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UNIFORM ACT RELATING TO GENERAL COMMERCIAL LAW

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

Mindful of the Treaty on the Harmonization of Business Law in Africa, in particular Articles 2, 5, 6, 7, 8, 9, 10, 11 and 12 thereof;

Mindful of the report of the OHADA Permanent Secretariat and the observations of the Contracting States;

Mindful of the opinion of the Common Court of Justice and Arbitration dated 7 April 1997;

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

PRELIMINARY CHAPTER : SCOPE

Article 1:

Every trader, be he an individual or a legal person including all commercial companies of which a State or a person governed by public law is a member, as well as every economic interest group, whose place of business or registered office is situated on the territory of one of the Contracting States to the Treaty on the Harmonization of Business Law in Africa, (hereinafter referred to as "Contracting States"), shall be subject to the provisions of this Uniform Act.

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

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

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

BOOK I : STATUS OF TRADER

CHAPTER I : DEFINITION OF TRADER AND COMMERCIAL TRANSACTIONS

Article 2:

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

Article 3:

Commercial transactions shall include:

- the purchase of movable or immovable property for resale;
- banking, stock-exchange, currency exchange, brokerage, insurance, and transit transactions;
- contracts between traders for business purposes;
- the industrial exploitation of mines, quarries and any natural resource deposit;
- rental of movable property;

- manufacturing, transportation and telecommunication operations;
- the operations of trade middlemen such as commission, brokerage and agency, as well as middleman's operations relating to the purchase, underwriting, sale or rental of immovable property, businesses, shares in commercial companies or property development companies; and
- transactions carried out by commercial companies.

Article 4:

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

Article 5:

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

CHAPTER 2 : CAPACITY TO TRADE

Article 6:

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

Article 7:

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

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

Article 8:

No person shall engage in a commercial activity where he/she is subject to a particular status resulting into an incompatibility.

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

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

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

Third parties may, if they decide, rely upon transactions carried out by a person who is in a situation of incompatibility, but the latter cannot rely upon such transactions.

Article 9:

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

- civil servants and staff of public entities and Enterprises with State shareholding;
- Court officials and Auxiliary officers of Justice: Barrister, Bailiff, Auctioneer, Stock Exchange Broker, Currency exchange agent, Notary, Court Registrar, Legal Administrator, and Liquidator;

- approved Chartered Accountant and approved Accounting Officer, Auditor, Consulting Lawyer, Ship-broker;
- more generally, any occupation the exercise of which is subject to regulations forbidding the exercise of such activity concurrently with a commercial occupation.

Article 10:

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

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

Article 11:

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

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

The prohibition applicable to the bankrupt person shall end upon discharge, under the conditions and forms provided for in the Uniform Act regarding the collective procedures for the discharge of debts.

Article 12:

Without prejudice to other sanctions, transactions carried out by a person subject to a prohibition shall not be binding as against third parties acting in good faith.

Good faith shall always be presumed.

However, such transaction shall be binding as against the person subject to the prohibition.

CHAPTER 3 : ACCOUNTING OBLIGATIONS OF THE TRADER

Article 13:

Every trader, whether he is an individual or legal person, shall keep a day book in which his commercial transactions shall be recorded on a daily basis.

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

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

Every corporate body which is a trader shall also comply with the provisions of the Uniform Act relating to the Law on commercial companies and economic interest groups and the Uniform Act relating to the organization and harmonization of business accounting.

Article 14:

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

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

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

Article 15:

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

Article 16:

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

Article 17:

Every corporate body engaged in trading must also draw up, each year, a summary of its financial statements, in accordance with the provisions of the Uniform Act relating to the organization and harmonization of business accounting, and to the Uniform Act relating to commercial companies and economic interest groups.

CHAPTER 4 : BARRING BY LIMITATION

Article 18:

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

BOOK II : TRADE AND PERSONAL PROPERTY CREDIT REGISTER

PART I : COMMON PROVISIONS

CHAPTER I : GENERAL PROVISIONS

Article 19:

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

- 1) for the registration of
 - a) individuals having the status of trader, within the meaning of this Uniform Act;
 - b) commercial companies and other corporate bodies subject to registration, as well as branches of foreign companies operating on the territory of the Contracting State.

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

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

2) for the registration of entries relating to :

- a) the the charge over shares;
- b) the over a business, and the preferential right of the seller of the business;
- c) the charge over professional equipment and motor vehicles;
- d) the charge over stocks;
- e) the preferential rights of the Treasury, the Customs Administration and Social Security Institutions;
- f) retention of title clauses;
- g) finance lease contracts.

CHAPTER II : ORGANIZATION OF THE TRADE AND PERSONAL PROPERTY CREDIT REGISTER

Article 20:

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

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

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

Article 21:

The Register kept at the court Registry shall comprise:

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

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

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

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

Article 22:

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

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

The first original shall be kept by the Registry.

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

The third and fourth originals shall be forwarded by the Registry to the National Data-Base which shall then send one of them to the Regional Data-Base.

Article 23:

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

1) for individuals: their full name, date and place of birth, nature of the activity in which they are engaged, address of their principal place of business, as well as the addresses of branches set up within the jurisdiction of the relevant court for the registered office and outside the said jurisdiction;

2) for commercial companies and other corporate bodies: their business name, legal form, nature of activity exercised, registered capital, address of the registered office and those of branches set up within the jurisdiction of the relevant court for the registered office and outside the said jurisdiction.

