence is assessed on the basis of the rules on use, unless provided otherwise.

3. If the right of habitation authorizes the person having the right of habitation to use all parts of a building intended for habitation by taking full advantage of it, while preserving its substance, the right is actually the right of usufruct of a residential building and is evaluated according to the usufruct rules.

4. The owner retains the right to dispose of those parts of real property not intended for habitation, as well as of the residential parts of the building which are not the subject matter of the right of habitation of the person having the right of habitation, but not so as to prevent the enforcement of the right of habitation.

5. In the enforcement of the right of habitation, it must not be made impossible or burdensome for the owner to examine the entire piece of real property that he owns.

**Article 273**

**Needs of the person having the right of use**

1. Regardless of his other property, the person having the right of use is authorized to use servient property in accordance with his needs, appropriate in view of his age, occupation, profession and the size of his household.

2. Needs of the person having the right of use are determined according to the situation existing at the time of establishing the right of use; subsequent changes of occupation and profession do not enChapter the person having the right of use to extend the right of use, unless provided otherwise.

3. Needs of the person having the right of use include the needs of his family household, including any changes in the family household that could be naturally expected and foreseeable (spouse and underage children, as well as persons he is bound to support in accordance with law) or which are necessary for maintaining the family household.

**Article 274**

**Acquiring fruits and other benefits**

1. The person having the right of use acquires the fruits of servient property when he gathers them for his needs based on the powers following from the right of use, and the same applies to all other benefits of the property.

2. The provision of paragraph 1 of this article relating to fruits also applies to rentals, interest and other revenues derived from the property as the result of a legal relationship (civil fruits); however, the person having the right of use is not authorized to gather anything not relating to the period of duration of his right of use; the rest belongs to the owner of servient property, who may claim it.

**Article 275**

**Costs and charges**

1. All benefits derived from the property without having disturbed the person having the right of use belong to the owner, and the owner is bound to bear all ordinary and extraordinary costs and burdens on the servient property, as well as to bear the cost of maintaining it in good condition.

2. If the costs and burdens are in excess of the benefit to the owner, the person having the right of use has to bear the cost of such difference, unless he waives his right of use.

**Article 276**

**Non-transferability**

A right of habitation and a right of use may not be transferred or leased

**PART VIII – CHARGE ON LAND**

**Chapter I – Charge on Land**

**Article 277**

**Charge on land**

1. Any immovable property may be encumbered in such a manner that recurring performances are to be rendered to a beneficiary on account of the immovable property.

2. A charge on land may be created for the benefit of a person or in favor of the current owner of another immovable property.

**Article 278**

**Creation of charges**

1. The creation of a charge on land requires a written agreement and registration of the charge in the immovable property rights register.

2. A charge may be created by law.

**Article 279**

**Personal liability of owner**

1. Individual performances resulting from a charge on land shall be delivered by the owner of the immovable property so charged, unless otherwise provided.

2. The owner of an immovable property encumbered by a charge on land is personally liable for all performances that fall due while his ownership lasts, unless otherwise provided in a written agreement between the owner and the beneficiary.

**Article 280**

**Individual performances**

The provisions applicable to the payment of interest on a claim secured by a mortgage apply, with the necessary modifications, to individual performances due under a charge.

**Article 281**

**Division of immovable property**

1. If an immovable property that benefits from a charge on another immovable property is divided, the charge will continue to benefit the separated parts of the property.

2. If the performance is divisible, the shares in the enChapterment are determined according to the size of the parts of the divided property.

3. If the performance is not divisible, the owner of the encumbered immovable property may only deliver to all beneficiaries jointly. Every beneficiary may demand performance to all beneficiaries. The exercise of the right under the charge is, in case of doubt, permissible only in such a manner that it does not become more onerous for the owner of the immovable property so encumbered.

4. The beneficiaries may determine that all rights out of the charge shall be linked only to one part of a divided immovable property. Such determination must be registered in the immovable property rights register.

**Article 282**

**Non-severability of charges on land**

A charge on land existing in favor of the current owner of a plot of land may not be severed from the ownership of this plot of land.

**Article 283**

**Personal charge on land**

1. A charge on land existing in favor of a specific person may not be connected with the ownership of a plot of land.

2. If a claim for an individual act of performance is not transferable, the right may not be alienated or encumbered.

**Article 284**

**Exclusion of unknown enChapterd persons**

If the person enChapterd is unknown, the provisions of Article 109 apply with the necessary modifications to the exclusion of his right.

**PART IX - BUILDING RIGHT**

**Chapter I – Building Right**

**Article 285**

**Building rights**

1. A building right is a right to ownership of a building on or under the surface of an immovable property.

2. A building right encumbers at the time of its creation the immovable property on which the building exists or will be constructed.

3. A building constructed pursuant to a building right is a component part of the building right.

4. A building right may not be restricted to a part of the building, such as a level or story.

5. A building right may be alienated or inherited.

**Article 286**

**Application of real rights**

The provisions of this Civil Code applicable to immovable property, in particularly the provisions concerning mortgages, apply to building rights, with necessary modifications.

**Article 287**

**Establishing a construction right**

1. The establishment of a construction right requires a valid contract between the owner of the immovable property and the beneficiary by which the parties agree on establishment of a construction right and the registration of the right in the Immovable Property Rights Register.

2. The owner of an immovable property may establish a construction right for his own benefit.

3. A contract to establish a construction right must contain the name of the immovable property owner, a precise description of the immovable property encumbered by the construction right and the duration of the building right.

4. The duration of the construction right shall be regulated with the agreement between parties, if it is not provided otherwise by separate law, but the duration shall not exceed ninety nine (99) years.

**Article 288**

**Optional content of a construction right**

1. The content of the construction right may include provisions on the following:

1.1. the construction, maintenance and use of a building;

1.2. the immovable property owner’s remedies in case of a breach of the contract establishing the construction right, in particular as to violations of the obligation to construct, maintain, or use the building;

1.3. the building insurance and any plans for re-erecting the building in the event the building is destroyed;

1.4. the liability for public and private charges and encumbrances;

1.5. the obligation of the beneficiary to transfer the construction right to the owner of the immovable property under certain conditions (reversion);

1.6. the immovable property owner’s enChapterment to consent to transfers, encumbrances, and realty charges concerning the building right;

1.7. the obligation of the beneficiary to pay compensation for use and penalties for the breach of the contract establishing the construction right.

**Article 289**

**Compensation for use**

1. If for reasons to compensate for the use of the immovable property a recurring performance is agreed, the provisions on realty charges apply with necessary modifications.

2. The compensation for use must be specified for the amounts due during specific periods of time. The compensation for use may be specified in a foreign currency. The value of the compensation for use may be indexed to official public valuations that may exist for such construction right or to the officially determined rate of inflation.

3. If it is impossible to determine the value of a compensation for use, the competent court shall determine an adequate evaluation of or any adjustment to the compensation for use. The personal circumstances of the parties may not be taken into consideration when such determining is made.

**Article 290**

**Establishing separate ownership over building units**

1. The separate ownership over a building unit may also be established in a building right.

2. If several persons are enChapterd to the building right, each one of them must be allocated singular ownership over one or several particular rooms.

3. If only one person is enChapterd, the provisions regarding the creation of singular ownership over a building on the part of one owner are applicable *mutatis mutandis*.

**Article 291**

**Enforcement procedures**

1. In case enforcement procedures are taken against an immovable property encumbered with a building right, the provisions regarding enforcement procedures taken against an immovable property encumbered with real servitudes are applicable with necessary modifications.

2. In case enforcement of a construction right may have to be enforced against an immovable property, the provisions regarding enforcement procedures taken against an immovable property are applicable with necessary modifications.

**Article 292**

**Termination of construction right**

1. A construction right terminates after the agreed period of time.

2. A construction right can be terminated early if the owner of the immovable property and the beneficiary of the construction right agree by contract that the building right is terminated.

3. The provisions regarding the creation of a building right apply with necessary modifications to the termination contract.

4. If a construction right is encumbered with the right of a third party, the termination requires the written consent of the third party.

**Article 293**

**Termination of a construction right for non-payment**

If the beneficiary of the construction right is late in the payment of the compensation for use in the amounts of up to two annual payments of compensation for use the owner of the immovable property may terminate the building right and demand from the beneficiary the transfer of the building right (reversion).

**Article 294**

**Consequence of termination**

1. Upon the termination of a building right, the building becomes part of the immovable property.

1. If the owner and the beneficiary have not agreed otherwise, the owner must compensate the beneficiary with a sum equal to one-fourth of the market value of the building. The compensation shall be calculated based on the value of the building on the day the building right is terminated.
2. If the owner of the land is not paying owner of the building according to the paragraph 2, then this shall be paid by the owner of the building. If this is not happening then there shall be applicable rules that apply for mixed immovable property.

**Article 295**

**Mortgages and easements over the building right**

1. After the termination of the construction rights the building’s right creditor (the mortgage creditor or the realty charge’s beneficiary) obtains a claim for satisfaction out of the claim for compensation.

2. The owner is not released from his obligation to compensate until he delivers the indemnification to the mortgage creditor or the easement’s beneficiary.

3. Furthermore the mortgage creditor and the realty charge’s beneficiary are enChapterd to the same rights they would have in the case of termination due to mandatory enforcement.

**PART X - TRANSITIONAL PROVISIONS**

**Article 296**

**Applicability of provisions for transfer of the ownership**

1. The provisions of this Civil Code are applicable to all transfers of ownership over movable property or immovable property units after its coming into force.

Transfer of immovable property for which at the time of coming into force of the Civil Code only the underlying obligational legal transaction for the transfer of ownership existed whereas according to former law, legal validity was subject to additional requirements (especially approvals for registration), remain subject to special regulation other than Civil Code

**Article 297**

**Acquisition in good faith**

1. Acquisition in good faith is determined in accordance with Article 44 if the moment of the acquisition of possession in accordance with Article 36, paragraphs 1, 2 and 4 or the acquisition of the indirect possession in accordance Article 36, paragraph 3 as well as of a transfer in accordance with paragraph 4 have taken place after Law No. 03/L-154 came into force.

2. This also applies to the termination of rights in accordance with Article 40.

**Article 298**

**Exclusion of good faith**

The exclusion of acquisition in good faith is determined in accordance with Article 41 if the time when direct possession was acquired, or cease took place after the Law no. 03/L-154, dated 25/06/2009 came into force. This also applies if the time of the involuntary loss of the property was before the coming into force of this Civil Code.

**Article 299**

**Proof of improval for acquisition of ownership**

1. It is presumed to be owners od the immovable property persons, that on the day of the coming into force of Law no. 03/L-154, dated 25/06/2009, are in possession of a tapia-deed/ lists , rights certificate issued before 23rd March 1989 stating that they or their legal predecessor are owner of an immovable property,

2. The presumption according to paragraph 1 can only be rebutted only by the enforceable decision of a court.

3. Persons which at the day of coming into force Law no. 03/L-154, dated 25/06/2009, are in possession of a tapia-deed/certificate of property right issued after 23rd March 1989 stating that they or their legal predecessor are owner of an immovable property must have the Deed verified by the competent court of Kosovo in the procedure foreseen by law.

**Article 300**

**Compulsory registration of immovable property rights**

The acquisition of ownership over an immovable property requires entry into the Immovable Property Rights Register. The documents registered with a competent court prior to the establishment of the Immovable Property Rights Register must be registered in the Immovable Property Rights Register at the competent Cadastral Office in order to gain validity, with the coming in force of the Civil Code.

**Article 301**

**Application of *ratione temporis* provisions on acquisition of movable property by prescription**

A movable property cannot be acquired by acquisitive prescription if the owner involuntarily lost his direct or indirect possession over it in the period between March 23nd, 1989 and the coming into force of law no Law no. 03/L-154, dated 25/06/2009.

**Article 302**

**Application of *ratione temporis* provisions on acquisition of immovable property by prescription**

Ownership can be acquired according to Article 58, paragraphs 2 and 59 of the Civil Code only if the period according to 58, paragraphs 2 and Article 59 paragraph 1 and paragraph 2 (in case of real rights other than property), has begun counting after the time in which the immovable property rights register was established and commenced its activities.

**Article 303**

**Claims based on Articles 98 to 109**

Claims based on Articles 88 to 99 can also be made if necessary and useful expenditures were made before the coming into force of this Civil Code.

**Article 304**

**Ownership over a building unit**

1. Independent ownership over a building unit is to be registered on application of the enChapterd party as an encumbrance of the immovable property. An independent immovable property rights register (page) needs to be created for the building.

2. The acquisition of independent ownership over a building unit is only possible if the ownership over the building is registered as an encumbrance of the immovable property.

**Article 305**

**Compulsory application of norms on pledge**

The necessity, requirements and effects of registration of pledge must comply with the provisions, which are applicable on the coming into force of the Civil Code or which may come into force in the future.

**Article 306**

**Compulsory application of norms on mortgages**

1. Mortgages which are created after Civil Code entered into force shall be in compliance with the applicable conditions for the registration of mortgages.

**BOOK FOUR - FAMILY LAW**

**PART ONE**

**Chapter I – General Provisions**

**Article 1**

**Scope of Book IV**

This Book regulates engagement, marriage, cohabitation, relations between parents and children, parental responsibility, contact rights between children, parents and other caregivers, adoption, custodianship, protection of children without parental responsibility or care, the marital property regime, retention and adult protection, and other issues related to family relations.

**Article 2**

**Family**

1. Family is a community of parents, children and other relatives who in terms of this Book have reciprocal rights and obligations.

2. Family enjoys the right to special protection by the state at the way that is regulated by law..

3. Everyone has the right to respect for his/her private and family life in accordance to the law.

**Article 3**

**Principle rules on family relations**

1. Husband and wife have equal rights. They owe each other respect and mutual assistance. This also applies to cohabitation between a man and a woman. Husband and wife have same mutual rights and obligations in all legal-family relationships, especially related to parental care.

2. Children’s rights are protected. Both parents are responsible for the growth and education of their children until the age of 18. Parents, the competent state bodies and courts shall primarily take into account the best interest of the child.

3. Parents and children owe to each other assistance and consideration for the entire span of their lives.

4. Family life relies on the principle of solidarity, all family members shall mutually respect and assist each other.

5. Violence in the family is prohibited. Protection against violence is regulated by special law.

6. Protection of children's rights and interests is also done ex officio by Courts and other state bodies

**Article 4**

**Equal treatment**

All persons enjoy equal treatment of rights and obligations set forth in this Book. There shall be no direct or indirect discrimination against any person or persons based on sex, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or convictions, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status.

**Article 5**

**Social protection**

1. Children without parental care, and those with diagnosed mental or physical disorders as well as parents who are not capable to create necessary living conditions for themselves and their children are under special financial and social support.

2. The social community undertakes protection of elderly persons and adults who cannot take care of their affairs by reason of a physical, mental or psychological handicap or illness, in cases when they are not capable to ensure living conditions and have no other persons in their kin who are obliged by Law to provide assistance.

3. The will of any person who cannot take care of their affairs by reason of old age or a physical, mental or psychological handicap or illness must be respected.

**Article 6**

**Institutional protection of rights**

1. Custodian Body is an administrative municipal body competent for social issues. it consists of a group of experts with professional work experience in the specific field of responsibility.

2. Custodian Body may also be a body (group of experts as mentioned above) of a specific social institution that is established by the Municipal Assembly to carry out such obligations.

3. Custodian Body is primarily competent body for providing professional assistance and protection of the rights and interests of a child and other family members. The court is competent body for deciding disputes between family members, as well as for all measures of child protection that take place against the will of the parents.

4. Competent authorities act urgently in all procedures concerning family legal issues when children are involved and at the same time protect the wellbeing of children.

5. The Custodian Body, participating in the procedures, is authorized to present motions for protection of children’s rights and interests, to present facts that are not included, to suggest administration of necessary evidence, to exercise legal remedies, and undertake other judicial actions. Court is obliged to invite Custodian Body participating in the procedures, to all court hearings, and to deliver all the decisions.

**Article 7**

**Social welfare and special protection**

1. For realization of family relation’s rights, the parents and child are provided special protection by means of social welfare.

2. Children whose parents are unable or unwilling to exercise parental responsibility are given special protection.

**3.** Social protection of a child without parental care, a person with a disability and a person that for other reasons is not capable of caring for himself and his rights and interests must be ensured respecting the principles of human rights and rights of child and wellbeing of the person under custodianship.

**Article 8**

**Support Mbështetja profesionale për kontestet familjare**

When applying this book, legal and natural persons, providing professional assistance or solving disputes between family members, shall mutually cooperate.

**PART TWO**

**Chapter I – Engagement**

**Article 9**

**Engagement**

Engagement is the mutual promise of two persons of different gender to get married in the future.

**Article 10**

**Inability of lawsuit për lidhje të martesës për shkak të ekzistimit të fejesës**

1. No one can file a lawsuit for marriage due to the fact that he was engaged.

2. The Promise of a penalty if marriage will not be performed is void.

**Article 11**

**Liability to pay damages in case of relinquishment from engagement**

1. If a fiancé relinquishes from an engagement, he is obliged to compensate for any expenditures or obligations which were invested on expectation of marriage to the other fiancé, the parents of the other fiancé or third persons who acted on their behalf.

2. Liability for damages is limited to the extend expenditures or obligations were reasonable according to the circumstances.

3. There is no liability if there was an important reason for relinquishment form engagement.

4. The right to a lawsuit for claims by the engagement legal institute is prescribed with the expiration of the two-year term.

**Article 12**

**Responsibility of the other fiancé for revocation**

If a fiancé is responsible for the rescission by the other due to an important reason, he is liable for caused damages.

**Article 13**

**Return of gifts**

If engagement doesn’t end with a marriage, every fiancé may ask the other to return gifts he gave on the occasion of the engagement. In this case, provisions on unjust enrichment in Book Three of this law shall apply. In case one of the fiancés dies, the right to ask for return of gifts can’t be realized by other persons.

**Chapter II – Marriage**

**Sub-chapter I – Kuptimi i martesës**

**Article 14**

**Marriage**

1. Marriage is a legally registered community of two persons of different sexes, through which they freely decide to live together as husband and wife. Marriage is continuous legally regulated live community of husband and wife. Marriage is concluded by given consent of husband and wife and their signature before the official (registrar) of civil status.

2. Man and woman, have the right to marry and found a family without any limitation due to race, nationality or religion and they are equal to marriage, during marriage and at its dissolution.

3. According to this law husband and wife enjoy reciprocal rights and obligations.

**Article 15**

**Capacity for marriage**

1. The ability to marry is gained after acquiring full capacity to act.

2. A person who has reached the age of 16 can marry if the competent court allows the marriage for reasonable reasons.

**Sub-chapter II – Terms for Marriage**

**Article 16**

**Terms for marriage**

1. A person who has not reached the age of eighteen cannot marry.

2. For reasonable reasons and upon his/her request, competent court may allow marriage to an underage person older than sixteen years if finds that such person has reached the physical and psychic maturity necessary to exercise his/her marital rights and to fulfil marital obligations.

3. Before making a decision, court will seek opinion of Custodian Body, hear the minor and his or her parents, respectively his custodian. The court will also hear the person with whom the minor intends to marry, take opinion of relevant health institution and will investigate other relevant circumstances for the decision.

**Article 17**

**Certificate of marital status for foreigners**

1. People of foreign nationality shall bring a marital status certificate provided by the authorities of their home country proving their eligibility for marriage according to this law, namely that no marriage prohibitions or bans exist.

2. The certificate loses its validity, if marriage is not bonded six (6) months after the certificate was issued. If the certificate states a shorter time limit, this limit will apply.

**Sub-chapter III – Ndalesat dhe pengesat martesore**

**Article 18**

**Free will**

Marriage shall not be valid when the will has been obtained under coercion, threat or by mistake or any other lack of free will of the future spouses.

**Article 19**

**Existing marriage**

No one shall enter into a new marriage unless the previous marriage has legally ceased to exist.

**Article 20**

**Capacity to act**

1. A person who has been deprived of his capacity to act by a court decision cannot conclude a marriage.

2. Notwithstanding paragraph 1 of this Article, the court may exceptionally, allow such person to marry upon request. In such cases, court may seek the opinion of the parent, supervisor or custodian of the person and custodian body.

**Article 21**

**Consanguinity**

1. A marriage cannot be concluded between relatives in direct blood line or in indirect line such as brothers and sisters from the same father and same mother, sisters and brothers from father or mother, uncle and niece, aunt and nephew, neither between children of brothers and sisters of the same mother and father nor the children of the brothers and sister form father or from mother.

2. This will also apply to brothers and sisters from a father or mother, and if such relationship has ceased to exist because of adoption.

3. Extra-marital consanguinity is the same marriage ban as the marital one.

**Article 22**

**Adoption**

1. Adoption is a ban to marriage.

2. Consanguinity that is created by adoption is marriage ban same like consanguinity.

**Article 23**

**Affinity**

1. Persons that are in affinity cannot get into marriage; father in law and daughter in law, son in law and mother in law, stepmother and stepson, regardless of the fact whether the marriage that has created such relations has ceased to exist.
2. Due to justifiable reasons, competent court may allow marriage between persons in affinity, after seeking the opinion from the Custodian Body

**Article 24**

**Custodianship**

1. Marriage between the custodian and the person under custodianship is banned during the time of custodianship.

2. Due to justifiable reasons, the competent court may allow marriage between persons as mentioned in paragraph 1 after seeking the opinion from the Custodian Body.

3. Custodianship ceases upon marriage between these persons whereas marriage remains valid.

**Sub-chapter IV – Marriage application and procedure**

**Article 25**

**Marriage application**

1. Persons willing to marry shall file a request with the Municipal registrar.

2. A certificate of birth has to be attached to the request and, when necessary to prove the requirements for marriage set down in the law, other documents, like a certificate of divorce, a certificate for marriage-eligibility for foreigners or a passport.

3. The (official) registrar decides on the marriage date in agreement with the persons willing to marry.

**Article 26**

**Information on matrimonial property regime**

1. The registrar informs the couple that by marriage, they enter the legal property regime of equal participation in acquisitions of the property, except if they have concluded a contract for special property regime.

2. Registrar informs future spouses that they must conclude a notarial contract if they wish to change the legal matrimonial property regime as foreseen in paragraph 1 of this article.

**Article 27**

**Reciprocal information on health and other issues**

Upon request for marriage, registrar shall recommend persons willing to marry to until the marriage date reciprocally be informed regarding their health conditions, to visit a family consultancy to be provided with a professional opinion regarding the development of harmonious marital and family relations and to get acquainted with the opportunities and advantages of family planning and to agree on the future surname.

**Article 28**

**Premises for marriage**

1. Marriage is solemnly entered into in official premises specifically designated for this purpose.

2. Marriage is entered into within official premises, exceptionally in another convenient location based on the registrar's decision, with a special payment for entering into marriage outside official premises.

**Article 29**

**Procedure with the registrar**

1. To enter into marriage, it is necessary that two persons of opposite sex in the presence of another people freely declare their will and full consent for marriage in front of the registrar.

2. The statement shall be absolute and without dating.

3. Participating parties during the marriage are the future spouses, two witnesses and the registrar.

4. Any person with the capacity to act may serve as witness during the marriage.

**Article 30**

**Registrar’s cooperation**

The registrar is obliged to allow the marriage procedure if there is no ban or prohibition. The registrar is obliged to refuse cooperation in the marriage procedure, if any prohibition or ban exists.

**Article 31**

**Entering into marriage**

The marriage commences with the report presented by the registrar, stating the presence of the future spouses and the non-existence of marital bans and prohibitions provided for by law. This is concluded, based on the documents and statements of future spouses and witnesses.

**Article 32**

**Marriage refusal**

If the registrar concludes the existence of any marriage ban or prohibition, he verbally informs the applicants that they cannot marry and makes official record in the minutes therein.

**Article 33**

**Marriage**

1. In case the registrar concludes the non-existence of prohibition and bans, he then shall inform the future spouses about the provisions of this Book regarding their rights and obligations, and shall read these provisions to them.

2. The registrar shall ask each future spouse separately, whether they agree to marry with one another.

1. After ensuring statements consenting for the marriage, the registrar shall announce the marriage bonded.
2. Marriage is considered to be bonded, after the spouses, witnesses and registrar sign in into the register.

**Article 34**

**Administrative procedure**

1. If persons applying for marriage disagree with the verbal communication as provided for in Article 32, of this book they may request the registrar to bring a ruling on the refusal of the marriage request.

