

# **LAW OF COMMERCE**

1334

## **Book One - General Regulations** **Chapter One – Introduction**

Article 1: The provisions of the Commerce Laws are applicable to all commercial transactions.

Article 2: Commercial disputes are to be settled in accordance with legally binding agreements and in their absence disputes are to be determined and settled by reference to the meaning and implication of existing commercial laws. In the absence of a law, local and special customs (those that are commonly recognized, consented to, and used) are applied. Local customs and practice are preferred to general custom. In the absence of any other of the above – mentioned methods any other laws which might apply to the dispute are used.

Remark: The preference of local and special custom and practice to general custom and practice is given because the custom of and practice of locality are the out come of business transactions of the area. If a clear-cut custom relating to a dispute in one particular locality does not exist, the custom of the nearest locality to this dispute is applied.

Article 3: In the absence of any other explicit laws, the contents of Article 2 are applied.

### **Chapter 2- Commerce and Commercial Capacity**

Article 4. Every individual having reached the age of eighteen is permitted to engage in commercial activities provided he is not legally debarred of his legal rights.

Article 5. When a business has passed to a minor, the legal authorities shall consider if the continuation of such a trade by his legal agent is beneficial to the interest of the minor. In case the executer or the legal agent should not have the legal commercial capacity, he is not permitted to carry on until a new agent or guardian has appointed.

Article 6. The rulings of Article 5 are applicable to other individuals lacking commercial capacity.

Article 7: All persons who under law of promotion and retirement of civil servants are counted as employees of services of the state are barred from engaging in direct commercial activities.

Article 8: Everyone, whether as an individual or a member of a corporation, who possesses legal commercial capacity and who in his own name has engaged in one or

more commercial activities and who has made commercial activities his habitual business is considered a merchant.

Article 9: A person who has opened a center for his commercial activities and who advertises to the public through circular letters and the press is considered a merchant even if his habitual business is not commercial activity.

Article 10: An individual performing a commercial transaction by chance or by coincidence shall not be considered a merchant. The transaction and activities performed must be governed by the regulations of commercial laws.

Article 11: Provinces and municipalities may engage in commercial activities. They are not considered merchants but their commercial transactions are governed by commercial law.

Article 12: People whose commercial activities are based more on physical strength than on cash capital, or whose income is so little it barely suffices for their living, regardless of whether they are stationed in a shop or move around, are considered small merchants (small businessmen).

Article 13: Small merchants do not have to have a business title or keep the commercial registry books and neither are they affected by the bankruptcy regulations.

**Remarks:** Those who are in one of the trade classes and who are required to get a business class permit are classified as small businessmen.

### **Subchapter C – Commercial Transactions**

Article 14: For merchants / non-merchants who purchase movable and personal property for sale or lease to other persons in original or altered form, the sale or leasing of such properties is considered a commercial transaction.

Article 15: Leasing of movable and personal property by merchants and non-merchants for the purpose of leasing it to others is considered a commercial transaction.

Article 16: Employment of persons for the purpose of contracting them to others by individuals, whether merchants by vocation or otherwise, is considered a commercial transaction.

Article 17: If a landowner, farmer, or a cattle-raiser sells his products or changes them to other forms before selling them, such action should be considered as normal or ordinary activities. Similarly, if a farmer with agricultural and industrial machines or plants exchange his product – or if a professional person or his employee (or his machines) produces his professional product and sells them; or if an author publishes his books and sells them, these activities constitute ordinary activities. But if a person for the purpose of

changing his agricultural product opens a permanent establishment possessing the qualities of an industrial business, this is considered a commercial transaction.

Article 18: The following transactions are commercial and business transactions:

- a. Agreement to provide any kind of movable property and accept any kind of activities and products.
- b. Establishment of a power plant or press; photography; printing; and selling of books.
- c. Establishment of theaters, movies, parks and public places, e.g., hotels, business compounds, restaurants and the like, employment offices, and auction places.
- d. Transportation of passengers, animals, and goods via land, air, and water
- e. Distribution of water, gas, electricity and the establishment of telephone communication.

Article 19: The following transactions are commercial transactions regardless of the parties concerned:

- a. Working for commission.
- b. Brokerage.
- c. Bill and draft transactions (whether recorded in the name of a person or a bearer).
- d. Money exchange transactions.
- e. Transactions made by private and public (special and general) banks.
- f. Transaction relating to current accounts and agreements thereof.
- g. Transactions relating to mortgage documents and receipts existing against goods placed in commercial general storehouses.
- h. Establishment of commercial companies and buying and selling of shares.
- i. Contraction of any kind of insurance for all risks whether for fees or for reciprocal terms.

Article 20: All transactions of a merchant are assumed to be commercial unless proved ordinary.

Article 21: If an agreement between parties is commercial to only one of the parties, provided there are no statements to the contrary in the law, the obligation arising from this agreement on the part of the contractors are subject to the Commercial Law.

Article 22: Obligations arising for a merchant or non-merchant from other transactions or from transactions similar to those mentioned in this chapter, are inherently subject to the regulations of the Commercial Law.

Article 23: All transactions relating to the transactions of this chapter are taken as commercial transactions.

## **Subchapter D- Business Registration**

Article 24: The business Registration Office, supervised by the courts, deals with the solution of problems and the hearing of cases arising from commercial disputes.

Article 25: Responsibilities for the operation of the Business Registration Office, under the direct supervision of the president of the related court, shall be delegated to a responsible and authorized officer.

Article 26: If there are many commercial courts in one locality, the Business Registration Office, by the decision of the higher authorities, should be placed under the supervision of one of these courts.

Article 27: All matters and transactions subject to registration by commercial or other laws are registered directly or by request made through related agencies or other concerned parties. Any chances brought about related matters must be filed and registered according to rules.

Article 28: The following are to be registered by merchants and commercial firms:

- a. Name of the person or firm.
- b. Father's name.
- c. Place and date of birth.
- d. Citizenship of person or firm.
- e. Business title.
- f. Field of business .
- g. Kind of firm as well as its date of establishment and home office.
- h. Capital of firm (small business are exceptions).
- i. Individual authorized to sign in affairs of the firm.
- j. Any other specifications which are compulsory must be registered.

Article 29: Interested parties, as well as their heirs and agents may be authorized to make request for registration. In case more than one person is authorized to make the registration request, if the registration is made through request of one of them, it is considered to have been made through the request of all of them.

Article 30: Since registration may be initiated either by personal request of interested parties or by their legal agents, they are executed by submission of papers formally prepared and considered and containing registration information.

Article 31: Request for registration must be made during the period prescribed by law for this matter. If no such period is fixed by law, the registration must be completed within one month from date of completion of documents. For persons who must register but who live far from the place of registration, due to the distance. One day is added for each 12 miles.

Article 32: The registration that must be advertised should be in local, official, or private papers until such time as a special paper for the purpose of official advertising is created. In case there is no local paper, the matter should be advertised in the local paper of the closest vicinity. Except in special cases where advertisements are legally permitted to be omitted, the subject of the registration should be published word by word. If the advertisement takes more than one issue of the paper, the last day of advertisement is considered the completion date of advertisement. The number and date of registration must appear on request paper, securities, and advertising newspaper, and must be recorded.

Article 33: Subjects awaiting court decisions or those concerning which the registration officers have some question could, by the request of the interested parties, be temporarily registered. If within six months of the temporary registration the matter is settled, it is permanently registered according to the law, otherwise it is omitted from the registry.

Article 34: If the registered item, in all or in part, should no longer exist, the registered item could, on written request of the concerned parties, ( which should be accompanied by necessary supporting papers), be omitted in whole or in part as necessary. For items whose registration it was necessary to advertise, their omission is advertised as well.

Article 35: In regard in execution of the registration by the officer of registration, the omission and changes related to thereof, submitted by an interested party, could be objected to by relevant officers of registration. Such objection is given the consideration of the court and a decision will be made. In the case the method followed by registration of officers should also affect a third party, the matter should be taken by the court, heard, and a decision made as a legal case in presence of the third person and the objector.

Article 36: Anyone may study the contents of a registry and the recorded papers related thereto to investigate their corrections, and they may request an authenticated copy of the registration.

**Remark:** In such cases, a certification fee is charged as follows:

- a. For each study (one Afghani)
- b. For receiving a copy with no confirmation and certification (5 Afghanis)
- c. For receiving a certified copy (20 Afghanis)

Article 37: The individuals required to register who have not done so are subjects to compensate those individuals who have been affected by this negligence. Moreover, by recommendation of registration officer to the related court, such a person could also be fined in cash. Such people made to compensate for loss received by others can appeal to court of appeals or to Supreme Court, provided the compensating money is placed in the court safe or provided they submit a guarantee before the case is accepted for further hearing.

Article 38: Subjects registered in the Registration Office can affect and have legal competence in relation to a third party but the subjects not registered that legally should

have been do not affect the third party, even though they have been advertised by special channels. This much should be mentioned – that the obliged persons against other could claim and prove their awareness of the matters that should have been registered.

Article 39: Individuals who, in bad faith, commit fraudulent acts in registering are subject to a cash fine or imprisonment or both. These people for a period of time, are deprived of the right of membership in Chambers of Commerce and industry, and are not allowed to carry out transactions in stock exchanges.

Demand for reimbursement of losses on the part of others because of this fraudulent act is permitted and the Court should give consideration to it whenever the demanding person requests it.

## **Chapter Five Business Title**

Article 40: Every merchant is obliged to sign and execute his business transactions under a definite title known to be his business title.

Article 41: Every merchants whether alone or in partnership with another, and also every commercial company must register and advertise his or its business title in the Registration Office of the district where his or its business office is located or where business transaction are taking place.

Article 42: The business title should be composed of names of the merchants and his family and must be clearly distinguishable from titles already registered. Every merchants can add and bring changes to his business title provided this change does not create any wrong impression about the identification of the merchants himself, or about the existence of his close partner in the mind of a third party.

Article 43: The title of a general partnership (Kollektif Sirkat in Turkish, Sherkat Tazamoni in Dari) must be composed of the names of all partners, or it should, at least, contain the name of one partner and include the word "Tazamoni", or general partnership.

A special partnership (Sherkat Tazamoni-Mekhtalet in Dari, Komad in Turkish) company is organized on the ordinary basis of its capital being divided into shares. As mentioned in Article 42, the titles contains the name of one of the partners who will have an unlimited responsibility plus the term "Tazamoni Mekhtalet", or special partnership.

The field of activity and purpose plus the term "joint stock company" is indicated the title of joint stock company (Sherkat Sahami). The name may appear in the title of such company.

Article 44: In case a merchant should have registered his business title in a locality, another merchant, even if he should happen to have a name to make this the same title, cannot, unless bringing a change in it to distinguish it from the title previously registered,

use this title in that locality as a business title or as a title for carrying out a business transaction. Also, if a merchant or company wishes to open a branch in a locality different from the one in which he or it has registered, and if there is another business going on by that name, there has to be a change in the title of the newcomer business in such a way as to make it clearly distinguishable from the one previously registered there.

Article 45: As the transaction of a business title or the separation of the title from the business firm is not permissible, similarly in the case of transfer of one business firm, if the business title is not specifically provided the title of the business cannot be transferred.

Article 46: Upon the sale of a business, the sellers shall be responsible for their acts and obligations pertaining to operations prior to the date of sale. Likewise, profits and gains accruing from operations prior to sale shall be credited to the sellers of the business. Any provision to the contrary shall be specified in the contract of sale, shall be registered at the Business Registration Office, and shall be advertised in an appropriate trade paper to inform persons concerned with those transactions. Obligations of the buyer, deriving from the above provisions, expire at the end of five years if not appropriately assumed by the seller.

Article 47: If, upon transfer or grant of a business, the grantee (the one to whom the business is transferred) has not agreed in the grant contract to accept responsibility for all obligations prior to the grant, and has not registered it, the grantee is not responsible for the obligation of the grantor.

Article 48: The buyer of a business who has acquired a business according to Article 46 shall include in the title of the business subsequently and appropriate phrase to show his operation as the successor of the seller. Failure to do so makes the seller (or the transferor) who has agreed with the buyer (or transferee) to use the business title responsible for all obligations which the buyer has rendered under the same title. However, this is conditioned to the fact that if the debts are received due to an appeal of the creditors, by the court, the seller would not be responsible any more.

Article 49: In the case of the death of a partner whose name was a part of the title of a company, if the heirs of the deceased continue in the business, the title of the company should not be changed. If the heirs do not participate in the company and give a written approval to the effect that the name of the deceased partner could be used, the title of the company need not be changed.

Article 50: In case the title of a business is changed, the contents Articles 41 are applied.

Article 51: In case a person intentionally uses the business title of another, on his merchandise files, letters, and articles related to his business, or sells or offers the goods marked under the title of another business, he is liable to fine or imprisonment or both; provided that there should not be any interference with the contents of Article 54 application of the punishment of this Article is restricted to suits brought by an

individual. The accuser can take back his complained but this will also invalidate the suit regarding the common rights.

Article 52: Those deviating from Articles 40, 41, and 42 and the last paragraph of Article 43 and from Article 45 are fined in cash.

Article 53: All courts and officials of Chambers of Commerce, industries, and the registration office, when informed about business title not having been registered, and which is contrary to Article 40, 41, 42 and 43, are supposed to inform the related authorities.

Article 54: Regardless of the manner in which a business title is used contrary to the contents of this subchapter, the concerned parties can ask for the prohibition of its use or, if registered, can ask for its invalidation. Moreover, if others should happen to have suffered loses through the use of such titles, regardless of whether the title was used intentionally or through mistake, those who have suffered are entitled to claim the loses suffered by them. The court can investigate the matter and the loses suffered, through informed sources, and decide as it thinks proper. In addition to the above, if the accusers wishes and agrees to pay the expenses, he can public the findings of the decision of the court.

### **Subchapter F – Illegal Competition**

Article 55: If the marks or names used by a merchant should interfere with those used by another merchant, and causes doubts, the use of such marks and names is not allowed for the first-mentioned merchant. In case a person uses such interfering signs, though not through any fault, the court can order the removal of names and designation if the interested party so requests.

Article 56: Any kind of fraudulent act and cheating is prohibited in commercial activities.

Article 57: A merchant, for the purpose of competition, cannot publicize untrue statements such as will prove injurious to the interest and business of a fellow merchant.

Article 58: A merchant is not allowed to publicize statements contrary to fact about the origin, quality, and importance of his merchandise to attract the customers of another merchant who sells the same goods; or to publicize certificates and awards which have not really been received by him, or to commit fraud for the same purpose.

Article 59: No merchant is allowed to bribe the employees of other merchants or factories for the purpose of receiving information about customers and attracting their customers.

Article 60: A merchant cannot give a letter of certificate of good services and conduct to a person for the purpose of fooling another merchant.

Article 61: A merchant acting contrary to the above Articles is subject to payment of the losses suffered by others.

Article 62: In case a commercial information agent, whether intentionally or through negligence, issues false statements concerning the financial strength and moral conduct of a merchant, the agent is subject to pay the losses suffered by the merchant. To correct his statement will not acquit the agent. The court, in addition to ordering him to pay the losses, can also order the agent to pay for the publicity of the problem to be made known to the public through one or several papers.

Article 63: A merchant who has intentionally committed acts in violation of this Chapter, in addition to paying the losses suffered by others, is subject to fine and imprisonment as well.

Article 64: If a person receives punishment or pays for losses, and repeats the same act again, his punishment may be doubled. A complaint leading to the punishment of a person can be made only by an interested person or by a local Chamber of Commerce. Withdrawal of the personal complaint invalidates the common rights.

### **Subchapter G – Commercial Books**

Article 65: Every merchant must keep three books – a book showing his capital, a ledger, and a journal. Moreover, he must regularly keep a copy of all outgoing letters and telegrams and the original of all incoming letters and telegrams with all papers relating to the payment.

Article 66: A merchant may, if he keep other books for his business but these books are not subject to the regulations mentioned in the following Articles.

Article 67: The merchant does not have to enter everything personally on the books; he may hire a person to do so, but the merchant himself is personally responsible for anything in his books.

Article 68: The books kept according to Article 65 are to be taken personally by the merchant or his agent to the local registration office for marking and sealing. The registration should mark all the pages with ink and seal them. Then the office will note the total sheets of each book on its first and last pages. After noting the date besides the seals of the first and last pages, the registration office should also include there a certified signature.

Article 69: The book containing the asset items of the merchant should contain the following:

- a. The cash on the first day, as well as the approximate value of all movable and immovable goods and properties specified for his business, as well as the value of

- all shares and bonds issued based on current prices, and all the receivable claims whether based on documents or otherwise.
- b. All receivables and credits due by virtue of contracts or any other means.
  - c. After determination of net assets, that is, assets minus liabilities, the merchant at the end of each financial year must prepare a balance sheet indicating assets and liabilities of his business. The balance sheet must be made out at least once a year.

Article 70: At the start of the business, when the real capital of the merchant is determined according to Article 69, and is recorded in the daily journal, all transactions relating to buying and selling, whether commercial or ordinary, as well as his personal expenses, shall be noted by daily in the journal.

Article 71: All correspondence by the merchant should be briefly registered in an indicator filing system in original and copy, as well as all outgoing and incoming letters and telegrams.

Article 72: All decisions reached by the general assembly and the board of directors, with the names of all those present and the date of the meeting, and such other information which might complete the record of the meeting, should be entered into the Decision Book and undersigned, in the name of the company, by all those authorized to do so.

Article 73: Merchants or their successors who might continue in business must keep the required books (from the date of the last entry mentioned in the books), and letters and telegrams from their date for a period of fifteen years.

Article 74: All books and related commercial correspondence pertaining to inheritance, partnership, or bankruptcy, at the time of their surrender can be investigated both by the court and by interested parties.

Article 75: During the hearing of a disputable case, the court can, by its own wish or by the request of one of the parties, order the commercial books and papers to be shown.

Article 76: In case the books and papers to be shown are in the possession of a court different from the one in which the case is heard, and if it is difficult to show them in the court, the court can formally request the other court having possession of the required papers to send a correct and reliable copy of the required parts.

Article 77: The responsibility which arises from not having necessary commercial books or the fact that books have not been legally and properly kept rests personally on the owner of a business and the merchant cannot put the blame on others and acquit himself.

Article 78: In case the necessary commercial books are destroyed by such accident as fire or other hazards during the time in which they were supposed to be kept safely, the merchant or his legal agent in a month's time should bring the matter to the attention of

the related court. The court after investigation and after satisfying itself with the accuracy of the matter , will provide the person with certificate to this affect.

Article 79: During a dispute between two merchants over business transactions, the legal commercial books could be used, under the terms mentioned in Articles 80 and 84, as evidence.