Article 24:

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

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

2) decisions handing down sanctions affecting the estate of managers and directors of corporate bodies;

3) discharge decisions or amnesty orders lifting disqualifications or prohibitions.

The information provided for under this article shall be communicated by the court which handed down the decision, or failing this, by any interested person, to the Registries having jurisdiction over the place(s) where the secondary business(es) is/are located.

PART II : REGISTRATION IN THE TRADE AND PERSONAL PROPERTY CREDIT REGISTER

CHAPTER I : REGISTRATION CONDITIONS

Section 1 - Registration of individuals

Article 25:

Every individual having the status of trader as provided for in this Uniform Act shall, within the first month of operation of his business, apply to the Registry of the competent court within whose jurisdiction the business is operated for registration in the Trade and Personal Property Credit Register.

The application for registration shall indicate :

- 1) the full name and personal address of the applicant;
- 2) his date and place of birth;
- 3) his nationality;
- 4) where applicable, the name under which he runs the business and the sign used;
- 5) the activity or activities carried out, and the form of operation;
- 6) the date and place of marriage, the type of marriage property option adopted, clauses binding on third parties restricting the free disposal of property of the spouses or the absence of such clauses, proceedings for separation of property;
- 7) the full name, date and place of birth, domicile and nationality of persons having the capacity to bind the applicant by their signature;
- 8) the address of the principal place of business and, if applicable, the address of each of the other subsidiaries or branches operated on the territory of the Contracting State;
- 9) if applicable, the nature and the place of operation of the activity of the last branches previously operated with an indication of their registration number (s) in the Trade and Personal Property Credit Register;
- 10) the date of commencement, by the applicant, of the operation of the principal business and, where applicable, the other branches.

Article 26:

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

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

Section 2. Registration of companies and other corporate bodies

Article 27:

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

The application shall mention:

- 1) the name of the company;
- 2) where applicable, the trading name, acronym or sign;
- 3) the activity or activities carried out;
- 4) the form of the company or corporate body;
- 5) the amount of the registered capital with indication of the amount of contributions in cash and an evaluation of contributions in kind;
- 6) the address of the registered office, and where applicable, that of the principal place of business and of each of the other places of business;
- 7) the duration of the company or the corporate body as fixed by its articles of association;
- 8) the full name and domicile of business partners who have unlimited and personal liability for the company's debts, with an indication of their date and place of birth, nationality, date and place of marriage, the type of marriage property option adopted and clauses binding upon third parties restricting the free disposal of property of the spouses or the absence of such clauses, as well as proceedings for the separation of property;
- 9) the full name, date and place of birth, and domicile of managers, directors or partners with general power to bind the company or the corporate body;
- 10) the full name, date and place of birth and domicile of Auditors where their appointment is provided for by the Uniform Act relating to the Law on commercial companies and economic interest groups.

Article 28:

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

- 1) two certified true copies of the articles of association;
- 2) two originals of the validity and conformity certificate or of a certified true copy of a certificate of payment of shares;
- 3) two certified true copies of the list of managers, directors or partners having an unlimited liability and personally liable for the company's debts or with power to bind the company;
- 4) two extracts of the criminal record of the persons referred to in paragraph (3) above; if the applicant is not a national of the Contracting State in which he is applying for registration, he will also have to provide an extract of his criminal record from the authorities of his country of birth, and failing this, any other document in lieu thereof;
- 5) where necessary, a prior authorization to operate the business.

Article 29:

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

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

- 1) the name of the branch or subsidiary;
- 2) if applicable, its commercial name, acronym or sign;
- 3) the activity or activities carried out;
- 4) the name of the foreign company that owns the said branch or subsidiary; its commercial name, acronym or sign; the activity or activities carried out; the form of the company or

corporate body; its nationality; the address of its registered office; if applicable, the full name and domicile of the business partners having an unlimited liability for the company's debts;
5) the full name, date and place of birth of the natural person resident on the territory of the Contracting State with power to represent and manage the branch.

Section 3 - Common provisions for the registration of individuals and corporate bodies

Article 30:

Registration shall be personal, whether the trader is an individual or a corporate body. No person shall be principally registered in several registers or in the same register under several numbers.

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

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

Article 31:

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

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

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

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

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

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

Article 32:

Any registration, as well as any entry or indication establishing changes that have occurred since the date of their registration in the status and legal capacity of individuals or corporate bodies subject to registration, shall also be subject to a notice to be published in a newspaper authorised to publish legal notices within a month of entry of such formality.

The notice shall contain:

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

Section 4 - Supplementary and secondary amending entries

Article 33:

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

Any change concerning particularly the civil status, the marriage property option, the legal capacity and activity of an individual subject to registration, or specifically any change concerning the articles of association of a corporate body, shall be entered in the Trade and Personal Property Credit Register.

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

Article 34:

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

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

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

Article 35:

The application shall be filed at the Trade and Personal Property Credit Register of the court within whose jurisdiction the secondary business is located.

The Court Registry in charge of the Register shall forward within one month of the secondary registration, a copy of the application for secondary registration to the Court Registry in charge of the Register where the principal registration was effected.

Every registration of a secondary business shall lead to a registration number being assigned , and shall be, within one month of such registration, published in a newspaper authorised to publish legal notices.

Section 5 - Striking off the register

Article 36:

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

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

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

Every removal from the Register shall be published in a newspaper authorised to publish legal notices.