2. The ruling provided for in paragraph 1 may be appealed within eight (8) days upon notification by competent bodies regarding the disallowance of marriage.

3. Based on the request provided for in paragraph 2 of this article, the competent body is obliged to issue a decision through administrative procedure within fifteen (15) days upon receipt of the request.

**Article 35**

**Attendance**

In case that on the decided date of marriage the bride, groom or both do not appear and their absence is not justified, the request for marriage shall be deemed to have been withdrawn.

**Article 36**

**Marriage register (of married)**

1. The registrar records marriage in the marriage register, which is then signed by the spouses, two witnesses and the registrar.

2. Immediately upon marriage, the spouses are provided with a certificate from the marriage register.

**Article 37**

**Preliminary issues**

Persons marrying according to religious rules shall not perform the wedding, unless the spouses testify the legal entry into marriage through a certificate, issued by the marriage registrar.

**Article 38**

**Documentation**

1. The official from the religious community, in front of whom marriage was entered into in a religious way, shall provide the registrar with a document signed by the spouses, the witnesses and the representative of the religious community, proving the religious entry into marriage and this will be recorded on the place where legal marriage was previously recorded.

2. The document foreseen in paragraph 1 shall be delivered to the registrar within five days from the date of entry into marriage.

**Article 39**

**Registration**

1. The registrar is obliged to record the marriage entered into in a religious way in the marriage register within three days upon receipt of the document provided by this book, if there is previous legal entry into marriage.

2. Immediately upon recording religious marriage in the marriage register, the registrar shall issue legal act that will inform the parties that there religious is recorded along legal marriage.

**Sub-chapter II – Cohabitation**

**Article 40**

**Cohabitation of man and woman**

1. Cohabitation of a man and a woman is the factual relationship between an unmarried adult man and an adult woman who openly live as a couple, characterized by a joint life and work that represents a character of stability and continuation.

2. Cohabitation of a man and a woman is equal with the status of marital spouses on the aspect of rights and obligations for caretaking, reciprocal financial support, and property rights as specified in this Book.

3. Cohabitation of a man and a woman does not produce effect of paragraph 2 if at the time of its creation the following marital obstacles existed: existing marriage, consanguinity at the level forbidden by law, the adopting gender, mental illness, and legal incapacity unless any of the obstacles ceased during the existence of cohabitation.

**Article 41**

**Burden of proof**

A person who wants to derive rights from cohabitation of a man and a woman must prove its existence and duration.

**Article 42**

**Benefits**

During their cohabitation, cohabitants have mutual obligation (to each other) for same respect, mutual understanding and support like under the legal marriage.

**Chapter III - Të drejtat dhe Detyrimet e Bashkëshortëve**

**Article 43**

**Matrimonial Spouses**

1. Spouses in marriage are equal, in all personal and property relations.

2. The marriage is entered into for the permanent purpose.

3. Spouses are obliged to be faithful to one another and reciprocally assist, respect and financially support one another, especially in case that the other is lacking a sufficient material basis for living.

4. Spouses shall develop and live out the feeling of reciprocal solidarity, as well as solidarity towards their children.

**Article 44**

**Matrimonial surname**

1. Spouses shall determine their common surname by agreement, respectively the surname that they are going to use after marriage.

2. When entering into marriage, the spouses through agreement may decide:

2.1. that each of them retains his surname;

2.2. that the common surname shall be the one of either spouse;

2.3. to add the surname of the spouse to one surname.

3. A surname combination shall not be possible, if the surnames of the spouses are already composed of a double surname. In this case only one of the surnames may be combined with the name of the other spouse to become the matrimonial surname.

4. In case spouses do not decide on a matrimonial surname, each of them retains his own surname.

**Article 45**

**Residence, household and occupation**

1. Matrimonial spouses decide on the place of residence through agreement.

2. The spouses decide for maintaining common household through agreement.

3. In case one of the matrimonial spouses is exclusively in charge with the maintenance of household, he manages the household on his own responsibility.

4. Matrimonial spouses’ both together contribute to the family maintenance in proportion to their individual capability. Mutual contribution of the spouses is considered to be household maintenance as well as other earnings that are necessary for family living and it is presumed that they are equal with their contribution in family expenditures.

5. Each spouse is independent in selecting a job and vocation, but spouses shall previously to that find a mutual consent about this choice.

**Chapter IV - Marrëdhëniet Pasurore të Bashkëshortëve**

**Article 46**

**Property regime in marriage and cohabitation**

1. Matrimonial spouses during their common life may have special (individual) property gained prior to the marriage bond, as well as the joint property that is created through their joint work during spousal life.

2. The special (individual) property of spouses, other than the one that was made prior to the marriage bond, may also be created during the term of marriage, inheritance, donation or other form determined by this particular code or law.

3. The joint property of married spouses is the property acquired through their joint or separate work during the continuation of marriage and the income derived from such property if the matrimonial spouses have not determined the property estate regime gained during marriage.

4. Matrimonial spouses at any time during their joint matrimonial life may with a special contract regulate property issues and decide on their property regime and administration.

**Article 47**

**Special (individual) property (Ownership) of spouses**

1. Property (ownership) belonging to the spouse at the time of entering into marriage remains his special property (ownership) even during the marriage.

2. Special property (ownership) is also property acquired during marriage through inheritance, donation, or other legal form of property acquisition.

3. Special property (ownership) invested in the increase of joint property remains a special property. The value of special property remains unchanged regardless of the addition or reduction of the joint property for which the special property of one or both spouses is engaged.

4. The property (ownership) that will belong to the spouse, upon division of joint property, becomes a special property.

5. The product of art, intellectual work or intellectual property is considered special property of the spouse who has created it, while the gains from that intellectual product are joint property of spouses;

6. Each spouse independently administers and possesses his/her separate property during the course of the marriage.

**Article 48**

**Joint property**

1. Joint property of spouses is the property acquired by joint or separate work during the course of the marriage as well as income deriving in any other manner from the joint property.

2. Joint property may also include property rights and obligations rights (claims).

3. Property acquired jointly through gambling games, from joint gifts, intellectual property and other similar forms, during the duration of marriage is considered as joint property.

4. Spouses are joint owners of joint property in equal shares unless they have otherwise agreed on a premarital contract or similar contract during marriage, or if one of the spouses does not dispute the sharing of joint property in equal parts by summoned to calculate the contribution to the creation of joint property.

**Article 49**

**Administration of joint property**

During the marriage, the spouses administrate and dispose of joint matrimonial property together and in agreement.

**Article 50**

**Registration of rights on joint immovable property**

1. Rights on joint immovable property of spouses, are recorded in the immovable property rights register on behalf of both spouses as joint property in unspecified parts.

2. When only one of the spouses is registered as property right holder or any other right of the joint property in the immovable property rights register, it shall be considered as if registration was carried out on behalf of both spouses. Immovable property that is registered on the name of one of the spouses cannot be alienated without the consent of both spouses.

3. A spouse who is not registered as a holder of a right of ownership in an immovable property that is joint property can at any time apply to the name of his spouse other than his name as a titular holder of joint immovable property.

**Article 51**

**Enforcement of applicable laws**

Applicable laws regulating rights and obligations on immovable property shall also apply mutatis mutandis to immovable property in joint property, unless otherwise provided by this Law.

**Article 52**

**Personal and joint obligations, obligations from obligational relationships**

1. The property character obligations of the spouses are:

1.1. obligations incurred jointly by both spouses;

1.2. obligations incurred by one spouse in order to meet the appropriate family needs;

1.3. obligations incurred for the use or administration of joint property or in the interest of the joint property;

1.4. obligations related to a spouse’s professional activities.

2. Joint obligations can be recovered from the joint property and from the separate property of the spouse. If the spouses are jointly liable, the obligations may also be recovered from the separate property of either spouse.

3. Personal obligations related to obligational relationship or crime can also be recovered from half of the net value of the joint property where the special property of a debtor spouse, income and gains are insufficient for recovery.

1. Any obligation not forming part of the joint obligation under this Article shall be considered as separate obligation.

5. The spouse, who has fulfilled the solidarity obligation from his special property, has the right to demand that the other spouse reimburse the part of the obligation that he has fulfilled.

**Article 53**

**Burden of proof**

1. Spouses should prove their contribution to the joint property created during the term of marriage.

2. If spouses cannot prove their contribution, then their contribution is considered to be equal.

3. Obligations created by spouses, if cannot be proved to be separate obligations, are considered to be joint obligations.

**Article 54**

**Contractual arrangements on possession and administration of joint property**

1. Spouses may contract that administration and possession of joint property in a whole or in parts shall be carried out by one of the spouses.

2. The contract may be limited only to the administration or possession. Unless otherwise contracted, administration also includes possession within regular activity.

3. Neither of the spouses can arbitrarily deprive the other spouse of joint property

**Article 55**

**Apportioning (division of joint property) by agreement**

1. Spouses, at any time may divide their joint property by written agreement, certified with the notary.

2. Division of joint property may also be made in court proceedings by a court of competent jurisdiction where the spouses cannot reach an agreement and require that their shares in the joint property be designated as separate s to register the right of ownership over their shares.

3. These separate parts are joint ownership and are expressed in percentages or whites until physical separation occurs, if property can be physically divided.

4. Division the joint property by spouses cannot cause harm to third parties.

**Article 56**

**Evaluation of contribution in creation of joint property,**

**in case of disagreement**

If agreement on division of joint property is not reached due to the assessment of the contribution, then this will be decided by the court. Court decision should be based on the spouse's contribution, by assessing all the circumstances and not by considering only personal income and other income of each spouse, but also the assistance of one of the spouses offered to the other spouse, such is care for children, management of home affairs, care and management of property, as well as any other form of work and co-operation related to the administration, maintenance and increase of joint property.

**Article 57**

**Determination of shares**

1.Share of spousal property is determined based on the spouse's contribution through the assessment of all circumstances and not by considering only the personal income and other income of each spouse but also the assistance of one of the spouses offered to the other spouse, such is care for children, management of home affairs, care and management of property, as well as any other form of work and co-operation related to the administration, maintenance and increase of joint property.

2. The largest share of the spouse in a determined object or determined right, may be determined by court only if that object or right is economically independent compared to other objects and rights of the joint property and the spouse, for obtaining such object or right, has largely participated with income from his separate property.

3. The spouse, who after the cease of the marital community increases the value of objects from the joint property by investment, has the right to claim remuneration from the other spouse, if investments were necessary and useful. Remuneration shall be in proportion with his share in the object.

4. The other spouse may be released from such obligation, if he accepts to receive the largest share of that object in proportion with the investments made.

**Article 58**

**Time limits and subjects that can demand division of joint property**

1. Division of joint spousal property may be requested during marriage, upon dissolution of marriage and at its dissolution.

2. Persons eligible to demand division of joint property are: spouses, heirs of a dead spouse of a spouse that is announced dead, creditors of one of the spouses, if the claims of the creditor cannot be realized from the separate property of that spouse who is the debtor. Creditors cannot demand division of joint property of matrimonial spouse if their claim is prescript.

2. Creditors may not demand the apportioning after their claim is time-barred.

**Article 59**

**Extinction of joint property**

1. Extinction of the legal regime of spouse’s property acquired during the marriage occurs:

1.1. on the day the death of a spouse or at the day of announcement of one spouse dead;

1.2. on the day of annulment of the marriage, from the day when the request for annulment of the marriage was submitted;

1.3. in case of divorce, from the date of application for divorce;

1.4. by termination of their joint matrimonial live, form the day of their separation;

1.5 with an agreement for division of joint spousal property.

**Article 60**

**Property acquired during cohabitation**

1. Property acquired by joint work during cohabitation is considered joint property of cohabitants.

2. Provisions of this code relating to evaluation and division of joint property of matrimonial spouses applied analogically for joint property of man and woman in cohabitation.

**Article 61**

**Premarital or marital agreement related to property acquired during marriage**

1. A marital agreement related to the property acquired during the marriage may be concluded at any time before entering into marriage or during marriage.

2. Premarital agreement shall come into effect on the day of the registration of the marriage, while the contract concluded by spouses during the marriage enters into force at the moment of its notarisation.

3. By a marital agreement, the fiancées or spouses define their property relations for the future in accordance to the provisions of this code and applicable laws.

4. The marital (premarital) agreement cannot be contrary to the legal provisions and should respect applicable laws of the country where the marriage is entered to.

5. A person, who is legally incapable, cannot enter into a marital agreement.

**Article 62**

**Agreements between persons in cohabitation**

1. People living in cohabitation may conclude a written agreement authenticated by a notary regarding the property that they will acquire during cohabitation by their joint work. Cohabitants may conclude such agreement during cohabitation period.

**Article 63**

**Notarial form and certification of agreement**

1. Agreements related to property issues are only valid if entered into before the notary.

2. The notary will read out the agreement (contract) and explain to the parties consequences of the agreement (contract). Notary ensures that the spouse who loses rights through the agreement understands this fact and that he freely decides to sign the agreement.

3. The contract shall be made in writing, signed in front of the notary after the enlightenment of the parties and will be certified by the notary.

**PART THREE**

**Chapter I – Dissolution of Marriage**

**Sub-chapter I – General Principles**

**Article 64**

**Dissolution of marriage**

1. The court and any person concerned with a dissolution of marriage shall have regard to the following general principles:

1.1. Institution of marriage shall be preserved;

1.2. spouses to a marriage which may have dissolved are to be encouraged to take all practicable steps, whether by marriage counselling, reconciliation procedures foreseen by this code, mediation or other methods, to save the marriage;

1.3. a marriage which has irretrievably broken down should be dissolved;

1.3.1. with minimum distress to the parties and to the children affected;

1.3.2. dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as possible in the circumstances; and

1.3.3. without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end.

1.4. any risk of harm or violence to spouses and to children should be avoided.

**Article 65**

**Ways of dissolution of marriage**

1. Marriage is dissolved upon death of the spouse, announcement of the missing spouse dead, annulment or divorce.

2. Marriage is dissolved only upon submission of claim or proposal for divorce, and by court order through annulment (void marriage) or divorce (valid marriage).

3. Annulment or divorce produce legal effects when the judgments of the court annulling or divorcing marriage becomes final.

4. When a missing spouse is announced dead, marriage is dissolved the day when the death of the missing spouse is concluded by final judgment.

**Article 66**

**Dissolution of cohabitation**

No legal action shall be required to dissolve cohabitation.

**Sub-chapter II – Marriage Annulment**

**Article 67**

**Collision of marriages**

1. Marriage entered into at the time of existence of previous marriage of one of the spouses is void.

2. New marriage entered into at the time of the existence of the previous marriage of one of the spouses shall not be annulled, if previous marriage was dissolved in the meantime.

3. When both marriages are dissolved simultaneously due to the death of the spouse who entered into a new marriage, while still being legally married to another person, new marriage shall be annulled, except when the new marriage has lasted for several years and the spouse from the previous marriage has not undertaken actions to re-establish marital relationship and cohabitation.

**Article 68**

**Violence and threat**

Marriage shall be annulled if the spouse has given consent to marry while under violence or serious threat.

**Article 69**

**Formal deficiencies that cause annulment of marriage**

1. Marriage may be annulled if the formal requirements for marriage foreseen in Articles 14 to 25 and Article 28 of this Book are not met. Namely if:

1.1. the spouse doesn`t have full capacity to act because mental illness; or

1.2. marriage was entered into between persons in consanguinity or persons of the same kin based on adoption or affinity.

**Article 70**

**Error and deceit**

1. Marriage may be annulled if entered into by error regarding the identity of the spouse.

2. Marriage entered into because of wilful deceit regarding facts, which, if known in time would have stopped the spouse from entering into such marriage, and which now make common life unbearable shall be annulled.

**Article 71**

**Lack of intent**

1. Marriage entered into without the aim of co-existence of the spouses is null.

2. Marriage is void when the spouses through marriage were in fact not interested to establish cohabitation (joint lif) but want to hide some other legal action or primarily want to achieve another goal (i.e. legal succession, family pension, escape from criminal liability or misuse of any other rights).

3. Such marriage shall not be annulled, if it is later decided to establish cohabitation.

**Article 72**

**Right to file claim**

1. Persons eligible in filing a claim for the annulment of marriage due to reasons provided for in this Book are the spouses, public prosecutor and all other persons who have a direct legal interest in the annulment of marriage.

2. When reasons provided for in this Book cease, the right to file a claim for the annulment of marriage belongs only to the spouse who has suffered from the error or legal incapacity. The claim may be filed within one year from the date, the aforementioned reasons ceased to exist.

**Sub-chapter III – Divorce**

**Article 73**

**Divorce**

1. Marriage may be dissolved by divorce only upon decision of a court upon claim or proposal of one spouse or both spouses.

2. One spouse or both may by mutual agreement request a divorce by filing a proposal with the competent court.

3. If one of the spouses files a claim for divorce and the other spouse the latest until the conclusion of the main court session expressly declares not to reject the soundness of the requests in the complaint, it shall be considered, that the spouses have submitted a proposal for divorce by agreement.

**Article 74**

**Causes for divorce**

1. The spouse may request divorce when their marital relations have seriously and continuously become disordered and when due to other causes the marriage has irretrievably broken down.

**Sub-chapter IV – Protection of Children and Spouses**

**Article 75**

**Principles of protection**

1. The court will not dissolve the marriage during the pregnancy of the wife with a joint child and until their joint child becomes one year old.[Alternative: The spouse cannot file a claim for divorce during the pregnancy of a woman with a joint child and until their child reaches age of one (1) year].

2. Together with the claim for divorce by mutual agreement, spouses are obliged to submit a written agreement of custody, education and feeding of their joint children, as well as a written proposal on how personal contacts between the child and both of the parents shall be guaranteed in the future.

**Article 76**

**Necessary livelihood of spouse**

1. During court procedures of marriage disputes, based on claim, court may determine by decision about temporary measures to provide financial livelihood for the spouse.

2. Appeal against the ruling provided for in paragraph 1 of this Article does not stop the execution of the ruling.

3. If the circumstances make it necessary, one spouse may demand that the other permit him the sole use of the matrimonial home or of part of the matrimonial home for the time of the marriage court disputes. Court will render the decision considering all the circumstances of the case, in particular the best interests of children living in the household, any violence used by a spouse towards the other or the children, and financial rights and interests of both spouses

**Sub-chapter V – Procedura në Kontestet Martesore**

**Article 77**

**Competence**

In marital disputes, apart from the court with overall territorial jurisdiction, the court in the territory of which the spouses had their last joint residence, shall have jurisdiction

**Article 78**

**Right of the Custodian**

The custodian, may file a claim for divorce on behalf of the spouse suffering from diagnosed mental illness or the person suffering incapacity to act only with previous consent of the Custodian Body.

**Article 79**

**Exclusion of Public**

Public is excluded from the procedures of marital disputes.

**Article 80**

**Principles**

1. Court decision on divorce shall be taken after a period of efforts of reconciliation guided by the court in special court sessions except when: 1. One of the spouses is incapacity to act; 2. When one or both spouses live abroad; 3. When place of residence of one of the spouses is not known.

2. The reconciliation period shall allow spouses a period for reflection and consideration of their decision and to consider all circumstances and consequences.

**Article 81**

**Reconciliation procedures**

1. In divorce disputes, court is obliged to try to achieve formal reconciliation.

2. Decision on divorce is sent to the parties only after concluding the procedures and only if reconciliation was not successful.

**Article 82**

**Reconciliation sessions**

When court is conducting reconciliation procedure of the spouses, it shall assign special sessions in efforts to reach reconciliation, as far as it concludes that chances to achieve reconciliation still exist.

**Article 83**

**Participation in reconciliation sessions**

1. Both spouses are summoned to personally participate in the session in efforts to achieve reconciliation.

2. When one or both spouses duly summoned do not justify the absence at the session in efforts to reach reconciliation, the court shall assess whether to assign a new session or to conclude that reconciliation has failed.

3. When one or both spouses who through a joint proposal have initiated the procedures for divorce by mutual agreement do not appear in the session in efforts to reach reconciliation and their absence is not justified, it shall be considered, that they have waived the proposal for divorce by mutual agreement.

**Article 84**

**Subject matter jurisdiction of Custodian body in reconciliation procedure**

1. If the spouses have one or more joint minor children, the reconciliation procedure is conducted in front of Custodian Body by applying social work and other professional methods, by utilizing services of marriage and family councils as well as other professional institutions.

2. Procedures shall be supported by the principle of free will and co-operation.

3. In other cases, court conducts reconciliation procedure of spouses, when the president of court panel doesn’t consider that the reconciliation procedure shall be transferred to the Custodian Body.

4. In the written record transferring reconciliation to the Custodian Body, names and addresses of spouses shall be included, as well as the date of divorce procedures and the main reasons for requesting divorce. If the spouses have minor children, all data referring to them shall also be provided.

**Article 85**

**Territorial legal jurisdiction**

1. Jurisdiction for reconciliation procedure, lies not only with the Custodian Body in the territory of which is the transient or dwelling place of the defendant, but also with the Custodian Body in the territory of which the spouses had their last joint residence.

2. When procedures commence with the claim for divorce by mutual agreement, the Custodian Body in the territory of which one of the spouses has his transient residence or dwelling place shall be competent for the reconciliation procedure of spouses, as well as the Custodian Body in the territory of which the spouses lastly resided jointly.

**Article 86**

**Protection of children in reconciliation procedure**

During reconciliation procedures, Custodian Body concludes under what living and developing conditions joint children of the spouses are found in and undertakes all necessary measures to ensure education, security and financial livelihood, by making efforts to achieve agreement between the spouses in order to protect children’s interests.

**Article 87**

**Deadline for reconciliation procedure by Custodian Body**

1. Reconciliation procedure in front of the Custodian Body may not last longer than three months but can be extended, if the spouses agree to continue such procedure after the expiry of the this deadline.

2. Custodian Body is obliged that without any delay submit to the court a written report on the results of the reconciliation procedure.

**Article 88**

**Court Investigations/Inquiries**

**1.** When procedure by the proposal of the spouses for divorce by mutual agreement have commenced, facts supporting the proposal are not investigated, however, the court may decide to conduct evidentiary proceedings, same as for the procedures in divorce by claim, if during the reconciliation proceedings considers that joint minor children due to justifiable reasons require preservation of marriage.

2. When spouses have joint children, court may investigate the facts and conduct evidentiary proceedings relating to that part of the proposal of spouses dealing with keeping, education and provision of financial livelihood for children, if convinced that the proposal of parents regarding these issues doesn’t provide necessary guarantee that the interests of their minor or disabled children shall be properly protected through such agreement.

**Article 89**

**Determination of Facts on which the request is based**

1.Facts based on which the party bases its request in marital disputes, may be considered disputable by the court, even when such facts are no longer disputable between parties.

2. No judgment may be issued for marital disputes due to absence or judgment by concession.

**Article 90**

**Withdrawal of a claim**

1. In divorce disputes, the plaintiff may withdraw the claim until the conclusion of the main court session without the consent of the respondent, whereas with the consent of the respondent until the procedure becomes final.

2. Spouses can withdraw joint proposal for divorce by mutual agreement may be undertaken until the judgment for divorce becomes final. The proposal shall be considered to have been withdrawn even when one of the spouses withdraws from the proposal.

**Article 91**

**Limitation of Appeal**

Judgment dissolving marriage according to the joint proposal of the spouses for divorce by mutual agreement may be appealed only because of:

1. Essential violations of provisions of the contentious procedure,

2. Due to the fact that the proposal was submitted by mistake or under coercion or deceit.

**Article 92**

**Prohibition of extraordinary remedies**

If marriage has been dissolved or annulled by final judgment, a decision for divorce, respectively for annulment of the marriage may not be attacked with extraordinary legal remedies.

**Article 93**

**Division of joint property**

1. At the date of the dissolution of the marriage, property that is acquitted by joint work during marriage must be determined, evaluated and divided as provided for in provisions of this Book.

2. Division of joint property of spouses can be deemed during the marriage and at the time of divorce.

3. Right for division of property is not prescriptive, but does not affect rules on statutory prescriptions and prescriptions of claims.

**Article 94**

**Division guidelines**

1. When dividing joint property, the debt of the joint property shall be calculated in the shares of each spouse.

2. If joint property is not sufficient to cover the existing obligations to the joint property, all joint liabilities remaining after the division may be covered by separate property of the spouses. A spouse who has paid joint obligations before or after termination of marriage has the right to regress the other spouse for half of the payment.