Article 80: The contents of the legal business books may be used against the owner or his followers and descendents, regardless of whether legally kept or not, but these contents cannot be used to the advantage and benefit of the possessor unless kept according to the regulations affecting such books.

Article 81: If the contents of the books of a merchant are according to regulations but should be contradictory to the contents of books of another merchant, the contents of the books of any one of the parties, if proved false with strong evidence and reliable reason, could lose their effect as evidence.

Article 82: If the books of a merchant are legally kept and the books of the opposite party are illegally kept, or if he should not happen to have any books, or if he refuses to submit his books for examination, the contents of the books of the first-mentioned merchant could be used against the second one , but if the second merchant proves the falsehood of all the statements brought against him with strong reasons and evidence, the contents of the books of the first merchant lose their proving effect.

Article 83: If a merchant agrees in court to accept the contents of the books of an opposition party, and if the opposition party refuses to submit his books for examination, the court may make a decision favorable to the first merchant, according to the judgment of the court.

Article 84: In case the court finds the contents of the books of a merchant kept according to the law, and wishes to use these contents in favor of the owner, the court can, for the sake of satisfying itself as to the accuracy of these contents, and fulfilling its moral obligation, undertake an additional investigation, and after satisfying itself can make the necessary decision. This supplementary investigation should in no way more than fifteen days.

### **Subchapter H – Business Agents**

Article 85: A person delegated by a merchant to engage in the business activities of the merchant in any locality, whether it be that of the business center or not, is called a business agent for the merchant.

Article 86. A merchant is responsible for those activities and transactions of his agent which he has delegated to him. If a person is agent for more than one merchant, each merchant is responsible in turn for the transactions of the agent. If a person should

happen to be delegated as an agent by a business firm, the responsibility of each of the partners, or stockholders, of the firm will determined by the kind of business.

Article 87: The agency right to person is delegated explicitly or incidentally. The document showing the explicit agency must be registered in the registration office of the locality in which the agent is working and it should also be advertised in that locality. Otherwise, the contents of Article 88 are applied.

Article 88: If a person is an undisclosed agent of a merchant, the agent's right as far as third parties is concerned is unlimited and his Agency includes all transactions that can be made during that specific business. If the agent should enter into business transaction with a third party, and if the principal should be precluded from proving that the third party knew of the limitation of the agent's rights during the course of the transaction, the claim of the principal regarding the limitation of his agent's rights against the party is not valid.

Article 89: If an agent executes his transactions always in the name of the principal, namely, the owner of the establishment, he must, at the time of signing, put beside his name the name of the merchant and his identify or his business title and add the word "for" or an equivalent word; otherwise, he will be personally responsible for transactions that he has executed. If other people face problem with the agent in transactions that are delegated to him, they can also bring suit against the principal.

Article 90: In case a person goes into an agency without being authorized by a merchant, and his transactions do not receive the approval and certification of the merchant, the self-appointed agent is subject to pay the losses suffered by an innocent third person.

Article 91: An agent cannot, without the explicit approval of his principal, execute any transactions in his own name or in the name of or in partnership with other persons. An agent deviating from this is subject to pay any loss suffered through his transactions. But if the agent in doing so makes a profit, the merchant is entitled to it.

Article 92: Invalidating or limiting an agent's right is subject to registration and advertisement.

Article 93: An agent can bring suit against others in the Court in the name of his Principal regarding the transactions such Debts and etc, delegated to him and others can also bring suit against the agent.

Article 94: The contents of this chapter are applicable for the agents of foreign firms, in whose names they are executing transactions in Afghanistan.

### **Subchapter I – Commercial Traveler Agents**

Article 95. Those employees allowed and permitted by a merchant, through letters, advertisements, or circulars and other documents of this sort, sent to other places, to carry

out business transactions, are called traveler agents. The principal of such agents are responsible for the results of those businesses which have been delegated to these agents.

Article 96: The contents of Article 89 are also applicable to traveler agents but these agents, when signing, cannot use the word "for" or its equivalent. They must write just the names of their principal.

Article 97: Just as the traveler agents are not supposed to take substitute for the goods they themselves have not given, they cannot prolong payment of the price or reduce the amount thereof, but they can in the name of their principal accept propositions made in the name of their principals and take such actions as might be necessary to safeguard the interests of their principals.

### **Subchapter J – Salesmen**

Article 98: Persons authorized to sell goods in commercial establishments, whether retail or wholesale, are called salesmen. Salesmen are entitled to claim and receive the price of goods sold by them on the premises. In the absence of a formal authorization from the principal, the agent is not authorized to solicit and receive from buyers payment for merchandise sold other than on the sales premises.

### **Subchapter K – Brokerage**

Article 99: A person not specifically committed to the service of either of two business parties, who acts, for a fee, as mediator to facilitate the execution of a business transaction and chooses this as his profession, is called a broker. Brokers are entitled to the rights and bound by the obligations in this chapter.

Article 100: If contracting parties do not want documents, or if because of local custom the documentation because of the kind of goods should not be deemed necessary, the broker must give both parties documents containing the names and complete identities of the contracting parties as well as the terms of contract, the kind and quantity, and the time of delivery of the goods. These documents should be arranged just after the conclusion of the contract and should be signed by the broker.

Article 101: Concerning transactions not necessarily taking place at once, documents should be signed by contracting parties, and the document signed by one should be given to other. In case one of the parties should refuse to sign or accept the document, the broker must at once inform the other party.

Article 102: The broker is responsible for the accuracy of the signature of both parties on the document which is executed by him, and also for the accuracy of the last of the endorsers.

Article 103: If the broker by whom the transaction has taken place arranges the document in such a way as to leave identify of the second party to be known in the future; and if the first party accepts the document and after identify of the second party becomes known makes no objection, the party accepting the document is obliged to use the terms of the real contract. The time during which the identify of the other party should be known depends on local custom, and in the absence of such custom is determined as seems appropriate. If the identify of the unknown party should not be known during the prescribed time, or if it should be known but the other party should have objections to it, the accepting party is entitled to claim the execution of the transaction by the broker personally or bring suit against him. In spite of this if the accepting party does take advantage of the situation when the broker refers to him, his claim will not be heard. In case the broker executed the transaction personally the rights which according to the contract belong to the other party are owned by the broker.

Article 104: The broker must keep samples of all goods sold by him until such time as transactions are completed. If both parties disregard explicitly the keeping of samples, or if according to local custom because of the kind of the goods it should not be deemed necessary to keep samples, the broker can dispose of the deposited samples. Brokers should mark the samples for the completion and verification of the transaction.

Article 105: The broker does not have authority to accept the price or the goods prescribed in the contract.

Article 106: The broker should behave as an efficient and honest merchant. The broker is responsible for losses caused, to each of the parties, by his negligence.

Article 107. To side with one of the parties to such an extent as to interfere with fair mediation, or to profit from one side with bad faith in mind for the other, invalidates the broker's claim for his fee and brokerage expenses.

Article 108: After the completion of a business deal, or if subject to a condition after a realization of condition and completion of the contract, the broker is entitled to claim his fee. This claim is valid for one year from the date on which the contact has been made. If the contract should not take place, or if the condition should not be realized, the broker is not entitled to the fee for actions he may have taken.

Article109: (in the eng book ? ) The amount of a broker's fee is determined by agreement and regulations. In case no such agreement or regulation should exist, it is determined according to local custom.

Article 110: If the payment of reasonable expenses is not subject to the completion of the transaction, the broker is entitled to claim it.

Article 111: In case both parties have not decided who should pay the broker's fee, and if there are no regulations governing, the matter should be settled through local custom. In

the absence of local custom to this effect, half of the fee should be paid by each of the parties.

Article 112: The broker must record all transactions taking place by his mediation and according to Article 100, he should daily sign in the journal for each transaction entered by him. The contents of the Articles concerning the daily journal of the merchants are applicable to the journal of the broker; the broker must give a sign, whenever one of the parties requests for the copy of his daily journal related to the transaction.

Articles 113: The court, in order to prove the details of a case, can ask for the original of copy of the document and other papers as well as the daily journal of the broker as it deems necessary.

Article 114: A broker acting contrary to the Articles relating to his daily journal is fined a cash amount.

Article 115: Persons doing brokerage among small businessman are not subject to the content of the Articles relating to the document and journal.

**Chapter II- Commercial Companies**  
**Subchapter A – General Regulations**  
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Articles 116: Commercial companies are those companies (*shirkat*) which are created for the purpose of carrying out commercial activities in one or several localities.

Article 117: Commercial companies are of the following kinds:

- a. General partnership ( Sherkat-Tazamoni in Dari, Kollektif Sirkat in Turkish)
- b. Special Partnership (Sherkat-Tazamoni-Mokhtalat in Dari, Komondit-Sirkat in Turkish)
- c. Limited liability company (Sherkat-e-Mahdud-ul-Massoliat in Dari, Limited Sirkat in Turkish)
- d. Corporation (Sherkat Sahami in Dari, Anonim Sirkat in Turkish)
- e. Cooperative ( Sherkat Toohwine) companies

Article 118: Commercial companies can have legal existence and therefore are entitled to contract and promise under their own title, and execute transactions. These companies can appear in the courts as debtors or creditors, and own movable and immovable properties.

Article 119: Items taken as capital in commercial firms are as follows:

- a. Movable material goods, as cash, articles, and animals
- b. Non-material movable goods, as royalties, patents, trade marks (commercial, industrial)
- c. Any kind of immovable property
- d. Profits and privilege from the use of movable and immovable properties
- e. Products and processes
- f. Commercial credit and good will
- g. Business center (place of business)

Article 120: The right of establishment, of rent, of name, of title, of patent, of trade mark, of models and drawings which are used in commercial and industrial services, are considered as elements of the business firm.

Article 121: Any partner having promised to pay his share of the capital of the company is indebted to and responsible to the company. Therefore, if partner should be late in paying the company, and if he is responsible for a loss suffered by the company, he must pay this to the suffering firm.

Article 122: If the share of the capital should be of cash kind by delay in payment of which the company has suffered, in addition to the loss that should be paid in accordance with Article 121, the merchant at fault should also pay the legal interest on it from the date it was due.

Article 123: If a partner, in place of his share in the capital of the firm, should direct the firm to collect the claims he has on other people, until such time as these claims have been collected by the company the partner is responsible to the firm. There being no understanding to the contrary if payment on the part of others indebted to the partner of the firm should fall due within one month from the date of the establishment of the firm, they must be collected. If the money cannot be collected in a month, the interest on them must be paid proportional to the time elapsed. If part of the claims should be collected, the uncollected part is also subject to this regulation.

Article 124: The price of articles brought in as capital must be determined in the contract. If this has not been done, the price used in the market on the day the articles are brought to the firm should be taken as the base. In case there should not be such articles on the market, or there should not be their prices in the stock exchange on that day, the opinions of informed individuals should be respected by both parties.

Article 125: The ownership of goods brought to the firm as capital is delegated to the company unless understanding should exist to the contrary.

Article 126: Regarding payment of interest for loss or damage, as mentioned in Articles 121, 122, and 123, prior information to the party concerned is not necessary. This provision does not negate the termination rights of the partner as contained in Article 175.

Article 127: Every partner is supposed to supervise the affairs of the firm as that of his private business with honesty and good will.

Article 128: None of the partners are entitled to ask for a wage for the work they do regarding company affairs, unless this is mentioned in the contract.

Article 129: Each of the partners is responsible for whatever loss may be suffered by the company through his negligence, fault, or deviation from his line of authority and duty. He cannot escape this loss because he has been useful to the company somewhere else.

Article 130: If employees of a company are paid bonuses and rewards for the services they render out of profits which the company makes, the employees are not considered partners of the company. Although this payment, partially or wholly, may constitute a gain in behalf of these employees, this payment will not have the quality of a partnership.

Article 131: If the division of profit and loss are to be distributed is not mentioned in the contract, each person receives his profit and loss proportional to his capital.

Article 132: If the division of either loss or profit is mentioned in the contract, the other is also distributed in that manner.

Article 133: If the written agreement should restrict the profit to one or some of the partners, or if it excludes one or some of the partners from the loss, such agreement is not valid. In such case the distribution is taken as unknown and the profit and loss should be distributed in accordance with Article 131 among the partners. In the case of a partner whose endeavors and work is taken as capital in the firm, and who is not affected by the loss of the firm according to written agreement, this arrangement is valid.

Article 134: If a company with definite stated term of existence continues to do business after the expiration of that period, it will be construed as having an indeterminate or indefinite existence thereafter.

### **General Partnership Part One**

Article 135: A general partnership is one which is established under a definite title for the purpose of carrying out business transactions of two or more persons with collective responsibility. If the ownership of the company should not suffice to pay the debts of the company, each of the partners is responsible to pay all the debts of the company.

Article 136: General partnership companies should have written contracts.

Article 137: The contracts of the general partnership companies must contain the following items:

- a. Date of contract
- b. Name, identify, address, and such information as might distinguish the partners. If another company be a partner, the title of that company.
- c. business location
- d. The fact the company is a general partnership company
- e. The title of the company
- f. The names of all the partners authorized to sign in the name of the company with the explanation as to whether these people are singly or collectively authorized to sign
- g. Subject of business
- h. The capital share of each partner and the approximate value of non-cash capital with the manner in which this approximation has been reached
- i. Each partner's share in loss and profit
- j. The date of establishment and termination of the company, and such other items as the partners might think useful.

Article 138: Within a month from the date the a branch outside the region where it is registered, it must register its contract details in the locality company is established,

persons establishing a general partnership company must register and advertise a copy of the contract in the locality where the office of the company is situated.

Article 139: If a general partnership company should establish as well.

Article 140: After a company has been registered and advertised, if any changes are brought in a general partnership company regarding its title, its business location authorized signing partners, withdrawal or conclusion of partners, increase or decrease of capital, going out of business before or continuing beyond the specified period, or joining another company – all these details must be put in a statement signed by all partners. This statement, together with the proper supporting documents, should be submitted to the related court for certification, after which it should be registered and advertised.

Article 141: Details that must be registered and advertised according to Articles 138,139, and 140, cannot be used against a third person before registration and advertisement. If before registration and advertisement a transaction should have taken place in the name of the company, the company is responsible to the third party. In case the company has not been registered and advertised, and if the partners should not admit the existence of the company, third parties could, by whatever means and evidence, prove the existence of the company.

Article 142: If the registration and advertisement of a general partnership company has not taken place during the period of time prescribed in Article138, and does not take place later, each of the partners is entitled to ask from the related court the dissolution, but must first inform the partners, through the registration office, about the matter. In case the court agrees to the dissolution, the dissolution is in effect in the case of the partner asking dissolution from the data of advertisement. If the company should be dissolved in this manner, until the end of registration and advertisement, whatever transactions are made in the name of company do not damage the interest of third parties.

### **Part I – Relation among Partners**

Article 143: Partner relationships are affected by the written agreement among the partners of a general partnership company. Where there is nothing implicit in the agreement to this effect, the contents of this Chapter apply.

Article 144: According to the written agreement, if not explicit, the administration of the company, with the majority vote, could be delegated to one, a few, or all of the partners, or delegated to a person or persons outside the company. If the administration of the company has not been delegated to anyone in the manner mentioned above, each of the partners may be considered authorized to the affairs of the company.

Article 145: In case the administration authority of the director is determined according to the written agreement of the company, the partners cannot limit his authority or dismiss him. If strong reason should exist, that is , if the director neglects his duties or is

unable to administer the authority of the director could be limited or he could be dismissed upon request of one of the partners to the Court.

Article 146: A director appointed after the written agreement and by the decision of the partners can be dismissed by majority vote. If a majority vote is not received for his dismissal, any one of the partners can refer the matter to court and, with strong and valid reasons, ask his dismissal.

Article 147: If the administration of the company should be delegated to all or some of the partners, each of them singly is authorized to administer. If some of the partners responsible for the administration of the company should not agree with the execution of a certain matter, the other authorized partners can settle this with a majority vote. If it is mentioned in the agreement of the company that decisions should be reached by the alliance of the administering partners, this should be observed unless an emergency exists where delay might prove injurious. If the directors should not be able to reach an agreement in voting, the matter should be brought to the attention of the general meeting of the partners for decision.

Article 148: Ordinary matters and transactions effecting the purpose and subject of the company relate to the administration of the company. Where the director finds it profitable for the company, he is authorized to take action and judge. Important matters such as contributions, price, transfer of immovable properties, securities, and other matters which are other than ordinary activities must be decided by vote of the partners.

Article 149: If a partner should take a loan from the company or collect a sum of money in the name of the company (provided there is not anything against this in the written agreement), and does not pay this sum in due time to the company, in addition to paying the original sum he has to pay interest for the late period as well.

Article 150: No partner is allowed to transfer his share to a person outside the company in part or in full without the approval of the other partners. In case such a transfer does take place, it is of no effect to the partners or the third parties, and loss caused by the act is solely directed towards the transferring person.

Article 151: A partner authorized to administer the company cannot, without the approval of other partner, accept an outside as a partner in the company, or substitute him for himself in the administration.

Article 152: If in the bylaws or contract of the organization of the company there is a condition for payment of interest for the paid capital, this stipulation is acceptable.

Article 153: The business duration of the company is until the end of the lives of the partners, unless otherwise specified in the contract. In spite of this, if a company's duration is not definite and the nature of business activities is such as to limit the existence of the company, its life span is considered that of the date of compilation of the activities.

Article 154: A partner who is not the director is entitled to get information on the activities of the company as well as its financial status. A contract negating this fact is not valid.

Article 155: Decision regarding alterations and adjustment of the contract should be made with the agreement of the partner and other decisions should be reached through the majority vote of the partners, unless otherwise stated in the contract.

Article 156: The director, at the end of each fiscal year, according to a balance, should prepare the profit and loss statement of the company and determine the share of each partner according to it.

Article 157: A partner, without the agreement of the partner, cannot be made to complete his share of the loss of capital, but the amount of loss of capital of the partner could be paid from the profit made in subsequent years, unless there should exist in the contract a provision different from this.

Article 158: A partner cannot execute a business transaction of the company in which he is a partner as a separate transaction in his own or someone else's account without the approval of the other partners. Similarly, he cannot be a responsible member of another company which might be engaged in the same kind of business. If the partners of a newly established company should happen to know that one of the company, at the time of joining the company, has been a responsible member of another company, and if the company do not decide explicitly on his separation from the other company, his membership in the other company is considered to have been accepted.

Article 159: If a partner should act contrary to Article 158, the company is entitled to claim for losses or the company can accept transactions made in the name of the partner or in the name of a third person in the name of the company. The preference of one of the above two steps rests on the decision of the partners. If the partners should not protest within six months of the date they are informed that their partner is a member of another company, or within six months of the date they are informed of the execution of his transactions, their right to protest is invalid, but they are entitled to ask the dissolution of the company.