Article 37:

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

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

The liquidator must apply for the company to be struck off the Register within one month of the closure of liquidation operations.

Where the request is not made within the prescribed deadline, the Court Registry of the competent court shall strike off the company upon a judgment of the competent court, given upon its own request or upon the request of any interested party.

Every removal from the Register shall be published in a newspaper authorised to publish legal notices.

CHAPTER 2 - EFFECTS OF REGISTRATION AND DISPUTES

Section 1 - Effects of registration

Article 38:

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

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

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

Article 39:

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

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

Article 40:

Persons subject to registration in the Trade and Personal Property Credit Register may, in their commercial activities, rely on the deeds and documents subject to registration as against third parties and public services, which may however rely on them, only if such deeds and documents have been published in the Register.

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

Section 2 - Disputes relating to registration

Article 41:

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

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

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

Article 42:

Where the corporate body or an individual who is a trader fails to apply for registration within the prescribed time-limit, the competent court may, by itself or at the request of the Court Registry in charge of the Trade and Personal Property Credit Register, or any other applicant, take a decision ordering the party concerned to have his registration effected.

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

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

Article 43:

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

PART III : REGISTRATION OF SECURITY OVER PERSONAL PROPERTY

CHAPTER I : CONDITIONS FOR REGISTRATION OF SECURITY OVER PERSONAL PROPERTY

Section I - Charges over shares

Article 44:

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

1) the original copy of the security deed where it is a private document, or an authentic copy thereof where it is a notarial document or a court decision authorizing the creditor to have the charge entered in the Register.

2) four originals of a registration form indicating:

a) the full name, business name, registered capital, domicile or registered office of the parties, as well as the registration number of the company whose shares are charged;

b) the nature and date of the deed(s) deposited;

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

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

Any modification by agreement or court order shall be subject to the registration of an amendment under the same conditions and forms as provided for the initial entry.

Article 45:

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

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

1) mention the entry in the individual file opened in the name of the company whose shares are concerned with this security entry;

2) file the deeds and an original of the declaration form that was given to him in the file kept in the name of the corporate body whose shares are concerned with this security entry;

3) give to the applicant the second original of his declaration, mentioning the date and the number of the entry.

The third and fourth originals of the declaration form shall be forwarded to the National Data-Base which shall then send one of them to the Regional Data-Base.

Section 2 - Charge over a business and registration of the preferential right of the seller of a business

Article 46:

If a charge is granted over a business, the secured creditor shall present to the Registry of the competent court within whose jurisdiction the corporate body or individual that/who owns or operates the business is registered:

1) the original copy of the security deed where it is a private document or an authentic copy thereof if it is a notarial document or a court decision authorizing the creditor to have the charge entered in the Register;

2) four originals of a registration form indicating:

a) the full name, business name, domicile or registered office of the parties, as well as the registration number of corporate body or individual who owns or operates the business over which the registration is requested;

b) the nature and date of the deed(s) deposited;

c) a description of the business over which the charge is granted;

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

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

Article 47:

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

To this effect, he shall present:

- 1) the original copy of the sale contract if it is a private deed, or an authentic copy thereof where it is a notarial document;
- 2) four originals of a registration form indicating:
 - a) the full name, business name, domicile or registered office of the parties, and, where necessary, the registration number of the corporate body or the individual purchasing the business;
 - b) the nature and date of the documents deposited;
 - c) a description of the business over which the charge is granted in order to enable its identification;
 - d) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
 - e) the secured creditor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

Article 48:

Where the charge or the preferential right of the seller concerns patents, trade marks, and industrial drawings and designs, it shall, in addition to the registration of the creditor's security under the conditions stipulated in Articles 46 and 47 above, comply with the specific provisions relating to industrial property.

Article 49:

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

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

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

The third and fourth original of the declaration form shall be forwarded to the National Data-Base which shall then send one of them to the Regional Data-Base.

Article 50:

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

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

Section 3 - Charge over professional equipment and motor vehicles

Article 51:

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

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

Article 52:

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

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

Article 53:

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

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

Section 4 - Charge over stocks**Article 54:**

Where security is granted over stocks, the chargor shall file the following at the Registry of the court within whose jurisdiction the individual or corporate body who owns the stocks charged is registered:

- 1) the original of the security deed where it is a private document, or an authentic copy thereof where it is a notarial deed or a court decision authorizing the creditor to have the deed entered in the Register;

2) four originals of an entry form indicating:

- a) the full name, business name, domicile or registered office of the parties, as well as the registration number of the corporate body or the individual who owns the charged stocks against whom the entry is made;
- b) the nature and date of the deed(s) deposited;
- c) a description of the stocks charged in order to facilitate their identification;
- d) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
- e) the secured creditor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

Article 55:

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

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

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

Section 5 - Registration of preferential rights of the Treasury, the Customs Administration and Social Security Institutions

Article 56:

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

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

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

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

Article 57:

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

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

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

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

Article 58:

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

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

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

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

Section 6 - Retention of title clauses

Article 59:

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

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

- 1) a certified true copy of the deed specifying the retention of title clause;
- 2) four originals of an entry form specifying:

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

Article 60:

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

The Registry shall give the applicant an original of the form bearing clearly the indication "retention of title clause" as well as the number and date of the entry;

Any modification by agreement or court order of the retention of title clause shall be subject to be an amending entry in the Register under the conditions and in the forms stipulated for the initial entry.