3. When dividing the property takes place upon request of one of the spouses of a legally registered marriage, consideration should be given to ensure that his/her share includes those objects of the joint property which serve his/her craft or vocation.

4. If value of objects provided for in paragraph 3 of this Article is disproportional high, compared to the value of general joint property, those objects shall also be divided, except in cases when the spouse to whom such shares should belong to does not ensure pecuniary compensation of the relevant or approximate value to the other spouse, respectively does not transfer another object or share with relevant or approximate value to the other spouse. For these compensation purposes consent of both spouses is required.

5. When division is initiated upon request of one spouse, he shall be provided with those objects of the joint property which exclusively serve for personal use.

**Article 95**

**Pecuniary Compensation**

When the share of one spouse from the joint property is disproportional smaller than the share of the other spouse, the court, upon request of one of the spouses, considering all the circumstances and the values of his share may determine pecuniary compensation for the spouse.

**Article 96**

**Movable items**

1. Each of the spouses may request movable items from the joint property to be divided to the other spouse on behalf of the share in the joint property of the spouse who has kept those items upon termination of their coexistence and has silently possessed them for at least 3 years or has only bought them for his own use without approval of the other spouse.

2. On application of paragraph 1 of this article, other spouse may request to be provided with the relevant share from other movable items and if the values of such items are not sufficient, he is eligible to pecuniary compensation for the difference.

**Article 97**

**Determination of joint property in case of non-agreement**

When there is no agreement about which part of the joint property belongs to which spouse, this shall be decided by the court.

**Article 98**

**Items for children’s use**

The spouse to whom the joint children have been entrusted to for protection and education, besides his share, is provided with items serving only the children or which are designated only for their direct use, except when the value of these items is un-proportionally high compared to the value of the general joint property. In this case difference shall be pecuniary compensated by spouse to whom children are entrusted.

**Article 99**

**Court decision on matrimonial domicile**

1. If spouse in the divorce procedures does not agree upon who shall be enChapterd to live in the matrimonial domicile in the future or about the distribution of commonly used furniture and other household belongings, decision shall be taken by the court, on request of one or both of the spouses.

2. Court shall decide with close regard to each individual case, especially when the decision touches the welfare of children and the social position of the spouses.

**Article 100**

**Right on pre-emption**

When share of the spouse from the joint property is finally determined, other spouse has the right on pre-emption of that share.

**Article 101**

**Surname of spouse after divorce**

1. Spouse, who at the time of entering into marriage has changed surname, after dissolution of marriage, may acquire its previous surname.

2. Statement for acquiring previous surname shall be submitted within six months from the dissolution of marriage.

3. Statement shall be submitted to the registrar who maintains register of marriages where marriage was entered into based on the place of residence of the person providing the statement.

**Article 102**

**Limitation of liability**

Other spouse is not responsible for the obligations that one of the spouses had before entering into marriage, as well as for personal obligations, that he accepts during the marriage.

**Article 103**

**Inheritance**

If marriage is dissolved or annulled by court order, the spouse loses the right for statutory inheritance or inheritance by will.

**PART FOUR**

**Chapter I – Legal Relations between Parents and Children**

**Sub-chapter I – Paternity**

**Article 104**

**Presumption of paternity**

1. If a child is born during the marriage or within 300 days after breach of marriage then husband of the child’s mother shall be considered as child`s father.

2. When the child was born during the later marriage of his mother after the period of 270 days up to 300 days after dissolution of her previous marriage, husband of mother from previous marriage will be considered as father of a child except when the husband of the mother from the later marriage with her consent accepts the child as his own.

**Article 105**

**Children born in marriage**

1. A child shall be considered to have been born in marriage when his parents are married at the time of the child birth.

2. If the parents of extra marital child intended to enter into marriage but were impeded due to death of one spouse or due to a marriage ban, which arose after conception, upon request of one parent or the child, court shall in an extra contentious procedure announce that the child was born in marriage.

3. When none of the parents is alive, or the parent alive has been deprived from capacity to act or from parental custody, procedure to announce minor child to have been born in marriage, shall be initiated by the Custodian Body

4. Under the conditions of Paragraph (2) of this Article, request to announce the marital child may also be submitted in the dispute for the verification of paternity, if paternity has not been previously verified by acceptance or by court decision.

**Article 106**

**Children born out of marriage**

Father of the child who was not born in marriage or during the period of 300 days after the dissolution of marriage, shall be considered the husband who accepts the child as his own or the person, the paternity of whom has been verified by court decision.

**Article 107**

**Eligibility for recognition of Paternity**

Paternity may be recognized to a male who is capable to act and who has reached the age of 16, as well as to a person who has partially been deprived from his capacity to act but is capable to understand content of the statement for recognition of paternity.

**Article 108**

**Principles on recognition of paternity**

1. The person considering himself father of the child may accept paternity in minutes in front of the registrar.

2. Paternity may also be recognised before the Custodian Body, before the court or another duly authorized body. These bodies are obliged, without delay to submit verified minutes to the competent registrar who shall then register child in the register of births.

3. Paternity may also be recognized by will.

4. The statement for recognition of paternity cannot be provided by a proxy representative.

**Article 109**

**Procedure for recognition of paternity in front of official- registrar of civil status**

1. When mother of the extra marital child, announces birth of her child she may present the person she considers father of her child. She may provide verbal statement to be recorded in the minutes of registrar or before the body, authorized to prepare public documents, in a verified document or a will.

2. When the mother has not provided written record about the person she considers to be the father of her child, the registrar shall give advice regarding her rights to do so.

3. After taking mother’s statement regarding identity of her child’s father, he shall ask the mentioned person to declare about his paternity directly before the registrar or to provide a certified document within a time limit of 30 days. Invitation of such individual must be submitted in person and based on the methods providing confidentiality.

4. The registrar shall draft minutes regarding undertaken actions and verbal statements of the child’s mother and the person whom the mother alleges to be the father of the child.

5. If the invited person declares not to be the father of the child or within 30 days does not express himself regarding the paternity of the child, the registrar shall inform mother of the child thereupon.

6. When invited person declares before the registrar, to consider himself to be the father of the child, and this is recorded in the minutes or in the verified document, the registrar shall officially register him as father of the child in the register of births and shall inform child`s mother regarding this registration.

**Article 110**

**Recognition of paternity before birth and after death of a child**

1. Statement for recognition of paternity may also be provided before the child’s birth. Such statement produces legal effect, provided that the child is born alive.

2. After death of a child, paternity may be verified only by court decision upon request of authorized persons and if they have a legal interest for this.

**Article 111**

**Consent of the mother**

1. Recognition of paternity produces legal effect and is registered in the register of births only if mother of child agrees with such recognition.

2. Statement on consent for recognition of paternity may be given by mother according to the regulations provided for in Article 108 of this Book.

3. If she has not presented the same person as father of the child, registrar is obliged to summon the child’s mother for her statement within thirty 30 days from the recognition of paternity.

**Article 112**

**Consent of the child**

1. If child is older than 16 years, consent of the child shall also be required for recognition of paternity. Such consent shall be provided as foreseen in Article 114. When child is legally incapable consent is given by his legal representative.

2. When the child regardless of his age is in continuous incapacity to act or mother is no longer alive or with unknown residence or has been announced dead or has been completely deprived from her capacity to act, statement regarding consent for recognition of paternity shall be provided by custodian of the child with the permission of the Custodian Body.

**Article 113**

**Court procedure for disagreement**

1. If mother of a child or child older than 16 years of age, or the custodian of a child does not agree with the recognition of paternity, or when they do not declare themselves concerning this issue within 30 days after being informed of recognition, person who has recognized a child as his own may submit a claim to the court, in order to verify that he is child`s father.

2. Claim may be submitted within a period of three years after being informed about disagreement of the child`s mother. If in the meantime paternity of another person has been verified, claim shall not be submitted after expired date for rejecting paternity of such person.

**Article 114**

**Legal effect of the statement of recognition**

1. Statement for recognition of paternity, statements of the mother and child and consent for recognition of paternity shall not be revoked.

2. Person giving a statement for recognition of paternity may request annulment of such statement, if it was given under coercion, deceit or mistake.

3. Claim for annulment of a statement may be submitted within a period of six months from the date, coercion ceased to exist or the moment mistake is noticed.

**Article 115**

**Extra Marital Children**

1. Apart of a person considering himself father of the child, the child and the child’s mother may also submit a claim for paternity verification.

2. Extra marital child may submit a claim for paternity verification at any time.

3. If child is minor or is legally incapable to act, mother may on his behalf submit a claim. If mother is not alive, or has been deprived from parental responsibility or mother`s place of residence is unknown, claim may be submitted by custodian with the permission of Custodian Body.

4. Mother may submit a claim for the verification of paternity as long as she has parental right for the child.

**Article 116**

***Ex officio* action**

1. When the mother has recorded specific person to be father of her child and within a period of one year from the child’s birth does not initiate paternity verification procedure, Custodian Body may *ex officio* initiate such procedure on behalf of a child. In this case the child is assigned a special custodian to conduct the procedures.

2. Custodian Body shall not initiate the procedure of *ex officio* verification of paternity, if mother objects to this action due to justifiable reasons.

**Sub-chapter II – Maternity**

**Article 117**

**Verification of maternity**

Provisions of this Law regarding verification of paternity shall also apply for verification of maternity

**Sub-chapter III – Rejection of Paternity and Maternity**

**Article 118**

**Rejection of paternity by husband**

1. Husband may reject paternity of the child born by his wife during marriage, or before expiry of 300 days from dissolution of marriage, if he does not consider himself being the father of the child.

2. Claim on rejection of paternity may be submitted within six months from the time of acknowledgement of the fact that gave reason for the assumption of paternity. Claim shall not be submitted later than a period of 10 years after the child’s birth.

3. If husband of the child’s mother has been completely deprived from his capacity to act, claim rejecting his paternity may be submitted by his custodian with the permission of the Custodian Body.

**Article 119**

**Rejection of paternity by mother**

1. Mother may reject a father of the child to be the person, who according to Paragraph 1 of the Article 104 is considered to be father of a child.

2. Claim rejecting paternity by the mother shall be submitted within six months from the child’s birth.

**Article 120**

**Rejection of paternity on child`s initiative**

1. Child may reject paternity of a person, who according to this Book is considered to be his father.

2. Child may submit a claim rejecting paternity. When child is minor or legally incapable, claim on his behalf may be submitted by mother and, if the mother is no longer alive or her place of residence is unknown or she has not legal capacity, or she has been deprived from parental right, claim may be submitted by custodian with the permission of Custodian Body.

3. Child’s right to claim rejection of paternity is not prescriptive.

**Article 121**

**Rejection of paternity by third person for an extra marital child**

1. Person considering himself to be the father of an extra-marital child may claim invalidity of the paternity of the other person who accepted a child as his own, provided that with the same claim he requests verification of his own paternity.

2. Claim may be submitted within a period of one year from the date of registration of the rejected paternity in the register of births.

**Article 122**

**Rejection of Paternity of a third Person for a Marital Child**

1. Person considering himself father of a marital child, may reject paternity of a third person who according to this Law is considered to be father of the child.

2. This applies only in case that the person has lived in cohabitation with the mother of the child at the time of the conception and that with the same claim he requests verification of his own paternity.`

3. Claim rejecting paternity provided for in Paragraph (1) of this Article shall be submitted within a period of one year from the child’s birth.

**Article 123**

**Rejection of Maternity**

1. Woman registered in the register of births as mother of a child, may reject her maternity, if she considers not to be child`s mother.

2. Claim rejecting maternity may be submitted within a period of six months from the date of learning not to be child`s mother and at the latest within the period of 7 years from the child’s birth.

**Article 124**

**Rejection of maternity of a third Person**

1. Woman that considers herself being mother of a child may reject maternity of the other woman, which has been registered as mother of that child in the register of births, provided that with the same claim she requests verification of her own maternity.

2. Such claim shall be submitted within a period of six months from the date of learning that she is mother of that child and at the latest within the period of 7 years from the child’s birth.

**Article 125**

**Rejection of Maternity on child`s initiative**

1. Child may reject maternity of the woman registered in the register of births to be his mother.

2. Until the age of adulthood of the child and in cases, when the child has been deprived from his capacity to act, Custodian Body or custodian, with the permission of the Custodian Body may submit such claim on the child’s behalf.

3. Child’s right to claim rejection of maternity is not prescriptive.

**Article 126**

**Succession of rights**

1. Right to claim rejection of paternity as well as the right to claim rejection of maternity is not transferred to successors of authorized persons; however, successors may continue commenced procedure, if they have a legal interest in this issue.

2. Exceptionally from provisions of Paragraph 1 of this Article, successors of the person, who according to this Law is considered being father of the child, may submit a claim rejecting paternity, if such person was not informed, neither of the conception of mother, nor of the birth of a child, nor has he lived together with the mother of the child.

**Article 127**

**Exception**

Rejection of paternity or maternity is not permitted after child’s death.

**Article 128**

**Principle**

Determination or rejection of maternity or paternity of a child which is conceived by medical assistance and the consent of the donor it is not allowed.

**Article 129**

**Exceptions**

1. Exceptionally, husband of the mother may reject paternity of the child born at the time of marriage or after 300 days from termination of marriage, if the child was conceived artificially with the sperm of a third person and without written consent of the husband.

2. Woman, which gave birth to a child conceived by an ovule cell of another woman, has the right to reject maternity, if conception was carried out by medical assistance and with no written consent of hers.

3. Woman with the ovule cell of whom the child has been conceived without written consent of hers, has the right to reject maternity of the woman who gave birth of a child, if at the same time she claims verification of her own maternity.

4. Claim rejecting maternity or paternity may be submitted within six months from the date of being informed about the conception as provided for in Paragraphs 1, 2 and 3 of this Article. This shall not be submitted after the child reached age of seven.

5. If persons mentioned in Paragraph 1, 2 and 3 of this Article learn about conception before time of birth of the child, they shall submit a claim rejecting maternity or paternity within six months from the child’s birth.

**Chapter II – Child Protection and Parental Care**

**Sub-chapter I – Child Protection**

**Article 130**

**Principles of child protection**

1. Every child enjoys the undeniable right for life.

2. Children have the right to grow up in a family with parents. Children not living together with both parents, have the right to regularly meet the parent they are not living together with.

3. Children with diagnosed mental or physical impairments are eligible to special care, suitable conditions of life which guarantee their dignity and facilitate active participation in social life.

4. Children are eligible to free of charge primary education and access to information regarding different professions and existing schools.

5. Children enjoy the right for protection from economic utilization, child exploitation trafficking and sexual exploitation and from conduction of any activity which could be harmful or hazardous to their education or health.

6. Children shall be protected from maltreatment and sexual violations.

7. Children shall be protected from illegal usage of narcotic drugs and psychotropic substances and it shall not be permitted to use children for illegal production and trafficking of such substances.

**Article 131**

**Cohabitation and separate living**

1. Minor children have the right to live with their parents.

2. Minor children may live separately from their parents only if common interests of children and parents require so.

**Article 132**

**Return of a child in cohabitation with parents**

Parents shall request return of their minor child, when a child is not living with them or is unjustly kept by other persons.

**Sub-chapter II – Parental Responsibility**

**Article 133**

**Parental responsibility**

**Principles**

1. Parental responsibility primarily results from the right for parental care.

2. A child is under parental responsibility until it reaches majority age.

3. Parents are obliged to ensure at any times that the principles laid out in Article 130 of this Book are utilized for protection of their minor children.

4. Parental responsibility includes rights and obligations, aiming to ensure emotional, social and material welfare of the child, by looking after the child, preserving personal relations with a child, providing proper growth, education, vocational training, legal representation and administration of property.

3. By applying these principles parents shall consider skills, expectations and desires of their children.

**Article 134**

**Personal contribution and usage of public services**

To ensure parental care and to apply principles of Article 133 of this Book, parents are obliged to personally contribute and to make use of services of social institutions if necessary.

**Article 135**

**Determination of child’s surname**

1. Parents in agreement determine surname of a child.

2. Child obtains the surname of one or of both parents.

3. Parents shall not determine different surnames to joint children.

5. When parents cannot reach an agreement regarding the surname of a child, surname is determined by Custodian Body after hearing both parents.

**Article 136**

**Exceptions**

1. If one of the parents is not alive, or has no possibly to exercise parental rights and responsibilities, or he is unknown, other parent determines surname of the child.

2. If both parents of the child are not alive, or have been deprived from parental responsibility or they are unknown, Custodian Body determines surname of the child.

**Article 116**

**Child’s surname after change in family status**

1. A minor child who has been given a surname after changes in his family status by recognition of paternity, by marriage of the parents, by verification of paternity or by the rejection of paternity, may be determined a new surname within a period of two months after the change of family status.

2. When a new surname is determined for a child who is older than ten years, child’s consent is necessary.

3. Statement for determination of a new surname shall be submitted to the registrar who keeps the register of births for the child, or to the registrar, based on the residence of the person providing statement.

**Article 138**

**Representation**

1. Parents are obliged and have the right to legally represent their minor.

2. All consignments and statements that need to be send to the child, may be send to either one parent or the other and when parents are not living together, to the parent whom the child is living with.

**Article 139**

**Administration of property**

Parents to the benefit of the child administer the property of the child until the age of majority.

**Article 140**

**Use of Child’s Incomes**

**Principle**

1. Parents may use incomes deriving from their child’s property for nutrition, education and for necessary needs of the family community, if the family has no sufficient means.

2. Parents may alienate or indebt the child’s property only with the permission of the competent Custodian Body and only for the purpose of providing livelihood, care and education.

**Article 141**

**Legal Transactions, Labour Relations**

1. Child who has reached age of 14 may undertake legal actions; however, for validity of these actions consent of his parents or permission of the Custodian Body for legal actions is required, except for actions, or unless otherwise allowed by Law.

2. Child who has reached age of 15 may, with consent of his legal representative, independently establish labour relations and possess and dispose of his personal income and property acquired through his work but shall contribute for his nutrition and education from such income.

**Article 142**

**Definition of parental care, Exercise by the Parents**

1. Parental custody includes all parental rights and obligations, provided for in this Law.

2. Parents jointly exercise and fulfil parental rights and obligations by agreement.

3. If one of the parents has died or has been announced dead or has not been entrusted with parental custody or deprived from it, parental custody belongs to the other parent. The same shall apply if due to other circumstances one parent is not capable of exercising parental care.

**Article 143**

**Exercise of care by Custodian Body**

Custodian Body decides on behalf of the child’s interests only on request of one or both of the parents, on request of a third person, in cases when custody of the child is under its control or upon a court decision.

**Article 144**

**Exercise of care in case of separation of parents**

1. If parents live in separation, parent that the child lives with exercises parental care, if agreed on by the other parent**.**

2. In cases when parents live in separation and they cannot agree whom the child shall live with, decision is to be taken by competent court, unless otherwise provided for by this Law.

3. In cases when parents live separately, are divorced or their marriage has been annulled by a court decision or by decision of some other competent body and the child has been entrusted for care and education to one of the parents, parental care is exercised by the parent whom the child has been entrusted to.

4. During the time of execution of a court measure, parental care is exercised by parent whom by decision of the court, was ordered to apply the measure.

**Article 145**

**Court decision on exercise of parental rights and obligations**

1. When competent court in a marital dispute brings a judgment for the dissolution or annulment of marriage, by this judgment the court shall also decide on issues of custody and education of minor children.

2. When parents have not reached an agreement regarding the issue mentioned in paragraph 1 or if their agreement does not comply with the interests of the children, court, after hearing the opinion and proposal of the Custodian Body and investigating all relevant circumstances of the case shall decide: to entrust all children for care and education to one parent, to entrust some to the mother and the others to the father or, to entrust some or all children to a third person.

3. If the parent who exercises parental care hinders personal contacts of the child to the other parent, the court by judgment shall regulate the manner of maintaining personal contacts of the children with the parent who does not exercise parental care, if the evaluation of all circumstances of the case show that this is necessary for protection of a child.

4. The court shall change the decision regulating custody upon request of one parent or the Custodian Body, if changed circumstances require so.

5. In all cases of parental custody court shall take into consideration opinion of the child who is capable of forming his/her views. Such opinion shall be given due weight in accordance with the age and the ability of a child to understand.

**Article 146**

**Issues of substantial importance for child’s development**

1. Both parents shall by and agreement decide for issues of substantial importance for the development of a child, even in cases when on the bases on their agreement, decision of Custodian Body or court decision only one of them exercises parental custody.

2. When parent who does not exercise parental care does not agree with any measure or action of the other parent in exercising parental care related to matters of substantial importance, he may inform competent court, which is obliged to decide whether the measure or such action is in favour of the child’s interests.

**Article 147**

**Temporary entrustment to a third party by parents**

1. When the interests of the child require so, parent or parents may temporarily entrust a child to a third person for care and education, if that person meets conditions of a custodian.

2. If parents or the parent who exercise parental care temporarily move to a different transient residence within or outside Kosovo, they or he may entrust a child for care and education only to a person who meets requirements of a custodian.

**Article 128**

**Entrustment of the child to one parent or a third person**

1. In case of death of the parent exercising parental care based on a court decision, a decision of the Custodian Body or based on a agreement with the other parent, as well as in cases when such parent loses capacity to act or abandons child, other parent has the right to request handover of the child for care and education. In case of dispute between parents and the third person, the competent court may decide to entrust the child for care and education to the person the child is cohabitating with, or to another person or institution, if after the opinion and proposal of the Custodian Body and investigating all the circumstances concludes, that the interests of a child require so.

**Article 149**

**Court considerations**

1. Court or Custodian Body, which brings a decision for the entrustment of a child for care and education, , must properly investigate all circumstances, which are important for proper physical and mental development, and education of a child.

2. In case the child is older than 10 years, the court shall in particular consider emotional needs of a child. If deemed necessary, the court shall take into consideration expert’s opinion.

**Article 150**

**Personal contacts**

1. If a child lives with only one parent or with a third person or institution, parents shall agree on a manner of preserving personal contacts with the child. In cases of dispute, competent court takes a decision regarding this issue.

2. If circumstances change, competent court may again regulate manner of preserving personal contacts of parents with their children.

**Chapter III – Supervision of Parental Care**

**Article 151**

**Supervision by Custodian Body**

Custodian Body exercises general and continuous supervision of exercise of parental rights and obligations.

**Article 152**

**Urgent measures of Custodian Body**

1. If the Custodian Body learns about the existing danger to the child because of an abuse of parental rights or any danger to the child by serious neglect of parental obligations, it is obliged to urgently undertake measures for protection of child`s personality, rights and interests.

2. The registrar is obliged to inform the Custodian Body of the birth of a child whose parent or parents are unknown and about all necessary measures to be undertaken for child’s protection.

**Article 153**

**Taking a child away from parents care**

1. A child shall not be removed from the care of her/his parent/s or legal custodian without their permission or an order of the court.

2. Exceptionally, where Custodian Body has reasonable grounds to believe that there is an immediate serious risk to the health, safety or welfare of a child, Custodian Body may enter any premises and remove the child to a safe place where he/she will be taken care of, for a period not exceeding 72 hours.

3. Before expiry of 72 hours, Custodian Body should bring the case to the attention of competent court, which shall decide on child`s custody. If circumstances require, court may make an assessment order for a period up to 21 days to allow further investigations and assessments to be made, by which time matter has to be brought to the court for further attention.

4. By taking a child away, other rights belonging to parents and their obligations towards a child are not terminated.

**Chapter IV – Deprivation from Parental Care**

**Article 154**

**Deprivation from care**

1. Parents that abuse exercise of parental rights or seriously neglect exercise of parental obligations are deprived from parental responsibility.

2. Parent may be deprived from parental care for all their children or, if special circumstances require so, they are deprived only from parental care of one child.

4. Decision to deprive parents from parental care is taken by competent court in an extra contentious procedure, after hearing the opinion of the Custodian Body and investigating all relevant circumstances of the individual case.

**Article 155**

**Procedure**

1. Decision on deprivation of parental care may be initiated by other parent, Custodian Body or Court.

2. Custodian Body is obliged to initiate procedure for deprivation of parental care, if it in any way learns about the existence of reasons provided to in this Book.

**Article 156**

**Re-entrustment of parental care**

1. When reasons causing deprivation of parental care cease to exist, parent or parents by court decision should be entrusted back parental responsibility.