### **Part III – The Relation of the Partners with Third Parties**

Article 160: A general partnership company, as far as third parties are concerned, is in existence as of the date of registration and advertisement.

Article 161: The partners' relationship with the third party is bound up with the persons who have the control and ownership of the company except where provisions have been made to the contrary in the bylaws and have been registered and announced.

Article 162: The manager appointed on behalf of a company may, in that capacity, sign all legal transactions in the name of the company and bind the company on his individual performance. Provision may also be made to negotiate through agents if they act in good faith and good intention on behalf of the company. Provision may also be made, if formally authorized, for a group of the shareholders to bind the company on their actions.

Article 163: The transactions made by the directors of the company in the name of the company relating to the company itself must be debited and credited regardless of whether explicitly stated or not.

Article 164: The partners are responsible collectively and individually for the debts of the company. Any term contradicting this statement shall not be valid as far as third parties are concerned.

Article 165: As far as debts and promises are concerned, suits could be brought first against the company and, if in vain or if the company should be dissolved, against the partners. In the meantime, the opposition party can ask, through the court, that the properties of the partners be under control.

Article 166: Any decision proclaimed by the special court with respect to the operations of the company shall not be individually applicable to the shareholders of the company.

Article 167: In the case of bankruptcy or liquidation of a general partnership company, the debtors of the company have priority over the personal debtors of the partners.

Article 168: The bankruptcy of the company is not taken as the bankruptcy of the partners. But if the bankrupt company should not be able to fulfill the demands of the debtors, the debtors can claim a suit against the partners, and if their property should not suffice the claim then the partners are taken as bankrupt by the court. Among the personal creditors, those who have legal claim upon the assets of the company have priority claims before the partners of the company.

Article 169: Partners of bankrupt companies, because of their capital contribution, may not withdraw or make other uses of company assets. However, they may claim their loans and other claims from the company just like the creditors of the company.

Article 170: A person indebted to the company cannot escape the debt if a partner of the company is indebted to him. Neither can a partner escape the debt he owes to the company if a person indebted to him happens to owe the company. But if a debtor of the company according to the Article 165 and 168, should not be able to receive his money, and if he refers to the partners, and if the partner happens to have personal claim on the debtor of the company, in that case he can use his claim to pay the debt of the company.

#### **Part IV – Dissolution, Examination, Expulsion of Partners and Amalgamation with other Companies**

Article 171: A general partnership could be dissolved in the following ways:

1. With the expiration of the duration of the company.
2. With the unified opinion of the partners (provided that the bylaws of the company make no indication that such a resolution shall be made by the majority vote of the partners).
3. With the decision of bankruptcy of the company by the court, or by the agreement of the partners and debtors on the bankruptcy of the company.
4. With the decision of the court, based on the strong and true reasons submitted by one or more partners to the effect of its dissolution.
5. With the completion of the activities of the company.
6. With an announcement by a partner to the effect that the company is dissolved, provided he has sufficient authority based on the contents of the contract
7. With the announcement of dissolution by one of the partners when the company's duration should be indefinite.
8. With the loss of two-third of the capital, provided the partners do not complete the capital or are not satisfied with the remaining capital.
9. With annexation to another company.

Article 172: After the dissolution of the company, the directors are not supposed to execute transactions in the name and account of the dissolved company. If they act otherwise, the responsibility that so arises is directed toward the directors without limitation until such time as the dissolution is legally registered and advertised, and all the partners have responsibility to the third parties.

Article 173: If the contract of company should exclude certain reasons as the causes of dissolution, it is valid, but if it absolutely excludes all the reasons as the cause of dissolution, it is invalid.

Article 174: If a company should be established for an unlimited period, any of the partners can, at least six months before the end of the transactional year, inform the partners through announcement issued by the registration office intention to dissolve the company.

Article 175: Companies established for limited or unlimited duration may be dissolved by decision of the court, through the request of a company presenting strong reasons. The strong reasons which cause the dissolution of a company are as follows:

1. Impossibility of realization of the purpose of the company for any reason.
2. Dishonesty of a partner whether in administrative or accounting affairs
3. The principal duties delegated to a partner not being performed.
4. Misusing the title or the properties of the company by a partner for personal benefits.

5. Disqualification and incompetence of a partner because of a continued sickness, or other reasons which will disable him to take part in the business affairs of the company.

Article 176: In order for a request to be heard to dissolve a company because of failure of a partner to supply his share of the capital, a warning must first be sent to the partner.

Article 177: If the duration of a company should be limited, or if it should depend on the life of one of the partners, after the duration or the death of the partner the company is considered existing for an unlimited period of time in order to complete outstanding business transactions.

Article 178: If it should be stipulated in the contract of the company that the company is considered dissolved in case of the death, bankruptcy or incompetence of one of the partners, the heir of the deceased, the legal financial executor of the bankruptcy, or the legal counsel or custodian of the incompetent should without delay inform the partners of the matter. If the delay should prove injurious to the business of the company, until such time as the partners will reach a unified decision about the matter, the legal executors of the company should execute the business of the company. Also, every partner delegated to a specific job should continue temporarily in that capacity. In such a case the temporary administration is in effect, the company is considered to exit.

Article 179: If there should not be an understanding about the continuation of the business of the company with the heir of a deceased partner, the partners, after the death of one of them, with the approval of his heirs, can continue the company. If the heir does not happen to agree, the partners can pay out his shares and go on with the business of the company.

Article 180: In case of the death of a partner, if the continuation of the company by the heirs of the deceased and the rest of the partners is clearly stated in the contract, it is up to the heirs to decide their contribution or separation from the company as a general partnership partner. In case the heir agrees to go on with the company, the rest of the partners must agree with him. But if the heir should not agree to go on as a general partnership company member, he can request to be accepted in the company as a partner but with a limited responsibility proportional to the capital and shares of the deceased partner, and the decision to accept his request is up to the rest of the partners.

Article 181: The heirs of the deceased partner must make their decision known within one month of the death of the partner whether they will remain in the company as a general partnership company member. During this month they will be considered as partners with limited liability. If they do not make their decision known during one month as limited liability partners, after the expiration of that date they will be taken as a general partnership company partner. If the heir be minors, regardless of the contents of the contract they cannot be considered as members of the general partnership company, but with the request of their guardians or executors they can be accepted with limited responsibilities, if the rest of the partners so agree.

Article 182: If any partner becomes incompetent, the provisions of Articles 179 to 181 will be applicable.

Article 183: In case of the bankruptcy of one of the partners (unless otherwise stated in the contract), the bankrupt partner is expelled from the company. In this case settlement, regarding the rights of the bankrupt, will be carried out either through him or his legal executor.

Article 184: If the request to dissolve a company should be made because of the reasons related personally to one of the partners, the court can, on request of other partners and after investigation, make a decision to continue the company and expel that partner.

Article 185: If a partner requests the dissolution of a company whose business duration is unlimited, the rest of the partners can reject the dissolution, expel the partner, and continue with the company.

Article 186: If a partner makes a request based on the rights prescribed in Article 175, through the registration office, and announces the dissolution of a company whose term of business is limited, the contents of Article 179 are applied to this situation.

Article 187: If a company is composed of two partners and one withdraws from the company, the remaining partner may obtain a court order transferring title to all the assets of the business without dissolution or liquidation. Settlement with the withdrawn partner will be made in accordance with the provision of Article 190.

Article 188: If there should be only two partners in a company, and if a person to whom a partner personally owes a debt should use his right to dissolve the company, as given him in Article 195, or if one of the partners should go bankrupt, the other partner can, within limitations established in Article 187, execute the business transactions of the company in his own account.

Article 189: If the dissolution of a company should be based on a reason other than bankruptcy, all the partners, according to Article 174, have to announce and register the matter of dissolution of the company. This action in the case of the expulsion of one of the partners from the company is also applicable. If the dissolution of the company or the expulsion of the partner be caused by death, the above formalities should be observed by all the partners including the heirs of the deceased.

Article 190: The shares of a partner who is expelled or who wishes to withdraw from a company are determined out of the assets of the company as of the date the expulsion demand has been made, unless otherwise stated in the contract.

Article 191: In case the shares of a partner are determined in accordance with Article 190, the sum is paid in cash.

Article 192: The shares of a partner who is expelled, or who has requested to withdraw, if the time of such settlement is indicated in the contract, shall be determined at that time. However, if it is not determined, it shall be determined when the first balance sheet is prepared, after the withdrawal of the partner is activated, the business is liquidated.

Article 193: A partner who is expelled, or has asked to withdraw, is to participate in the privileges and responsibilities of the transactions taking place before the expulsion is put into effect, but he cannot prevent the execution of transactions already acted upon and decided by the rest of the partners. If the clearance of the accounts should not be possible at once, he can ask, at the end of the accounting year, for the accounts of transactions which have taken place during the year. He is also entitled to request information on current transactions in progress at the end of the fiscal year.

Article 194: The expulsion or withdrawal of a partner, as it relates to third parties, is in effect as of the date of registration and advertisement of this matter, and before that date he is responsible to the third parties.

Article 195: If a person to whom a partner is personally indebted should not be able to get his claim from the personal properties of the debtor, he can, at the time of clearance, control through the court, the parts and shares of debtor in the company, or request the dissolution of the company at the end of the fiscal year; provided this request is made six months in advance. The company, or the rest of the partners can, before the order to dissolve the company should become effective, pay the debt and invalidate the order.

Article 196: If the personal creditor of a partner should use his power, in accordance with Article 195, to dissolve the company, the rest of the partners can decide upon the expulsion of the indebted partner and the continuation of the company. Similarly, they should inform the creditor. In this case, the partner is expelled at the end of the fiscal year from the company.

Article 197: Two or more general partnership companies can merge with each other to establish a new general partnership company, or both can join another existing general partnership company.

Article 198: In order for a merger of a general partnership to be in effect, separate decisions are to be made the related companies and should be registered and advertised.

Article 199: Each of the merged companies has to arrange its balance in unified forms and should advertise them. They should also make decisions as to the manner in which their debts will be paid and these decisions should accompany the balances.

Article 200: The decision to merge becomes effective three months after the date it has been advertised. If the merged companies pay their debts, or deposit the equivalent

amount in a recognized bank, or if the persons to whom they are indebted agree with the merger, it is not necessary to wait three months. The receipt received from the bank for the bank for the money deposited there should also be registered and established. Each of the persons to whom the merged companies are indebted can, within three months, submit a protest to court on the matter of the merger. Until such time as the protester takes his protest back or the court has made the fiscal decision relating to the protestor, the amalgamation cannot take place.

Article 201: If during the period mentioned in Article 200 there should not be any protest, the matter of amalgamation become final. The remaining or the newly created companies are the sole executor for all the rights and responsibilities of the previous companies. If from the merged companies, a new company is created, its registration and advertisement are necessary.

#### **Part IV – Liquidation (*Clearance*) of General Partnership Companies**

Article 202: If there should not be any arrangements about clearance or liquidation in the contract of the company, clearance is executed in accordance with the contents of this part.

Article 203: The clearance of general partnership companies is the responsibility of the liquidating officers whose manner of election is set forth below:

Article 204: The liquidating officers (clearance officers) are either previously elected by the partners as recorded in the contract of the company, or elected afterwards by the approval and decision of the partners. In this manner they could also be elected after the dissolution on agreement of the partners. Otherwise, all the partners or their legal executors are responsible for the clearance. In case of dissolution on request of any of the partners, it is possible for the liquidating officers to be assigned by the related court.

Article 205: The liquidating officers, whether assigned by the court or by partners, are assigned from among the partners or from outside.

Article 206: If the receivership or trusteeship in liquidation is composed of more than one person, it is essential that they work as a unit in the affairs of the liquidation. If one is delegated to perform independently on a given matter,, it is required that this be advertised and registered in the Registration Office.

Article 207: A liquidating officer is not allowed to delegate his duties to another liquidating officer or third party unless in the case of certain specific duties, in which case he can, from among his fellow liquidators, choose one or more persons to carry out for him, or give authority to a third person.

Article 208: In a company where transactions are under liquidation, one liquidating officer is sufficient to negotiate with third parties. If there is no danger to the benefit of

the company, the transaction which is performed by one of the liquidating officers is valid.

Article 209: General partnership companies, after dissolution, until liquidation of a affairs, could be considered to exist for the purpose of clearance.

Article 210: When a general partnership company is under clearance, on all papers prepared in the name of the company the statement "Clearance of the general partnership company" should be added and signed by authorized clearance officer or officers. Otherwise no responsibility could be directed toward the company.

Article 211: The priority given to persons to whom the company is indebted over persons to whom partners are personally indebted is protected even after the dissolution of the company.

Article 212: If the assets of the company at the time of liquidation are insufficient to satisfy the creditors, and there are reasons for bankruptcy, the court can issue the decision to the effect of bankruptcy of the company.

Article 213: If the liquidating officers of the company are elected according to the contract of the company from among the partners of the company before dissolution, they could be dismissed by the unanimous vote of all partners. In case there is no unanimous decision, the court can order such removal upon request of any one of the partners.

Article 214: If the liquidating officers of a company should have been elected from among the partners after the dissolution, they can be dismissed by the unanimous vote of the rest of the partners. If a unanimous vote is not received, the dismissal can take place through the court, based upon the request of any of the partners with acceptable reasons.

Article 215: The liquidating officers not chosen from among the partners, elected either according to the contract of the company or by the decision of the partners, can be dismissed by the unanimous vote of the partners. If a unanimous vote is not received, they can be dismissed through the request of any of the partners by the court.

Article 216: The liquidating officer appointed by the court can be dismissed only by the court.

Article 217: At the time of dissolution of the company, if the receivers should previously have been selected, or if they should have been appointed by the court or the partners during the dissolution, the liquidating officers can invite the directors of the company to participate – or if directors do not accept the invitation, they can invite the officers themselves – in preparing an accounting report containing the assets of the company as well as balance sheet. If the liquidating officers find it necessary, they can refer to other informed persons to determine the value of the company's properties. The balance sheet

and the assets accounts so arranged should be signed, in the presence of the liquidating officers, by the directors of the company.

The liquidating officers, after the signing of the general accounts, place all the properties of the dissolved company contained in the accounts, as well as its other papers, under their control and charge.

Article 218: The clearance officers are responsible for the safety of the property and rights of the dissolved company.

Article 219: The liquidating officers should execute the transactions started prior to liquidation. They should pay the debts and other claims on the company in cash. If the persons to whom debts are paid agree, the payment could be in kind. They should also collect the company's claims on others, and convert properties of the company into cash. These officers also execute all transactions and actions necessary for the collection of the properties of the company as well as the distribution of properties among the partners.

Article 220: The right to represent the company while in the state of liquidation, in the court and other places, rest with the liquidating officers.

Article 221: The liquidating officers cannot execute any new transactions not related to liquidation. In case they do so, they must assume any responsibility that might arise from such transactions.

Article 222: In case the liquidating officers are able to obtain any benefit for the dissolving company by affecting a compromise, they are authorized to seek appointment of a mediator toward this end, or enter negotiations to effect the compromise.

Article 223. The liquidating officers are permitted to sell the movable properties of the dissolved company according to the interests of the company, whether at auction or otherwise, but the immovable properties of the company, unless the opinion of the partners be otherwise, could only be sold by auction. The presence of minors or incompetents among the partners cannot prevent the sales of the movable and immovable properties.

Article 224: The liquidating officers can – with the permission of the partners, if appointed by them, or with permission of the court and unanimous opinion of the partners, if appointed by the court – execute temporarily the transactions which constitute the business of the company.

Article 225: The liquidating officers must pay the installment debts of a general partnership company which is liquidating as soon as possible in a discount manner, and the creditors of the company must accept this manner of payment.

Article 226: If the assets of a general partnership company should not balance claims on the company, the liquidating officers can refer to the partners for full payment of the debts of the company.

Article 227: If partners do not agree unanimously, the liquidating officers cannot sell all properties of the company in one lot.

Article 228: It is possible to extend or limit the legal authority of the liquidating officers by the unanimous vote of the partners or by decision of the court, whichever agency appointed them. In this case, the matter is to be registered and advertised. If the matter of limitation of authority has not been registered and advertised, it is with no effect as far as bona fide third parties are concerned.

Article 229: The liquidating officers, during the liquidation, are bound by the decision made unanimously by the partners about the liquidation. In case of bankruptcy, death, or incompetence of one of the partners, the contents of Article 230 are applicable.

Article 230: In case of bankruptcy, death, or incompetence of a partner, the right to participate in the decision to appoint, dismiss, or give directions to the liquidating officers is reserved to the lawyer or executor of the partner. The heir should unanimously appoint a lawyer. If this cannot be done, the appointment of the lawyer is up to the court.

Article 231: The liquidating officers can, after retaining the necessary amount to satisfy installments and payable debts of the company, distribute the remaining cash assets among the partners.

Article 232: In order for the liquidation process to be well organized and accurate, the officers must properly prepare the necessary books.

Article 233: The liquidation officers must report to the partners orally or in writing about the status of liquidation affairs when requested to do so.

Article 234: The liquidating officers must show all papers and books relating to the company's liquidation whenever the partners so request. The officers are not to prevent partners from copying the related books and papers.

Article 235: The liquidating officers, during liquidation, must deposit any money over 1,000 Afghanis in a recognized bank.

Article 236: At the end of liquidation proceedings, the liquidating officers must give an account of the clearance to the partners.

Article 237: All statements in the company contract relating to liquidating officers, together with directives decided upon by the partners and the court concerning their appointment, changes, and dismissal, are to be registered and advertised.

Article 238: At the end of liquidation, the liquidation officers, according to the contract or legal directives, must prepare a balance sheet containing the shares of the partner in the capital, profit, loss, and other items. This balance sheet should be submitted to the

partners. If the partners raise no objection within one month, the balance sheet is considered final. After the passage of this period, if partners refuse to accept their respective shares, the liquidating officers are to deposit the shares of each in his name in a recognized bank.

Article 239: The net assets of the company, in accordance with the contract or decision later made, should be distributed by the liquidating officers. Unless otherwise stated by the contract or directed by the partners, this distribution should be made in cash.

Article 240: Just as liquidation officers are collectively responsible for deviations from the contents of this law to the partners and third persons, so they are collectively responsible for transactions of persons whom they employ or appoint, if contrary to the contents of this law.

Article 241: Liquidation officers appointed from among the partners cannot be paid salaries and wages unless so stated in the contract or by decision later made, but officers appointed from outside, regardless of whether the salary and wages have been mentioned or not, are entitled to be paid.

Article 242: At the end of liquidation, books and papers are to be deposited in a safe place designated by the partners, and should be kept for a period of 15 years. If partners do not agree about the place, same is assigned by the court.