Section 7 - Registration of finance leases

Article 61:

In the case of conclusion of a finance lease, the lessor may file the following at the Court Registry of the competent court within whose jurisdiction the corporate body or individual holding the finance lease is registered:

- 1) the original copy of the deed bearing the leasing contract where it is a private document, or an authentic copy thereof where it is a notarial document;
- 2) four originals of a registration form specifying:
 - a) the full name, business name, domicile or registered office of the lessee, as well as his registration number;
 - b) the nature and date of the document(s) filed;
 - c) a description of the property which is subject to the finance lease, in order to facilitate its identification;
 - d) the amount of money due on the last day preceding the entry and, where applicable, the conditions of payment of the debt;
 - e) the lessor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept.

Article 62:

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

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

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

CHAPTER 2 : EFFECTS OF, AND DISPUTES RELATING TO REGISTRATION

Article 63:

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

- 1) during a period of five years for registration of a charge over shares, a charge over a business and a charge over professional equipment and motor vehicles, and registration of the preferential right of the seller and of finance lease contracts;
- 2) during a period of three years for the registration of the general preferential rights of the Public Treasury, the Customs Administration and Social Security Institutions.
- 3) during a period of one year for the registration of a charge over stocks and of a retention of title clause.

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

Article 64:

The renewal of an entry shall be made under the same conditions as for the initial entry. After verifying that the forms submitted at the Registry are conform with the title deeds submitted, the Court Registry shall renew the entry.

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

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

Article 65:

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

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

Article 66:

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

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

- 1) the full name, business name, domicile or registered office, as well as the registration number of the individual or corporate body against whom the entry had been made, or in the case of an entry concerning shares, the registration number of the company whose shares are subject to the entry;

2) the nature and date of the deed(s) filed;

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

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

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

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

Article 67:

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

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

Article 68:

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

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

BOOK III COMMERCIAL LEASE AND BUSINESS

PART I : COMMERCIAL LEASE

PRELIMINARY CHAPTER : SCOPE

Article 69:

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

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

Article 70:

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

CHAPTER I : CONCLUSION AND DURATION OF LEASE

Article 71:

Any agreement, even unwritten, between the owner of immovable property or part thereof falling within the scope of Article 69 and any individual or corporate body allowing the latter to carry on any commercial, industrial, handicraft or professional activity on the premises with the consent of the owner is deemed a commercial lease.

Article 72:

The parties shall freely determine the duration of leases.

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

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

CHAPTER 2 : OBLIGATIONS OF THE LESSOR

Article 73:

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

He shall be presumed to have fulfilled this obligation:

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

Article 74:

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

In such case, the lessee shall bear the inconveniences of the repairs.

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

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

If the urgent repairs make it impossible to use the premises, the lessee may request the termination of the lease by the court or its suspension for the duration of the repair works.

Article 75:

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

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

Article 76:

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

Article 77:

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

Article 78:

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

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

Article 79:

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

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

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

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

CHAPTER 3 : OBLIGATIONS OF THE LESSEE

Article 80:

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

Article 81:

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

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

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

Article 82:

The lessee shall be responsible for maintenance repairs.

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

Article 83:

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

CHAPTER 4 : RENT

Article 84:

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

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

Article 85:

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

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

- the location of the premises;
- their surface area;

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

CHAPTER 5 : TRANSFER - SUB-LEASE

Article 86:

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

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

Article 87:

The transfer shall not be binding upon the lessor if he is not notified under the conditions stipulated in Article 86 above.

Article 88:

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

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

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

Article 89:

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

In case of authorized sub-lease, the lessor shall be notified of the transaction by any written form.

In the absence of notification, the sub-lease shall not be binding on the lessor.

Article 90:

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

CHAPTER 6 : CONDITIONS AND FORMS OF RENEWAL

Article 91:

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

Article 92:

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

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

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

Article 93:

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

The lessee, who holds the right of renewal by virtue of the provisions of Article 91 above, may lodge an objection against such notice of termination, by latest at the date on which the notice of termination takes effect, by notifying the lessor by an extrajudicial act of the objection of the notice of termination.

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

Article 94:

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

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

Article 95:

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

1) where he has serious and legitimate grounds against the lessee to be evicted;
Such ground must be either a failure by the tenant to fulfil a substantial obligation under the lease or cessation of operation of the business.

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

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

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

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

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

Article 96:

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

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

Article 97:

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

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

Article 98:

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

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

Article 99:

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

Where there is no agreement between the parties, the lessee may bring an action before the competent court as soon as the unrenewed lease of a specified duration expires, or as soon as the notice of termination is given with respect to a lease of an unspecified duration.

Article 100:

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

CHAPTER 7 : TERMINATION OF THE LEASE BY THE COURT

Article 101:

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

Where the lessee fails to pay the rent or to comply with a clause in the lease, the lessor may apply to the competent court to terminate the lease and evict the lessee and all the

occupants under his authority, after giving him, by an extrajudicial act, a formal notice to comply with the clauses and conditions of the lease.

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

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

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

CHAPTER 8 : PROVISIONS RELATING TO MATTERS OF PUBLIC POLICY

Article 102:

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

PART II : BUSINESSES

CHAPTER I : DEFINITION OF BUSINESS

Article 103:

A business consists of a whole of resources that enable a trader to attract and maintain customers.

It shall comprise various tangible and intangible elements of movable property.

Article 104:

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

These elements are referred to as goodwill.