2. Request for entrusting parental care may be submitted by the parent or Custodian Body.

3. In marital disputes and disputes regarding relations between parents and children, the court dealing with these matters may *ex officio* bring a decision to return parental care, if it concludes that conditions for this are met.

**Chapter V – Timely Extension of Parental Care**

**Article 157**

**Principle of timely extension of parental care**

Parental care may also be extended after the age of majority if a child, due to an diagnosed mental illness, mental or physical impairments or other medically acknowledged reasons is not capable to take care of his personality, rights and interests.

**Article 158**

**Procedure of timely extension of parental care**

1. Decision for extending parental care is taken by the competent court in an extra contentious procedure upon request of parents or Custodian Body.

2. Proposal for extending parental care shall be submitted before the child reaches the age of majority, however, the court may also extend parental care even when request has not been submitted in due time, if reasons for extending parental care existed at the time the child reached the age of majority.

**Article 159**

**Cease of timely extension**

When reasons extending parental care for a mature person cease to exist, court upon request of such person, of the parents or of the Custodian Body, shall make a decision on terminating extended parental care.

**Article 160**

**Records**

Decisions extending or terminating timely extended parental care shall be recorded in the register of births and if such person possesses immovable property, it shall also be recorded in public records of immovable property.

**PART FIVE**

**Chapter I – Children without Parental Care**

**Article 161**

**Children without parental care**

1. A child without parental care is deemed to be a child whose parents are not alive, whose parents are unknown or have disappeared.

2. A child without parental responsibility is deemed to be also s child whose parents, for any reason have both are permanently or temporarily not fulfilling their parental obligations or parental care.

**Article 162**

**Principles of child protection**

1. A child without parental care enjoys special social protection.

2. According to this Law, fundamental forms of legal and family protection of children without parental are are: custodianship, foster care, residential shelter and adoption.

**Article 163**

**Enforcement of protection**

Decision on the enforcement of any of the forms for protection of children without parental care shall be taken only after a close examination of each individual case. Competent body shall conclude the form of family protection for a child which meets the child’s needs to the greatest extent.

**Article 164**

**Compensation for the loss of parental responsibility**

Protection of children without parental care, in conformity with the needs of these children is achieved through securing conditions for such a development of children, which shall in the best way compensate loss of parents or parental care.

**Chapter II – Adoption**

**Article 165**

**Mediation of adoption**

1. Purpose of mediation of adoption is to achieve placement of a child (adoptee) under the custody of a person who wishes to take a child under his custody and responsibility (adopter).

2. Mediation of adoption also means achievement and administration of data about a child which shall be placed as well as data about the prospective parents who wish to adopt a child even if the child is not born at the time data is filed.

**Article 166**

**Competent Authority for Adoption**

1. Adoption procedure is in competence of Court. During the process of deciding on adoption Court may seek advice from the Custodian Body.

2. Custodian Body shall dedicate only specially trained personnel which shall be suitable for the task due to personal features and which shall have professional experience in working with children.

**Article 167**

**Confidentiality and data protection**

1. Competent court and custodian body shall be responsible for data and privacy protection of information’s collected during adoption process.

1. Decision on adoption shall only be delivered to the parties which participate in adoption proceedings in accordance with the law.

**Article 168**

**Permissibility of adoption**

1. Adoption of a child is permissible only if it serves the child’s well-being and it is to be expected that a parent and child relationship between prospective adoptive parent and a child will be created.

2. A person who has been involved in unlawful acts or in actions contrary to good morals in taking or bringing a child for the purpose of adoption or who commissioned a third person to do so or rewarded such person for doing so, may only adopt a child, if this is imperative for the child’s well-being.

**Article 169**

**Persons that are eligible to adopt**

1. Spouses shall only adopt a child jointly.

2. An unmarried person may only adopt a child alone.

**Article 170**

**Exception on matrimonial requirements**

1. Exceptionally only one of the spouses may adopt a child, but this also requires consent of the other spouse.

2. One spouse may also adopt a child alone if the other spouse cannot adopt the child because incapacity to act or because he has not yet reached twenty-one (21) years of age.

3. At the request of the adopting party and with the consent of the persons who have participated in the adoption procedure, other spouse may be later included in adoption if he later fulfils the conditions provided by this Book or a specific law.

**Article 171**

**Probation period**

1. Adoption shall not be pronounced until the adopter has been caring for the child for an appropriate period of time, specified by the court, but not exceeding period of three (3) months.

2. Probation period shall be initiated and continuously supervised and evaluated by Custodian Body, which provides a report to the court as necessary.

3. Court shall make a decision at the end of the probation period. However court may extend probation for an additional period of up to three (3) months if there is disagreement between the parties or due to other justifiable circumstances brought to its attention by Custodian Body or child expert /s involved in the procedure.

**Article 172**

**Rights and obligations**

Adoption establishes same rights and obligations between the adopting party and the adoptee that exist between parents and children.

**Article 173**

**Child`s consent**

1. Child`s consent is required for an adoption. Consent for a child who is legally incapable or of less than fourteen (14) years of age may only be given by his legal representative, respectively custodian adoptee.

2. Otherwise a child may give consent himself.

3. In the event that the citizenship of the adopting parent and differ from one of a child, Custodian Body must give its approval for the procedure.

**Article 174**

**Parents’ consent**

1. Consent of the parents is required for the adoption of a child.

2. Consent may not be given before a child is eight weeks old.

3. No consent is required by the spouse who by court order lost custody or lost capacity to act or whose residence is not known for more than one year.

4. It is valid also when a person giving consent does not know already determined adopting persons.

**Article 175**

**Inquiries**

In case the adoptee has only one living parent, court shall address close family members of minor child’s dead parent to acquire data that could be of importance for the decision on adoption. Consent however is not required.

**Article 155**

**Substitution of consent of one of the parents**

1. Custodian Body shall, upon request of the child, substitute consent of one of the parents, if this parent continuously and gravely violates his obligations towards the child or by his conduct has demonstrated that he is indifferent towards a child and that in case the adoption is not taking place, this would result in a considerable disadvantage for the child.

2. Consent may also be substituted by the court decision, if violation of obligations, whilst not continuous, is nevertheless especially grave and it is anticipated that a child can no longer be entrusted to the responsibility of this parent on a permanent basis.

3. Consent shall be substituted when it becomes evident, that one parent has abandoned a child for more than six months and his residence is not known.

4. Consent of one of the parents may further be substituted, if he is permanently incapable to provide the necessary care and control of the child’s upbringing, because of a diagnosed, particularly severe mental illness or a diagnosed particularly severe mental or emotional disability and if adoption is not taking place, child could not grow up within a family and the child’s development would as a result be seriously jeopardized.

**Article 177**

**Consent Statement**

1. Consent must be declared to the court and becomes legally effective at the point in time it is delivered.

2. Consent may not be made subject to a condition or to a stipulation as to time, nor may it be made by a representative. It is irrevocable, as long as consent was not given by froud or under coercion or deceit.

3. If a person giving consent has limited capacity to act, his consent does not require assent of his legal representative.

4. Consent shall become ineffective if the request is withdrawn or the adoption is refused.

5. The consent of a parent shall also become ineffective, if child is not adopted within three years from the date consent became effective.

**Article 178**

**Invalidity of adoption**

An adoption is invalid if during the procedures of granting of such adoption it becomes obvious that the conditions of Articles 165 - 167, 171,174 and 177 are not met.

**Article 179**

**Only minor child**

Only a minor child can be subject to adoption.

**Article 180**

**Adopter**

Adopting party shall be only a person who has capacity to act and has the necessary personal qualities for successful exercising and fulfilment of parental rights and obligations.

**Article 181**

**Minimum age**

1. Prospective adoptive parent must have reached 21 years of age.

2. If spouses intend to adopt a child, one of the spouses must have reached 25 years of age and the other spouse must have reached 21 years of age.

**Article 182**

**Inter personal relationships**

1. There shall be no adoption of a person in straight line consanguinity nor of a brother or a sister.

2. A legal custodian cannot adopt a person under his care until competent body discharges custodian from his legal status.

**Article 183**

**Legal reliability of the adopter**

Below listed persons cannot adopt:

1. A person who by court order is deprived of parental care.

2. A person for whom there is founded suspicion that he will misuse the rights of an adopter resulting in harm to the adoptee or that he requests adoption for his own pecuniary benefit.

3. A person who suffers from a diagnosed psychiatric illness or is retarded from a mental perspective as well as a person who suffers from an illness which may endanger health and life of the adoptee

**Article 184**

**Citizenship of Adopter**

1. Adopter shall be a Kosovo citizen.

2. By way of exception, a foreign citizen/resident may be an adopting party, if the child cannot be adopted or fostered in Republic of Kosovo and/or there are reasonable grounds for such action as the child has special needs and requires specialized treatment not available in Republic of Kosovo.

3. The preliminary consent of the administrative bodies who deal with social work policies shall be required for adoption by a foreign citizen.

**Article 185**

**Court decision, request**

1. Adoption is established by competent Court upon request of the adopting parents in an non contested procedure..

2. Request may not be made subject to a condition or to a stipulation as to time, nor shall it be made by a representative.

**Article 186**

**Territorial jurisdiction and Exclusion of public**

1. Adoption is established in front of a Court according to the last joint residence of adopting parents as well as in front of a court according to the residence of the adoptee.

2. in adoption procedure, public is excluded.

**Article 187**

**Procedure for initiation of request for adoption**

1. Person who wishes to adopt, may present a request for an adoption to the Court together with the parents of the minor who is to be adopted,

2. Request shall have attached written consent of child’s natural parents, child’s certificate of birth and other relevant documents to present proof for the child’s future wellbeing, namely provide information about the adopting party and the adoptee as well as on adoption conditions.

3. Court is eligible to collect further data and proofs from Custodian Body, Social Services and other experts in the field of child care related to adoption conditions.

4. A child identified by competent authority as to be without parental care may be adopted by persons who are seeking adoption and have registered with the appropriate authority, which shall also be authorized to initiate the procedure.

**Article 188**

**Legal Advice and Assistance**

1. Competent Court responsible for mediation of adoption shall administer all requests for adoption and assist the parties in all stages of procedure.

2. Court is obliged to adequately inform adoptee and adopters about the legal, educational and moral purposes and consequences of adoption.

3. Court shall inform the adoptee of a legal nature of future rights and obligations and shall give relevant consultation and help in this regard.

**Article 189**

**Inquiries and Preparations**

1. In order to reach a decision about adaptability of adopting party and adoptee, Court shall take into account all reasonable opinions of sociologists, psychologists, doctors, therapists and other experts.

2. During the procedure of data and evidence collection on conditions for adoption, Custodian Body directly or through a professional social service assures necessary preparations of parents of the adoptee and of the adoptive parties respectively of the legal custodians of the adoptee.

**Article 190**

**Refusal of Request for Adoption**

1. If Court, on the basis of received and attached evidence and the opinion received *ex officio* according to the preceding Article as well as on the basis of an evaluation of all other circumstances concludes in the procedures preceding granting of an adoption, that the conditions defined for adoption by Law are not fulfilled or the adoption is not in the interest of the adoptee, Court shall make a decision for refusing request for adoption.

2. Appeal against decision which refuses request for adoption may be filed within a term of 15 days from the day decision was taken.

**Article 191**

**Approval of Request for Adoption**

1. If the Court concludes that the conditions for adoption set forth by this Law have been met, the adoption shall be approved.

2. In order to approve adoption, presence of the adopting party is required together with the presence of the spouse, parents, respectively the custodian of the adoptee and presence of the adoptee himself if he is over 10 years old, except when up to this age he was under the legal custodianship of a person who wishes adopt him/her.

3. Statement of consent of participating parties shall be entered in the minutes of procedure.

4. Upon conclusion of adoption procedure, minutes shall be signed by the parties and shall be read to present persons.

**Article 187**

**Minutes**

1. Special minutes are kept on the process of adoption.

2. Minutes on establishment of adoption contains data on all undertaken actions, on all information’s gathered by Court and on statements and agreements of adoptee and parents as well as about final pronouncement of adoption.

3. Minutes on establishment of adoption contain surname of the adoptee as the surname of the adopting party. Any change of the first name of the adoptee, namely an additional first name shall be recorded as well.

4. Minutes on establishment of adoption provide data about parents of the adoptee as well as data about adopting party.

5. Minutes shall be signed by all persons who were involved in adoption process as well as by Court representative that conducted this procedure.

5. Court is obliged to keep all evidence and maintain documentation on the adopted persons and adoption process.

**Article 193**

**Registration**

Competent court immediately sends minutes of meeting on establishment of adoption to the institution that is competent for registration in the official birth book, to the party and to Custodian Body. Adopting party is registered as parent of the adoptee.

**Article 194**

**No establishment of adoption after the child`s death**

There is no establishment of adoption after child’s death.

**Article 195**

**Legal effect**

1. If a child is adopted by spouses or if a spouse adopts a child of other spouse, that child then acquires legal status of a joint child of the spouses.

2. In other cases child acquires legal status of a child of adopting parent.

3. In all cases referred to under paragraph 1 of this Article, spouses are enChapterd to joint parental care, in cases referred to under paragraph 2 of this Article, only adopting parent is enChapterd to parental care.

**Article 196**

**Cessation of the child’s relationships to relatives and claims**

1. When adoption is terminated legal relationship between a child and his descendants and relatives ceases together with the rights and obligations resulting there from.

2. Claims of the child which arose before adoption, especially those relating to annuities, orphan’s pension and other recurring corresponding payments, shall not be affected by adoption; this shall not apply to aliment claims.

**Article 197**

**Continuance of relationship with relatives**

1. If adopting parents are second or third degree relatives of the child by blood or marriage, only relationship between the child and his descendants on one hand and his parents on the other is legally ceased together with the rights and obligations resulting there from.

2. If a spouse adopts child of the other spouse, relationship does not legally cease in respect to the relatives of initial parent, if this parent had parental care and is deceased.

**Article 198**

**Surname of adopted child**

1. Child acquires surname of adopting person as his surname.

2. If a married couple adopts a child or if one of the spouses adopts a child of the other spouse and spouses do not have a joint married name, they shall determine child’s birth surname by making a statement to the court before adoption is pronounced.

3. Court may, when pronouncing the adoption:

3.1. Change child’s first names or add one or more new first names if this is in the interest of child’s wellbeing;

3.2. A new family with the child’s consent decides to place new surname before or after previous surname, if this is in the interests of the child’s wellbeing.

4. When adoptee is older than ten years old, his consent is required for the change of surname and any change in first name.

**Article 199**

**Principles**

1. Information about adoption and its circumstances shall not be disclosed or investigated without consent of the adopter and the child, unless special reasons of public interest require this.

2. Adoptee in his majority age has the right of access all information’s concerning his adoption and shall on his request be provided with personal information about his biological parents.

**Article 200**

**Termination of adoption and consequences**

Adoptive relationship may only be terminated under the provisions of following Articles 201 to 205.

**Article 201**

**Annulment of adoption**

1. Court may annul adoptive relationship on request, if it was established without a request of adopter or without consent of a child or consent of a parent.

2. Request lacking necessary consent is ineffective only when the declarer:

2.1. at the time of making statement was in a state of unconsciousness or temporary insanity, if applicant was legally incompetent to enter into a legal transaction or if the incompetent or less than 14 year old child personally gave his consent and decision was made thereupon,

2.2. failed to understand adoption procedures or although he was aware thereof, he did not intend to request an adoption or to express his consent for adoption procedures,

2.3. made a mistake concerning identity of a child or adoptive child made a mistake concerning identity of the adopter,

2.4. was induced to make the statement by fraud, concerning material circumstances or

2.5. was unlawfully induced to make statement under threats.

3. Annulment may not be made, if the declarer has ratified request or consent after cessation of deficiencies mentioned under paragraph 2.

4. Claim for annulment of adoption may be submitted within six months from the day when it was learnt about the reason for annulment and no later than within one year from the day of establishment of adoption.

**Article 202**

**No termination due to lack of consent**

Adoptive relationship may not be terminated, if welfare of the child would be substantially jeopardized thereby, unless the predominant interests of adopter necessitate termination.

**Article 203**

***Ex officio* termination**

1. During child`s minor age, competent Court may terminate adoptive relationship on its own procedure, if for any reasons this becomes necessary for the welfare of the child.

2. If a child was adopted by a married couple, adoptive relationship between a child and only one of the spouses may also be terminated.

3. Adoptive relationship may only be terminated:

3.1. if in a case under paragraph 2 other spouse or a biological parent is willing to take over care and upbringing of a child and if exercise of the parental care by him would not be in contrary to the child`s welfare, of

3.2. if termination would facilitate new adoption of a child.

**Article 204**

**Effects of termination**

1. Termination effects only future. If competent Court terminates adoptive relationship on the application of adopter after his death or on application of a child after death, it has the same consequence as an adoptive relationship terminated before death.

2. Upon termination of adoption, child`s relationship and his descendants and to the relatives based on the adoption is terminated, together with the rights and obligations created thereby.

3. At the same time relationship between a child and his descendants and natural relatives together with rights and obligations arising there from is revived, with the exception of parental care that depends only on the right for care.

4. Court shall return parental care to natural parents, if and as far as it is not in contrary to the welfare of a child; otherwise it shall appoint a custodian.

5. If adoptive parents are matrimonial spouses and termination affects only rights of one spouse, effects mentioned in paragraph 2 ensue only between child and his descendants on the one hand and latter spouse and his relatives on the other; effects under paragraph 3 do not ensure.

**Article 205**

**Effects on the surname**

1. Upon termination of adoption, child loses right to bear adopter`s surname as his surname.

2. Competent Court may upon request of a child decide that the child retains the surname he acquired by means of adoption, if a child has justifiable interest in bearing this surname.

**Article 206**

**Creation and Termination of Family Relations**

1. Upon adoption, family relations between adopting party and persons in his family on one hand, and adoptee and his descendants on the other are created, along with all rights and obligations thereby.

2. Upon on establishment of adoption rights and obligations of adoptee towards his parents and other persons in the family, as well as the rights and obligations of the parents and family towards him are terminated.

**Article 207**

**Prohibition of maternity and paternity confirmation after adoption**

After adoption, it is not permissible to ask for confirmation of maternity and paternity of an adopted child.

**Chapter III – Placement of a Child in another Family**

**Article 208**

**Principles of child placement in another family**

1. The placement of a child in a family is an organized social form of children’s care within another family.

2. Children without parents or without parental care and children whose development has been impeded by circumstances in their family, are placed in another family to ensure necessary conditions for development, education and their preparation for an independent work and life.

3. Educationally neglected children as well as children, whose development has been impeded, may be placed in another family.

4. The financial situation of parents shall not be a reason for a placement in another family. The family shall firstly be supported by all means of social welfare.

5. Rights and obligations of parents and child’s custodian in accordance to the provisions of this part of the Law, are limited for the duration of placement in a family.

**Article 209**

**Placement**

1. Children without parents or without parental care are guaranteed placement in a family until they are considered as being able for an independent life and work.

2. Placement of a child is possible within a family with two parents or one parent.

3. Placement is determined upon preliminary consent of biological parents of the child and, as a rule, placement lasts for duration of circumstances which gave rise to the placement.

4. After the placement of the child with another family, the Custodian Body undertakes immediately all necessary means to address and in future to avoid all circumstances which made placement with a foster family necessary.

**Article 210**

**Rights of foster parents**

1. Placement is made in a family, which can successfully fulfil parental obligations, in particular with regard to care, education, teaching and provision of a child with skills for an independent life.

2. Placement of a child in a family shall be made only with a family in which parent or parents to whom child is entrusted to, fulfil all the conditions provided for by law on behalf of children and parental responsibility.

**Article 211**

**Placement of children with special needs, neglected children and children with disabilities**

A family where a child with special needs, neglected child or a child with disabilities is placed, is chosen upon the proposal of a group of professionals, assigned by Custodian Body, which shall be comprised of social workers, teachers, psychologists and doctors as well as other experts, chosen with regard to the reasons that deem placement of a child in the family.

**Article 212**

**Legal competence; Documentation**

1. Custodian Body of municipality, in which territory child resides or is domiciled decides on placement of a child in a family.

2. Before making a decision upon a placement, Custodian Body mentioned in paragraph 1 of this article provides full documentation on all data which is important for making a decision on the child’s placement in a family, as well as on the family where the child will be placed.

**Article 213**

**Written Contract; Right of Visitation; Payment**

1. On the basis of the decision for placement of a child in the family, Custodian Body concludes written contract with one of the parents of the family in which child shall be placed.

2. The family where the child is placed is obliged to facilitate visits of the child’s parents, unless Custodian Body decides otherwise in interest of child`s welfare.

3. Family where a child is placed has a right to payment.

**Article 214**

**Termination of placement**

1. Placement within a family terminates:

1.1. By agreement of the contracting parties;

1.2. By withdrawal from the contract;

1.3. By the time a child reaches majority age, respectively thereafter when the child is able to conduct an independent life or if child marries before that age;

1.4. By the adoption of a child; or

1.5. Upon death of the child or death of a family member, who has concluded contract for the placement in the family.

2. In case of death of one of the parents of family from paragraph 1 of this Article, contract for placement with a family remains in force, if other parent, within one month, informs competent Custodian Body of the continuation of child’s placement in the family and provided that he has guarantee that the family in future fulfils the conditions determined by this Book.

**Article 215**

**Termination of contract**

1. Family where the child has been placed may withdraw from the contract within the terms provided for in the contract.

2. Custodian Body may terminate contract for placement in a family only if changed circumstances in the child’s family indicate, that there is no further need to continue placement.

**Article 216**

**Rescission from the contract**

1. If family where a child has been placed ceases to fulfil any of the conditions of Article 210 of this Book, respectively if the purpose of the placement has not been achieved, Custodian Body may decide to revoke contract for placement in a family.

2. Decision of paragraph 1 of this Article determines the day of rescission of a child`s placement.

3. Custodian Body, which has decided on the rescission of the contract for placement, shall ensure further protection, care and education of the child.

**Article 217**

**Supervision**

1. Custodian Body supervises child’s development, ensures that protection, care and education of a child is conducted in conformity with the provisions of this Book and with the provisions of the contract for placement of the child.

2. Competent Custodian Body pays special attention to the development of a child regarding the purposes, which led to the placement of a child.

3. Custodian Body is obliged to inform family where the child is placed about the reasons (defects in provision of care, protection and education of a child) that led to the child`s placement. It shall make proposals on their future avoidance and timely undertake all necessary regular social measures.

**Article 218**

**Obligations of the foster family to inform**

Foster family is obliged to inform Custodian Body about issues related of health, education and all other relevant conditions of child’s development.

**Article 219**

**Reciprocal information of responsible bodies**

1. If placement in a family has been decided by one body, whereas supervision is exercised by another body, supervisory body is obliged to inform body of placement of the child’s development.

2. If supervisory body from paragraph 1 of this Article concludes that one of the conditions mentioned in Articles 214 to 216 for dissolution of the contract have occurred, body that is responsible for placement shall without any delay be informed about this fact.

**PART SIX**

**Chapter I – Custodianship**

**Sub-chapter I – Placement and Purpose of Custodianship**

**Article 220**

**Principles of custodianship for minors and adults**

1. Minor children are placed under custodianship and enjoy special protection by public institutions:

* 1. when their parents are not able to exercise parental care;
  2. because both parents are deceased or not known, have been announced to be missing, or have been deprived of parental care or have lost capacity to act; or
  3. for any other reason that by court decision provides reason for decision in interest fo a child`s wellbeing.

2. Purpose of custodianship towards adults is to protect their personality and shall be manifested firstly through personal care, preparation for an independent life and medical care.

3. Custodianship also aims to ensure property rights and other rights and interests and of person under custodianship.

**Sub-chapter II – Custodianship of minors**

**Article 221**

**Competences and aims of custodianship for minors**

1. Custodian Body places under custodianship a minor child who is without parental care.

2. Custodian of a minor child is obliged to take care in good faith for the child’s personality, in particular for the child’s health, education, upbringing and development of the ability to undertake an independent life.

**Article 222**

**Capacity to act and use of income**

1. Minor child that under custodianship, who has reached 14 years yet, cannot exercise legal transactions

By itself, except for some matters of low importance. For the actions which cannot be exercised by himself/herself it is necessary to have permission of his custodian in order to make these actions valid, while for actions that cannot be carried by custodian it is necessary to have permission of Custodian Body.