### **Subchapter C – Special Partnership Companies**

Article 243: A company established under a definite title, for the purpose of trade, in which one or more partners have unlimited liability and the rest of the partners have limited liability with a definite capital, is called a special partnership company. The capital of the partner with limited liability can be into shares.

Article 244: Unless otherwise stated in this subchapter, rules governing general partnership companies apply to special partnership (Komandit) companies as well. Where it cannot be decided if a company is a general partnership or a Komandit company, it is considered to be a general partnership company.

Article 245: In the contract of a Komandit company, in addition to the requirement of Article 137, the names of the partners with limited liability, as well as the capital of each that has been paid or promised, should be entered, and should be registered and advertised.

Article 246: A partner with limited liability cannot submit his work, action, reputation, or profession (other than his scientific and technical invention), as capital.

## **Part II – Relation of Partners with Each Other**

Article 247: The relation among partners of a special partnership company are as set forth in this Part unless otherwise specified in the contract.

Article 248: Partners with limited liability are not authorized to administer and cannot prevent those authorized from executing their duties, but they can vote about matters not included in the authority of the administrative personnel.

Article 249. Each partner with limited liability is allowed, at the end of the year, to investigate the balance sheet, asset book, and papers of the company, either personally or through an informed person. If there is an objection to informed persons, the informed person may be appointed by the court on request of the partner.

Article 250. The contents of Article 158 (preventing partners of a general partnership company from executing transactions which are the subject of the company) are not applicable to partners with limited liability, but if the partners should establish an institution whose activities constitute the subject of the business of the company, or join another person having established such an institution, or join an existing company doing the same business, partners with limited liability will not be entitled to investigate the books and papers of the company.

Article 251: The responsibility of a partner with limited liability is proportional to his promised or paid-in capital.

Article 252: The partner with limited responsibility can, at the end of the fiscal year, receive his dividend, or if stated in the contract, his interest. If the company has suffered a loss, until the loss is recovered the interest is not paid but, in future years, after loss of capital is made up from remaining profit, the interest of previous years is paid out.

Article 253: Partners with limited liability are not required to return interest and dividend paid in previous years to make up for loss caused thereafter.

Article 254: Partners with limited liability are not required to return dividends and interest received on the basis of a properly prepared balance sheet.

Article 255: In case of the death of a limited liability partner, his heir replace him.

Article 256: If a limited liability partner transfers, without the permission of other partners, his shares wholly or in part, to another person, this new person is not entitled to investigate or interfere in the affairs of the company.

## **Part III – The Relation of the Partners with Third Parties**

Article 257: A partner with limited responsibility, whose name is in the title of the company, has unlimited responsibility to third persons.

Article 258: The responsibility to administer and represent a Komandit company rests with the partners with unlimited liability. The extent of this authority is subject to laws applying to general partnership companies. Unless prohibited by the company contract, a partner with limited liability may be delegated, by the director or directors of the company, to execute certain transactions; in such cases the responsibility arising through the execution of his delegated transactions is that of the company. If a partner with limited liability should act beyond his delegated duty, or act without having been delegated, he is personally liable for his actions.

Article 259: The giving of advice and consultations, the right to investigate and control the affairs of the company, and, when legally specified, participation in the appointment and dismissal of employees, or employment for minor work in the company, cannot cause unlimited liability for the partners with limited responsibilities.

Article 260: The responsibilities of partners with limited liability to persons to whom the company is indebted are in ratio to their investment in the business, but person to whom the company is indebted cannot, until the dissolution of the company, or until such time as legal pursuance proves useless, refer to limited liability partners. In the event of bankruptcy, the creditors have the right to claim against the entire assets.

Article 261: In case of bankruptcy of a Komandit company, claims on the company are given priority over claims on the partners personally.

Article 262: In case the assets of a company are not sufficient for the claims against it, creditors can demand their claims from the personal assets of the partners with unlimited liability. In such cases, the creditors of the company and the creditors of the partners have equal rights.

Article 263: Concerning the personal assets of limited liability, partners of a special partnership company, the company as well as partners personal creditors have equal status.

Article 264: Orders regarding the liquidation of general partnership companies apply as well as special partnership companies.

Article 265: Where a creditor of the company is indebted to a limited liability partner, and this partner has not fulfilled his promises to the company, it is possible to account and cancel the debt of the limited liability partner with that of the creditor.

### **Subchapter D – Corporations**

#### **Part I – Nature and Establishment of Corporation**

Article 266: A corporation is one establishment under a definite title for the purpose of commercial activities, whose capital is definite and divided into shares, with the responsibility of each stockholders limited to the proportion of his share.

Article 267: A Corporation may be formed immediately or gradually. If the founders buy all the shares of the company, it may be established at once, or the company may be established gradually by informing the public that shares are available for sale.

Article 268: For a corporation to be established, at least five shareholding founders are required.

Article 269: Those who, in the process of establishing a corporation, sign the articles of incorporation, and pay as capital a sum in cash or otherwise, are considered the founders.

Article 270: The founders must prepare and sign the articles of incorporation, and the articles of incorporation must include the following:

1. The title of the company and its home office.
2. The nature and kind of activities and purpose of the company.
3. Determination of capitalization, kind of shares, price of each share, as well as the terms under which the shares are bought.
4. Special benefits made possible and paid out of the profit for the founders, members of the board of directors, or other persons,
5. Procedure of election of the board of directors, board of supervision, their functions, signatures and administrative authority. ? in the eng book
6. Procedures to call the general meeting for stockholders, time to assemble, terms for discussion, decision, and voting.
7. Duration of the company, if it is for a limited period.

Article 271: A copy of the articles of incorporation, prepared according to Article 270, is submitted to the Ministry of National Economy, and a permit for the establishment of the company is obtained.

Article 272: After permission has been received, if the company is gradually established, founders should make an advertisement containing the following:

1. Business and duration of the company.
2. The price of each share, the amount of capital, and the privileges provided in the articles of incorporation for the founder or other persons;
3. The kind of inventory assets given for capital;
4. If the buying of an institution has been under consideration, its price;
5. The place and method of conducting the general meeting.

Article 273: The request to participate in the capital of the company is made in two copies, as follows:

1. Summary of items o Article 272.
2. Name, identity, and addresses of persons promising to participate;
3. The number of shares promised to be bought, in letters, with the date of the promise;
4. Statement accepting the contents of the articles of incorporation. If the company is not established within the specified period, the promises of the participant are without effect.

The request to take part must be accepted by letter wherein the signatures of participant has been certified.

Article 274: Total stock issued for the capitalization of the company must be actually and fully promised and at least one-fourth of the value of each stock share must be paid in cash.

Article 275: The issuance of stock certificates must not be for less than the authorized value.

Article 276: In case the payment of one-fourth of the price of the shares (which payment is legally necessary) should not be a condition at the time of the promise, the founders can, when all necessary promises are received, notify those have promised, through registered letters or papers, to pay one-fourth of their promised shares within a specified period. Those not complying within the specified period are either dropped or made to honor their promise, depending on the decision of the founders. In case some are dropped, other persons promising to buy shares in place of the ones dropped must pay one-fourth of the price of the shares. The company cannot be established until one-fourth of the price of the shares has been paid.

Article 277: One-fourth of the price of the shares, paid by those who have promised to buy shares, is deposited in a recognized bank. When the company is established, the deposited money is paid to the company after presentation of a document from the board of directors to the effect of registration, advertisement, and the permission of the related authorities. Otherwise, the money is returned, on presentation of receipts, to the persons having deposited it. The one-fourth of the price of the shares deposited in the bank is in no way given to the founders.

Article 278: After all capital of the company is pledged and the proper price of the shares paid, the founders should within ten days, through registered letters to the address of stockholders, and advertisement in the papers, call the founding general assembly. The mailing of letters and advertisement in the papers must take place at least 15 days prior to the assembly, and must contain the following:

1. Certification of the promise to buy all shares and the payment of one-fourth of the price of the shares.
2. The appointment of informed persons to determine the price of goods given in place of capital and the purchase of an institution which is allowed by the articles of incorporation;
3. Any terms providing for special benefit to the founders;
4. The appointment of the members of the board of directors, if not already provided in the articles of incorporation;
5. The appointment of the board of supervisors.

Article 279: The assembly should meet on the specified day and discuss and decide upon items of Article 278. The decisions of the assembly will be valid only if person

representing at least one-half of the capital of the company are present. Each share entitles the shareholders to one vote, and decisions are made by majority vote of those present.

Article 280: The founders, with other stockholders, who present goods for capital, or the founders, when the assembly is considering special benefits for the founder, are not entitled to vote on decisions as to price determination of the goods or the special benefits for the founders

Article 281: If the first members of the board of directors are not appointed by the articles of incorporation, they are appointed by the founder's general meeting from the shareholders

The appointment of the first board of supervisors is the duty of the founders' general meeting. This board cannot be appointed by the articles of incorporation, and must be delegated to two or more of the shareholders or to persons not shareholders.

Article 282: In the founders' general meeting, which takes place in accord with Article 279, where qualified persons are appointed to determine the price of properties offered for capital, or the price of an institution to be bought, the presence of at least two-third of the shareholders having paid in cash is necessary. Decisions are by majority vote. If the required number of person is not present, qualified persons are to be appointed by the related court.

Article 283: After completion of the report of qualified person, the founders are to call another meeting of the assembly, in accordance with Article 278, and each of these meeting notices should be accompanied by a copy of the report of the qualified persons. The authority of the founders' general meeting, concerning discussion and decision, is subject to conditions set forth in Article 279.

Article 284: The founders' general meeting will study the report of qualified persons and listen to comments offered by those presenting the goods for capital, and to owner selling their institutions. The assembly will then accept or reject the prices mentioned in the report, or change them with the approval of the owners.

Article 285: In case there are an insufficient number of members at the founders' general meeting to receive the qualified report, the founders will send a summary of the meeting, accompanied by registered letters, to the shareholders, and publicize the matter in the papers. In such case, the shareholders are invited to meet after one month.

Article 286: If a majority vote should not be received in the founders' general meeting, the opposing parties may write out the reasons for their opposition.

Article 287: The founders cannot include anything in the articles of incorporation by which they would be entitled to receive free shares or appropriate cash money for themselves which reduces the capital of the company.

Article 288: After the execution of Articles 279 and 284, the founders, within fifteen days, shall prepare a report on the nature and condition of the organization; articles of incorporation; statement of the bank regarding the one-fourth payment of the issued stocks; report of the minutes of the founders' general meeting; report of experts regarding the value of capitalization and inventory, or of other institutions; a certificate and a copy of the concession or monopoly, if related; and these shall be submitted to the related commercial court.

The court will investigate the papers and, if necessary, ask for explanations from the founders, if papers are not complete. One month after the date of presentation, the organization papers are to be certified.

Article 289: The establishment of a company, certified in accordance with Article 288, is to be registered in the related commercial office.

Article 290: A company not registered and advertised in accordance with article 279 is not considered legally to exist, and before registration and advertisement cannot execute any commercial transactions.

Article 291: Those having undertaken to take part in the capital of the company and wish to transfer their shares to others before the company is legally established, such process is not considered valid.

Article 292: For companies which are established immediately, the shareholders shall prepare the articles of incorporation containing requirements of Articles 274 about the promise for all shares, items 4 and 5 of Article 278, and Article 270. If, as part of the capital, a building or goods has been bought, qualified persons for determination of its value shall be appointed by the court.

Article 293: Shareholders of an immediately established Joint Stock Company, who wish to present their shares for sale to the public, shall comply with the provisions of Articles 272 and 273.

Article 294: For loss or damage resulting from the incorrectness of the declaration paper, or from the papers of Article 288, and other papers, responsibility rests collectively with the founders and those taking part in the preparation of such papers.

Article 295: If all shares have not been bought and paid for, but the report states they were, and if this is discovered, the founders and all those responsible for the report must take these shares into their own accounts and pay for them.

Article 296: The founders, or others, who are dishonest about the price of the goods, capital or buildings that are purchased must, collectively, account any loss or harm that might be directed towards the company by their dishonesty.

Article 297: The members of the board of directors and the board of supervisors during the first term must investigate to see if any dishonest act was committed during the establishment of the company, paid for by the founders. If they neglect this obligation, and if any loss results, the responsibility rests, collectively, with the members of the boards of directors and supervisors.

Article 298: Responsibility of the founders' boards of directors and supervisors, after five years from the date of registration, according to the general meeting of shareholders, is considered reconcilable and compromisable. Conditional to representation of capital, it should be approved by one-tenth of the shareholders' vote.

Article 299: Claims for loss that the company might have against the founder members of the board of directors, or board of supervisors, is invalidated after five years.

Article 300: The founders are responsible to third parties for promises and transactions made by them to establish the company. If the company has been established, founders can refer to the company for compensation for expenses, payment of which is subject to the approval of the founding assembly. If for any reason the company is not established, expenses are to be paid by the founders, and they cannot refer to the shareholders for compensation.

## **Part II – Board of Directors**

Article 301: The joint stock company shall have a board of directors composed of at least three persons to be selected from among the stockholders by the assembly. The first members of the board directors are also possible to be appointed by the articles of incorporation.

Article 302: Each member of the board of directors must deposit with the company part of his shares equivalent to one percent of the original capital of the company. If one percent of the capital of the company should exceed 200,000 Afghanis, the deposit of a sum exceeding this figure is not compulsory. Until such time as members have been released from their responsibilities on the board by the assembly, these deposited securities cannot be taken nor transferred to another person. For this purpose these securities are sealed and kept as a guarantee in the treasury of the company.

Article 303: The terms of the members of the board of directors, at the maximum, shall be three years. They may be re-elected, unless the articles of incorporation should state otherwise.

Article 304: The members of the board of directors elect, each year, from among themselves, a chairman of the board, and, if necessary, a vice-chairman.

Article 305: If a member of a board of directors is dismissed for legal reasons the board can appoint, temporarily, another member meeting the legal requirements, but they must, at the next general meeting, propose his appointment for approval.

Article 306: If the members of the board of directors are appointed by the articles of incorporation, they can, if circumstances require, be dismissed by the general meeting. In such case, they will also be deprived of the privileges and profits they had as members of the board of directors.

Article 307: The administration of the corporation, as well as its agencies, is under the board of directors.

Article 308: The board of directors is entitled to execute and sign any legal transaction included in the authority granted under the articles of incorporation. If the board of directors finds it profitable for the company, it is entitled to request arbitration and mediation.

Article 309: To give credit to papers and documents prepared in the name of the corporation, in case the signing authority should not be specified in the articles of incorporation, they are to be signed by all members of the board of directors.

Article 310: Those who have the authority to sign in the name of the company must sign under the name ( in eng book ?) after the title of the company has been recorded.

Article 311: Members of the board of directors cannot participate in discussions concerning matters involving their personal interest. In such cases they must announce to the meeting the interest they have in the matter and enter it in the minutes of the meeting.

Members deviating from these regulations must compensate for any loss that might be suffered by the company. If the majority of the members should have personal interests in the subject under discussion, the matter is referred to the next meeting of the stockholders.

Article 312: Members of the board of directors cannot without permission of the general meeting, execute transaction in their own names and accounts, or in the names and accounts of third person, either directly or indirectly, with the company.

Article 313: No member of the board of directors can, without permission of the general meeting, engage in commercial transactions such as his related company is engaged with. Members of the board are not allowed to join another company engaged in the same activities as his related company as a responsible member. The company can ask for compensation from the board member not complying with this Article, or can consider the transaction made in his name-for the loss suffered – as made in name of the company, and ask that the profit made through these transactions be turned over to the company.

In resolving above-mentioned matters, members of the board involved cannot participate. The right of the company to take advantage of this privilege exists for a period of one year from the date such transaction takes place.

Article 314: If the capital of the company should become reduced to one-half, the board of directors shall at once invite the general meeting to decide either to raise a capital of the original amount, to go on with the remaining capital, or to dissolve the company. If only one-third with the remains, and the general meeting should not decide to raise capital or go on with the capital left, the company is considered to be dissolved. If the assets of the company should not meet debts of the company, the board of directors must refer to the court in request consideration of the matter and announcement of the bankruptcy.

Article 315: The board of directors must prepare the necessary books and, at the appointment time, have the balance sheet of the previous year ready for investigation and study by the stockholders at least 15 days before the general assembly is to meet.

Article 316: Expenses for the purpose of establishing the administration of the company are to be entered in the expenditure account of the company, but the expenses for the preliminary establishment, or for establishment of a new branch, or for extension of the transactions made by the articles of the incorporation, or decisions of the general meeting, should be continue to be entered, at most for five years, in the balance sheet of each year. However, expenditures of each year should be recorded in the balance sheet of that year.

Prices of movable properties, buildings, and machines, which are to be shown in the balance sheet, are those figures remaining after deduction from their costs of depreciation and insurance fees, if issued.

Article 317: The board of directors must prepare, at the end of the year, in addition to the balance sheet, a statement of the financial, economic, and commercial status of the company, and must also make a statement regarding the percentage of profit distribution and the reserve.

Article 318: Unless otherwise stated in the articles of incorporation of the company, the meeting of the board of directors should take place in the presence of more than half of the formal members, and decisions should be reached by majority vote of the members present.

Members cannot vote in the name of each other. In case of a tie vote, the matter is discussed at the next meeting, after which, if a tie still exists, it is considered rejected.

Discussions of directors should be registered in a book regularly by a secretary elected from among the members or from outside. It is necessary the decisions should be signed by members present, and those voting against an issue must register the reason for their stands.

Article 319: Unless otherwise stated in the articles of incorporation, members of the board of directors are entitled to an attendance fee for each meeting day. If the fee is not determined by the articles of incorporation, it is determined by the general assembly.

Article 320: Members of the board of directors are not personally responsible for transaction executed by them in the name of the company except in the following cases where they are responsible to the stockholders and third persons:

1. For accuracy of the certification of stockholders' payment for the share document.
2. For true a statement of the profits that are paid and distributed.
3. For maintaining and properly keeping books legally required to be kept.
4. For executing decisions made by the general meeting.
5. For executing all the duties delegated to them, either through the articles of incorporation or by law.

In case the company should delegate one of above five responsibilities to one member of the board of directors, the responsibility is directed only toward that member and it does not affect other members.

Article 321: The newly appointed members of the board of directors must bring the attention of the board of supervisors any illegal actions taken by previous members of the board of directors; otherwise these new members are held liable as well.

Article 322: Member of the board of directors who, according to Article 321, are not satisfied with the legality of the transactions executed by the previous board, and who have recorded the reasons for their dissatisfactions the meeting record and have informed the board of supervisors and writing as well, or who have not participated in consideration of a matter of such nature, are not responsible.

Article 323: If the members of the board of directors, by any means, or through untrue statements about the present condition of the company, cheats other person, he is personally responsible for losses resulting from such acts.