Article 105:

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

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

CHAPTER 2 : METHODS OF BUSINESS OPERATION

Article 106:

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

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

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

Article 107:

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

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

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

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

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

Article 108:

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

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

Article 109:

Individuals or legal persons who grant a management lease shall:

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

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

Article 110:

The time limits provided for in the preceding article may be cancelled or reduced by the competent court, especially where the person concerned proves that he was unable to run his business personally or through his agents.

Article 111:

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

- the State;
- local authorities;

- public establishments;
- incapable persons, with regard to the business they owned before their incapacity;
- the heirs or legatee or devisee of a deceased trader, regarding the business operated by the latter;
- management lease contracts signed by representatives appointed by the court responsible in whatever capacity for the administration of a business, provided that they had been authorized to do so by the competent court and that they had met the relevant publicity provisions.

Article 112:

The debts of the owner of the business for which a management lease is granted may be declared immediately payable by the competent court if it deems that the management lease jeopardises their collection.

The action shall be instituted by any party concerned, under penalty of preclusion, within three months following the date of publication of the management lease contract, as provided for in Article 115 of this Uniform Act.

Article 113:

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

Article 114:

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

CHAPTER 3 : TRANSFER OF BUSINESS

Article 115:

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

Article 116:

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

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

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

Article 117:

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

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

Article 118:

Every document recording the transfer of a business shall indicate:

- 1) the complete civil status of the seller and the buyer with regard to individuals; the full name, business name, legal form, address of the registered office and objects of the seller and the buyer for corporate bodies.
- 2) their registration number in the Trade and Personal Property Credit Register;
- 3) if applicable, the origin of the property belonging to the previous seller;
- 4) the state of preferential rights, charges and entries registered in relation to the business;
- 5) the turnover for each of the past three years of operation or since the acquisition of the business, where it has not been operated for over three years;
- 6) the commercial profits made during the same period;
- 7) the lease, its date and duration, the name and address of the lessor and of the seller where applicable;
- 8) the agreed price;
- 9) the location and elements of the business sold;
- 10) the name and address of the bank designated as escrow where the sale is made by a private document.

Article 119:

The omission or inaccuracy of the above information may lead to the nullity of the sale, if the buyer so requests, and if he proves that such omission or inaccuracy has substantially affected the composition essence of the business sold and if he has suffered a prejudice as a result.

Such request shall be made within one year after the date of the document.

Article 120:

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

It shall be the duty of the seller and buyer, each in so far as he is concerned, to ensure that the corresponding amendment is made in the Trade and Personal Property Credit Register.

Article 121:

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

Article 122:

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

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

Article 123:

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

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

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

Article 124:

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

Article 125:

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

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

If, at the end of this time period, no objection is notified to the escrow he shall hand over the selling price to the seller.

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

Article 126:

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

Article 127:

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

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

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

Failure to comply with the formalities imposed on the person lodging the objection will result in his objection being declared null and void.

Article 128:

The objection shall have the effect of protecting such right. It is for the person lodging the objection to bring an action before the competent court to have his claim recorded and to have it paid.

Article 129:

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

The seller may also make an out of court arrangement for the person lodging the objection to withdraw it , in this case, the withdrawal shall be notified by the person who filed the objection under the conditions of form referred to in Article 125 above.

Article 130:

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

Article 131:

Any creditor who has had a preferential right or a charge entered in the Register or who has duly lodged an objection may, within a period of one month following the publication of the sale in a newspaper empowered to publish legal notices, make an offer to purchase the business at a price that is one-sixth higher than the overall price for the business indicated in the contract of sale.

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

In all circumstances, the person making such higher offer shall, within the same time limit, deposit at the Registry of the competent court the price increased by one-sixth.

Article 132:

The specifications, articles and conditions of sale shall reproduce all the contents of document by which the higher offer is made and shall also indicate at the instance of the Registry the charges previously entered in the Register and the objections duly notified following the publication, after the voluntary sale, of the business or during the compulsory sale proceedings.

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

Article 133:

The sale shall be an auction sale organised in the competent court, in the form of bids, after accomplishing the publicity formalities provided in this matter

Article 134:

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

For these purposes, he shall have his preferential right entered in the Register in the forms stipulated in this Uniform Act.

Article 135:

If the seller is not paid, he may also institute proceedings for the avoidance of the sale, in accordance with the provisions of common law.

Article 136:

The seller who intends to apply for the avoidance of the sale shall notify such action by extrajudicial act or by any means in writing to the creditors registered against the business at the elected domicile by these creditors in their entries.

He shall also make an advance registration of his application for avoidance of the sale, in accordance with the provisions stipulated for this purpose in the Uniform Act on the organization of securities.

The avoidance of the sale may be decided only by the competent court where the seller of the business is registered.

Any out of court arrangement for the avoidance of the sale of a business shall not be binding on creditors registered with respect to the the buyer.

BOOK IV : TRADE MIDDLEMEN

PART I : COMMON PROVISIONS

CHAPTER 1 : DEFINITION AND SCOPE

Article 137:

A trade middleman is a person who has the capacity to act or who purports to act, on a regular basis and as an occupation, on behalf of another person, called the principal, for the purposes of concluding a commercial contract of sale with a third party.

Article 138:

A trade middleman is a trader; he must comply with the conditions provided for in Articles 6 to 12 of this Uniform Act.

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

A trade middleman may be an individual or a corporate body.