2. Minor child under custodianship, who enters into an employment relation, may dispose of his personal income and revenues earned through his work. Besides this, he is obliged to contribute for his own food, education and upbringing to a reasonable extent.

**Article 223**

**Right for appeal**

Minor child who has reached fourteen 14 years of age has right to submit appeal against the decision of Custodian, Custodian Body or against other bodies which deny approval required for validly of any of his legal transactions.

**Article 224**

**Competence of custodian**

1. Custodian can undertake following actions only with prior approval of Custodian Body:

1.1. to entrust child to an orphanage or another organization of children and adults for protection, education and upbringing, to entrust minor child to another person for education, upbringing and care or to place a child under medical treatment for a long period at a health institution;

1.2. to initiate change of school;

1.3. to decide on the selection of a profession or exercise of the minor child’s profession;

1.4. to undertake other important measures which could harm minor child’s personality and interest.

**Article 225**

**Information’s from Custodian Body**

1. The social Welfare Centre that the child is entrusted to or the institution where he has been sent as well as the person to whom is entrusted for protection and education or medical institution where he is placed for medical care, are obliged to inform custodian and Custodian Body of all important issues regarding life, health, education and upbringing of a person under custodianship, as well as of a possible discharge from the institution and his new place of residence.

2. Persons and institutions mentioned in paragraph 1 of this Article are obliged to timely inform the Custodian Body before discharging minor child under custodianship in order to ensure timely measures for taking care and security of minor child.

**Article 226**

**Termination of custodianship**

1. Custodianship towards minor child terminates:

* 1. Upon reaching majority age;

1.2. Upon marriage before reaching majority age;

1.3. Upon adoption; or

1.4. Upon return of parental rights to his own parents.

**Article 227**

**Property of custodian and reports**

1. In case of termination of custodianship, Custodian Body requests from custodian to prepare a work report within a given term, to hand over the assets of child under custody and to deliver child to the administration respectively to the parents or the adopting party.

2. Delivery of properties is performed in the presence of the custodian, child under custody, respectively parent or adopting party and representative of Custodian Body.

**Sub-chapter III – Kujdestaria ndaj Personave të Cilëve u është Hequr Aftësia për të Vepruar ose të cilët Nuk e Kanë Aftësinë e Plotë për të Vepruar**

**Article 228**

**Full or partial deprivation of capacity to act**

1. An adult person who is not capable of normal judgment (diagnosed mental illness, mental retardation or another similar cause) and due to this reason is unable to take care of his rights and interests shall be deprived of his capacity to act.

2. An adult person who by his actions gravely endangers his rights and interests or the rights or interests of other persons because of a diagnosed mental illness, mental retardation or severe abuse of alcohol or narcotics or due to diagnosed infirmity of old age, shall be partially deprived of his capacity to act.

3. Decision to deprive someone from his capacity to act or to limit his capacity to act is made by competent court in a non-contest dispute.

**Article 229**

**Procedures**

1. Persons who by court order are partially or fully deprived of their capacity to act are placed under custodianship, exercised by Custodian Body.

2. Court has to forward decision within a ten-day period to the competent Custodian Body which, within 30 days from the day of the decision, has to provide custodianship.

**Article 230**

**Obligations of Custodian**

1. Custodian of the person who was deprived of his capacity to act is obliged to take care of the person’s the personality and in particular the conditions of his placement.

2. Custodian shall in particular take care of the special situation of a person in his custodianship with close examination of the causes that brought to the deprivation or limitation of person’s rights. Custodian shall enable person under his custodianship to live independent life in dignity for as far as possible.

3. If custodian concludes that circumstances indicate the need to regain capacity to act, respectively in case of a need of a revocation of previous decision, he is obliged to inform Custodian Body without any delay.

**Article 231**

**Analogy to Regulations for custodianship of minors**

1. Custodian of a person who is fully deprived of his capacity to act has the rights and obligations of custodian of a minor person that has not reached 14 years of age.

2. Custodian of a person who is partially deprived of his capacity to act (limitations of legal capacity) has obligations of a custodian of minor person who has reached age of 14. Under certain circumstances Custodian Body shall allow all legal transactions, which can be undertaken of a person with full capacity to act

**Article 232**

**Temporary measures**

1. The court where the procedure for deprivation of the capacity to act has begun is obliged to immediately inform Custodian Body which, if required, shall assign a temporary custodian to that person.

2. Provisions on custodianship of minors who have reached 14 years of age apply to the rights and obligations of temporary custodian from Paragraph (1) of this Article, but Custodian Body, when something like that is deemed necessary, may apply to this person the provisions of custody over minors who have not yet reached 14 years of age.

3. Obligations of a temporary custodian are terminated when either a permanent custodian is appointed or upon a court order denying custodianship in the specific case.

**Article 233**

**Supervision**

1. Custodian Body is obliged to conduct permanent supervision of living conditions of a person deprived form his capacity to act, of his medical condition and, if given, of the conditions that caused a respective loss or limitation of his capacity to act. The Custodian Body shall receive regular reports from custodian or from the institution where the person has been placed, respectively health institution where a person under custodianship is treated or placed for treatment.

2. According to its official obligation, Custodian Body initiates all necessary court proceedings for restitution of capacity act to the person under custodianship, if it concludes that a change in conditions require so.

**Sub-chapter IV – Custodians in Special Cases**

**Article 234**

**Custodianship for unclear property**

1. Custodian Body is enChapterd to appoint a custodian for special cases (special custodian) on behalf of a person’s assumed property in situations where the owner of the property is unknown and where such a person has no legal representative and custodianship is inevitable to protect legal interests of the owner.

2. A custodian may be appointed to the persons mentioned in Paragraph 1 of this Article by the court under the conditions provided by Law. Court and custodian are obliged to inform competent Custodian Body on this issue without delay.

3. Custodian Body may directly exercise rights mentioned in Paragraphs 1 and 2 of this Article.

4. This Right ceases at the moment a person on whose behalf special custodianship was established claims and proofs his own rights and identity with the Custodian Body.

**Article 235**

**Special custodianship for dispute assessment**

1. Special cases custodian shall be appointed for a child where even though the parents exercise parental care, there is a dispute between child and his parents, namely where significant legal transactions involving the child’s property are concerned.

2. Person under custodianship may be temporarily appointed a special custodian for a severe and legally grave dispute between him and custodian.

3. Parents, adopting parties, custodians, relatives and neighbours are obliged to notify Custodian Body when they become aware of events or instances mentioned in paragraphs 1 and 2 of this Article.

**Article 236**

**General provisions**

1. On the occasion of appointing a custodian for special cases, Custodian Body shall define scope, obligations and rights of special custodian, taking into consideration circumstances of each individual case.

2. Provisions on rights, obligations and responsibilities of custodian mentioned in paragraphs 2 and 3 of Article 220 apply by analogy to the special custodian.

**Sub-chapter V – Legal Competence in Matters of Custodianship**

**Article 237**

**Competence**

1. Custodianship matters provided for in this Law are conducted and fulfilled by Custodian Body.

**Article 238**

**Best Practices**

1. To protect rights and interests of a person under custodianship, Custodian Body undertakes all necessary measures to achieve purpose of custodianship in the best way.

2. Custodian Body during preparation, realization and enforcement of its decisions and measures, shall make use of all relevant forms of social protection, methods of social work and other professional work, namely of services of social organizations as well as of health and educational institutions.

**Article 239**

**Responsibility of Custodian Body**

1. Custodian Body ensures, that all rights and interests of the person under custodianship are guaranteed according to the provisions of this Law.

2. Custodian Body ensures also other forms of protection provided by Law to help minors and adult persons.

3. Custodian Body applies educational measures and other measures defined by the court. This body conducts and supervises all activities under its responsibility.

**Article 240**

**Custodian**

1. Custodian as a specially appointed person, is entrusted with all necessary rights and obligations to achieve this aim.

**Sub-chapter VI – Custodian and Custodianship**

**Article 241**

**Custodianship**

1. Custodian Body appoints custodian to the person under custodianship.

2. As a custodian can be appointed any person who has personal capacity and necessary ability to fulfil obligations of a custodian and who prior to that gives his consent to become a custodian.

3. Custodian shall in the first place be appointed from among persons in the family of the person under custodianship. Custodian Body shall decide whether this is in the interest of the person under custodianship.

**Article 242**

**Exclusions from the right of custodianship**

1. Following persons cannot be custodian:

1.1. Person that previously lost legal parental care of custodianship due to a court decision;

1.2. Person that is fully or partially deprived of his capacity to act;

1.3. Person whose personal interests are in obvious conflict with the interests of the person to be placed under custodianship;

1.4. Person whose personal characteristics and pecuniary interests may be in conflict with the interests of a custodian and where it is suspected that the relationship with the person under custodianship or the parents of a child under custodianship may cause conflicts.

**Article 243**

**Obligation to accept custodianship and exceptions**

1. Persons related by blood to the person to be placed under custodianship in direct linear ascendancy and direct linear decadency and brothers and sisters of the father or mother of the person under custodianship, are under the legal obligation to accept the task of a custodian if they comply with legal requirements for a custodianship under the provisions of this Law.

2. Persons in blood relationship are not obliged to accept the task of a custodian if:

2.1. they are under sixteen years of age;

2.2. due to illness, body disabilities or type of profession or service they are not adequately capable to fulfil this task;

2.3 they already took on the task of a custodian or if they already take care of two or more other children;

2.4 mother who is considered for this task has a child under the age of seven and therefore rejects the task.

2.5 a person already takes care of three or more minor children of his own.

**Article 244**

**Request review**

On the occasion of appointing a custodianship, Custodian Body shall take into account request of the person who is placed under custodianship if he is able to express his interest. Wishes of the relatives shall be also considered if this is in the interest of the person to be placed under custodianship.

**Article 245**

**Custodianship directly exercised by Custodian Body**

1.If this in the interest of the person to be placed under custody, the Custodian Body may decide not to appoint a custodian, but to fulfil the obligations of the custodian directly. Upon a decision to directly exercise the matters of custody a representative of the Custodian Body is appointed to conduct the tasks of a custodian on its behalf.

2. Custodian`s tasks, which require the permission of the Custodian Body or participation of the body in any other way, in order to validate a decision, can be conducted by a representative of the Custodian Body only, if this person is holder of the administrative authorization of the Custodian Body. He shall abide by any directions of the Custodian Body and act in accordance with the provisions of this Book.

**Article 246**

**Custodianship of more than one person**

The same person upon agreement may be appointed as an custodian for more than one person, if this is not in contrary to the interests of a persons under custodianship.

**Article 247**

**Delegation of obligations**

If Custodian Body generally takes the role of a custodian or carries out special tasks of the custodian directly, it is authorized to entrust certain tasks to other professionals who can act on its behalf and under its supervision.

**Article 248**

**Entrustment**

1. Custodian Body who decides on appointing the custodian defines custodian`s obligations and scope of authority.

2. Before making a decision from Paragraph (1) of this Article, Custodian Body informs the custodian of the importance of custodianship, about rights and obligations and provides all other important information required for carrying out the task of a custodian.

**Article 249**

**Obligations of custodian**

1. Custodian is especially obliged to take care in good faith of the personality and the rights and interests of the person under custodianship and to administer his property with care, as well as to inform Custodian Body of the course of custodianship.

2. Custodian is especially obliged, with the assistance of Custodian Body, to make use of all necessary means of social welfare in order to ensure material requirements needed for enforcement of custodianship measures.

**Article 250**

**Inventory of property**

1. If a person under custodianship owns substantial property, Custodian Body is obliged to attach an inventory- and evaluation-report of this property to his work report. This also applies to the person who performs tasks of a custodian on behalf of Custodian Body.

2. The following data shall be provided with the inventory or property:

2.1. Data of the person under custodianship

2.2. Data about the custodian respectively a person who acts as a custodian on behalf of Custodian Body to administer property of the person under custodianship

2.3. Data on the person who holds property things on behalf of the person under custodianship.

3. If Custodian Body, where it is legally permissible, has initiated custodianship procedure, it can conduct the inventory and evaluation of property of a person under custodianship and undertake all necessary measures to protect this property, even before making the final decision for placement under custodianship.

**Article 251**

**Representation**

1. Custodian legally represents the person under custodianship (legal representative).

2. If obligations of the custodian are exercised directly by Custodian Body or if custodian has only limited authority, Custodian Body represents person under custodianship through one of its representatives or other authorized professional person.

3. Person who represents a person under custodianship on behalf of Custodian Body can perform actions and measures as mentioned in Article 253 of this Book only upon prior permission of Custodian Body.

**Article 252**

**Prohibition of representation**

1. Custodian cannot represent the person under custodianship in following legal transactions:

1.1. In legal transactions between the person under custodianship and his spouse, his partner (in cohabitation from extramarital relation or from factual community) or one of his relatives in direct line, unless the legal transaction is limited to the fulfilment of an obligation;

1.2. In legal transactions which involve transfer or burden by lien, mortgage or surety bond, if this means a secured claim of the minor against custodian;

1.3. In legal transactions which involve an abolition or reduction of aforementioned secured claims or which cause obligation of the person under custodianship to such a disposition;

1.4. In legal proceedings between the persons designated in paragraph 1 as well as in court proceedings on an affair of the kind designated in paragraphs 2 and 3 of this Article.

**Article 222**

**Requirement of permission for legal transactions**

1. Custodian requires prior permission of the Custodian Body:

1.1. To enter into a legal transaction by which person under custodianship is obliged to a disposal of assets in the whole or over an inheritance or over his future legal inheritance or his future part of an inheritance;

1.2. for a renunciation of the person’s full or partial legacy;

1.3. for a contract which inclines the sale of a company-business as a whole or a contract that inclines the foundation of a company-business together with other persons;

1.4. for leasing contract of real-estate or commercial enterprises;

1.5. for renting or leasing or other contracts by which the person would be committed to regular obligations, if this contract exceeds the time of one year after the person reached majority.

1.6. for an apprenticeship contract, if this contract binds the person for more than one year;

1.7. for contractual labour relations if they oblige the person for more than one year;

1.8. for the admission of money on the credit of the person under custodianship;

1.9. for acquisition of a debenture or debenture bond or for entering a commitment of change or another paper, which can be transferred by endorsement;

1.10. for assumption of a financial commitment or an endorsement;

1.11. for granting of the power of procuration;

1.12.to enter in an amicable arrangement or an arbitration agreement, unless if disputed item does not exceed two hundred 200 Euros or unless the agreement corresponds exactly to a court proposal.

2. If custodian entered into legal transactions without prior permission of the Custodian Body, validity of the transaction depends on its later approval by Custodian Body.

3. If a person represents the person under custodianship on behalf of the Custodian Body as provided for under Article 200 paragraph 3, he always needs prior permission of the Custodian Body.

**Article 254**

**Requirements for permission**

The permission shall only be granted to the custodian in person.

**Article 255**

**Request for actions to be taken**

1. The custodian, public prosecutor, commune in whose territory the person under custodianship is residing or domiciled, a relative to the person under custodianship, humanitarian organizations or non-involved third persons can make a request or proposal to the Custodian Body in any matter to undertake actions and measures of custodianship, required for the protection of interests of the person under custodianship.

2. The applicants mentioned in paragraph 1 of this Article may file a complaint to the second instance against a decision of the Custodian Body refusing custodianship measures and actions within a term of fifteen (15) days from the day of the decision.

**Article 256**

**Legal transactions between the custodian and person under custodianship**

Custodian can enter into a legal transaction with the person under custodianship only if Custodian Body concludes that this is in the interest of the person under custodianship.

**Article 257**

**Regular Work Report**

1. At the beginning of each year custodian shall present a report to the Custodian Body and justify his work for the past year. Monthly reports shall be given on request of Custodian Body and a final report when he terminates custodianship.

2. The report of the custodian shall prove his work and care for personality of the person under custody, especially about the conditions of placement and as far as applicable his health, education, upbringing and all other important matters for the personality of the person under custody.

3. Report shall also contain information’s on all property matters.

**Article 258**

**Review of the Work Report**

Custodian Body is obliged to conscientiously review all reports on the work of the custodian and, if required, to undertake all necessary means to protect interests of a person under custody.

**Article 259**

**Remarks on the Work of Custodian**

1. Person under custody may make remarks on the work of the custodian, but remarks may also be made by his relatives and third persons.

2. Remarks on the custodian’s work shall be delivered to the Custodian Body, to decide on matters of custodianship.

3. In case Custodian Body directly fulfils obligations, remarks on Custodian Body are delivered to the second instance court, to decide on matters of custodianship.

**Article 260**

**Examination of Remarks**

1. Custodian Body examines the remarks and in case remark found grounds for intervention, it undertakes all necessary steps.

2. In case Custodian Body directly fulfils its obligations and responsible second instance court concludes that the remarks are grounded, it gives instructions to Custodian Body to undertake all necessary steps. Custodian Body shall, pursuant to the instructions decide, which measures to undertake and shall inform second instance body about this.

**Article 261**

**Compensation**

1. Custodian fulfils his obligations without compensation, but the Custodian Body may award compensation to the custodian who devotes himself to a great extend to the given task.

2. Custodian has a right to reimbursement of reasonable expenses incurred during conduct of a custodian’s tasks.

**Article 262**

**Liability for Damages**

Custodian is liable for compensation of any damages to the person under custody which have been caused by unfounded refusal to accept obligations of a custodian, by unreasonable omission to timely fulfil the obligations of a custodian, by negligent behaviour, by violation of rules of this law or upon arbitrary abandonment of his responsibilities.

**Article 263**

**Obligation for sustention, request for compensation of expenses**

1. In case of irregular conduct of the custodian, Custodian Body is under obliged to undertake all necessary means to maintain representation of rights of the person under custody.

2. As far as compensation of damages is concerned, Custodian Body shall provide immediate compensation for all damages towards the person under custody and shall give the custodian a time limit to refund the amount.

3. In case the refund is not provided within the given time limit, Custodian Body shall directly or through a custodian appointed on this occasion, submit a claim to the competent court, to sue liability of the custodian.

**Article 264**

**Discharge of the Custodian**

1. Custodian Body shall without any delay discharge a custodian, if it concludes that the custodian has misused his authority or threatened the interests of the person under custody.

2. Same applies in case that custodian has for any reason lost the right to be a custodian.

3. Custodian Body shall discharge custodian at latest within a 30 days’ time limit if it finds that the custodian has been negligent in the fulfilment of his obligations or it considers, that it would be beneficiary for a person under custody to be assigned to another custodian.

4. When Custodian Body acts under the authority derived from Paragraphs 1 and 2 of this Article, he is obliged to undertake all necessary measures to maintain representation of rights until the appointment of the new custodian.

**Article 265**

**Release of the Custodian from Obligations**

1. Custodian Body shall release custodian from his obligation on his request no later than three months from the day custodian filled request.

2. A relative of the person under custody who is in a direct blood line, brother or sister from father or mother who is serving as a custodian, shall be released of obligation on his request, only if there are no grounds under which the request should be refused.

3. When Custodian Body acts are compliant to Articles 264 and paragraph 1 and 2 of this Article, it is obliged to undertake all necessary measures to protect, ensure and maintain all rights and interests of the person under custody. It shall select and appoint a new custodian as soon as possible.

**Article 266**

**Property Issues after Discharge or Release from obligations**

1. If the person under custody owns property, Custodian Body undertakes all necessary measures to verify current state of property by means of an inventory and an evaluation of the property.

2. All property under custody shall as soon as possible be entrusted to new custodian or to the person, who on behalf of the Custodian Body exercises the task of a custodian.

3. The inventory, evaluation and delivery of the property of the person under custody shall be accomplished by a commission, appointed by Custodian Body. Proceedings are to be held under the presence and participation of discharged or released custodian, new custodian respectively the person who directly exercises the task of a custodian as well as the person under custody, in case that the latter is mentally capable to understand the matter.

**Sub-chapter VII – Authorities and Procedure**

**Article 267**

**Territorial Competence**

1. Territorial competence of the body which according to the provisions of this Book carries out and performs the tasks and work of custodianship, is decided according to the domicile (registered place of living) and if this does not exist, according to the residence (unregistered place of living) of the person under custodianship.

2. Territorial competence from Paragraph 1 of this Article is determined at the time, the conditions for placement under custodianship arose.

**Article 268**

**Change of Residence**

1. If residence changes, respectively the domicile of the person under custody changes, territorial competence of the Custodian Body changes accordingly.

2. New competent Custodian Body shall decide whether a new custodian shall be assigned and whether any measures determined by the previous competent body shall remain or be changed.

**Article 269**

**Official obligation and rule of short procedure**

1. Procedure for placement under custodianship is initiated and conducted ex officio.

2. Procedure under Paragraph 1 of this Article is urgent.

**Article 270**

**Bodies to be informed**

1. Custodian Body shall be informed as a matter of obligation by the below mentioned bodies regarding a need of a person to be placed under custodianship or of another form of necessary protection, respectively about the termination of custodianship:

1.1. the registrar,

1.2. judicial bodies and administrative bodies, if during the course of their obligations are involved in the matter,

1.3. relatives, family members and if deemed necessary, third non-involved persons.

**Article 271**

**Procedure**

**1.** When Custodian Body becomes aware that a person shall be placed under custodianship, it immediately undertakes all necessary measures to protect personality, the property, rights and other interests of such a person and starts the procedure for placement under custodianship, namely appoints the custodian, determines his obligations and the scope of his authority, respectively makes the decision to fulfill the obligation of a custodian directly.

2. After appointment, Custodian Body shall immediately entrust its obligations to the custodian.

3. Following persons shall participate in the procedure of entrustment:

3.1. the custodian

3.2. person under custodianship, in case he is mentally capable to understand subject matter

3.3. family members, that cohabitate with the person under custodianship.

4. The representative of the Custodian Body verbally informs all present persons about obligations and competencies of a custodian and the person under custodianship, as well as about aims and purposes of custodian.

5. Upon delivery of documentation about the property which has to be administered by custodian in accordance with the provisions of this Law, obligations of custodian in this respect become legally effective.

6. Custodian Body may assign a temporary custodian while the decision is pending.

**Article 272**

**Defining issues about adequate form of custodianship**

On making the decision about the adequate form of custody, Custodian Body shall consider all interests of the person under custody and determine all contemporary professional methods of social work and social protection, as well as consider all material and pecuniary possibilities.

**Article 273**

**Registration**

1. Act for placing a person under custodianship and the act for termination of custodianship shall be sent to the competent registrar within a time limit of 15 days after which it becomes legally effective. Legal effect is achieved, when decisions are taken.

2. If the person owns immovable property, action under Paragraph 1 of this Article is also sent to the competent body, for registration of this fact in public real-estate registers within the same term.

**Article 274**

**Written Evidence**

Custodian Body is obliged to collect and keep written evidence about the procedures, in particular for custodianship involving minors, custodianship of adults and custodianship for special cases.

**Article 275**

**Costs**

1**.** Costs related to application of certain measures, taken in the interest of the person who isbeing granted protection according to the provisions of this Law, are paid in accordance of priority, from:

1.1. Incomes of a person who is being protected

1.2. Pecuniary means acquired from parents or other persons who are under the obligation to provide financial sustention for a person that is being protected

1.3. Pecuniary means acquired because of social protection and other forms of social assistance.

2. Funds acquired due to social protection, shall be used under the direction of the custodian to undertake all necessary measures in the interest of the person that shall be granted given form of protection according to the provisions of this Book.

3. This shall also apply when this person has sufficient funds, but the request made to those that are obliged to provide protection causes difficulties in conditions of protection in such a way as to endanger his life, health or regular education.

4. Custodian Body has the right to claim costs made under Paragraph 2 and 3 of this Article against the person whose needs are met, respectively to pursue his claims towards those that are obliged to ensure protection.

**PART SEVEN**

**Chapter I - Marrëdhëniet Pasurore të Anëtarëve të Bashkësisë Familjare**

**Article 276**

**Family Community**

A family community consists of the spouses and their immediate family which for the purpose of this Book include children and parents of the spouses. Other family related persons as well as persons who are substantially economically dependent and who live in a joint household with the spouses may, for the purposes of this Book be considered as members of the family community.

**Article 277**

**Acquisition of Property**

All property acquired during the duration of this union is considered to be joint property of all members of the family community who have participated in its creation.

**Article 278**

**Administration of Property**

1. Joint property is being administered jointly by the members of family community and is disposed of jointly or by mutual agreement.

2. Minors who are members of a family community and who have reached the age of 15 take part in administration and have equal rights in regard to the disposal of joint property.