Article 324: Cases brought against members of the board of directors, according to the Articles 320 and 321, for the responsibilities mentioned therein, are voided five years after the date the responsibility was incurred.

Article 325: Should the general assembly decide to bring charges against members of the board of directors, the decision may be put into effect. If the general assembly should decide against bringing a case against members of the board of directors, and stockholder who owns 10 percent of the capital should disagree with this decision, the company must, within one month of the date of the decision, bring charges against members of the board of directors. To bring charges as mentioned above, in the name of the company, against members of the board of directors, is the duty of the board of supervisor. If the bringing of charges is affected by the votes of the stockholders owning 10 percent of the capital,

stockholders may appoint a consul from outside. Such stockholders must deposit their shares, for compensation of possible loss, in a recognized bank until the case is settled. If the case is rejected, the voting stockholders must compensate for losses suffered by the company.

Article 326: If the administration of the company, according to the articles of incorporation or the decision of the general assembly, should be delegated to a managing director not a member of the board of directors, in such case the director is also responsible for the duties mentioned in Article 320 to the stockholders of the company as well as to third person. Any condition in the articles of incorporation contrary to this, or statement that the managing director is subject to the board of directors, does not free him from these responsibilities.

Article 327: Members of the board directors are not responsible for the misconduct of the managing of director, but if members of the board of directors should appoint an unqualified person, or ignore this misconduct, or permit him to do things not under the authority of the director, in such cases they are collectively responsible to the stockholders of the company. However, members of the board of directors who, according to Article 322, prove they have not participated in such misconduct, are not held responsible.

Article 328: Unless otherwise stated in the articles of incorporation, the board of directors is authorized to dismiss or appoint the managing director. These actions must be advertised.

Article 329: The managing directors, when permitted, can delegate execution of certain transactions to others, but they can not delegate their director ship duties to others.

Article 330: The managing directors can not be appointed for longer terms of duty than those of the members of the board of directors. They can at any time, like members of board of directors, be dismissed. The managing director appointed from among stockholders and dismissed cannot claim damage and loss.

Article 331: The board of directors of a corporation, in addition to keeping record commercial books, must also keep the following records:

1. A special book for stockholders in which the name, father's name, identity, title and address of all shareholders are recorded.
2. Record of initial payments made for capital and the increase therein;
3. Record of the discussions of the general meetings; and
4. The discussion book of the board of directors.

Article 332: Unless otherwise stated in the articles of incorporations, the appointment of officials is the duty of the board of directors.

Article 333: If any members of the board of directors or board of supervisors should become bankrupt, or be deprived of his legal qualifications, or be punished for a criminal act, his authority in the affairs of the company is terminated and he is to be replaced by another person.

Article 334: The board of directors can, by majority vote, delegate its power and authority to one or more of its members.

### **Part III – Board of Supervisors**

Article 335: Unless otherwise stated in the article of incorporation, the board of the supervisors of the corporation should be composed of two members. These members can be elected from among stockholders or out side thereof, for the first time by the founders, general meeting for period of one year, and subsequently by the general assembly for a maximum period of three years. The board of supervisors whose term has expired can be re-elected. Members of the board of supervisors can not be elected as member of the board of directors no can they administer the business transactions of the company. Members of the board of directors whose term have expired can not be elected as member of the board of supervisors until the general assembly releases them from responsibility.

Article 336: The general assembly can in order to investigate certain specific matters, appoint a separate aboard of supervisors.

Article 337: Relatives of members of the board of directions, such as father, son, uncle, (brother of father and mother),

#### *Articles 337-364 missing*

Assembly, they can appeal to the Court , but they must pay the expense incurred and deposit their shares in a recognized bank in advance. In case this request should be rejected, or the result of investigation by the court should prove the claim false, the stockholders initiating the action are responsible for paying, collectively, the losses caused to the company.

Article 365: Certification of the balance sheet by the General Assembly frees the Boards of Directors and Supervisors from responsibility, except that these Boards are responsible for any irregularity found in the balance sheet. They can not be released even by the General Meeting.

Article 366: Decisions reached by the General Assembly affect those absent as well as those in opposition to decisions taken.

Article 367: Decisions made by the General Assembly which are contrary to explicit orders of the Law or the articles of incorporation of the company can be protested within

three months of the date the decisions were made , in a local court concerned with commercial cases. The following are entitled to make such an objection:

1. The shareholders who were present but were not in favor of the decision , and who have entered their opposition in the minutes, or who have been deprived from voting rights on no legal grounds, or who think the invitation of the meeting was not in accordance with the law.
2. The board of Directors.
3. Each member of the Boards of Directors or Supervisors , when the decision of General Assembly of stockholders may cause responsibility to impinge upon them. If the objections are numerous, and the trial is a singular one, the hearing on the claim is to be delayed until the end of the objection. The court can , when so requested by the interested parties, have the complainants presents guarantees in case probable damages should devolve upon the company. The amount of the guarantee is to be determined by the court, if the protest should be by the Board of Directors, the company is represented by the board of Supervisors.

Article 368: In cases of protest against the decision of the General Assembly, according to Article 367 the Court can, after asking for explanations from the Boards of Director and Supervisors, order postponement of execution of the decision concerning which the protest has been made.

Article 369: The order of the Court to invalidate the decision of the Assembly over which the protest has been made, being final, is applicable to all stockholders. The board of Directors must register and advertise a copy of the above-mentioned order at once.

Article 370: If it is proven that the persons protesting a decision of the Assembly acted in bad faith, these persons, collectively, must bear the responsibility for any loss resulting to the company by their actions.

Article 371: Unless otherwise stated in the articles of incorporation, the General Assembly can modify the contents of the articles of in corporation to increase the capital of the company or change the nationality of the company. The unanimous approval of the stockholders is required. In discussions dealing with modifications of the articles of incorporation, a person controlling even one share is entitled to participate and vote. If anything in contradiction to this should appear in the articles of incorporation, it is invalid. Votes of persons controlling more than one share are to be counted proportional to the shares, even if otherwise stated in the articles of incorporation.

Article 372: In meetings of the Assembly dealing with changes in the type of business or nature of the company, the presence of shareholders representing at least three-fourths of the capital of the company is required. For the decisions made at these meetings to be effective, two-thirds of the votes of those present, in person or by their proxies, is necessary. If at the first meeting shareholders representing three-fourths of the capital of the company are not present, the board of Directors can call an assembly meeting again for this purpose. This invitation should be advertised in the papers 15 days prior to the

meeting. At this second meeting, the presence of shareholders representing half of the capital of the company is sufficient. In the notices and invitations sent to nominated stockholders, the later discussion, and the result of the previous meeting should also be included. If a sufficient number of shareholders is not present, a third meeting may be called within the period authorized for the second meeting. For this purpose, the attendance of one – third of the shareholders will suffice as quorum, but in order for decisions to be effective, they must be reached by two-thirds of the votes of those presents, whether in person or by proxy.

Article 373: If the decisions concerning modification of items in the articles of incorporation are not effective before being advertised and registered in the local commercial court.

Article 374: In case the General Assembly should be called to meet to consider modification of terms of the articles of incorporation, the text of the modification should also, according to Article 356, be advertised to the interested persons.

Article 375: Until such time as the initial capital of the company has been completed, the General Assembly can not consider the issuance of new shares, or the increase of capital.

Article 376: In case the General Assembly should decide to increase the capital of the company by issuing new shares, the related documents, after going through legal channels, together with a joint statement of the Boards of Directions and Supervisors, should be submitted to the Ministry of Commerce for the certification of the Minister, after which the matter is advertised and registered in a commercial court.

Article 377: When payment for new shares is made in other than cash, such payment is governed by the rules existent when the company was established.

Article 378: If the increase in capital of the company should have taken place not in accordance with law, it will be without effect, and the Boards of Directors and Supervisors are, collectively, responsible to the company and third persons.

Article 779: Unless prevented by the decision of the General Assembly concerning the increase in the capital of the company, each of the shareholders may, in proportion to the shares he has in the capital of the company, buy new shares issued. The Board of Directors should advertise the issuance of new shares. This advertisement should also specify a period of not less than four weeks for acceptance or rejection by the stockholders.

Article 380: Any decision by the General Assembly regarding decrease of the capital of the company should also include arrangements and steps for the execution of this decision.

Article 381: After advertisement and registration of the decision to decrease the capital of the company, advertisements should be made three times, in the papers, to notify any

creditors. To these creditors whose addresses are known to the company, personal notices are to be sent as well. Before the date of the last advertised notice, creditors who prove their claims on the company are paid on request. For the purpose of clearing the transactions of the creditors, stockholders are not paid until two years from the date of advertisement announcing the decrease.

Article 382: For the capital decrease such as reduction of outstanding shares of stock, or any other method, the procedure must be advertised. Shares which, in spite of notice, are not brought in, should be cancelled. However, when advertisement is made in regard to the return of stocks, warning about the cancellation of un-presented stocks should be explicitly indicated.

Article 383: After arrangements for reduction of capital are completed, the matter is advertised and registered by the board of Directors.

### **Part V – Stock Certificates**

Article 384: Stock certificates are either with or without names of owners.

Article 385: Before the registration of a company, stock certificates or anything else used temporarily for stock certificates are not to be issued.

Article 386: Unless otherwise stated in the articles of incorporation, stock certificates must bear the names of the owners.

Article 387: A provision in the articles of incorporation preventing the transfer of stock certificates with names to those without names, or vice versa, is valid.

Article 388: To change stock with a name to that which has no name, it is necessary that the full costs of the shares be paid. If the market value of the nominated stock is greater than par value (*qimat morihza*), the additional amount should be received.

Article 389: Stock certificates not fully paid for, and those temporary certificates that have been given to shareholders before the certificates were issued to the stockholders to show their subscription, must bear the names of the owners.

Article 390: As far as the company is concerned, each share of stock is indivisible. If a stock certificate is owned by more than one person, they can establish and prove their rights with the company only through counsel.

Article 391: Stock certificates should bear the signature of the person authorized to sign in the name of the company. Stock certificates must contain the name of the company, the date of the announcement concerning the establishment of the company, the number of shares, the capital of the company, and the price of the stock certificate. The signature as stamp or seal is also allowed.

Article 392: Each stock certificate must be worth at least 100 Afghanis. to issue a stock certificate worth less than 100 Afghanis is not allowed, unless otherwise stated in the articles of incorporation.

Article 393: Stock certificates with names must bear the name, profession, and address of the owner, and must be registered in a special book in the company.

Article 394: Unless otherwise stated in the articles of incorporation, stock certificates bearing names are transferable to others without the consent of the company.

Article 395: Stock certificates with names are transferred to others by endorsement or by another written document. In order for this transfer to be honored by the company and other persons, it should be registered in a special book by the company. The registration takes place upon showing the stock certificates or the document to the effect of its transfer, by the receiver.

Article 396: Possession of or transfer of unregistered stock certificates (anonymous stock) as far as the company is concerned is validated only by possession or ownership.

Article 397: The stockholder who has not paid the price of the stock certificates must pay, from the day it was due, legal interest on the loss caused by this negligence to the company. The amount determined in the articles of incorporation to be paid as compensation for the loss caused by the delay in payment of the stock certificate is valid.

Article 398: In case a stockholder has not paid, in full or in part, the price of his shares at the time due, the Board of Directors can, unless otherwise stated in the articles of incorporation of the company, take the following actions. The shareholders who delay payment for their stock certificate are warned through paper twice a month, at intervals of 15 days, with the notification running each time for three successive days. If within one month from the date of the last announcement the price is not paid, the persons involved are given two other warnings, at an interval of 10 days, that if they do not make payment in full they will lose all their privileges of stock ownership. Persons not having paid their due are deprived of their rights to participate unless otherwise stated in the articles of incorporation. This matter is also separately announced. After these steps, the company should sell the involved shares at the stock exchange price or by auction, invalidate the previous documents, and issue new ones in their place. In these documents the paid amounts and the remaining installments should be entered. If the money received from the sale of stock certificates sold according to this article should be less by the initial owners.

Article 399: In the case of sale of a stock registered in the name of an owner whose subscription price has not been paid in full, the initial owner and the subsequent owners are responsible, collectively, for the amount due the company.

The responsibility of those transferring is invalidated after three years from the date the transfer is registered in the books of the company. Before paying the balance, the original

stockholder who has transferred his stock certificate can refer to the succeeding stockholder or the last person who holds the stock for the amount he has paid so far.

Article 400: Before the establishment of a corporation is final, transfer of stock certificates is not allowed.

Article 401: Transfer of stock certificates paid for in “Kind” is possible two years after the company has been established.

Article 402: In a stock certificate or a temporary certificate should become so old and in such bad condition that its further use is impossible, but its contents and distinguishing marks are perfectly legible, its owner is entitled to pay the expenses involved and receive new or replacement stock certificate from the company.

### **Part VI – Bonds (Loan Documents)**

Article 403: A corporation may borrow by means of bonds having the same face value and the same terms of repayment.

Article 404: Until all the bond certificates issued have been sold, no other bonds can be issue.

Article 405: Bonds issued by the corporation should not exceed the paid amount of capital and the assets of the company certified according to the last balance sheet.

Article 406: Through the articles of incorporation of the company may allow the issuance of bonds, the approval of the General Assembly is also necessary. In order for this approval to be valid, condition dealing with the quorum and majority vote of those present, as mentioned in the first part of Article 372, must be complied with. This approval should also be advertised and registered in the Commercial Registration Office.

Article 407: The board of Directors when issuing bonds must release a statement containing the following:

1. Name, kind of business, head office, and length of existence of the company.
2. The amount of capital of the company.
3. The date of the articles of incorporation and any modifications therein, with their dates and the dates the announcements were made.
4. The financial condition of the company according to the certified balance sheet.
5. The total value of the outstanding bonds; the procedure for payment to the company, with the value of each note; the amount of interest; the kind of bond (name-bearing or otherwise); and the procedure and time for repayment.
6. The date of registration, and announcement of the decision of the General Assembly concerning the issuance of the bonds.

7. If the movable or immovable properties of the company have been mortgaged or presented as guarantee either for a previous bond issuance or otherwise, this fact should be announced at least 15 days before the bonds are issued.

Article 408: The conditions of Article 407 are entered on the subscription slip of the bond.

Article 409: On bonds, in addition to the items of the above statement, the amount and conditions of interest are also entered. Bonds should be signed by at least two members of the Board of Directors.

Article 410: Members of the board of Directors violating orders concerning loans are collectively held responsible to the interested persons.

Article 411: The board of Directors must prepare, before the general meeting of the bondholders, a list of the regular bonds for analysis by the owners of the bonds.

Article 412: The corporation should keep a registration book for the registration of bonds bearing names of bonds owners.

Article 413: The board of Directors and the Board of Supervisors can, when necessary, call a meeting of the owners of bonds, just as they call a meeting of the General Assembly. Owners of bonds representing one-fifth of the value of the regular bonds can request a general meeting of the owners bonds. The board of Directors and Supervisors must give due consideration to their request. The meeting notice of the bond owners is subject to the special provisions dealing with the notice to stockholders for the Assembly.

Article 414: The general assembly of the bond owners is entitled to express its opinion concerning the following:

1. Reduction, removal, or cancellation of special guarantees regarding the bonds.
2. Prolongation of the interest period, reduction of the amount, modification of the terms for the payment of interest.
3. Prolongation of time and adjustment of conditions of the loan.
4. Receiving and accepting stock certificates in place of bonds.
5. Appointment of one or more representatives to look into the above matters.

Article 415: In order for items 1, 2, 3 and 4 of Article 414 to be applicable to the owners of bonds, it is necessary that two-thirds of them should decide. As far as item 5 of Article 414 is concerned, approval of owners representing half of the bonds is sufficient.

## **Part VII – Loss of Stock Certificates and Bonds**

Article 416: A corporation which has issued unregistered stocks and bonds may pay the value and profits only to the bearers.

Article 417: If , by any means, a stock certificate or a bond should be lost by the bearer, and the issuing company should be directed in writing through the registration Article of the Commercial Court not to pay on it, and any responsibility regarding the withholding of payment is accepted, the company will withhold payment. If , within twenty days from the date of the court order no decision is communicated from the court to the company concerning the prevention of payment , the demand is invalidated.

Article 418: The written request must contain the following details:

1. The value and the serial numbers of the certificates.
2. The number of certificates.
3. The circumstances of the loss and , if possible, the time and place of the receipt of interest or profits.

Article 419: A person having lost possession of stock certificates or bonds who refers to the Local Commercial Court, as detailed in Article 418, will be questioned by the Court concerning the accuracy of his claim. If the circumstances prove reasonable and sufficient , the Court will forbid the company to pay, and announce its decision in the papers. If, within two years, a person should find his stock certificates or bond and so advise the court, the Court will look into the matter and make decision. If, during the period mentioned, no one makes a claim, the Court should, on the request of the person having lost possession of the stock certificates or bonds, order the payment of the interest or profit, and the person shown to have lost same will be considered as owner. This decision is effective after announcement.

Article 420: In the process of asserting one's right to anonymous stocks and bonds, based upon the loss of possession, one can bring suit against the person who has found the documents or who has stolen them, or who has knowingly taken them from the rightful owners.

Article 421: A person who loses his stock certificates or bonds bearing his name can ask for duplicates, from the company, provided the registration proves him to be the real owner of the stock certificates or bonds. Upon favorable decision of the Board of Directors he may be given the required duplicates.

Article 422: All expenses incurred in proving ownership of documents and in having duplicate documents issued by a company when necessary will be borne by the person bringing the action to establish ownership.

## **PART VIII**

### **Dissolution and Liquidation of Corporations.**

Article 423: Corporations can be dissolved for any one of the following reasons:

1. The termination of the specified period.

2. The accomplishment of the purpose of the corporation or the impossibility thereof.
3. The loss of two thirds of the capital in accordance with Article 314.
4. In case the total number of stockholders should be reduced to less than five.
5. Realization of the causes affecting the dissolution of the corporation according to the articles of incorporation.
6. Merger of the company with another company.
7. The bankruptcy of the company.
8. The decision of the General Assembly to dissolve the company in accordance with the first part of Article 372.

Article 424: If after the establishment of a corporation its stockholders should number less than five any interested party can refer to the court to ask its dissolution.

Article 425: Creditors of a corporation which has lost two thirds of its capital can ask the court for its dissolution. If the corporation can present to the court adequate guarantees for the claims of its creditors the court may order the dissolution of the corporation.

Article 246. If the dissolution of the corporation should be caused by any reason other than bankruptcy the Board of directors should advertise the matter for three consecutive weeks so the creditors of the corporation can receive payment

Article 427: A corporation dissolved for a reason other than bankruptcy is to be subsequently liquidated (Cleared).