Article 139:

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

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

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

Article 140:

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

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

Article 141:

The provisions of this Book shall not apply;

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

Article 142:

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

CHAPTER 2 : ESTABLISHMENT AND SCOPE OF THE MIDDLEMAN'S MANDATE

Article 143:

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

Article 144:

The middleman's mandate may be written or oral.

It shall not be subject to any conditions of form.

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

Article 145:

The principal and the middleman on the one hand, and the middleman and the third party involved on the other hand, shall be bound by customs they knew of or were supposed to know of and which, in trade, are widely known and generally followed by parties involved in agency relations of the same nature in the given trade branch.

They shall also be bound by practices they have established between themselves.

Article 146:

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

The authority shall include particularly the power to do legal acts required for its performance.

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

Article 147:

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

CHAPTER 3 : LEGAL EFFECTS OF ACTS DONE BY THE MIDDLEMAN

Article 148:

Where the middleman acts on behalf of the principal within the scope of his authority and third parties knew or were supposed to know his position as middleman, his acts shall

directly bind the principal to the third party, unless it results from circumstances of that particular case, including the reference to a commission or brokerage contract, that the middleman only intended to bind himself.

Article 149:

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

- the third party did not know or was not supposed to know the position of the middleman, or
- if the specific circumstances of that particular case, including the reference to a commission contract, show that the middleman only intended to bind himself.

Article 150:

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

The middleman shall thus be liable to the principal for the good and faithful execution of the mandate.

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

Article 151:

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

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

Article 152:

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

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

Article 153:

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

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

Article 154:

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

Article 155:

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

He shall pay interest on late payments, and shall also compensate for damage resulting from the non-performance or poor performance of the mandate, unless he proves that the damage occurred without any fault on his behalf.

CHAPTER 4 : TERMINATION OF THE MIDDLEMAN'S MANDATE

Article 156:

The middleman's mandate shall end:

- by agreement between the principal and the middleman;
- upon the full performance of the transaction or transactions for which the authority was given;
- upon revocation by the principal, or upon renunciation by the middleman.

However, the principal who wrongfully revokes the mandate given to the middleman shall compensate him for damages caused.

The middleman who wrongfully renounces to perform his mandate shall compensate the principal for damages caused.

Article 157:

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

Article 158:

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

Article 159:

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

PART 2 : THE COMMISSION AGENT

Article 160:

In relation to sale and purchase, the commission agent shall be a person who undertakes in his own name to carry out, but on account for a principal, the sale or purchase of goods, for a commission.

Article 161:

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

Where the commission contract contains specific instructions, the commission agent shall strictly comply with them, unless, where applicable, he takes the initiative to cancel the contract if the nature of the contract or the customs are against such instructions.

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

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

Article 162:

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

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

Article 163:

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

Article 164:

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

Article 165:

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

Article 166:

Every commission agent shall have, for all debts owed to him by the principal, a right to retain the goods held by himself.

Article 167:

Where goods forwarded for sale under commission are in an obviously poor condition, the commission agent must preserve the remedies against the carrier, establish proof of the damaged condition, preserve the damaged goods as best as he can and inform the principal promptly.

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

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

Article 168:

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

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

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

Article 169:

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

Article 170:

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

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

Article 171:

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

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

Article 172:

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

Article 173:

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

Article 174:

The customs commission agent shall be bound to pay, on behalf of his client, duties, taxes or fines charged by customs services. The customs commission agent who has paid, for a third party, duties, taxes or fines charged by customs services shall be subrogated in the rights of the Customs authorities.

Article 175:

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

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

PART 3 : THE BROKER

Article 176:

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

Article 177:

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

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

Article 178:

The broker shall:

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

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

Article 179:

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

Article 180:

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

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

If the buyer is the sole principal, he shall bear the commission, in addition to the price paid to the seller.

Article 181:

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

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

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

Article 182:

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

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

Article 183:

The broker loses his right to a remuneration and to the reimbursement of his expenses if he acted in the interest of the contracting third party, in disregard of his commitments towards his principal, or where he arranged for the contracting third party to pay him a remuneration, without the knowledge of the principal.

PART 4 : COMMERCIAL AGENTS**Article 184:**

The commercial agent shall be an intermediary , acting in a the capacity of a self-employed professional, to whom are assigned, on a permanent basis, the tasks to negotiate and eventually conclude contracts of sale, purchase, hire, or provision of services on behalf of, and on the account of producers, manufacturers, traders or other commercial agents, without being bound to them by a contract of employment.

Article 185:

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

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

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

Article 186:

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

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

Article 187:

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

Where a non-competition agreement is concluded between the commercial agent and his principal, the commercial agent shall be entitled to a special indemnification at the end of the contract.

Article 188:

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

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

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

Article 189:

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

Article 190:

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

Article 191:

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

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

Article 192:

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

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

Article 193:

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

Article 194:

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

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

Article 195:

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

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

Article 196

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

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

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

In the case of a contract for a specified duration transformed into a contract for an unspecified duration, the period of notification shall be determined in relation to the period running from the beginning of contractual relations between the parties.

The parties may not agree on shorter periods of notice.

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

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

Article 197:

In case relations between the principal and the commercial agent are terminated, the commercial agent shall be entitled to a compensatory indemnification, without prejudice to possible damages and interest.

The commercial agent shall lose the right to redress if he has not notified the principal, by an extrajudicial act, within a period of one year from the date of termination of the contract, that he intends to enforce his rights.