3. Administration of joint property on mutual agreement of all members of the community can be entrusted to one or more members of the family community

4. Each member of the family community may request revocation of a decision on entrustment of administration of the joint property. If the other members of the family community do not agree, decision is taken by the court in an (ex-officio) non-contentious procedure.

**Article 279**

**Immovable Property**

1. Rights of members of a family community concerning immovable property are registered in public registers, in the register for registration of rights on immovable. Entry is made on behalf of all the members of a family community who with their work have participated in the acquisition of undetermined parts.

2. If the registers show a registered member of the family community in the capacity of an owner (single owner), as long as not changed upon joint proposal of all other members of the family community, the facts concerning the rights of joint property are not changed to the legal status of joint ownership.

3. A contract by which a member of the family community, who has been registered as single owner in public registers transfers or burdens immovable property acquired within family community, other members of family community may legally attack such action. This shall only be possible, only if at the time of entering into a contract the register showed facts on rights of joint ownership or if at the time of entering into a contract with a third party, the single owner has without any doubt made public that the property is under family community.

(4) Non-authorized transfer of immovable property can otherwise only be legally attacked, only if the recipient was in bad faith.

(5) If a member of family community, without authority transfers joint property acquired in family community, other members of the family community have the right to ask competent court for an evaluation of their part and a decision for pecuniary compensation.

**Article 280**

**Analogy**

If the Law does not provide otherwise, property relations among members of the family community in this Book shall apply in analogy on governing of property relations between spouses.

**Article 281**

**Contractual agreements and documentation**

1. The members of a family community may regulate their reciprocal property relations by contract.

2. The contract from Paragraph 1 of this Article shall be made in writing, has to list all members of family community with their form of participation and has to be certified by a judge.

3. Upon certification, the judge shall read the contract and shall inform contracting parties about consequences of the contract.

4. If minors participate in the contract, notary shall, prior to certification request the opinion of Custodian Body.

**Article 282**

**General rules on property rights**

General rules of property relations apply also for property relations among members of the family community if not otherwise foreseen in this Book.

**PART EIGHT**

**Chapter I – Financial Sustention**

**Article 283**

**Financial sustention**

1. Financial sustention in the context of this Book shall mean financial support and material support.

2. Relatives related by blood in a direct bloodline (consanguinity) are obliged to provide reciprocal financial sustention.

**Article 284**

**Condition of neediness (poverty)**

Only persons who cannot financially sustain themselves are eligible to financial sustention.

**Article 285**

**Service capability**

1. Persons who under consideration of all personal obligations are not able to provide financial sustention without endangering their own reasonable sustention, are not obliged to provide financial sustention.

2. Parents who fall under paragraph 1 are obliged to, by all reasonable means provide financial sustention to their minor and unmarried children. This also applies to children between the age of 18 and 26 as long as they live in the household of their parents or one parent and are still in general education.

3. Obligation mentioned in paragraph 2 is not applicable if there is another relative who is obliged to provide financial sustention. It shall also not apply if the child’s support may be taken from the child’s property.

**Article 286**

**Obligation of reciprocal information on financial situation**

1. Relatives in a direct line are obliged to disclose to each other their income and financial situation based on request.

1. Based on request the person who is obliged to provide sustention shall present written evidence and documents to proof his incomes and his financial situation.

**Article 232**

**The order of obliged persons**

1. The spouse is primarily obliged to provide financial sustention to the other spouse.

2. In case the obligation of financial sustention lies with several relatives, the obligation lies firstly with the descendants and secondly with the relatives in the ascending line.

3. Obligation for providing financial sustention for people in consanguinity is determined according to order by which applies for inheritance.

4. Among several relatives who are of the same nature of relation, all of these are obliged in proportion to their financial capabilities. The person who directly takes care for a child in his household fulfils his share by providing care and education.

**Article 288**

**Change in order of obligation**

1. As far as a relative is not obliged to provide financial sustention, the obligation passes over to the relative based of the further order of obligation.

2. The responsibility of a spouse to provide financial sustention to the other spouse passes over to the relatives of the person in need only in case of financial incapability as mentioned in Article 285 paragraph 1.

**Article 289**

**Rule of sharing obligation of more persons in providing financial sustention**

In case more than one person is in need and the person that is obliged to provide financial sustention to all of them is not capable to provide full sustention under the reasons mentioned Article 280, obligation is shared among all obliged relatives, until financial sustention is fully guaranteed.

**Article 290**

**Extent of sustention**

1. The extent of sustention shall be adequate to the conditions under which person eligible for sustention used to live. In case the situation was desolate, the sustention should provide at least the minimum, which is needed to maintain daily life in dignity.

2. Sustention consists of all necessary requirements of living, including all costs of necessary training or education to acquire a profession.

**Article 291**

**Form of sustention**

1. Sustention shall primarily be pecuniary.

2. The person obliged to provide pecuniary sustention may ask for the permission of the Custodian Body to be allowed to provide sustention in another form if a special situation requires this.

3. Sustention has to be paid monthly in advance.

**Article 292**

**No renunciation of sustention**

The person eligible to sustention cannot renounce his right to future sustention.

**Article 293**

**Expiration of the right to financial sustention**

1. The right to sustention between two persons expires, if either one of them dies.

2. This does not apply to the obligation of a parent towards his child. In this case his obligation is passed to his legal successor.

**Chapter II – Financial Sustention and Food**

**Sub-chapter I – Financial Sustention of Children**

**Article 294**

**Application of principles**

General principles of the responsibility of parents provided for in this Law shall apply, unless not otherwise foreseen in the following Articles.

**Article 295**

**Financial sustention**

1. Parents are under the obligation to provide financial sustention for their minor children.

2. f the child has not completed education until adult age, parents are obliged to provide all necessary support to ensure education, respectively faculty education until the child is 26 years of age

**Article 296**

**Sustention of minor child in special cases**

2. If a child in adult age is unable to work due to illness, physical or mental defects, and does not have sufficient means for his financial outcomes, parents are obliged to provide financial sustention until such a situation ceases.

**Article 297**

**Obligation of a child**

From the age of 15 years and onwards, a child who earns income by his own work, is obliged to financially contribute for his own sustention and if required, also for a reasonable contribution to the sustention of his parents and siblings of a family he lives with.

**Article 298**

**No loss of obligation by loss of parental care**

Parent who loses parental care is not released from the obligation of sustention of his children.

**Article 299**

**Obligation of children towards their parents**

1. Children have an obligation to provide financial sustention to their parents if their parents are not able to work or do not have sufficient minimum means to live.

2. By way of exception, the court may refuse a claim for financial sustention, if the parent has lost parental care or has not provided financial sustention for the child, despite his financial capability.

3. The exception mentioned in paragraph 2 of this Article also applies if the court, after examining all the circumstances of the case concludes that the obligation of the child would presents an open injustice to the child.

**Article 300**

**Obligation of stepfather/mother towards their stepson/daughter**

1. Stepfather and stepmother are obliged to provide financial sustention for their stepchildren if they have no other relatives who are obliged to provide financial sustention or have only relatives who are financially incapable.

2. The obligation of stepmother or stepfather continues even after the death of their partner who has been a natural parent to the child, if the step child and the step mother or step father cohabitated prior to the death of a partner.

3. This shall not apply, if marriage between the parent and stepfather or stepmother of the child has been annulled.

**Article 301**

**Obligation of stepson/daughter towards their stepfather/mother**

Stepson/daughter are obliged to provide financial sustention for the stepfather and stepmother according to Article 299 if they have provided financial sustention and care for them for a reasonable time. If stepfather and stepmother have their own children, then this obligation is shared with them.

**Sub-chapter II – Matrimonial Sustention (Alimony)**

**Article 302**

**Definition of alimony**

Alimony is financial maintenance of spouses or former spouses.

**Article 303**

**Eligibility of spouses for alimony**

1. The spouse who does not have sufficient means for financial sustention, who is unable to work or for some other reasons cannot be employed, has the right to financial sustention from other spouse in proportion to his financial abilities.

2. The court, considering all the circumstances of the case, may refuse request for alimony, if alimony is demanded by a spouse in bad faith or if he has abandoned the spouse without any reasonable grounds.

**Article 304**

**Alimony for the care of a child**

A divorced spouse may claim alimony from the other spouse as long as and to the extent he cares for and sustains a joint child and for this reason it becomes impossible to work.

**Article 305**

**Alimony due to age**

A divorced spouse may claim alimony from the other spouse, from the moment

1. of divorce,

2. termination of care and sustention of a joint child or

3. conclusion of the conditions foreseen in Articles 306 and 307 of this Book he cannot be expected to engage into employment because of age.

**Article 306**

**Alimony for Illness or disability**

A divorced spouse may claim alimony from the other spouse if and as far as from the moment of divorce, the termination of care and sustention of a joint child or the cease of the conditions foreseen in Articles 307 of this Book he cannot engage into employment because of an illness, a disability or a weakness in his physical or mental strength.

**Article 307**

**Alimony because of unemployment; Claim for difference**

1. As far as Alimony cannot be granted under Articles 304 to 306, a divorced spouse may claim alimony if and as far as he is not able to find employment after the moment of divorce.

2. In case earnings from employment do not meet the need and he is not eligible for alimony under Articles 303–306, he is eligible to claim the difference as alimony in order to achieve reasonable financial sustention.

**Article 308**

**Adequate employment**

1. The divorced spouse can only be requested to engage in adequate employment.

2. Employment is adequate, if it is in harmony to education, capabilities and health of the divorced spouse and it is adequate to the state of living. The latter is dependent on the time the marriage lasted and the time, the divorced spouse engaged in care and upbringing of a joint child.

3. The divorced spouse shall engage in further education or retraining, if it is possible and necessary for finding an employment.

**Article 309**

**Neediness**

The divorced spouse may not ask for alimony, as far and as long he is able to sustain himself from his own earnings and property.

**Article 310**

**Extent of alimony**

The extent of alimony is dependent on the matrimonial standard of living. Maintenance of the standard of living requires also the costs for adequate health insurance and costs for education or further retraining according to Article 311 paragraph 3.

**Article 311**

**Limitation or cease of obligation**

1. A claim for alimony may be rejected or limited. This shall be dependent on extent the claim is unreasonable.

2. The claim shall be unreasonable if:

2.1. the period of time the marriage lasted and period providing sustention for a joint child was very short, and due to the fact of a marriage or sustention alimony is claimed for;

2.2. the claimant is guilty of a crime or a deliberate aggravated assault against the other spouse; or

2.4. the claimant intentionally caused his neediness.

**Article 312**

**Capability for providing alimony**

1. Persons who considering all other obligations are not able to provide alimony without endangering their own reasonable sustention, are not obliged to provide sustention.

2. As far as they are able to provide alimony the obligation remains.

**Article 313**

**Obligation of reciprocal information on financial situation**

1. Divorced spouses are obliged to disclose to each other their income and financial situation on request.

2. Written evidence and further documents shall be presented on request, in order to give proof about income and financial situation.

**Article 314**

**Regulation of order on obligation of alimony**

1. The obligation for alimony lies firstly with the divorced spouse.

2. If or as far as the divorced spouse does not provide sufficient alimony, the obligation is passed on, as the right to financial sustention, to the relatives according to the succession line of the defendant.

**Article 315**

**Form of alimony**

1. Alimony shall be primarily pecuniary.

2. The person under who is obliged to provide alimony may ask for the permission of the Custodian Body or court to be allowed to provide sustention in another form if a special situation requires this.

3. Money has to be paid monthly and in advance.

4. Instead of a monthly payment the claimant may ask for a lump sum satisfaction if there are reasonable grounds and the lump sum would not result in an unfair burden to the person under obligation to provide alimony.

**Article 316**

**Deal**

Divorced spouses may enter in a deal about alimony within the court where the procedure for alimony is conducted.

**Article 317**

**Termination of rights for alimony**

The right of the divorced spouse for alimony ceases, when the conditions of Articles 303 to 307 of this Book no longer apply, when the time for which the court has determined alimony has expired, when the divorced spouse that enjoys this right re-marries or enters into cohabitation (factual community) or dies.

**Article 318**

**Continuation of rights**

1. Obligation to provide alimony does not cease with the death of the obliged person but is passed on to his legal successor. In this case all possible limitations on the amount of alimony cease and the amount is re-determined, dependent on the financial capabilities of the successor.

2. This also applies for the claim for alimony for the month the claimant entered into a new marriage or dies.

**Article 319**

**Resurgence of the right to receive alimony**

In case where a person who is eligible to alimony entered into a new marriage and this is later dissolved by divorce, if he cares for a joint child from his first marriage, hi has the right to submit the claim for alimony against his earlier spouse.

**Article 320**

**Court Procedures**

1. The spouse has the right to request that by the same court procedure which dissolves the marriage the court to decide in regard to alimony.

2. The spouse who has not requested alimony from the other spouse in the divorce disputes, due to any reasonable ground, may submit such a claim in a separate law suit within 2 years but only if the below mentioned conditions are met:

1.1. If conditions on granting alimony have existed before divorce and have continued until closure of the court session in alimony dispute or

1.2. If within this deadline the incapability to work is caused as a consequence of personal injury or health injury from the time before the divorce.

**Article 321**

**Alimony in cases of unexpected annulment of marriage**

In case marriage is annulled, the spouse who at the time of entering into the marriage did not know the cause of the invalidity of the marriage, can demand the other spouse to provide alimony under the conditions in which a divorced spouse shall satisfy a claim for alimony.

**Sub-chapter III – Special Provisions for the Protection of Children of Unmarried Parents**

**Article 322**

**Obligations of unmarried father**

1. The father of a child is obliged to grant financial sustention for the time span of six (6) weeks prior of birth and eight (8) weeks after the birth of a child.

2. This relates also to all costs of pregnancy and delivery of the child.

3. As far as the mother cannot engage into employment because of an illness inflicted by pregnancy or delivery, the obligation to provide financial sustention for the child and alimony to the woman may be timely extended.

4. The same shall also apply if the mother cannot engage into employment because of care and upbringing of the child.

5. This shall also apply in cases when the child was born dead or died after birth or during the disability of the child caused by birth.

**Article 323**

**Limitations**

1. The obligation to provide sustention begins 4 weeks before birth and ends three years after birth.

2. The three year limitation may be extended, if it is deemed strictly necessary to ensure living conditions of woman and child.

**Article 324**

**General rules on obligations of maintenance among relatives**

1. All provisions on obligations of sustention between relatives shall also apply for children of unmarried parents.

2. The obligation for alimony firstly lies with the father and then with other relatives.

**Article 325**

**Obligation of the unmarried mother**

If the father engaged with care and upbringing of the child, he may claim financial sustention mentioned under Article 322, paragraph 4.

**Article 326**

**Refusal of claim**

The court may refuse the claim for alimony only if the claimant is guilty of a deliberate aggravated assault or similar crime against his partner.

**Article 327**

**Invalidity of refusal**

Rights for alimony between unmarried partners cannot be renounced.

**Chapter III – Procedures**

**Article 328**

**Territorial jurisdiction**

In disputes on alimony, the child respectively his legal representative may file a lawsuit either at the court with general territorial jurisdiction or at the court in whose territory the plaintiff resides or is domiciled.

**Article 329**

**The Judicial Panel**

The procedure for the alimony dispute at the First Instance Court is conducted and decided by a panel consisting of one judge and two lay judges, whereas at the Second Instance Court by a panel of three judges.

**Article 330**

**Ex Officio Decision**

1. Wherever possible, decisions on protection and sustention of children in marital disputes shall be ex officio.

2. Court shall accept an agreement of parents on financial sustention in accordance with this Law only if the settlement is in conformity with the provisions of this Law on issues of financial sustention.

3. Court decides ex officio, on the financial sustention of the child only if it is confirmed, that the defendant is the father of the child, respectively it is confirmed that the defendant is the mother of the child.

**Article 331**

**Involvement of Custodian Body**

1. The Custodian Body may initiate and conduct the lawsuit on behalf of the minor child.

2. It may also initiate the lawsuit for the increase of alimony, if the parent who has custody of the child, does not exercise such right due to unreasonable grounds.

3. If the parent does not claim enforcement of the decision, by which alimony has been decided on by the court, Custodian Body may on behalf of the minor child request a final decision in the execution procedure in accordance with provisions of the Law on Enforcement Procedures.

**Article 332**

**Temporary ex officio measures for sustention of child**

1. In disputes of financial sustention of children, in disputes about custody and in disputes where financial sustention for the child is decided ex officio, court ex officio determines temporary measures for financial sustention if both parents do not effectively contribute to the child’s financial sustention.

2. If the parent who on the basis of the court decision is obliged to provide determined amount for financial sustention does not carry out his obligation regularly, Custodian Body, upon request of the other parent or as part of its official obligations undertakes all necessary measures to provide the child with temporary financial sustention according to the provisions on social protection of children.

3. Measure shall last for as long as the parent does not fulfil his obligation.

4. If necessary, enforcement measures against this parent shall be initiated.

**Article 333**

**Temporary Measures for sustention of adults**

1. In disputes about alimony or financial sustention of adults, the court may determine temporary measures for their alimony or financial maintenance only upon the request of the claimant.

2. Enforcement of measures may be initiated on request of the claimant.

**Article 334**

**Encouragement of out of court settlements**

Custodian Body is obliged to encourage children and parents to enter into out of court settlements.

**Article 335**

**Principles of determination of sustention and alimony**

1. Obligation to provide financial sustention or alimony is determined in proportion to all means of the defendant and within the limits of the needs of the claimant.

2. Court shall consider the defendants financial situation, ability to work, factual possibility of employment, health condition, personal needs, legal obligations and all other relevant circumstances.

3. When alimony is demanded for the child, the court considers the age of the child and all needs for his education.

**Article 336**

**Adjustment of decisions for sustention**

1. Upon the request of the claimants or the obliged persons, Court may increase, decrease, end or change financial sustention or alimony which has been determined by a previous court decision, if circumstances on which the decision was based have changed.

2. Conditions which may change are namely personal needs and a rise in costs of living on the claimant’s side and financial status of the defendant on the other side.

**Article 337**

**Extension of the Lawsuit**

1. When the court concludes that parents alone or together cannot fulfil the alimony needs of the minor child to the amount deemed necessary by the court, Custodian Body shall be informed in this regard.

2. In such cases, Custodian Body may extend the lawsuit for financial sustention and include other persons who according to the Law are obliged to provide financial sustention.

3. Decision on inclusion of these persons is incontestable.

4. Legal representative of the minor child is enChapterd to request an extension of the lawsuit under the conditions set out in Paragraph 2 of this Article.

2. If court, in a subsequent procedure concludes that other relatives also have no means to satisfy the needs of the child, Custodian Body will take necessary measures to secure the alimony needs of the child according to provisions on social protection especially those mentioned under Articles 321-332.

**Article 338**

**Enforcement of Court Decisions**

1. The decision to increase financial sustention or alimony at the request of an eligible person or the proposal of Custodian Body is taken by the competent court. Based on an executive decision the court may initiate enforcement proceedings according to the rules on issuance of enforcement decisions. Custodian Body respectively the competent body for statistical matters shall be informed about this procedure.

2. If the obligor of alimony challenges the decision pursuant to Paragraph 1 of this Article, indicating in his challenge that his income has not been increased in proportion to the increase of the costs of living or other circumstances have occurred which do not support the increase of financial sustention or alimony, court will instruct such a person to initiate litigation within the prescribed time limit to proclaim enforcement as unacceptable.

3. Until enforcement litigation becomes final, the enforcement decision for the payment of determined amount for financial sustention or alimony will be postponed, but the court may decide not to postpone enforcement, if it deems that the debtor will not be harmed by such action.

**Article 339**

**Cooperation in Enforcement**

The employer of a person against whom a court decision for alimony or financial sustention is being enforced, is obliged to cooperate with the authorities to provide a compulsory deduction of the alimony contribution from the persons salary or wage.

**Article 340**

**Exclusion of the Public**

In order to guarantee protection of personal rights of parents and children, the public is excluded from all litigation for financial sustention and alimony.

**Article 341**

**Revision**

Revision is allowed in all disputes on financial sustention and alimony.

**Article 342**

**Territorial jurisdiction**

In disputes for verification or refusal of a paternity or maternity, child, respectively his legal representative may file a lawsuit, either at the court with general territorial jurisdiction or at the court in whose territory person resides or is domiciled.

**Article 343**

**The Judicial Panel**

The procedure of a lawsuit among parents and between parents and children at the first instance level will be conducted and decided by a panel, consisting of one judge and two lay judges, whereas at the court of second instance the panel comprises of three judges.

**Article 344**

**Participating Parties**

1. In disputes for the verification of paternity, parties of the lawsuit are the person whose paternity should be verified, child and the mother of the child.

2. Participating parties in disputes refusing paternity of the person, who according to the Law is deemed to be father of the child, are: person refusing paternity, child and the mother of the child.

3. Parties in the dispute where the person who deems himself to be the father of the child, challenging paternity of the person who has recognized a child as his own, are: the person who refuses to recognize and accept paternity, the person whose paternity is being objected, child and the mother of the child.

**Article 345**

**General Court Procedures on Verification of Paternity or Maternity**

1. In disputes of family relations between parents and minor children and lawsuits for verification or refusal of paternity or maternity as well as in the case of adult children, the court may also consider facts which are not contested by the parties.

2. In such disputes, no judgment can be pronounced because of absence or no admission.

3. In a dispute about verification or refusal of paternity or maternity, a judicial agreement shall not be allowed.

4. If in the lawsuit for verification of paternity or maternity the defendant recognizes his paternity respectively maternity, procedure shall be suspended and court will immediately send a certified copy of the minutes, together with the declaration for recognition of paternity respectively maternity to the competent official for registration of the child in the birth register.

**Article 346**

**Ensuring necessary participation, refusal of claim**

1. If in the verification dispute, respectively in the dispute for refusal of paternity all persons mentioned in article 344 of this Book have not been included as claimant and defendant, court shall invite the claimant to extent the lawsuit to more persons. These persons cannot refuse extension of the lawsuit.

2. If in the dispute for rejection of paternity, the plaintiff, within the term determined by the court, does not extend the suit to other persons, who are not initially included in the suit or if these persons within the same term do not join to the claim as new claimants, the claim shall be refused.

3. If in the dispute for verification of paternity, the plaintiff, within the term determined by the court, does not extend the suit to other persons, who are not initially included in the suit, or if these persons within the same term, have not joined in the suit as new plaintiffs, the court shall inform Custodian Body on this matter and shall determine a new term within which the parties shall join the suit.

4. If no further parties participate in the lawsuit in the given time limit, the claim shall be refused.

**Article 347**

**Involvement of Custodian Body**

1. In case of family relations disputes between parents and minor children, the court shall inform Custodian Body, if it concludes that the statutory representative does not exercise the appropriate care in his responsibility due to a lack of knowledge or negligence.

2. Custodian Body at any time has right to participate in such a dispute if it concludes that this is in the interest of the child or if a child is a party in the dispute.

3. Custodian Body as a participant in the procedure is enChapterd to make proposals for protection of rights and interests of children, to submit the facts which were not pointed out by the parties and to propose collection of evidence, to provide legal measures and other contested actions.

4. Court is obliged to invite Custodian Body participating in the procedure to all court sessions and to send all of its decisions to this body.

**Article 348**

**Protection of children by special Custodians**

1. If a child and the parent, who is the legal representative of the child, jointly file a lawsuit for the verification or refusal of paternity, respectively, if they are defendants in the same suit, that parent shall also represent the child in the lawsuit but Custodian Body may appoint to the child a special custodian if there are conflicting interests between the parent and child in the same suit.

2. If child and parent, who is the legal representative of the child, have opposing interests in the suit as plaintiff and defendant, Custodian Body shall assign a special custodian to the child.

**Article 349**

**Ex Officio temporary measures for the protection of children**

1. In custodianship procedures, court may ex officio determine temporary measures for protection, education and placement of a child.

2. Temporary measures may be applied, irrespectively of the decision made in the underlying dispute or the nature of the underlying lawsuit if this is deemed necessary.

3. Appeal against the decision on temporary measures does not stop execution of the decision.

**Article 350**

**Exclusion of the Public**

In the litigation for the verification or refusal of paternity and in disputes for custodianship of minor child, public is excluded from the lawsuit in order to guarantee protection of children.