Article 428: If the liquidation officers are not specified in the articles of incorporation , the General Assembly when dissolving the corporation will appoint the liquidation board.

Article 429: If the liquidation officers have not been appointed by either the articles of incorporation or the General Assembly , the board of Directors must execute this matter.

Article 430: The liquidation officers, whether appointed by the articles of incorporation, or the General Assembly, or the board of Directors executing the liquidation duties according to Article 249, can be changed or dismissed by the General Assembly. On request of interested persons, the Court may also change or dismiss the liquidation officers after consideration.

Article 431: The properties of the corporation, after settlement of the debts of the corporation, are distributed among the stockholders proportional to their shares. People who, on the basis of the records and other recognized securities, are considered creditors of the corporation, must be invited by registered letters to come to receive their payments. Payments for the claims of those not appearing or claims not yet settled are deposited in a recognized bank. The liquidation officers violating the above orders and making unauthorized payments are personally and collectively held responsible.

Article 432: Papers and records of the dissolved corporation at the end of the liquidation, on request of the liquidating officers or other interested parties, may put away in a safe place by the related Commercial Court for a period of 15 years.

Article 433: The provisions of Articles 205, 206, 207, 208, 209, 210,211, 212 ,213, 214, 215 , 216 , 217 , 218 , 219 , 220 , 221 , 222 , 223 , 224 ,225 ,226 ,227, 228, 229, 230, 232, 233, 239, 240 and 241 apply to corporations as well.

Article 434: Duties delegated to the directors according to Article 217 are executed by the Board of Directors during a liquidation.

Article 435: Corporation are considered to exist after dissolution and until the end of liquidation, and if the liquidation board should deem it necessary it can invite the General Assembly to meet to decide relevant matters.

Article 436: The liquidation officers are to investigate the existing condition of the company, prepare the property book and the balance sheet of the company, and present them for approval to the General Assembly.

Article 437: Finally, the liquidating officers must prepare a terminal account and present it to the General Assembly.

Article 438: The liquidation officers should complete their duties within one year. If this should not prove possible, the officers must , at the end of the year, make a report on the status of the liquidation and the reasons preventing the completion of liquidation within the period of one year, and present it to the General Assembly for its approval to continue in liquidation.

Article 439: The liquidating officers must receive the approval of the General Assembly to sell properties on a wholesale basis.

Article 440: net assets of the company are distributed among the stockholders in proportion to the money they invested. As far as the redemption of preferred shares is concerned , actions should be taken according to the decision of the General Assembly, unless otherwise stated in the articles of incorporation.

Article 441: If the dissolution of a corporation should take place because of its merger with another company, the following applies:

1. the administration is vested in the newly established company but properties of the dissolved company must be separated administered and liquidated until claims on the company are paid.
2. A court which had authority over the dissolved corporation before it was dissolved will continue such authority until its assets are separately administered.

3. Members of the Board of Directors of the new company , until execution of the first item of this Article, have a collective and personal responsibility for the administration of the assets.
4. The matter of dissolution of the company should be registered in the Commercial Registration Office and advertised.
5. The properties of the two uniting companies can not be merged before completion of the period specified in Article 438.

### **Part IX – Profit and Loss Statement**

Article 442: When distributing profit , at least five per cent of it should be kept in the name of reserved capital to compensate for possible loss and damages. If there should not exist anything explicit in the articles of incorporation about the increase of contingency capital so accumulated, when it is equal one-fourth of the capital of the company, it is no longer increased by retaining the reserved profit. If the sale of the shares should exceed their book value, the additional amount derived may also be added to the reserve capital. If the reserve capital should become less than the amount prescribed by the articles of incorporation or law, it is again raised according to paragraph one until the deficiency is eliminated.

Article 443: Until losses of the company have been recompensed and reserve capital deducted according to Article 442, the dividend is not distributed. Profits distributed contrary to this order will not be considered legal and the provisions of Article 444 here apply.

Article 444: If profits are distributed in bad faith in the absence of the balance sheet, or based on unreal profits on the balance sheet, they should be returned. Claim for the return of unreal profits, five years after the date specified in the articles of incorporation for the distribution of profits, is valid.

Article 445: If profits do not permit or warrant payment of normal dividends or interest, it is permissible to pay up to five per cent on the capital contribution or on bonds for a period not to exceed five years. These amounts so paid out of the interest account may be treated in the balance sheet as if they were preliminary.

Article 446: If the reserve capital should not be sufficient to meet the losses of the company, no profit is distributed to stockholders until the loss has been completely wiped out.

### **Subchapter E – Special Partnership Companies**

#### *Sherkat – Tazamoni – Mokhtalet (Komandit-Shirkat)*

Article 447: Special partnership companies are those in which one or more of the stockholders have collective and unlimited responsibility , but other stockholders have

limited responsibility proportional to the shares they have in the company, in case of debts to the company.

Article 448: The legal relations of collective stockholders to each other, to stockholders with limited responsibility, and to third parties ; representation of the company; exodus from the company; and especially administrative authority of the company are subject to laws governing special partnership companies. In other specifications, provided elsewhere in this chapter, the orders of corporation are applicable.

Article 449: All the items of Article 270 except item 6 must be included in the “Komandit” companies are not subject to the provisions of Article 271.

Article 450: All the items of partnership Association of “Komandit” companies should be signed by all of the stockholders. All persons participating in the preparation of the Articles of Partnership are considered as founders. The founders can not be less than five members and at least one of the founder should include in the Articles of Partnership the amount of stocks which they have.

Article 451: Orders relating to the duties and responsibilities of the Board of Directors in corporation are applicable to special partnership companies.

Article 452: Director of “Komandit” companies can be dismissed in accordance with the conditions and circumstances determined for the dismissal of directors in General Partnership companies.

Article 453: As in a general partnership, a general partner of the company can not engage in commercial activities of a kind in which the company is without the permission of the rest of the general partners of the company. He can not subscribe as a general partner in a general partnership which is dealing. The general partner violating this is subject to the provisions of Article 159. However, if the general partner or the Board of Supervisors during one year do not object to the participation of the general partners in another company, the right of objection is invalid.

Article 454: Execution of decisions of the general assembly unless provided otherwise in the Articles of Partnership is the responsibility of the Board of Supervisors.

Article 455: The Board of Supervisors can represent the stockholders with limited responsibility in case of a claim between the general partners and the general assembly of partners with limited responsibility.

Special delegates can be selected by decision of the assembly of partners with limited responsibility to this authority. The general partners can not be included in the Board of Supervisor.

## **Subchapter F – Limited Companies**

Article 456: Commercial companies whose capital is not divided into shares, and in which the responsibility of each partner is limited to his promised capital , are called companies.

Article 457: With the exception of insurance , limited companies can be established for any kind of business.

Article 458: Limited companies are established with the permission of the Ministry of Trade. In the request all partners or their certified attorneys must sign a petition. All the capital of the company should be pledged and at least half of it paid.

Article 459: In limited companies the minimum member of partners is two and the maximum number is 50. The capital of such a company must not be less than Afghani 100,000.

Article 460: The title of the company should be followed by the word “Limited” and on all the papers and documents the amount of the capital should be written under the title of the company.

Article 461: Stock certificates received for capital contributed in kind shall be specifically identified as such. Transfers of these are restricted to the approval of the majority of the partners controlling three-fourth of the capital . If the capital is paid in kind, it can not be transferred to another during the first three years of the company.

Article 462: In case a person who has not paid all of his promised capital transfers his part to another person, the company can , during the first two years of the date of the transfer, claim the remaining capital either from the initial partner or the new partner, but after this period the claim is to be paid by the new partner.

Article 463: A limited company is administrated by one or more directors appointed from among the partners or from outside the company. The directors are appointed either by agreement of the company or by the subsequent decision of the partners.

Article 464: In any actions contrary to the law or the Articles of Partnership , the directors are collectively and personally responsible.

Article 465: In companies having more than 20 partners, meetings of the partners are subject to the conditions and formalities governing corporations. In companies having less than 20 partners, decisions are made by the votes of the partners. In both cases, partners representing half of the capital must vote in favor of the subject under discussion for its approval.

Article 466: The contents of Article 151 apply to limited companies as well.

Article 467: In reaching decision, each partner’s vote counts proportionally to his share in the business.

Article 468: In the case of limited companies with not more than five partners , the agreement can be amended with the approval of all the partners. In companies with more than five partners, votes of partners representing two-thirds of the capital are sufficient.

Article 469: With the death or bankruptcy of one of the partners, the company is not dissolved . If a company has two partners, in the case of death or bankruptcy of one of the partners the remaining partner presents another partners for the departed partner or else the company is dissolved.

Article 470: In companies having over 20 partners, one or more supervising members are named to act as the Board of Supervisors, as in the case of corporations.

Remark: There shall be in a limited company, as well as in a corporation , a representative of the Government with the title of Commissioner to supervise in the application of the law. The duties of the Commissioner are to be determined in accordance with separate regulations.

### **Chapter III – Commercial Documents**

#### **Subchapter A – Drafts or Bills of Exchange Part I – Form and Preparation of Bills of Exchange**

Article 471: Bills of exchange must contain the following:

1. The words “Bill of exchange” should be written in the text of the document in whatever language the bill of exchange has been written.
2. The order of the payment of a specific amount, unconditionally.
3. The name of the payee.
4. The item of payment.
5. The place of payment.
6. The name of the person authorized to receive the money.
7. The place and date the bill of exchange is written.
8. The signature of the person issuing the bill of exchange.

Article 472: Documents lacking any of the items of Article 471 will not be considered a bill of exchange except in the following situations:

1. The bill of exchange whose payment time is not specified is payable upon presentation.
2. For bills of exchange not showing the place of payment, the place mentioned after the name of the addressee is the place of issuance is not mentioned, the place following the name of the person issuing the bill of exchange is considered the place where the bill of exchange has been issued.

Article 473: Bills can be written to be payable by order of writer, or to the writer, or to the account of a third person.

Article 474: Payment of a bill of exchange can be restricted to the residence of the third person, whether at the home of the addressee or elsewhere.

Article 475: For bill of exchange which are payable either “on sight” or after a specified time, the one issuing the bill of exchange can make it conditional that a portion of the payment shall constitute interest. This provision is not allowed with respect to other bills.

Article 476: In cases where the amount of a bill of exchange is written both in letters and figures , and there is difference between these two, the amount written in letters is honored. In case the amount of a bill of exchange is written more than once all in letters or all in figures, the there is a difference between these amounts, the lesser amount honored.

Article 477: The signatures of those not qualified or authorized to sign a bill of exchange can not affect the signatures of those who are qualified and authorized.

Article 478: A person, not counsel for another person, who signs a bill of exchange in the letter’s name and account is liable for that bill of exchange. This order is also valid where counsel violates his authorized limitations.

Article 479: Acceptance and repayment of bills must be assured by the issuers. Any denial of ability to assume and repay the bills when due is not valid or allowable.

## **Part II – Endorsement**

Article 480: A negotiable note is transferable by endorsement. If the writer adds “not transferable or qualifying provisions, the note is not transferable by endorsement and is considered an untransferable claim. A note can be endorsed in the name of addressee , the writer, or another responsible person. With endorsement, all the privileges due to the note are transferred.

Article 481: Endorsement should not be subject to any condition. Any condition related to endorsement is without effect. The endorsement as a part of the draft is not accepted.

Article 482: Endorsement can be made on the note of another paper accompanying the note. Endorsement should be signed by the endorser. If the name of the bearer is not mentioned in the endorsement, or the endorser had only signed the note or the accompanying paper, this endorsement is correct and acceptable. (Blank endorsement).

Article 483: If the endorsement should be of the blank kind, the bearer can:

1. Endorse it in his own name or in the name of and another person.

2. Transfer it as blank or re-endorse it to another person.
3. Transfer the note to another person without endorsement, or fill in the blank space on the note.

Article 484: Unless otherwise specified, the endorser must accept and \_\_\_\_\_ the note. The endorser can forbid re-endorsement. In such cases, the endorser is not responsible to the person by whom the note was subsequently endorsed.

Article 485: Endorsement may be specific, to a given person, or may be in blank. Endorsements which are crossed out are not valid. If the owner of a note endorsed in blank loses possession of it, the finder or bearer is entitled to payment as the owner thereunder if he can prove valid titles.

Article 486: If a bearer should bring suit against the responsible persons, defendants can not free themselves of responsibility because of transactions with a previous bearer or issuer.

Article 487: If the endorsement contains one of the following statements “collectible”, “receivable” or a statement denoting delegation of authority the bearer, in spite of the fact that he is entitled to all rights, can only endorse the note as an agent. In such a case, interested parties can not bring a case against the bearer. The agency existing in the endorsement holds true until death of the employer of the agent, or the invalidity of the legal rights.

Article 488: In case the endorsement contains the statements “for guarantee”, or “for mortgage” or other statements denoting these ideas, the bearer can take advantage of all the rights resulting from this note, but the subsequent endorsement by him is only considered as being made by an agent or representative to these rights.

Article 489: Endorsement made after the due date is considered to have been made before. Unless otherwise specified, endorsement lacking the date is considered to have been made before the expiration of the period specified.

### **Part III – Acceptance**

Article 490: A negotiable note can be presented for acceptance before the specified time at the residence of the addressee by the bearer or any person having it.

Article 491: the writer can specify in the note, for the acceptance of the addressee, the due date, or the writer can write the obligation of the bearer for acceptance without specifying the date. The writer can also make the condition that a note can not be accepted for payment before a specific date. Unless the writer writes the statement “unacceptable” , every endorser can , with or without specification of the passage of a period of time, make the note due.

Article 492: Notes whose presentations are subject to a specific period of time should be presented within six months after the time the note has been written. The writer can either increase or decrease this period, but the endorser can only decrease it.

Article 493: The bearer who presents a note for acceptance does not have to turn it over to the acceptor prior to payment. The bearer, in due course, can present the note the day after it has been first presented. If the bearer protests against additional delay, interested parties are not permitted to withstand the second claim.

Article 494: Acceptance is denoted by the statement “Has been accepted” , or by an equivalent statement , and this should be signed by the addressee. The signature of the addressee alone on the note also denotes acceptance. In case payment of a note is to be made during or after a specific period, should be bearer not ask for the registration of the presentation date, any date on which acceptance has taken place should be registered. If the addressee, while accepting the note, should not register the date, then it is necessary that the bearer, for the sake of his own rights against the endorser and the writers, should prepare a note of protest to prove the negligence of the addressee.

Article 495: The acceptance must be unconditional. However, the second person may refuse to pay a small part of the amount involved. During the period of the acceptance, other conditions modifying the contents of the negotiable note are not acceptable. In spite of this, the acceptant is responsible under the terms he has accepted.

Article 496: If the note is made in such a way as to be paid in a place other than the residence of the addressee, and if the name of the person to whom it should be paid is not explicitly mentioned, it is understood that the acceptant has promised to pay the amount of the note personally in the prescribed place.

Article 497: A person accepting a note is responsible for its payment. In case of refusal, if the bearer should be the writer as well, according to Article 518 and 519, he can bring a suit to claim all the pertinent rights.

Article 498: If the acceptance should have written his acceptance on the note and before delivery of the note to the bearer he crosses out his writing, it is understood that he has

refused to pay, but if the addressee has informed the bearer or one of the signatories of the note of his acceptance in writing , and after that happened he crosses out his writing, he is responsible within the limitations of his acceptance.

#### **Part IV – Guaranty**

Article 499: The payment of a negotiable note, in part or in full, could be executed through guaranty. The guaranty will probably be made by a third person or by one of the signatories.

Article 500: The endorsement should be registered on the note or on paper attached to the note. “Guaranty” or words saying it is guaranteed, or some similar expressions are added and signed by the guarantor. The signature of persons other than the issuer and addressee on the draft will convey guarantee. It must be specified on the guaranty whose account is guaranteed . If it is not specified , it will be accounted in the account of the issuer.

Article 501: The guarantor is as much responsible as the person who has been guaranteed. If the note is not prepared in accordance with the law, the guarantor is not responsible for his promise. If the guarantor does pay the amount of the note, he is entitled to refer to the person guaranteed for or to those who are responsible for the person guaranteed for.

Article 502: A negotiable note is paid under the following conditions:

1. During the period specified after the presentation.
2. During the specified period after the date of the note.
3. At the specified date due.

Remark: Notes whose payments are subject to presentation should be paid when presented, and notes whose payments are to be made during a specified period after presentation must be presented during the period specified for acceptance.

Article 503: Notes whose payments are subject to presentation should be paid when presented, and notes whose payments are to be made during a specified period after presentation must be presented during the period specified for acceptance.

Article 504: Payment dates for notes payments dates are during a specified period after presentation are determined by the date of their acceptance or date of protest. As far as the accepting party is concerned , where no protest is involved concerning notes whose acceptance date is not known, the last day of the period specified for the presentation is considered the time of acceptance.

Article 505: For notes whose payment should be made after one or more months of the date of issue, or after presentation, their payment date is the one on which the payment has been made in that month. If there should not be a specified day of the month, the last day of the month is considered the due date. If payment should be made in a few months

and a half, all the completed months should be accounted first. If the payment date should be the first or the end of the month, these expressions imply the first 15 days and the last 15 days of the month. When eight or fifteen days are mentioned, it does not mean one week or two weeks, but it means eight or fifteen real days. Half of the month is interpreted as 15 days.

Article 506: As far as payment is concerned, if the calendar of the place at which the note has been issued should differ from the calendar of the place where it is payable, the calendar of the place where it should be paid is honored. If the due date should correspond with a holiday, the payment should be made the day after the holiday. This rule will also apply in the case of other commercial papers.

## **Part VI – Payment**

Article 507: The bearer must refer to the addressee on the date the note is payable or, at the most, after two working days.

Article 508: When the addressee pays the amount of the note, he requests the bearer to sign it as evidence of payment, and then he should keep the note. Partial payment of a note is not rejected, but the addressee can request to have the signature for the part paid as evidence of payment.

Article 509: The bearer of a negotiable note does not have to receive the amount before the due date. The addressee paying the note before the date due is himself responsible for any loss caused by this act. The person paying the note close to the date due has no responsibility provided this should have taken place through no fault or bad intention of his. The person paying the note is responsible for investigation of the arrangement and continuation of the endorsement but he is not responsible for investigating the accuracy of the signatures of endorsers.

Article 510: If the note should specify currency not used in the payment place, and if the writer should not require the payment in that currency, then the payee may pay it in accordance with the exchange rate of the payment date, in the currency used in that place, but if the currency should be such that the person indebted is unable to pay in kind, then the bearer can request that the payment should be made in the local currency at the prevailing rate on the due date.