The successors of the commercial agent shall also be entitled to a compensatory indemnification where the termination of the contract is due to the death of the agent.

Article 198:

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

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

Article 199:

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

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

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

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

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

Article 200:

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

Article 201:

At the end of the contract, each party is bound to return anything given to him for the duration of the contract either by the other party, or by third parties on behalf of the other party, but without prejudice to either party's right to retain such thing.

BOOK V : COMMERCIAL SALE

PART I : SCOPE AND GENERAL PROVISIONS

CHAPTER 1 : SCOPE

Article 202:

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

Article 203:

The provisions of this Book shall not govern:

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

Article 204:

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

Article 205:

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

CHAPTER 2 : GENERAL PROVISIONS

Article 206:

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

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

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

Article 207:

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

Subject to contrary agreements between the parties, they are deemed, in the commercial sales contract, to have tacitly referred to the professional practices they knew or ought to

have known, and which, in trade, are widely known and generally followed by parties to contracts of the same type in the commercial sector concerned.

Article 208:

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

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

Article 209:

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

PART 2 : FORMATION OF A CONTRACT OF SALE

Article 210:

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

A proposal shall be sufficiently specific where it indicates the goods, and expressly or implicitly determines the quantity and price of the goods or provides guidelines which make such determination possible.

Article 211:

An offer shall become effective when it reaches the offeree.

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

However, an offer cannot be revoked if it is specified that it is irrevocable, or if it provides for a specific time limit for its acceptance.

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

Article 212:

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

Silence or lack of action shall not, by themselves, constitute an acceptance.

Article 213:

The acceptance of an offer shall take effect from the time when the offeror receives the indication of its assent.

The acceptance shall not take effect if the offeror does not receive the notice of acceptance within the time limit stipulated by him or, where this is not stipulated, within a reasonable time

limit, considering the circumstances of the transaction and the means of communication used by the offeror.

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

Article 214:

A reply which purports to be the acceptance of an offer, but which contains additional or different elements which do not substantially alter the terms of the offer shall constitute an acceptance.

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

Article 215:

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

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

Article 216:

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

Article 217:

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

Article 218:

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

PART 3 : OBLIGATIONS OF THE PARTIES

CHAPTER 1 : THE SELLER'S OBLIGATIONS

Article 219:

The seller shall be bound, under the conditions provided for in the contract and in this Book, to deliver the goods and to hand over, where necessary, documents relating to them, to ensure that they are in conformity with the order and to provide his warranty.

Section 1 : Obligation to deliver

Article 220:

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

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

Article 221:

If the seller is bound to arrange for the transportation of goods, he shall conclude the contracts required to ensure that the goods are transported to the place agreed upon with the buyer, by appropriate means of transport and in accordance with the trade practices.

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

Article 222:

The seller shall deliver the goods:

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

Article 223:

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

Section 2: Obligation relating to the conformity of goods

Article 224:

The seller shall deliver the goods which are of the quantity, quality, specification, provided for in the contract and which are contained and packaged in the manner provided for in the contract.

Except where the parties have agreed otherwise, the goods shall conform to the contract only if:

- 1. they are fit for purposes for which goods of that type are generally used;
- 2. they are fit for any special purpose which was brought to the knowledge of the seller at the time of conclusion of the contract;
- 3. they possess the qualities of goods of which the seller has provided a sample or model to the buyer;
- 4. they are packaged or contained according to the usual method for goods of the same type, or in the absence of such usual method, in a manner to ensure their conservation and protection.

Article 225:

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

Article 226:

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

Article 227:

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

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

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

Article 228:

The buyer shall lose the right to rely upon a lack of conformity, if he does not notify it to the seller, indicating the nature of the lack of conformity, within a reasonable period from the time he noticed it or ought to have noticed it.

Article 229:

In any case, the buyer shall be deprived of the right to claim redress of a lack of conformity, where he does not notify it to the buyer within one year from the date the goods were effectively delivered to him, unless this time limit is incompatible with the duration of a contractual guarantee.

Section 3: Warranty

Article 230:

The seller shall deliver the goods free from any right or claim from a third party, unless the buyer accepts to collect the goods under such conditions.

Article 231:

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

The guarantee extends to both the buyer as against the seller, and to the sub-buyer as against the manufacturer or an intermediary seller, in relation to a hidden defect affecting the goods sold from the time they were manufactured.

Article 232:

Any clause limiting the warranty shall be interpreted restrictively.

The seller who purports to rely upon a clause limiting the warranty must prove that the buyer knew and accepted the existence of that clause when the sale was concluded.

CHAPTER 2 : THE BUYER'S OBLIGATIONS

Article 233:

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

Section 1: Payment of price

Article 234:

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

Article 235:

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

Article 236:

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

The net weight is defined as the gross weight less the weight of the packaging.

Article 237:

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

- at the latter's place of business, or
- if the payment is to be made on delivery of goods or handing over of documents, at the place agreed upon for the delivery or handing over.

Article 238:

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

The seller may make such payment of the purchase price a condition for the delivery of the goods or handing over of the documents.

If the contract involves the transportation of the goods, the seller may dispatch the goods on terms whereby the goods or the documents representing the goods will only be handed over to the buyer against payment of the purchase price.