**Article 351**

**Joint dispute procedures**

Parties which jointly file a dispute for refusal or verification of paternity or maternity, respectively which are defendants in the same lawsuit, are deemed to be one contesting party, so that if the litigants make any omissions in any of the contesting actions, the effect of the contesting action undertaken by contesting party lie on a party that didn`t undertake such action.

**Article 352**

**Costs**

Court decides on its discretion on the costs of the procedure.

**Article 353**

**Ex Officio measures in court procedure**

1. In the appeals proceedings of disputes for verification of paternity or maternity and in disputes for protection, education or sustention of a minor child, Second instance court shall wherever possible take ex officio decisions in the interest of the minor child.

2. In case of disputes under Paragraph 1, Second instance court of will examine even parts of the decision which were not challenged by the appeal.

**Chapter IV – Provisions of Civil Procedure**

**Article 354**

**Application of Law on Judicial Contests**

In marital litigations or court disputes among family members Provisions of the Law on Judicial Contests apply, unless this Law provides otherwise.

**Article 350**

**Application of the Law on Extrajudicial Procedure**

In legal issues which by this Law are regulated in extrajudicial procedure, provisions of the Law on extrajudicial procedure shall apply.

**Chapter V – Enforcement Procedure**

**Article 356**

**Territorial jurisdiction**

1. With regard to the decision for enforcement of a court order to deliver the child to the parent or to any other person to whom child was entrusted for protection and education, competence lies with the court which has general territorial jurisdiction for the party which demands such enforcement, as well as with the court in whose territory the child is located.

2. Court in whose territory child is located has the territorial jurisdiction to carry out enforcement procedures.

**Article 357**

**Enforcement Procedures**

1. On the occasion of compulsory execution, court will consider emergency nature of the procedure and the need to protect personality of a child to the maximum extent.

2.After evaluating all circumstances of the case, court will decide whether to apply execution by determining fines against the person, where the child is located or whether to remove the child from the person or not.

3. If the purpose of execution cannot be achieved by a decision of fines, execution shall be applied by taking the child from the person where the child is located and handing over the child to the parent or another person to whom the child has been entrusted to for protection and education.

4. In execution procedures, court shall seek for opinion of Custodian Body.

**BOOK FIVE – INHERITANCE**

**Chapter I – General Provisions**

**Article 1**

**The object of the book on inheritance**

1. This Book regulates the inheritance rights.

2. Inheritance is a transfer of a person’s property based on the law or based on a will (inheritance) from a dead person (decedent) to one person or several persons (heirs or legatees), according to the provisions set out in the present Code.

3. For the purpose of this Book, words in the masculine case shall also include the feminine case and vice versa, without discrimination.

**Article 2**

**The object of inheritance**

1.The object of inheritance are things and the rights belonging to the decedent.

2. The object of inheritance may also be the obligations of a decedent.

**Article 3**

**Equality in inheritance**

1. All physical persons under the same conditions are equal in inheritance.

2. Children born out of wedlock, when paternity has been recognized or verified, as well as adopted children are as equal as children born during marriage.

3. The adopted child has no inheritance right in his original family and neither the family inherits from the child.

4. Foreign nationals are equal to the citizens of the Republic of Kosovo in respect of inheritance, unless otherwise foreseen by special law.

**Article 4**

**Acquiring inheritance**

1. Inheritance is gained with the death of the decedent.

2. Every physical person can be inherited. Only physical person can be decedent.

**Article 5**

**Time and place of the opening of the inheritance**

1. The deceased person (decedent) is inherited by the person who, from the moment of his death, has acquired the right to inherit.

2. Every person is able to inherit, unless it is differently provided by this Code.

3. The right to inheritance is acquired upon the death moment of the decedent. Heir with the right to inheritance can give up his right based on the provisions of this Book, which will imply that this right has never been acquired.

**Article 6**

**Null and void agreements on future inheritances**

Any agreement between future heirs, or between future heirs and third persons, over on an inheritance that has not been opened shall be deemed null and void.

**Article 7**

**Ability to inherit**

1. Any person who is alive at the time the inheritance is opened, or any person conceived before the death of the decedent, and born alive, may inherit.

2. A person will be considered to have been conceived at the time inheritance is opened if such person is born alive within 300 days after the death of the decedent.

**Article 8**

**Grounds for inheritance**

Inheritance shall be based on legal, testamentary or contractual succession.

**Article 9**

**Legal succession in general**

Inheritance shall be based on legal succession when the decedent has not left a valid will, if the decedent has not made a valid contract *inter vivos* or for the property of the decedent which is not included in a valid contract *inter vivos*.

**Article 10**

**Heritage by the Municipality**

If the decedent has no heirs, the right to inheritance is passed on to the Municipality, which acquires the same position as the legal heir of the decedent. Municipality cannot give up the right to inheritance.

**Chapter II – Legal Inheritance**

**Article 11**

**Heirs at law**

1. Heirs at law are: the decedent’s children, his adoptees, and their descendants, spouse, parents, siblings and their descendants, grandfather and grandmother and their descendants.

2. By law, the cohabitant has the same rights as a marital spouse, unless otherwise provided by law.

3. Cohabitation in this Book means cohabitation as defined in Article 40 of the Book on Family, which has lasted for at least five years, or for at least three years, if a child is born from this relationship and this relationship ended because of the death of the decedent.

4. These persons shall inherit according to the order of succession set forth in this Code.

**Chapter III – Order of Heirs**

**Sub-chapter I – First line inheritance**

**Article 12**

**Successors and the spouse of decedent’s**

1. The decedents shall be inherited, prior to all others, by his children and spouse.

2. Without prejudice to paragraph 3 of this article, the persons from paragraph 1 of this article shall inherit in equal shares.

3.

**Article 13**

**The right to representation**

1. If one of the children of the decedent died before the decedent, the place of this child is taken by the children of this child, and if these children have also died, by the grandchildren of this child and their successors as long as there are people in this line

2. Persons from paragraph 1 of this article inherit in equal shares.

**Sub-chapter II - Second line of inheritance**

**Article 14**

**Decedent’s parents and spouse**

1. The property of a decedent who has no descendants shall be inherited by his parents and spouse.

2. The decedent’s parents shall inherit half of the property in equal shares, and the other half of his property shall be inherited by his spouse.

3. If there is no surviving spouse, the parents of the decedent shall inherit the entire property in equal shares.

4. If only one parent survives the decedent, he shall inherit half of the property.

5. If both parents of the decedent have died before him the entire property shall be inherited by the decedent’s spouse.

**Article 15**

**Brothers and sisters of the testator and their descendants**

1. In case there is no surviving spouse and no surviving descendant and one of the decedent’s parents died before him, the part of the hereditary property that would have belonged to him under Article 14 if he had survived the decedent, shall be inherited by his children (the decedent’s brothers and sisters), his grandchildren, his grand–grandchildren and further descendants according to the provisions of this Code regarding inheritance by the decedent’s children and other descendants.

2. If both parents of the decedent have died before him, the part of hereditary property that would have belonged to each of them if they had survived the decedent shall be inherited by their respective descendants in the manner set out under paragraph 1 of this article.

3. At all times, the decedent’s siblings related to him through his father only, shall inherit equal shares of the father’s hereditary share, and siblings related to him through his mother only shall inherit equal parts of the mother’s hereditary share; and siblings related to the decedent through the same mother and father shall inherit the father’s hereditary share in equal parts with the siblings from the father’s side, and the mother’s hereditary share with the siblings from the mother’s side.

**Article 16**

**The inheritance from a parent who died without any descendants**

In case there is no surviving spouse and no surviving descendant and both of the decedent parents have died before the decedent and one of the parents did not leave any descendants, the part of hereditary property that would have belonged to those descendants shall be inherited by the descendants of the other parent.

**Sub-chapter III – Third line of inheritance**

**Article 17**

**Decedent’s grandfather or grandmother**

1. The hereditary property of predecessors, who has left neither descendants, nor a spouse, nor parents, and whose parents have not left other descendants, shall be inherited by his grandparents.

2. Half of the hereditary property shall be inherited by the grandparents on father’s side, and the other half by the grandparents on mother’s side.

**Article 18**

**The rights of the grandfather and grandmother of the same lineage**

1. The grandparents of the same lineage shall inherit in equal shares.

2 If any of the predecessors of the same lineage died before the decedent, the share of the hereditary wealth that would belong to him as if he had lived after the decedent. The decedent shall be inherited by his children according to the provisions for inheritance by the decedent’s children.

3. For all other issues regarding the hereditary rights of grandparents of the same lineage, and their descendants, the provisions for inheritance by the decedent’s parents and siblings shall apply.

**Article 19**

**Grandparents of one lineage who have died without leaving descendants**

If the grandparents of the same lineage have died before the decedent and have not left descendants, the part of the hereditary property that would have belonged to them if they had survived the decedent shall be inherited by the grandparents of the other lineage, as per article 18 of this Book.

**Sub-chapter IV – Inheritance by Public Authorities**

**Article 20**

**The municipality as legal heir of last resort**

1. If the decedent does not leave any legal heir or with testament, the succession shall be assumed by the municipality where the decedent had his last residence or abode.

2. If his or her place of residence has been outside the territory of the Republic of Kosovo then the hereditary wealth belongs to the municipality where the decedent has had his or her last residence or place of residence in the country. In cases where the decedent has never resided or stayed in the Republic of Kosovo, the hereditary wealth belongs to the state.

**Chapter IV – Special Provisions for Some Heirs**

**Sub-chapter I – Children**

**Article 21**

**Equal treatment of the decedent’s children**

Children born in marriage and outside marriage when paternity has been recognized or certified according to the Book for the Family, as well as those adopted, and their descendants, shall have equal rights to inheritance.

**Article 22**

**Equality in inheritance of adoptees**

The adoptee and his descendants shall have the same rights towards the adopter as to adopter’s children and their descendants.

**Article 23**

**Consequences of a request to nullify an adoption**

An adoptee and his successors shall not inherit the adopter, if the adopter has submitted a request for ceasing the adoption, and after his death it is verified that the request was justified.

**Chapter V – Rights over Household Items and Spouse’s Rights**

**Article 24**

**Inheritance of household items**

1. The household items that are used for fulfilling the daily needs of the surviving spouse or other heirs, who have lived in the same house, such as furniture, equipment etc., shall be inherited by the surviving spouse and decedent’s descendants, unless these items are of substantial value.

2. The persons listed in paragraph 1 of this article shall obtain the co-ownership in equal shares of the household items so deducted.

**Article 25**

**Usufruct of the spouse**

1. The surviving spouse has the right to live at the marriage spouse's home for a period of one year after the death of the decedent, without prejudice to his right to inherit.

2. If the matrimonial home has been taken away from the spouse without his consensus, he can reclaim it from the person who is in its possession.

**Article 26**

**Matrimonial property status**

1. The surviving spouse of the decedent has the right to claim his share from the joint property. This share will not count towards the share in the inheritance that the spouse is enChapterd to according to this Book or to the will of the decedent.

2. If the decedent and his spouse had joint property under their matrimonial property regime, only the share that pertains to the decent after distribution of the joint property shall fall in the scope of the inheritance.

3. Nothing in this Book shall be construed to limit the surviving spouse’s right to whatever he is enChapterd to under the Family Law provisions regarding the winding-up of a matrimonial property regime.

**Article 27**

**When a spouse is not eligible to inheritance**

1. The right to inheritance between spouses ceases to exist upon divorce or annulment of the marriage.

2. A spouse shall not be eligible to inherit in the following cases:

2.1 if at the time of the death of the decedent the requirements for the dissolution by divorce of the marriage were satisfied and the decedent had filed for or consented to the divorce

2.2. if the decedent was enChapterd to file for the annulment of the marriage and had filed for it.

**Chapter VI – Persons Receiving Alimonies or Maintenance**

**Article 28**

**The rights of persons whom the decedent paid alimonies or maintenance to**

1. Any obligations of the decedent to provide maintenance or alimonies shall be transferred to the inheritance as a debt if the person who benefits from the alimony or maintenance would otherwise not have the necessary means for living.

2. The heirs and legatees are liable for the payment of this debt according to the provisions on the liability vis-à-vis creditors of the decedent in general.

**Chapter VII – Compulsory Heirs**

**Sub-chapter I – Principles**

**Article 29**

**Compulsory heirs in general**

1. Compulsory heirs are: the decedent’s descendants, adoptees, their descendants, his parents, and spouse.

2. Decedent’s grandparents, and siblings, are compulsory heirs only if they suffer from permanent and total disability to work and lack the means for living.

3. The persons mentioned under paragraphs 1 and 2 of this article are compulsory heirs when they are called for inheritance according to Articles 11-19.

**Article 30**

**Extramarital Cohabitation**

Persons in extramarital cohabitation are not compulsory heirs

**Article 31**

**The compulsory and the available part (share) of the hereditary property**

1. The compulsory heirs have the right to such part hereditary property over which the decedent cannot dispose, and which is called the compulsory share.

2. The compulsory share of the descendants and of the spouse is half, and the compulsory share of other compulsory heirs is one-third, of the share the compulsory heir would have obtained as heir at law according to the provisions on inheritance under Articles 12 to 19 of this Book, while the compulsory share of other heirs receives the third of it.

**Sub-chapter II – Calculating the Compulsory Share**

**Article 32**

**Determining the value of the hereditary property**

1. The value of the hereditary property, which is used as the basis for calculating the compulsory share, shall be calculated as follows:

2. First, all the assets the decedent had at the moment of his death shall be inventoried and evaluated, including all testamentary dispositions, and all debts owed to the decedent, even those owed by one of the heirs, except those debts obviously irrecoverable.

3. The decedent’s liabilities, the cost of inventorying and evaluating the inheritance, and the expenses for the decedent’s funeral, shall then be subtracted from the value of the decedent’s assets so determined.

4. To the remainder so determined shall be added the value of all gifts made by the decedent in any manner to an heir at law within the last ten years before his death, including gifts made to heirs who have renounced to their inheritance, and those gifts that the decedent ordered not to count towards the heir’s inheritance share.

5. To this sum shall be added the value of gifts that the decedent made to persons who are not heirs at law during the last year of his life, with the exception of ordinary gifts.

**Article 33**

**What is considered a gift**

For the purposes of this Book, a gift is considered any renunciation of a right, forgiveness of debt or other obligation, any transfer of property in the interest of an heir on behalf of the hereditary part with the purpose of establishing or expanding the family, practicing a mastery, or any other activity without reward.

**Article 34**

**Determination of the value of the gift**

The value of a gift shall be evaluated based on its value at the moment of the donation.

**Article 35**

**Gifts consisting of insurance**

If the gift consists of an insurance contracted for the benefit of the donee, its value shall be equal to the amount of premium paid by the decedent, if such amount is equal to or smaller than the amount insured; and if such amount exceeds the amount insured, the value of the gift shall be equal to the amount insured.

**Article 36**

**Deduction of household items**

Household items that one heir or the spouse inherits will not be calculated towards the compulsory share, nor shall they be counted towards the hereditary share of an heir.

**Sub-chapter III – Decreasing Testamentary Dispositions and Returning of Gifts due to Infringement of the Compulsory Share**

**Article 37**

**Infringement of the compulsory share**

1. If the compulsory share is infringed, testamentary dispositions shall be decreased, and gifts shall be returned, to the extent required to restore the compulsory share.

2. The compulsory share is infringed if the combined value of testamentary dispositions and gifts exceeds the available share. This combined value shall comprise gifts and testamentary dispositions that have been ordered by the decedent not to count towards the share of a compulsory heir. It shall not comprise gifts that were been made more than ten years before the death of the decedent.

**Article 38**

**The rank of decrease and return**

1. If the compulsory share is infringed, the testamentary dispositions shall be decreased, and if that is insufficient, the gifts shall be returned.

2. If the gift cannot be returned *in rem*, the person who received the gift shall return its value according to the provisions on the return of an unjust enrichment.

**Article 39**

**Proportional decrease of testamentary inheritance**

Testamentary dispositions are decreased proportionally, irrespective of their nature and volume, and irrespective of whether they result from one or several wills, unless otherwise provided for in the will.

**Article 40**

**Privileged legacy**

If the decedent has left a legacy and ordered for some legacies to be paid prior to others, these legacies shall only be decreased if the value of the other legacies is not sufficient to restore the compulsory share.

**Article 41**

**Proportional decrease of legacies**

1. A testamentary heir, whose share is reduced in order to restore the compulsory share, may request a proportional reduction of legacies to be paid by him/her, unless otherwise provided for in the will.

2. Paragraph 1 of this article shall also apply to a legatee who was ordered by the decedent to make a payment from his/her own legacy.

**Article 42**

**The rank of returning gifts**

1. Returning of gifts shall start with the last gift made, and shall then continue in reverse temporal order.

2. Gifts made at the same time shall be returned in proportion to the value of the gifts.

**Article 43**

**The position of the person returning the gift**

As regards the obligations of a person who has to return the gift, he is considered a *bona fide* possessor up to the day he was informed about the request to return the gift.

**Article 44**

**The right to request reduction of testamentary possession and returning gifts**

1. Only compulsory heirs shall have the right to request the reduction of testamentary dispositions and the return of gifts if the compulsory share is infringed.

2. Such right cannot be seized by the creditors of the compulsory heir.

**Article 45**

**Prescription of the request**

The reduction of testamentary dispositions may be requested within three years from the announcement of the testament, and the returning of gifts within three years from the decedent’s death, respectively from the day the decision on the declaration of death or the decision confirming his suspected death became final and absolute.

**Chapter VIII – Taking into Account of Gifts and Legacies for the Hereditary Share**

**Article 46**

**Taking into account of gifts to an heir**

1. Everything an heir has received as a gift from the decedent in whatsoever manner shall be taken into account for the calculation of the hereditary share.

2. If the gift was made more than ten years before the death of the decedent, it is not taken into account.

3. Profits or proceeds from made from the gift until the decedent’s death shall not be taken into account.

4. Gifts shall not be taken into account if the decedent has declared at the time of donation or later, or in a will, that the gift should not be counted towards the hereditary share, or if it results from the circumstances that this was the decedent’s intention.

5. Nothing in this article shall affect the provisions on the compulsory share.

**Article 47**

**Taking into account legacies for heirs at law**

A legacy that is left to an heir at law shall be counted towards his hereditary share, unless it results from the will that the decedent wanted such heir to receive the legacy in addition to his hereditary share.

**Article 48**

**Taking into account gifts and legacies**

1. Donations and legacies shall be taken into account by distributing to the other heirs, from the

hereditary property, the respective value, and by dividing only the remainder among all heirs.

2. If things and rights that the decedent owned of his death are not sufficient for the other heirs to receive the respective value, the heir towards whose share the gifts or legacies are counted shall not be obliged to return anything he had received.

3. Nothing in this article shall affect the provisions on the compulsory share.

**Article 49**

**The right of an heir who will not have gifts or legacies taken into account**

1. If according to the decedent’s will, the gift or legacy should not be counted towards the heir’s hereditary share, such heir shall retain the gift or legacy, and shall take part in the division of the inheritance, with the other heirs, as if he had not received the gift or legacy.

2. If there are compulsory heirs, and according to the decedent’s will the donation or legacy should not be counted towards the heir’s hereditary share. The heir may retain the gift or legacy only within the limits of the available share.

**Article 50**

**The right of an heir who has renounced to the inheritance**

An heir who has renounced to the inheritance shall retain the gift within the limits of the available share.

**Article 51**

**The right to return gifts**

1. An heir has the right to return to the inheritance property what had been donated to him.

2. In this case, its value shall not be counted towards the hereditary share, and as regards the expenses and damages caused to the gift, he will be considered to have been a *bona fide* possessor, unless the contrary is proved.

**Article 52**

**Expenses caused by maintaining the heirs**

1. What is spent for the maintenance of an heir, or for his compulsory education, shall not be counted towards his or her heredity share.

2. The court shall decide whether expenses incurred for further education of an heir are counted towards such heir’s hereditary share, taking into account the circumstances of the case, and namely the value of the inheritance, the amount of expenses incurred for such further education, and the ability of the other heirs to maintain themselves.

**Article 53**

**Customary gifts**

Customary gifts shall not be counted towards the hereditary share.

**Article 54**

**Gifts made to a person who is replaced by another person in the inheritance**

1. If a person has been replaced as an heir by one or several other persons because he/ was unworthy, or has been excluded from inheritance by will, or has been deprived of the compulsory part, any donations made to such replaced person will not be counted towards the share of the heir or heirs replacing it in the inheritance.

2. If a person has been replaced as an heir by one or several other persons because he had died before the decedent, or because he renounced the inheritance, any donations made to such person will be counted towards the share of the heir or the heirs replacing it in the inheritance.

**Article 55**

**Taking into account of the heir’s debt towards the decedent**

Any debt owed to the decedent by an heir will be counted towards that heir’s share, according to the provisions regarding setoff for compensation.

**Article 56**

**Who may request counting**

Each heir shall have the right to request that gifts and legacies be counted towards the hereditary share of another heir.

**Chapter IX – Testamentary Inheritance**

**Article 57**

**Definition of will**

1. A will implies the expression of final willpower foreseen by law, by which the decedent orders the distribution of his property after his death.

2.Two or more persons cannot make a will in the same act, neither for the benefit of a third person, nor under the Chapter of a reciprocal and mutual disposition.

**Sub-chapter I – General Rules on the Validity of Wills**

**Article 58**

**Ability to make a will**

1. A will may be made by any person who is able to act and who is aged 18 or over.

2. The Testament can also be done by a person who has reached 16 and has gained the authority through emancipation

3. The validity of the will shall not be affected if the decedent loses his ability to act after the will has been made.

4. The person who has been deprived of the ability to act, and the person who at the time of the making of the will is unable to understand its consequences (the lack of ability for wills) cannot make a will.

**Article 59**

**Validity of a will**

1. If the contents of a will permit more than one interpretation, then in case of doubt preference is be given to the interpretation under which the disposition may be effective.

2. The ineffectiveness of one of a number of dispositions contained in a will results in the ineffectiveness of the other dispositions only if it is to be assumed that the decedent would not have made them without the ineffective disposition.

**Article 60**

**Invalidity of a will caused by erroneous expression of intention**

1. A will shall be null and void if made as a result of threat, actual violence, or fraud.

2. Testamentary dispositions shall also be invalid when they were made by the decedent as a result of a substantial mistake.

3. If only some dispositions of the will were made as a result of threat, or actual violence, or fraud, or substantial mistake, then only these dispositions shall be considered invalid.

**Article 61**

**Annulment of a will for testamentary incapacity or erroneous expression of intention**

1. Only a person with a legal interest shall be enChapterd to require the annulment of a will, or of some of its dispositions, because the decedent was legally incapable to make a will, or was not of mature age, or because dispositions were made as a result of threat, or actual violence, or fraud, or substantial mistake, and may only do so within one year from the day when such person obtained actual knowledge about the existence of a grounds for invalidity, and in any event no later than 10 years from the time the will was announced.

2. The one year deadline cannot begin before the will is announced.

3. Vis-à-vis a person who is in bad faith, the annulment of a will can be requested for up to 20 years starting with the announcement of the will.

**Sub-chapter II – Formal Requirements for the Validity of Wills**

**Article 62**

**Holographic will**

1. A will shall valid if it has been written, dated and signed by the decedent with his own hand or has placed his fingerprint.

2. The date shall mention the day, the month, and the year.

3. The signature shall contain the last name of the decedent and at least one first name, and shall be made at the end of the will.

**Article 63**

**A written will in the presence of witnesses**

1. A decedent who is literate may make a will by signing the document irrespective of the fact who has written it, in the presence of two witnesses, declaring before them that the will is his.

2. The witnesses will sign the will themselves, and it is useful to note their capacity of being witnesses.

**Article 64**

**A court will if the decedent is literate**

1. At decedent’s request, a will may be drafted by the competent judge, who shall verify decedent’s identity prior to do so.

2. The judge shall read the written will to the decedent and then inform him about the legal consequences of the will.

3. After the decedent has read and signed such will, the judge shall note on the will itself that the decedent has read and signed it in his presence.

**Article 65**

**A court will if the decedent is illiterate**

1. If the decedent cannot read the will drafted by a judge, the latter shall read it out to him in the presence of two witnesses. The decedent then, at the presence of the same witnesses, shall sign the will or put his fingerprint on it, after having declared that it is his will.

2. The witnesses shall sign the will.

3. The judge will confirm in the court records (procès-verbal) that all these procedures have been followed. These records should be signed by the decedent, the witnesses, and the judge.