Article 511: The rates used in the payment place determine the basis for the value of the foreign currency. The writer or one of the endorsers can exchange the money to be paid and record it on the note. In case currency used in the issuing country and the paying country should have the same name but different values, the currency of the payment country is assumed.

Article 512: In case the note is not presented for payment during the period mentioned in Article 507, each of the debtors can, at the expense of the bearer, transfer the amount of the note to an authorized agency.

## **Part VII**

### The right to act in case of nonpayment and non-acceptance

Article 513: The bearer has the right to recourse from the endorser and the maker and other responsible persons in the following cases:

1. If during the specified time the note has not been paid.
2. If the payment of all or a part thereof should have been refused.
3. In case of the bankruptcy of the addressee, regardless of whether the note had been accepted or not; or in case of delay in the payment by the addressee regardless of the order of the Court; or in case the bearer has appealed to the Court and has asked for control of the property of the addressee equivalent to the amount of the note without any actual result.
4. In case of the bankruptcy of the issuer of the note which was not acceptable by him.

Article 514: Refusal to accept or to pay should be proved with a formal paper called "Protest of Non-acceptance or Nonpayment". The Protest of Non-payment should be made on the date of the payment or during the subsequent two working days, and the protest of Non-acceptance should be made during the period specified for the presentation of the note for acceptance. As far as the second paragraph of Article 493 is concerned, if the first presentation of the note should have taken place on the last day of the pay period, the Protest could also be made on the following day. The Non-acceptance Protest invalidates the default and absence of presentation. In cases mentioned in Item 3 of Article 513, the bearer, without presenting the note to the addressee, or the protest, can use his right to refer against the responsible parties; as far as Item 4 of the above-mentioned Article is concerned, the bearer having as reason the bankruptcy of the issuer can apply.

Article 515: the bearer must, within four working days after the date of the protest, or, if the return is conditioned without expense on the note, during the period of four working days after the day of presentation, announce the matter of non-acceptance or default to the endorser and the issuer. Any endorser informed must relay the news received by him, together with the name and address of those sending him the news, during the period of two working days, to those having endorsed to him. This process should continue until the matter has reached the issuer. The periods mentioned start from the date of the arrival of information.

If an endorser has not written his address or has written it illegibly, the only the information sent by him to the endorser before him is sufficient. The person who has to make the information must execute this through the format office. The person not relaying the during the prescribed period is not invalidation his rights, and if there should be any loss caused by his negligence, this loss is directed towards himself. The amount of this loss can no exceed that of the note.

Article 516: If the issuer or the endorser or the guarantor has written the statements “Return without expense” or “Without Protest” or other statements implying this idea, the bearer of this kind of a note is not subject to these restrictions in his application, but the bearer of the negotiable note has to relay the information during the prescribed period to the endorsers and the issuer. The proof of the absence of application of the period regulation is to be made by the person who will be against the bearer. The condition put by the issuer is applicable to all those signing the note. If such a condition should be put by an endorser or a guarantor, it is only applicable to the endorser or the guarantor. If, in spite of the conditions of the issuer, the bearer should protest, the expenses are to be assumed by him.

1. In case the legally specified periods of the note payable on presentation or those payable after a period on presentation have passed.
2. In case the Protest regarding non-acceptance or a default has been made after the legally specified period.
3. If a note having the condition “without expense” has been presented after the specified period, or if in the note the writer specifies that it be presented for acceptance during a specific period. These conditions can be discharged that the issuer considers himself somewhat responsible.

If an endorser has specified a period in his endorsement for presentation, only he can take advantage of this period.

Article 517: Persons writing, accepting, or guaranteeing a note, are individually and collectively responsible to the bearer. The bearer of the note, without having followed the steps, has the right to bring suit against each and all of them. Exactly the same right is held by any signer who has paid the amount of the note. The bringing of suit in the first place against one of these can not prevent the bringing of suit by the bearer against other.

Article 518: The bearer may claim the following from the person against whom he has preferred charges:

1. The amount of the negotiable note which has not been accepted., or which has been accepted but not paid, together with its interest, if subject to interest.
2. Six per cent interest on the amount of the balance due from the due date.
3. The expenses of the Project and also those of information relayed by the bearer to the endorsers and the writer, together with other expenses that might have been suffered in this matter. If the right to complain has been used before the due date, the negotiable note is discounted. The discount to be applied is that of the official rate of the day (bank rate) or the rate of the free market area of the bearer.

Remark: The six per cent interest mentioned in Item 2 is applicable to all matters over which no agreements are reached.

Article 519: The person paying amount of the note can make the following claims against those responsible to him:

1. The total amount he has paid.

2. The interest on the amount paid from the date of payment.
3. Any expense that he might have suffered in this matter.

Article 520: Any responsible person against whom claims have been made can, after payment of the amount of the note, request that he be given a receipt for the note on the paper of Protest. Any endorser who pays the amount of the note can cross out his endorsement or those of his subsequent endorsers.

Article 521: In case of charges preferred after the partial acceptance, the person who pays the rejected part of the amount of the note can request that this payment be recorded on the note and the receipt for it given to him. The bearer should give him one true copy of the note together with the Protest, so that subsequent use of the Protest will not be possible.

Article 522: A person having the right to complain unless otherwise provided in the note, may with a new negotiable note called the Return Note receive the amount of the note from one of the persons responsible to him. It is necessary that the Return Note should be payable at the place of residence of the receiver on presentation. The Return Note, in addition to amounts claimed in Articles 518 and 519, must also contain the amounts for brokerage, stamps, and transfer expenses.

Article 523: The right to prefer charges of the bearer against the writer, endorsers, and other persons responsible for the note except the referring right against the acceptant are invalid in the following cases:

Article 524: If during the periods legally specified, the presentation of the Note and the Protest is not possible, due to reasons beyond control, the mentioned periods shall be prolonged. The bearer of the note must, without delay, inform his endorser of the reason. This information should be entered on the note or on an accompanying paper, which must be dated and signed. After the uncontrollable reason has been eliminated, the bearer should, without delay, present the note for acceptance or payment, and, if necessary, issue the Protest. If the uncontrollable reason should last for more than 30 days after the due date, without any need for presentation of the note and the writing of the Protest, the right to prefer charges can be used. Concerning notes payable on presentation, or during a period after the presentation, the period of 30 days is counted from the date the bearer has informed his endorser of the uncontrollable reason, even if this date occurred before the end of the presentation period. In cases where a protest should depend only on the bearer or on the person obliged to present the note, this shall not be considered an uncontrollable reason.

## **Part VIII – Intermediate**

Article 525: The writer or the endorser may introduce another person so that the addressee could, in case of default, refer to him for acceptance or payment. The third person and the addressee, or anyone who might have responsibility due to signing the note (excepting those who accept the note) may act as intermediary. A person mediating for anyone of the signatories must so inform the person for whom he is mediating within the period of two working days.

### **Accepting Through Mediation**

Article 526: In case the due date of the note has arrived and the bearer has authority to prefer charges, acceptance through mediation may take place. The bearer is free to accept or reject mediation, but if the bearer accepts the offer of mediation, he loses the right to prefer charges against the responsible parties before the due date.

Article 527: The acceptance of mediation shall be written on the note and signed by the intermediary. The person in whose name the acceptance through mediation has taken place shall be explicitly stated. In the absence of such an explicit statement, it is considered to have taken place for the account of the issuer.

Article 528: The acceptant through mediation has responsibility to the bearer and , if this acceptance through mediation should happen to be in behalf of the addressee, he is responsible to the subsequent endorsers just as the addressee, he is responsible to the subsequent endorsers just as the addressee. In spite of the acceptance through mediation, the person for whom the mediation has taken place, or this legal counsel can, according to Article 518, pay the amount and claim the note or , if necessary, the Protest paper.

### **Payment through Mediation**

Article 529: In all cases where the bearer is entitled to prefer charges, whether during the due date or before that, payment through mediation is possible. Payment through mediation must include all the sum payable. It must be executed at the very latest on the day following the last day specified for the protest of default.

Article 530: If a negotiable note has been accepted through mediation but not paid , the bearer shall write the Protest of default the next day after the last date specified for the Protest. In case the Protest is not made within the mentioned period, the person in whose account the note is accepted and also the subsequent endorsers are without responsibility.

Article 531: The bearer not accepting payment through mediation according to Article 518 loses his right to prefer charges against those who are responsible for the payment of the note.

Article 532: Payment through mediation for whomever it may be is evidenced by explicitly writing and signing on the note. If the name of the person to whom the payment

is to be made is to be made is not clearly written on the note, it is understood that the note is for the writer. The note and the Protest form, in case same has been executed, are given to the person who has made the payment through mediation.

Article 533: On payment through mediation, to whomever it is made, the rights of the bearer and all those responsible to him are transferred to the payee, but that person can not re-endorse the negotiable note. Payment through mediation (from whomever it might be) is a sign of the release of subsequent endorsers. In case there should be many intermediaries for the payment through mediation, the mediation of any one of them who acquits the most persons is preferred.

### **Part IX – Number of Copies of the Negotiable Note**

Article 534: A Note may be issued in many copies, not different from each other, The text of the copies should have serial numbers. Any copy of the note not having a serial number is considered a separate note. If the text of the note should not have the expression “Only one copy”, the bearer can, by agreeing to pay the expense, request many copies. If the note should be in one copy and the endorsement is made on it, and later the bearer gets many copies, he must refer to his previous endorser and this endorser must refer to the endorser before him in favor of the bearer, and the endorsement should go in this way. The endorser must make their endorsements on the new copies.

Article 535: If payment should be made against one copy of a note which has many copies, the other copies are without effect. In spite of this, the addressee is responsible for any copy not returned. The endorser submitting many copies to many persons and the subsequent endorsers are responsible for all the copies not rejected and bearing their signatures.

### **Part X – Forgery & Alteration**

Article 536: The forgery of a signature in a Note, whether it be of the issuer or of the acceptance, does not affect other signatures on the note.

Article 537: If an alteration is made in the text of a negotiable note, the persons signing it after the alteration has taken place are responsible for the amount after alteration, and those who have signed it before the alteration are responsible for the original text of the note.

### **Part XI – Passage of Time**

Article 538: All cases brought against the acceptant because of the note are without effect three years after the due date. The cases brought by the bearer against the endorsers and the issuer are without effect after one year from the date of the Protest made during the specific period thereof (or, if the note should contain the condition of “return without expense”, from the due date). Cases brought by endorsers against each other or against

the writer lose their effect after six months of the date of the payment by the endorser, or of the date the cases against them were brought.

Article 539: Transaction requiring termination at a specified time are valid only in case of those persons who will take advantage of them.

## **Part XII –General Regulation**

Article 540: If the due date of a negotiable note falls on a holiday, payment is made on the following working day, and also all transactions relating to the note, especially the matter of its presentation for acceptance and the writing of Protest, should take place on a working day. In case one of the above-mentioned transactions should fall due in a period the last day of which is a legal holiday, the period is prolonged until the first working day after the holiday. Holidays occurring in the period are counted

Article 541: The first day of the time specified legally according to a contract is not counted in the above-mentioned period.

Article 542: The responsibility of persons in a negotiable undertaking is according to the laws of the nationality of the persons involved.

Article 543: All promises concerning a negotiable note are subject to the laws of the country in which the promises are made.

Article 544: The Protest or any action taking place to protest the rights initiating from a negotiable note or the uses thereof are subject to the laws of the country in which the actions take place.

## **Subchapter 8 – Promissory Notes**

Article 545: A commercial promissory note has the following points:

1. The expression “Promissory Note” on the document in whatever language is written.
2. The unconditional payment of the specified amount.
3. The due date of the payment.
4. The place for the payment.
5. The name of the person is whose behalf or on whose order the payment is to be made.
6. The place and date of the writing of the promissory note.
7. The signature of the person issuing the promissory note.

Article 546: A document not having any one of the above-mentioned points is not considered to be a promissory note except in the following cases:

A promissory note not containing the due date is payable on presentation, and if a promissory note should not contain the place of payment, the place at which it was issued, or the place at which the writer resides, is considered the payment place.

If the place at which the promissory note was issued is not mentioned in the text of the note, the address written beside the signature of the writer is considered its issuing place.

Article 547: The following regulations governing negotiable notes are also applicable to the promissory note:

Endorsement, Articles 480-510  
Guaranty , Articles 499-501  
Due Dates, Articles 502-506  
Payment 507-512

Right to Prefer Charges, in case of Default, Article 513,520,522 and 523.  
Intermediary of the payment through mediation, Articles 525,529, and 523  
Forgery and Alteration, Articles 536-537  
Passage of Time, Articles 538-539  
Method of Calculating Official Days, Articles 540-541  
Payment in the Place of the Resident of other person, Articles 474 and 496  
Agreement on the Interest, Article 475  
Difference in Statements Dealing with Payable Amount, Article 476  
Result s of Signature of Qualified Persons, Article 477  
Action on the Signature of a person who is not an Attorney or who violates Terms Established for the Executor, Article 478

Article 548: The person signing a promissory note bears the same responsibility as a person accepting any negotiable note. When the note is signed, after a period from the date of presentation (provided the expression “approved” is written on it by the signer) it is presentable within the specified period of Article 492. If the signer refuses to put the expression “Approved” and record the date, then according to Article 494 the refusal should be proved through a Protest paper. The date of this Protest paper is considered to be the first of the payment period after the presentation of the document.

## **Subchapter C – Checks**

### **Part I – Checks**

Article 549: A check should have the following features:

1. The word “check” in the next of the document.
2. The order of effect the unconditional payment of the sum
3. The name of the payee.
4. The place of payment
5. The record of the place and date of issue of the check.

6. The signature of the person issuing the check.

Article 550: A document not containing any one of the criteria of Article 549 is not considered a check except in the following cases:

If the payment is not mentioned in the check, the address written beside the name of the addressee is considered the payment as well as the living place of the addressee.

If the place at which the check has been issued is not mentioned, the place beside the name of the person issuing the check is considered the place of issue.

Article 551: A check is considered when the person issuing it has funds with the addressee and the addressee is obliged to pay it through an agreement explicit or understood.

Article 552: A check is considered payable in the following manner:

1. To a specified person or by his order.
2. To the bearer.

If the payee of the check is not indicated, the check shall be regarded as a “bearer” check.

Article 543: The person who issues the check can do so in his own name.

Article 544: If the check should be issued with interest as a term, such a term is not recognized.

Article 555: In case there should be a different between the numbered amount and the written amount of check, the latter amount is valid.

Article 556: In case a check should have the signature of those not authorized to sing the check, or forged signatures, or the signature of those not real , in addition to the signature of the authorized person, the commitment of the qualified person who has singed the check is recognized.

Article 557: Persons issuing checks in the name or account of a person for whom they are not executor are responsible the consequences.

Article 558: The person who issues the check is a guarantor for this payment. Where conditions are imposed by one who demands guarantees other than this, the person issuing the check in such case is released from the guarantee after payment of the amount.

## **Part II – Endorsement**

Article 559: Any check except the one for the bearer is transferable with endorsement. If the writer should use the expression “Not transferable or anything to imply this idea, the

check can not be transferred by endorsement. A check may be endorsed to the addressee, to the writer, or to any other person. These persons may in turn re-endorse the check to others. With endorsement, all rights resulting from the check are transferred.

Article 560: The endorsement should be unconditional. Otherwise the specification of the condition and the endorsement is not recognized. Endorsement of part of the amount of the check is not recognized. Endorsement by the addressee is not acceptable. Endorsement in the name of the addressee assumes receipt.

Article 561: Endorsement may be on the check or on accompanying paper. The endorsement should be signed by the endorser. If the endorser should be satisfied with only signing it, without reference to the name of the bearer, the endorsement is acceptable. The regulations for blank endorsement in Article 483 through 488 are applicable to checks as well.

### **Part III – Guaranty**

Article 62: The regulations of Article 499 through 501 concerning the guaranty of negotiable note are applicable to the guaranty of check as well.

### **Part IV – Presentation and Payment**

Article 563: A check is payable when presented. Any condition contrary to this is not accepted.

Article 564: If the is paid in the same place it was written, the owner must claim payment of it within 15 days of the date of its issue. If it should be issued from one part of the country to another, its payment should be claimed with two months of the date of issuance. Concerning checks issued abroad which should be paid in Afghanistan, the regulations regarding checks can claim payment is four months from the date of issuance of the check.

Article 565: If the place of issuance of the check and that of payment of the check should have different calendars, that date which coincides with the date of the calendar of the place of payment is taken.

Article 566: If the owner of the check does not claim the amount of the check during the legal period, his case against the endorser is not heard. If the amount of the check, due to a reason related to the addressee, should not exist, the bringing of the case of the owner against the writer is not acceptable either, but the addressee can pay the amount even after the expiration date of the check.

Article 567: If the writer of the check should die after he has issued the check, or should be deprived of authority and qualification, this fact does not affect the check.

Article 568: The person receiving the amount of the check must endorse it. The owner of the check is entitled to accepted part of the amount mentioned and in such a case he must endorse only for the amount received.

Article 569: If the check payable should be written in currency different from the currency of the paying country, the payable amount could be (with the request of the bearer) exchanged according to the rate of the day of payment. If payment is not made at the time of presentation, the owner of the check may, of his own will, request that payment be made in the currency of that country on the basis of the rate on the date of presentation. The value of the foreign currency could be determined on the basis of local custom. However, the writer can specify that payment be made on the basis of the rate mentioned in the check.

#### Part V – Cancelled Checks and Checks Transferable to Accounts.

Article 570. the writer or owner of a check can cancel it. Cancellation is effected by placing two parallel lines of the check. It is either public or private, depending on whether either a blank or the word banker or equivalent appears between the lines or the name of the banker is written between the two lines. Public cancellation is changeable to private but vice versa through the erasure of the line and the word banker or the name of the banker is not allowed.

Article 571. In case of check cancelled privately, the addressee can transfer it only to the banker whose name has been written or if the banker himself be the addressee it could only be transferred to his customer. The banker whose name has been mentioned can refer the check for payment to other banker. The banker cannot treat the cancelled check in an account other than that of his own customers or other banker. The addressee of the banker not following the above-mentioned regulations is responsible for any loss resulting to the amount mentioned in the check.

Article 572. The writer or the owner can prevent the payment of a check in cash through writing of the check the expression non-negotiable and adding is payable in the account to the check is not permitted.

#### PART VI- Action in Cases of Nonpayment

Article 573. In case of refusal of payment the owner of the check can refer to the endorsers' writer and all those responsible. The owner can present any one of the following reasons for refusal to pay:

1. Protest by a formal paper
2. Endorsement of the check by the addressee together with the date .
3. The certification of the commercial code to the effect of presentation of the check with the recorded date.

Article 574. The protest should be made before the end of the period specified for the presentation. If the check is to be presented on the last day of the specified period the protest may be made the next working day.