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

Article 239:

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

Section 2: Taking delivery

Article 240:

The obligation to take delivery shall consist in the buyer :

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

Article 241:

If the buyer is late in taking delivery of the goods or does not pay the purchase price, whereas payment of the price and delivery must be made simultaneously, the seller shall, where the goods are in his possession or under his control, take reasonable measures, under the circumstances, to ensure their preservation.

He shall be entitled to retain the goods until the buyer reimburses the expenses he incurred for the preservation of the goods.

Article 242:

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

He shall be entitled to keep them until the seller reimburses the expenses he incurred for the preservation of the goods.

Article 243:

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

Article 244:

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

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

This party shall be liable to the other party for the balance.

CHAPTER 3 : PENALTIES FOR THE NON-COMPLIANCE WITH CONTRACTUAL OBLIGATIONS

Section 1 - General Provisions

Article 245:

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

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

Article 246:

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

Article 247:

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

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

Article 248:

A breach of a contract of sale by one of the parties is considered as essential when it causes to the other party such prejudice as to substantially deprive him of what he rightfully expected from the contract, except where such breach was caused by an act of a third party or by an event of force majeure.

Section 2 - Sanctions for breach of the seller's obligations

Article 249:

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

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

Article 250:

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

Where the goods do not conform to the contract, the buyer may demand that the seller supplies goods in replacement if the lack of conformity constitutes an essential breach of the contract and if such delivery is demanded at the time of denunciation of the lack of conformity, or within a reasonable period following such denunciation.

Where the goods do not conform to the contract, the buyer may demand that the seller remedies the lack of conformity. The remedy shall be required at the time of denunciation of the lack of conformity, or within a reasonable period following such denunciation.

Article 251:

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

The buyer shall not, before the expiry of such time limit, use any of the remedies available to him for breach of the contract, unless he has received notification from the seller informing him that the latter would not perform his obligations within the time limit so granted.

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

Article 252:

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

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

Article 253:

If the seller requests the buyer to inform him whether he will accept the performance of his obligations and if the buyer fails to respond within a reasonable period of time, the seller may fulfil his obligations within the time limit he has indicated in his request.

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

Article 254:

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

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

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

- in case of late delivery, from the time when he knew that the delivery had been made;
- in case of a breach other than late delivery.

Article 255:

If the seller delivers only part of the goods or if only part of the goods delivered conforms to the contract, the provisions of Articles 251 to 254 shall apply regarding the part that is lacking or that does not conform to the contract.

The contract shall be completely terminated only if the partial non-compliance or the lack of conformity constitutes an essential breach of the contract.

Section 3 - Sanctions for non-performance of the buyer's obligations

Article 256:

If the buyer has not performed any of his obligations under the contract of sale, the seller shall be entitled to :

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

Article 257:

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

The seller shall not, before the expiry of such time limit, rely on any of the remedies available to him in case of breach of the contract, unless he has received notification from the buyer informing him that the latter would not perform his obligations within the time limit so fixed.

However, the seller shall not on that account lose the right to claim damages and interest for late performance.

Article 258:

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

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

If the buyer requests the seller to inform him whether he accepts the performance of his obligations and if the seller fails to respond within a reasonable period of time, the buyer may perform his obligations within the time limit he has indicated in his request.

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

Article 259:

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

- 1) if the buyer's breach of any of his obligations under the contract or these provisions constitutes an essential breach of the contract, or
- 2) in case of default in taking delivery, if the buyer does not take delivery of the goods within the additional time limit proposed by the seller.

Article 260:

In case the goods do not conform to the contract and whether or not the purchase price has already been paid, the buyer may reduce the price proportionately to the difference between the value that the goods effectively delivered had at the time of delivery and the value that goods conforming to the contract would have had at that time.

Article 261:

If the seller delivers only part of the goods or where only part of the goods delivered conforms to the contract, the provisions of Articles 258 to 260 above shall apply regarding the part that is lacking or that does not conform to the contract.

The buyer shall declare the contract completely terminated only where the partial breach or the lack of conformity constitutes an essential breach of the contract.

Article 262:

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

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

If the buyer takes full or partial delivery of the goods, he shall pay for the delivery at the rate provided for in the contract.

Section 4 - Interest and Damages and interest

Article 263:

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

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

Article 264:

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

Article 265:

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

Article 266:

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

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

Section 5 - Exemption from liability

Article 267:

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

Article 268:

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

Section 6 - Effects of avoidance of contract

Article 269:

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

Article 270:

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

Article 271:

The buyer may not obtain avoidance of the contract or demand delivery of replacement goods if it is not possible for him to return the goods in the state in which he received them.

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

Article 272:

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

Article 273:

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

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

Section 7 - Barring by limitation

Article 274:

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

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

Article 275:

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

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

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

Article 276:

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

Article 277:

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

Article 278:

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

Article 279:

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

Article 280:

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

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

Article 281:

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

Article 282:

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

PART 4 : EFFECTS OF CONTRACT

CHAPTER I : TRANSFER OF OWNERSHIP

Article 283:

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

Article 284:

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

The retention of title clause shall have effect between the parties only if the buyer knew about it by it being mentioned in the contract of sale, the order form, or the delivery note no later than on the day of the sale.

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

CHAPTER 2 : TRANSFER OF RISKS**Article 285:**

The transfer of ownership shall entail the transfer of risks.

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

Article 286:

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

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

Article 287:

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

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

Article 288:

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

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

BOOK VI

FINAL PROVISION

Article 289:

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

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

Done at Cotonou, on 17 April 1997