**Article 66**

**Submission of a will to the court for safekeeping**

1. The decedent may entrust the competent court with the custody of a will written by his hand, a written will made before witnesses, or a will made in court, in an open or a sealed envelope.

2. The court shall make a record of the reception of the will, and shall put it into a special envelope, which shall be stamped and kept by the court.

**Article 67**

**Who may be a witness when drafting a written will before the witnesses and at a court testament?**

1. If a written will is made before witnesses (Article 80), and in case of a will made in court (Article 82), the witnesses shall be adults, who are not deprived of the ability to act, who are literate, and who understand the language the will is made in.

2. Testator’s descendants, his adoptees and their descendants, his ascendants, his adoptive parents, collateral relatives up to and including the fourth degree of kinship, the spouses of all these persons, and the testator’s spouse, shall neither be witnesses when a written will is drafted before witnesses, nor to a will made in court, nor draft a will according to the statement of an testator as a judge.

**Article 68**

**The will provisions to the benefit of a judge, the witnesses, and their close relatives**

Dispositions in a will whereby something is left to the judge who has drafted the testament, to the witnesses, and to ascendants, descendants, siblings, and spouses, of these persons, are null and void.

**Article 69**

**An oral will**

A testator may only declare his last will orally before two witnesses, if due to exceptional circumstances it is not possible to make a written testament.

**Article 70**

**Witnesses to an oral will**

When an oral will is made, only the persons who may be witnesses to a court testament shall be witnesses, but they do not necessarily have to be literate.

**Article 71**

**Duties of witnesses to an oral will**

1. The witnesses before whom the testator orally declares his will shall write down the declarations of the testator as soon as possible and submit it to a court, or repeat it orally before the court indicating when, where and in what circumstances the testator declared his will.

2. An oral will shall become invalid if, thirty (30) days after the exceptional circumstances in which it was made have ceased, it has not been declared to the court by the witnesses in accordance with paragraph 1 of this article. The provisions of the Book on Obligations regarding the interruption or the stoppage of prescription periods shall apply.

**Article 72**

**Dispositions in an oral will to the benefit of witnesses and their close relatives**

Dispositions in an oral will, whereby something is left to the witnesses, to their spouses, their ancestors, their descendants, the collateral relatives up to and including the fourth degree of kinship, or to the spouses of all these persons, are null and void.

**Article 73**

**Contesting a will for lack of the required form**

1. A will may only be contested for lack of the required form, after the opening of the inheritance, by a person with legal interest, and only within one year from the day that person obtained actual knowledge about the will, and in any event no later than ten years from the announcement of the will.

2. The one-year-period shall begin with the announcement of the will.

**Article 74**

**Evidence for a destroyed, lost, or forgotten testament**

A will that has been destroyed accidentally or by a third party, or lost, or mislaid, either after or before the testator’s death, but unintentionally, shall have the effects of a valid will, in case the interested person provides evidence that the will existed, that it was destroyed, lost, or mislaid, that it was made in accordance with legal requirements as to form, and if he proves the content of such part of the will that he is referring to.

**Sub-chapter III – Content of aWill**

**Article 75**

**Appointing an heir**

1. A testator may appoint, by will, one or several heirs.

2. Testamentary heirs are persons whom the testator has appointed, in a will, as heirs of his entire property, or a fractional part of his entire property.

3. A person to whom the testator has left one or several specific things or rights shall be considered an heir if it can be ascertained that this was the intention of the testator,

**Article 76**

**Dispositions for lawful purposes or setting up a foundation**

1. A testator may dispose by will that a thing, a right, or a fraction of the hereditary property, or the entire hereditary property, shall be used in order to achieve a lawful purpose.

2. In case the testator has ordered to set up a foundation, and has allocated funds to accomplish its purpose, such foundation will come into existence when a license from the competent public body is obtained.

3. When a testator leaves his property to public bodies, or other institutions, in a will, he may assign this property to a certain purpose.

**Article 77**

**Obligations and terms**

1. A testator may impose obligations on a person who is going to benefit from the inheritance.

2. Testamentary dispositions may be made under conditions, or may be limited in time.

3. Impossible, or illegal, or immoral conditions or obligations, as well as those that are unreasonable or contradictory, shall be considered nonexistent.

**Article 78**

**Appointment of heirs and other beneficiaries**

Heirs, legatees and other persons who benefit from a will shall be considered appointed if the will contains information on the basis of which it can be determined who they are.

**Article 79**

**Interpretation of a will**

1. The provisions of a will shall be interpreted according to the real intentions of the testator.

2. In case the intention of the testator cannot be ascertained, the interpretation that is more favorable for heirs at law, or – if given – for persons whom an obligation has been imposed on in the will, shall prevail.

**Chapter X – Legacy**

**Article 80**

**Leaving a legacy**

A testator may leave one or more legacies by a will.

**Article 81**

**The content of a legacy**

1. A testator may leave one or more things or rights to a certain person, or order the heir, or someone else whom he has left something to, to give a thing to a certain person, or to pay him a sum of money, or to discharge that person’s debt, or to maintain him, or in general to do, to refrain from doing, or to acquiesce to, something for the benefit of such person.

2. This kind of bequest is called a legacy, and the person appointed is called a legatee.

**Article 82**

**Who is obliged to discharge a legacy**

1. On the basis of the will, the legatee shall have the right to request discharge of the legacy from the person who has been assigned such execution in the will.

2. If the discharge of a legacy has been assigned to several persons, every one of them shall be liable proportionally to the inheritance he receives, except where it results from the will that it was the testator’s intention that they should otherwise be liable.

**Article 83**

**Legacies made to public bodies or institutions**

When a testator makes a legacy inheritance to public bodies or other institutions, he may specify the purpose for which the property shall be used.

**Article 84**

**Discharge of the legacy**

1. When an heir charged with a legacy, or an obligation, has died before the testator or has become unworthy, or has renounced to the inheritance, and the testator did not appoint any other heir to fulfill the obligations related to such legacy or charge instead of him, the heirs or heirs at law, to whose share of inheritance his part is added or passed, shall not be able to refuse discharge of the legacy due to these circumstances.

2. If the discharge of obligations related to the legacy or the obligation is closely linked to his person, who due to the abovementioned reasons cannot or does not inherit the decedent, the legacy and obligation shall become invalid.

**Article 85**

**Proportional execution**

In case none of the heirs has been assigned by the testator to discharge the legacy, each heir shall be obliged to contribute to its discharge in proportion to their inheritance share.

**Article 86**

**Reduction of legacy and obligations**

1. An heir is not obliged to discharge a legacy in its entirety, if its value exceeds the value of the decedent’s property he could dispose of without restriction.

2. The same shall apply to a legatee, if the value of a legacy or obligations that he is to discharge exceeds the value of his own legacy.

3. In such cases all legacies and obligations shall be reduced proportionally, unless the testator has disposed otherwise.

**Article 87**

**Lapse of legacy in general**

The legacy shall lapse if the legatee dies before the testator, or renounces to the legacy, or is unworthy. In these cases, the object of legacy remains with the person who was obliged to execute the legacy, unless it results otherwise from the will.

**Article 88**

**Lapse related to the object of the legacy**

The legacy shall also lapse when the testator has spent the object of legacy, or this object is lost while the testator was still alive, or is accidentally lost after his death.

**Article 89**

**Prescription of legacy**

The right to request discharge of the legacy shall be prescribed within one year from the day the legatee was notified about his right, and was authorized to request discharge of the legacy, and three years from the day when it is possible to discharge the legacy.

**Chapter XI – Executors**

**Article 90**

**Appointment of an executor**

1. A testator can appoint with a will one or more persons as executor.

2. An executor of a will can be any person that has the full legal capacity to act.

3. The person appointed to be a will executor is not obliged to take over this duty.

**Article 91**

**The duties of an executor**

1. Unless otherwise determined by the testator, the executor shall in particular protect the inheritance, administer it, to discharge debts and legacies, and in general to see to an execution of the will according to the testator’s intentions.

2. If there are several executors, they shall carry out the duties they were given together, unless the testator disposed otherwise.

3. The executor must hear the heirs prior of partitioning the inheritance between the heirs.

**Article 92**

**Being accountable and executor’s reward**

1. The executor shall be accountable for his work before the court.

2. He is enChapterd to be reimbursed for his expenses and the work performed, which shall be payable from the available inheritance share, by order of the court.

**Article 93**

**Dismissal of the executor**

1. The court, upon requisition or *ex officio*, may dismiss the executor, if his work is not in compliance with testator’s intentions, or with the law.

2. The dismissed executor shall be liable for the damage caused by his actions as executor.

**Article 94**

**Court-appointed executor**

The testator may require the Inheritance Court to appoint an executor, or to appoint one if the executor appointed by the testator refuses to assume the office or is dismissed by the Inheritance Court.

**Chapter XII – Revocation of the Will**

**Article 95**

**Principle**

1. A testator may revoke any time a will entirely or partially, in one of the forms foreseen by law for the preparation of the will.

2. A testator may also revoke a written will by destroying the document.

**Article 96**

**Relationship between the previous and subsequent will**

1. In case the subsequent will does not expressly revoke the previous will, the provisions of the former will shall remain in force if they are not in contradiction with the provisions of the subsequent will.

2. In case the testator has destroyed the subsequent will, the previous will shall re- enter into force.

**Article 97**

**Dispositions over the object of a legacy**

Any subsequent disposition over a thing left to someone by the testator in a will, shall have as result the revocation of such bequest.

**Chapter XIII – Unworthiness and Exclusion of Compulsory Heirs**

**Sub-chapter I – Unworthiness**

**Article 98**

**On unworthiness in general**

1. An unworthy person cannot inherit.

2. The unworthiness shall not prevent descendants of the unworthy person to inherit, as if the unworthy person had died before the decedent.

**Article 99**

**Unworthiness for inheritance**

1. A person is unworthy if he:

* 1. has intentionally killed, or has attempted to kill, the decedent, his spouse, his children, or parents;
  2. has falsely denounced the decedent of a crime which carries imprisonment, or made a false testimony to that effect;
  3. with the use of fraud, threat, or actual violence, has forced the decedent to draft, or change, or abrogate, a will, or has drafted himself a false will, or has used such will for his own interests, or the interests of third parties;
  4. behaved towards the decedent in a humiliating manner and has mistreated him; or
  5. did not fulfill an obligation to maintain or assist the decedent.

**Article 100**

**On Consideration of unworthiness *ex officio***

Unworthiness shall be considered by the court *ex officio*, except in the cases when the heir has not fulfilled his obligation to maintain or assist the decedent.

**Article 101**

**Exemption to ineligibility**

A decedent shall have the right to authorise an unworthy person to inherit, provided that the authorisation is granted by will, or, where such authorisation is not given expressively, the decedent notes in the will that he or she has recognised the unworthiness and still assigns him or her as an heir.

**Sub-chapter II – Exclusion of a Compulsory Heir from Inheritance and the Deprivation of the Compulsory Share to the Benefit of his or her Descendants**

**Article 102**

**The reasons of exclusion**

1. The decedent can exclude from inheritance, in his will, an heir who has the right to the compulsory share:

* 1. If he has committed a grave offence against the decedent by violating a legal or moral obligation;
  2. If he has deliberately committed a criminal act against the decedent, or his or her spouse, child, or parent.

**Article 103**

**Partial or full exclusion**

Exclusion from inheritance may be completely or partially.

**Article 104**

**Conditions for valid exclusion**

1. A decedent who wishes to exclude an heir from inheritance should express it in a clear manner and also indicate the reason for such exclusion.

2. The cause of exclusion should exist at the time when the will is made.

3. In case of conflict regarding exclusion, the person supporting the exclusion shall have to prove that there are grounds for it.

**Article 105**

**Consequences of exclusion**

With the exclusion the heir loses the part of inheritance equal to the amount it is excluded, and the remaining heir’s rights shall be assessed as if the excluded person had predeceased the decedent.

**Article 106**

**Deprivation of the compulsory share to the heir’s benefit**

1. If a compulsory heir is deeply indebted, or is a dissipative person, the decedent may deprive him, completely or partially, of the compulsory share, to the benefit of his descendants.

2. This deprivation remains in force only if at the moment of opening the inheritance, the deprived person has a child under 18 or a grandchild under 18 from a predeceased child, or a mature child or mature grandchild from a predeceased child, who is unable to work.

**Chapter XIV – Creditors of the Estate**

**Article 107**

**On the debts of the inheritance in general**

1. The heirs are liable for the debts encumbering the inheritance, in proportion to their share, and up to the amount of their hereditary share.

2. Debts encumbering the inheritance are: those secured on inheritance property, the personal debts of the decedent, the cost of the decedent’s funeral, and expenses required for the safeguarding and administration of the hereditary property up to the division of the inheritance.

**Article 108**

**Liability of a legatee for testator’s debts**

A legatee shall not be liable for the decedent’s debts, unless otherwise provided in the will.

**Article 109**

**Legacy left to a creditor**

When a testator has left the legacy to his creditor, such creditor has the right to request the discharge of the obligation towards him, except when the context of the will shows that the testator’s aim was otherwise.

**Article 110**

**Priority of creditors over legatees**

1. The decedent’s creditors shall have the right to have the obligations towards them be fulfilled before the legacies are discharged.

2. If legacies have been discharged before the creditors had been paid, the creditors shall be enChapterd to reclaim such legacy according to the provisions of the Book on Obligations for unjust enrichment.

**Article 111**

**Separation of inheritance**

1. The creditors of the decedent may request separation of the inheritance from the heir’s property within a three months’ time period following opening of inheritance. In this case, the heir may not take possession of heirlooms or Chapters things or rights that of inheritance, nor are the object of the inheritance, or pay his creditors from such inheritance, until the creditors who had requested claimed such separation have been compensated.

2. The creditors of the decedent, who requested separation of inheritance, may recover their debts only from the inheritance property.

3. The court may appoint the custodian for the separated inheritance.

**Chapter XV – Transfer of Inheritance to Heirs**

**Sub-chapter I – Opening of Inheritance**

**Article 112**

**Death and announcement of a deceased person**

1. Upon the death of a person his inheritance shall be opened.

2. The declaration of a person as dead shall have the same effect.

**Article 113**

**Opening the inheritance of a person announced as deceased and starting timelines**

1. The day on which the decision on the declaration of death of a person has become final shall be considered the day the inheritance of such person is opened, unless the decision itself specifies another day of death.

2. When a person is declared dead, the timeline starts from the day the decision to declare this person dead has become final

**Article 114**

**Simultaneous death**

If two or more persons die in the same accident, or if it is not known in which chronological order they have died, neither of them shall be considered alive at the moment the inheritance was opened. If the moment of death is known, the later deceased person is considered to inherit the person who died before him

**Article 115**

**Unknown heirs**

1. When it is not known whether there are heirs or not, the court shall by an announcement summon the persons claiming the right of inheritance to appear before the court.

2. If one year has passed after the day of the announcement, and no heir has appeared, the inheritance shall entrusted to the competent municipality, but this does not deprive an heir, who may appear later, to such inheritance or the part he is enChapterd to .

**Article 116**

**Custody for unknown heirs**

1. Immovables shall be handed over to the municipality, in the territory of which the immovable is located, while movables shall be handed over to the municipality in which the testator had his residence in Kosovo.

2. If the testator did not have any residence in Kosovo at the time of his death, movables shall be handed over to the municipality in the territory of which the court of Inheritance is located.

3. If the inheritance has not been claimed by the heirs within 20 years from the date of the announcement of the will, or if there is no will, from the death of the decedent, the decedent shall be considered without legal and testamentary heir and the provisions regarding inheritance rights of the municipalities under Article 21 shall apply.

**Article 117**

**Inheritance custodian**

1. When all or some of the heirs are not known or their residence is unknown, and in other cases when required, the court shall appoint a provisional inheritance custodian, who shall be enChapterd to sue, or be sued, on behalf of the heir, to recover the claims, and pay the debts, and to generally represent in heirs.

2. The appointment of a provisional custodian for an heir who is unable to protect his interest or who is a child under 18, shall be governed by the Family Law provisions.

3. The court has authority to assign specific rights and duties to an inheritance custodian.

3. If only one or several co-heirs are not known, or if the residence of such co-heirs is unknown, the court may appoint one of the remaining co-heirs as inheritance custodian.

**Sub-chapter II – Renouncement to Inheritance**

**Article 118**

**Renouncement in general**

1. The heir may renounce to the inheritance by a statement made to the notary, until the inheritance proceedings are completed.

2. The renouncement shall only apply to the renouncing heir in person and not to his descendants.

3. An heir who has renounced shall be deemed never to have been an heir.

4. The descendants of the renouncing heir, who will inherit instead of him, may renounce to the inheritance under the same rules as any immediate heir.

**Article 119**

**Enlightenment and form**

1. The judge will read out the statement and explain its consequences to the renouncing heir. He ensures that the renouncing heir understands this and he decides freely to make the statement.

2. The statement shall be made in writing, signed in front of the judge after the enlightenment and then shall be certified by the judge.

3. If the renouncing heir is a child under 18, he is represented by his parents, or, if the parents have not got parental responsibility, by his Custodian. Permission for the renouncement from the Custodian Body is required.

**Article 120**

**The transfer of the right to renounce to inheritance**

1. If an heir dies before the inheritance proceedings are completed, and has not renounced to his inheritance, the right of renouncement shall be transferred to his heirs.

2. If there are several heirs to the deceased heir, they are not required to renounce to the inheritance jointly, and each of these heirs to the deceased heir may renounce to such part of the decedent’s inheritance as corresponds to his part in the inheritance of the deceased heir.

**Article 121**

**Who is not enChapterd to renounce to inheritance**

1. An heir, who made dispositions on the entire inheritance, or on parts thereof, shall not be able to renounce to such inheritance.

2. Measures taken by an heir only to secure the inheritance, as well measures of ongoing administration shall do not deprive such heir of the right to renounce to his inheritance.

**Article 122**

**The content of a statement on the renouncement of inheritance**

1. A renouncement to inheritance shall be neither partial nor conditional.

2. A renouncement made for the benefit of a specific heir shall not be considered as a renouncement, but as a declaration of assignment of the inheritance share to that heir.

**Article 123**

**Renouncement to an inheritance that has not been opened**

Renouncement to an inheritance that has not been opened has no legal effect.

**Article 124**

**Irrevocable nature of the statement on renouncement of inheritance or acceptance of inheritance and its annulment**

1. The statement on the renouncement of inheritance or acceptance of inheritance may not be revoked.

2. The heir who made the statement may require the annulment of his statement, if such a statement was issued under a threat, or actual violence, or due to fraudulence or error.

**Article 125**

**How the inheritance share of the person renouncing is inherited**

The inheritance share of an heir who has renounced shall be inherited as if the heir who renounces had predeceased the decedent, unless it results otherwise from a will.

**Article 126**

**Prescription of the right to claim the inheritance**

1. The right to claim inheritance as the decedent’s heir shall be prescribed, *vis-à-vis* a *bona fide* possessor within one year from the day the heir knew about his right, and about who the possessor is, and in any event no later than within ten (10) years counted, for the legal heir from the death of the decedent, and for the testamentary heir from the day the will was announced.

2. *Vis-à-vis* a *mala fide* possessor, this right shall be prescribed within twenty years from the dates mentioned in paragraph 1.

**Sub-chapter III – Division of Inheritance**

**Article 127**

**EnChapterment to division**

1. Division of inheritance may be requested by any heir at any time, but not inopportunely.

2. Such right shall not be prescribed.

3. Any contract whereby an heir renounces to his right to request division, as well as a provision of the will which bans or restricts such right, shall be considered null and void.

**Article 128**

**The community of inheritance**

1. The inheritance shall be administered and disposed jointly by the heirs up to the moment of its division.

2. If there is no executor, and the heirs do not agree on the administration of inheritance, the court, upon the request of one of the heirs, shall appoint an administrator, who shall administer the property on behalf of all the heirs. The court may assign to each of heirs the share of inheritance to be administered.

3. The court may also appoint one of the heirs as administrator.

4. The administrator may, with the permission of the court, make dispositions regarding things comprised in the inheritance, if authorized to do so by the will, or if this is necessary to pay expenses, or to avoid damage.

**Article 129**

**Assignment of inherited share before the division**

1. Before the division, each heir may transfer his inherited share, in whole or in part, to co-heirs.

2. The contract on the transfer of the inherited share shall only be valid, if entered into before a judge.

3. The judge will read out the contract and explain its consequences to the heirs. He ensures that the all heirs understand this and that the heir who transfers his share decides freely.

4. The contract shall be made in writing, signed in front of the judge after the enlightenment of the parties and certified by the judge.

5. The assignment contract entered into by an heir, and person who is not an heir, shall only oblige the heir to hand over his share to the other party to the contract after the division; and the other party to the contract shall not receive any other right until division.

6. The co-heirs have a right of pre-emption according to the provisions of the Law on Real Rights. Such right shall become time-barred, for each co-heir, two months after such co-heir has been notified in writing about the transfer. If several co-heirs exercise their pre-emption rights, they shall jointly acquire the inheritance share, in proportion to their respective shares of the entire inheritance.

**Article 130**

**The right of heirs that cohabited or worked in the same community with the decedent**

1. Upon the request of an heir, who lived or worked with the decedent in the same community, the court may, if it finds that there are reasonable grounds for the request, decide to assign him one or several movable or immovable things, or groups of things, that would belong to the share of other heirs, and that he shall pay to the other heirs a monetary amount equal to the value of these things, within the time limits set by the court taking into account the circumstances of the case.

2. Until the established amount has been paid, these heirs shall have a legal pledge over the inheritance share assigned to the heir, who is under the obligation to pay them.

3. If the payment is not made within the time limits, the heirs have the right to request that either their claim be discharged, or the things that would normally have been part of their share of inheritance, be handed over to them.

**Article 131**

**Distribution of household items**

1. The household items that serve to fulfill the daily needs of an heir who has lived with the decedent in the same household, but is neither his descendant nor his spouse, shall be assigned to such heir upon his request, and its value shall count towards this heir’s share.

2. If the value of these items exceeds the value of the inherited share, the heir whom they have been assigned to shall pay the difference to the other heirs.

**Article 132**

**Obligation for protection amongst the heirs after the division**

1. If, after the division,

1.1. a third person, in application of a right created prior to the division, lawfully takes away, or seizes, a thing that an heir has received in the division, or lawfully limits the exercise of a right that an heir has received in the division, or

1.2. a thing received by an heir in the division has a concealed defect, or

1.3. a claim, assigned to an heir in the division, does not exist, or cannot be recovered with the full amount assigned to the heir, the other heirs shall be liable to such heir for the difference between the actual value to the heir of such thing, right, or object, and its presumed value in the division.

2. The right of an heir under paragraph 1 shall become time-barred three (3) years after the day of the division. The provisions of the Book on Obligations on the statute of limitation shall apply to such prescription.

3. The liability of each heir, under this article, and for each claim, shall be limited to such share of each claim as corresponds to his share in the entire inheritance.

**Chapter XVI – Transitional Provisions**

**Article 133**

**Application in time in general**

1. This Book applies to the succession of persons who die on or after the ##.##.## (day the Civil Code comes into force).

2. This Book applies to any disposition of property upon death (e.g. will, contract) made on or after the ##.##.## (day of its coming into force).

**Article 134**

**Application in time concerning cohabitation**

1. If cohabitants without children have lived to together for less than ten years (see old Article 28) on the ##.##.## (day the Civil Code comes into force), the following rules apply:

2. The five year period stated in Article 11 of this Book is applied with the modification that the period does not begin before ##.##.## (the date the new law comes into force).

3. However, as soon as the couple has lived together for ten years, it enjoys full inheritance rights in any case.

**Article 135**

**Application in time concerning the rights of extended family members**

1. If a member of the extended family has acquired rights under the Law No. 2004/32 (Family Law of Kosovo), these rights remain unaffected.

2. Claims arising from a familial contribution against the decedent at his death under the old law are treated like any other obligations of the decedent.

**Article 136**

**Application in time concerning the long-term affairs**

If a person has properly acquired any rights under the old law, those rights shall be respected under the new provisions. This also accounts for rights that have been properly acquired under the Law No. 2004/32 (Family Law of Kosovo).

**Article 137**

**Procedural provisions remaining in force**

All rules of procedural nature, which are not incorporated into this Book, shall remain in force.

**Article 138**

**Provisions of Private International Law remaining in force**

All rules of Private International Law, which are not incorporated into this Book, shall remain in force.