Article 575. On refusal to pay after protest the owner of the check may inform his endorser or the writer during the period of four working days after the submission of the protest. Within four working days after he has received the information every endorser must inform his previous endorser and with such information relay the names and addresses of all those who have relayed previous information.

This should be followed until it has reached the writer if the check has been guaranteed the guarantor must also be informed during the same period the information may take place by return of the check or by a registered check through the post office.

The date of arrival of the mail has no bearing on the determination of the period of information. A person not informing during a specified period does not lose his rights but, because of his negligence if any loss should result he is responsible for compensation. However his responsibility does not exceed the amount written on the check.

Article 576. the bearer of the check can bring cases against all those having responsibility in the check individually or collectively and in doing so he is not responsible to honor the arrangement for the endorsement and this right is also reserved for any paying person. Bringing suit against one responsible party does not prevent suing others.

Article 577: The bearer or the payee of the check can claim the following from responsible parties.

1. The unpaid amount of check
2. The interest
3. Any expense of the protest etc that might have been paid by him.

Article 578: Any responsible person confronted with suit can, on payment of the check, request the Protest and the receipt. The endorser having received the check and paid for it can cancel his own endorsement and those of his subsequent endorsers.

### **Part VII – The Number of Copies of the Check**

Article 579: It is possible to issue a check in many copies. In such case every copy must bear the same number and it should be mentioned thereon how many copies of the check there are , and should be paid on account of the first.

Article 580: When payment has been made on the first copy, other copies lose their effect.

### **Part VIII – Fraud and Alteration**

Article 581: The contents of Articles 536 and 537 concerning fraud and alteration are applicable to checks as well.

## **Part IX – Passage of Time**

Article 582: Suits brought by the bearer against the endorsers and the writer are cancelled six months after the end of the period of presentation, and also the suit of each of the responsible parties in cancelled six months after date of payment. The contents of Article 539 are applicable to checks as well.

Article 583: The provisions of Articles 540 and 541 dealing with negotiable notes and promissory notes are also applicable to checks.

### **Subchapter D – Loss of Commercial Documents**

Article 584: If the bearer of a commercial document should prove his ownership by discontinued endorsements, he does not have to return the amount he has received unless it is proved that he had received this through illegal means.

Article 585: The bearer who loses a commercial document may have the document invalidated in a Court which hears commercial cases. The document and circumstances relating to ownership in the loss should be explained as well as possible by the claimant. If the Court considers the reasons of the claimant sufficient, the Court, in writing, can order non-payment to the acceptant if the document was an accepted negotiable note; or if it was an unacceptable negotiable note or a check the Court can in writing order nonpayment by the writer and the addressee; if the document is in the name of the bearer, the Court can, in writing, order nonpayment by the addressee. The contents of the document and the need for its presentation within two months should be advertised in official and unofficial papers three times, At the end of this period, necessary action towards invalidation of the document is taken.

This period is in effect from the date of advertisement in the official paper about the document whose due period is completed; and from the date of completion of its due period about the documents whose due periods are completed after the third advertisement; and from the last day of the presentation period about the document whose payment is subject to presentation, and whose presentation period has not been completed by the date of the third advertisement.

Article 586: A person requesting invalidation of a document may prepare a statement as to the real content of the document, and send it to the addressee within the period and at the place legally specified. This same statement is considered as a protest to the payment, and the absence of the payment and presentation.

Article 587: If the document is not presented by the end of the period specified, the Court can – on request of plaintiff – rule as to the validity of the document, and inform the person as provided in Article 585. In case of a ruling of invalidity, the plaintiff can claim his rights from the acceptor of the negotiable note, or if the document should be an unacceptable negotiable note or promissory note or a check, from the writer, as if he

owned the original of the lost document. The defendant has the Court and contest the ruling.

Article 588: If the statement is presented to the related Court before the end of the period of advertisement, the Court execute the directives of Article 585 concerning the relaying of information and should hear the case in accordance with law, and render a decisions.

## **Chapter IV – Commercial Agreements**

### **Subchapter A – General Regulations**

Article 590: If two or more persons should have, collectively, a commitment to third person during a business transaction, whether of commercial nature to one or all of them, unless otherwise stated in the contract they are collectively responsible. This same order is applicable to persons guaranteeing a debt.

Article 590: If, because of some commercial contract, an amount is due in foreign currency not legally used in Afghanistan, the amount may, at the end of the due period, be changed into Afghanis. But if, during the contract, the payment should explicitly be provided to be paid in the foreign currency, or there should be a statement to this effect, the payment in the same currency must be recognized.

Article 591: A person not fulfilling his commercial commitment through importer delivery or delay, after being warned officially or by registered letter, must compensate for the loss in profit suffered by the person to whom he is committed. Uncontrollable reasons are exceptions to this order.

Article 592: If the person has committed himself should break his commitment, or should not fulfill the commitment that is to be executed at a particular time or during a particular period, or if the subject of the commitment should not execute an act and he executes same, suit to recover the loss may be filed without notice.

Article 593: If the amount mentioned in the contract as “Compensation for Loss” exceeds the amount of the profit that would have been received by the person to whom the commitment was made, the Court can not reduce that amount. Unless otherwise stated explicitly in the contract, the person specified in the name of compensation for loss for the execution of the commitment. If the loss to be paid by the person to whom the commitment had been made should exceed the amount specified as compensation for loss, unless otherwise specified explicitly in the contract.

Article 594: If the commitment is not executed because of reasons which could not be anticipated, or because of shortcomings of the creditor, or there is a waiver condition accepted by the person to whom the commitment has been made, the person who has made the commitment is in no way responsible for any kind of payment as compensation for the loss.

Article 595: The down payment is considered valid evidence that the contract has been made. In case of both parties executing their commitments , the down payment is taken into accounts. If a contract should be broken with consent of both parties, or for a reason that doesn't involve compensation for the loss. The down payment is returned to its owner.

Article 596: Unless otherwise stated in the contract, or used in the commercial custom, the party who through his own shortcomings doesn't fulfill the commitment is not entitled to claim down payment paid by him.

Article 597: If one of the contracting parties in absence of payment or promise of payment should , through agreement, reserve the right to initiate a conditional sum for himself, the party can not execute the initiated right until the agreement of acceptance has been fulfilled.

Article 598: Interest on commercial debts is calculated after the specified period, or , of the date should be specified , from the date indicated.

Article 599: A person having the authorization of a merchant who has made a transaction for a merchant or non-merchant that was necessary for his business or beneficial to him has the right to ask for a return due to the transaction he has made.

He moreover entitled to request the amount he has given in advance for fulfilling an action or receiving profit, and the expenses he has incurred, with interest, starting from the date of the expense.

Article 600: Interest in commercial transactions may be determined on the basis of the consent of both parties.

Article 601: A commercial contract is to be executed in the place mentioned in the contract. If it should not be mentioned in the contract, it should be executed in a place that may be determined on the basis the nature and purpose of the business. If the execution place is not mentioned in the contract, and also can not be inferred, the person who has made the commitment must execute his commitment where his place of business is located, or , if he does not have a place of business, it may be executed at the place where he lives.

Article 602: Settlement of the amount involved in the contract, unless otherwise explicitly or by inference stated in the laws, should take place where the place of business of the creditor is located, or if he does not have a place of business it should take place in his private residence. Debtors are not entitled to claim expenses and losses incurred through settlement.

Article 603: The request for execution of a promise whose time of execution is not specified in the contract is possible at any time , but if the execution of the promise should subject to the passage of a period according to local custom, the person who has

made commitments can not be made to execute the promise before the end of the mentioned period.

Article 604: If it should be a condition that the promise be realized during a period explicitly or implicitly specified , in the end of that period should correspond to a public holiday, it should be executed at least one day before. If the debtor has permission to make payment before. If the debtor has permission to make payment before the date due, provided custom should not be against it , he can not reduce or discount the debt without the permission of the creditor.

Article 605: If there is nothing explicit concerning the kind and quality of goods whose receipt has been promised, the person who has made the promise can give goods of average kind and quality but as he does not have to give the best quality , in the same way he is not allowed to give the worst.

Article 606: In case a promise binds both parties it is not necessary for one particular party to execute his part before the other has , but if one party is given priority in executing his duty explicitly by the contract, or by the nature of the business, or by current custom, he must execute his part even though the other has not.

Article 607: In case one of the parties executes his part and the other do not, the person who has executed can send a note to the one who has not to the effect that if he does not fulfill his responsibilities during a specified period the contract will be invalidated. After that , he can refer to the Court and request invalidation of the contract. The party who has referred to the Court to validate the contract can not request the fulfillment of the contract. Just as after the request of validation the Court can not give time to the defendant to execute his responsibilities, in the same way the Court can not accept the proposition set forth by the defendant regarding the execution of the promise. If the invalidation of the contract depends on a condition, or if for its taking place a period is determined explicitly or inferentially, after the realization of the condition or the passage of the period, no party is required to agree to execute the promise requested by the other party.

## **Subchapter B – Commercial Contracts**

### **Part I – Contract Procedure**

Article 608: In order for a commercial contract to take place, the consent of both parties is sufficient. Preparation of a contract or other ceremonies is not necessary.

Article 609: If it is required by the law that the contract be written on a special form , or if both parties delay the contract for certain ceremonies, the contract can not take place without that form or before those ceremonies. If both parties have agreed on the preparation of the contract, it is understood that the execution of the contract has been delayed for preparation of the contract. If the contract is not prepared but it is proved that

both parties have agreed to make the contract, absence of the prepared contract is not an excuse for not executing the contract.

Article 610: If it has been necessary to specify a period for acceptance, acceptance can not take place before the end of that period, even if both parties agree. If an agreement should be necessary, without specifying a period of acceptance the validity of acceptance is conditional to the immediate acceptance and presence of the parties concerned. A contract made by communication means, such as telephone, is as if it had taken place in the presence of the parties concerned. A contract made by communication means, such as telephone, is as if it had taken place in the presence of the parties concerned.

Article 611: When the act of acceptance takes place in writing, if the period is not determined, the contract initiator can not disregard the act of acceptance before the termination of the time necessary for thinking and positively answering by the acceptor.

Article 612: The acceptance answer should be sent during a specified period that should reach the contract initiator. If the answer comes after this period, the contract does not take place unless it is found that the acceptance answer has been given during the specified required period. The contract initiator must at once inform the other party about the delay in receiving the answer being responsible for the contract not taking place. Otherwise, the contract is valid.

Article 613: Lack of response by the other party does not imply acceptance. In case two members have permanent commercial relations, or if one of them requests the other to execute certain transaction in his name, the decision made by the person referred to should at once be made known to the opposite party, or else the lack of response is considered as acceptance. The party rejecting the initiated proposition has to take special steps about the goods sent to him when the proposition was made, as mentioned in Articles 762 and 763.

Article 614: If the acceptance's answer is not in agreement with the proposition, the contract does not take place. In such case, the acceptance necessitates another proposition.

Article 615: In order for a telegram concerning the proposition or the acceptance to be acceptable, it is necessary that it be proved that it contains the signature of the sender or has been sent with his consent.

Article 616: In case the proposition is made in writing, the contract takes place from the date of arrival of the acceptant's answer to the proposal; but if the proposer should be informed before the arrival of the answer or during this time of the rejection by the acceptant, the proposition is without effect.

Article 617: A contract taking place by communication is valid from the date the acceptance answer has been sent. Just as mentioned in Article 613, in case it is not

necessary that acceptance be explicit, the contract is in effect from the date the proposition has reached the addressee.

Article 618: The death or disqualification of merchant does not necessitate the invalidity of his proposition in acceptance concerning his commercial transactions unless otherwise explicitly mentioned or understood from the nature of that transaction.

## **Part II – Interpretation of Commercial Contracts**

Article 619: If the meaning of the statement of a commercial contract should be explicit and logical, the apparent meaning is assumed. Otherwise the real purpose is honored. If the content of the statement is inconsistent with that of the contract, the interpretation of purpose is held applicable.

Article 620: In case a statement has many interpretation , the common purpose is determined from the contents of other contracts, to custom, or the transactions and circumstances prevailing at the time of the preparation of the contract, or according to previous applications.

Article 621: In case the statement should have unusual and common meanings, it is interpreted as according to which meaning it is closer to.

Article 622: In case the statement of the contract should be interpreted with many meanings , and according to Article 620 the real purpose of both parties should not be determined , the contract is interpreter against the person promising and for person to whom the promise has been made.

Article 623: Recognition is given to commercial custom as well as to legal orders in commercial transaction unless otherwise explicitly agreed to by both parties.

## **Part III – Means of Proving Commercial Contracts**

Article 624: The Court rules as to the proof of the contract on the basis of commercial documents and commercial contracts. Unless otherwise stated in this law, witnesses and evidence are used to the benefit of the Court and the statement of plaintiff has no bearing.

Article 625: The return of the document to the debtor, unless proved otherwise, is considered as the reason for payment.

Article 626: When documents or commercial transactions, the validity of witnesses, may issue an order.

Article 627: Confession or admission is not qualified. Therefore, it is necessary that the statement made by the defendant be either all rejected or all accepted.

Article 628: if a written statement does not exist, and a person has either explicitly or inferentially accepted a bill or a note, it is understood that he has accepted the contents therein also. If a person takes a bill , and if he did not then protest its contents, it is understood that he has accepted the contents therein.

## **Subchapter C – Commercial Price**

### **Part I – General Regulations**

Article 629: The consent of both parties regarding the property and the price is considered to be acceptance of the price. To send the current price and the catalog or the offer to sell without specifying the nature, quantity, and price of the goods is not considered to be a proposition.

Article 630: If a seller sells the property of others, the buyer can not be their owner, but the seller has to either buy the goods and turn them over to the buyer or , if additional loss had been suffered, he has to compensate for the loss incurred.

Article 631: If a merchant should sell or receive the movable properties of another person, in case the buyer does not have the facts the buyer is the owner of the property sold, but if it is proved that the property sold was from a theft or was lost, the ownership of the buyer is cancelled.

Article 632: The price of commercial goods which was unknown at the time of contract and which was established at the time of delivery is considered applicable.

Article 633: If, during a contract, the destruction and loss of goods concerned should be anticipated by both parties, its price can be determined but in case of realization of the anticipated event the buyer is not entitled to return of his payment.

Article 634: All expenses concerning the receiving of contracted property, such as weighing and measuring, related to the seller, and all the expenses concerning the delivery such as expense of transportation relate to buyer, unless otherwise expected by the contract or commercial custom.

Article 635: If it should be necessary that articles sold be sent from another place to the buyer, and there is no condition made by the buyer concerning the delivery, in such case the seller takes steps towards the selection of transportation means for the properties and their protection as the buyer would.

Article 636: To send an article of goods sold to the residence of the buyer by the seller , or to send it to another place mentioned in the contract, is understood as a delivery, but if the seller should send the sold property with a person and advise him that the seller must pay the price and other necessary provisions, or else he is not to be given the goods, in this case the sending of the goods is not considered as delivery.

Article 637: To send a sold article or , with the consent of the seller, to place the mark of the buyer on the articles sold, provided the property is transported across land, ocean, or river, is considered as delivery

Article 638: The buyer who has purchased the property the quantity of which is determined from the wholesale point of view, can not be made to receive part of it. But if the buyer should have accepted partial shipment, he can make the seller deliver the balance due, or for not having received the balance suffered by him through this deed.

Article 639: The buyer may request the invoice for the property sold, or if it has been paid for, its recording on the invoice.

Article 640: After the completion of the contract, the loss suffered through the property sold, even if it should be accidental, is the responsibility of the buyer, but the loss resulting from the shortcoming or fault of the seller or the defect of property sold relates to the seller.

Article 641: After the completion of the contract, the loss suffered through the property sold relates to the seller in the following cases:

1. If the property sold is not specified and there are not distinguishing marks to differentiate it from other properties of the same kind.
2. If the property sold, whose weighing and measuring is necessary for the transfer, is changed or destroyed (but if the buyer in spite of warning to be present either himself or through a representative for weighing and measuring does not do so, the loss suffered relates to him).
3. If the transfer of a property sold should be conditioned for future delivery.
4. In case the buyer is ready to receive the goods sold but the seller, in spite of the notice does not take action to deliver the item.

Article 642: The loss suffered through mishandling of articles by the transportation agent or commission agent after the property has been given to them relates to the buyer.

If the transportation of goods should be subject to special conditions, the seller must follow these conditions. Otherwise he will be responsible for the loss suffered by the buyer. If the place where the property is sent should be considered by both parties as the delivery place, in such case the loss suffered to the property while in transit relates to the seller. If the seller only undertakes to pay the expenses for transportation, the place where the goods are sent is not considered the giving place.

Article 643: The price should be specified, or there should be a way to this end. In case the price is not specified, and the goods have not been given either, the current price at the place and time of the contract is taken as base. If the current rate at the place and time of contract be varied, the buyer has to pay the average rate.

Article 644: The right to determine the price by third person is allowed by contract. If the third person for any reason did not settle the price, the buyer must pay the current rate, or if there should be a varied he must pay the average current rate. If there is not a current rate, the price is set by the Court.

Article 645: If the buyer has not made payment, or he goes bankrupt during the period between the date of contract and delivery, even if the seller should have deferred the time of payment but has not received reliable guarantees, the seller has the right not to make delivery, the seller has the right not to make delivery.

Article 646: If settling the price is conditioned to weighing the property sold, the weight of the container is subtracted unless otherwise stated in the contract or used by the customer. If the weight of the container should be determined on the basis of real weight of the property sold, or on the basis of some other standard, or part of the weight of the property sold is reduced as the weight of the container, or if the price of the destroyed and useless part of the property sold which is given is reduced, this is possible through the contract, or, if a contract does not exist, through the current local custom.

Article 647: Prior to the full payment of the goods, the condition of non-transference of ownership to the purchaser by the seller is valid. When the goods are delivered, the cost is payable by the purchaser from the date of delivery.

Article 648: \_\_\_\_\_  
rate of the market or stock exchange, unless otherwise specified in the contract the average rate of the place and times of the contract existing in the market or the stock exchange is taken as standard. If this arrangement is not possible, the average rate of the sales of these same kinds of property at the time and place of contract is accepted.

Article 649: The interest on the price of the property sold in the name of compensation for loss is calculated from the date the property has been given, but if the buyer has refused to receive the goods the interest is calculated after the date the information has been sent to effect the receiving by the buyers.

Article 650: If the execution of the commitment is divisible in many ways depending on the nature of the contract, or the purpose of both parties, or the property sold, and if one the parties should not have fulfilled his commitment, the other can invalidate the contract.

Article 651: If a false takes place on the basis of a sample, it is the duty of the seller to prove that has provided identical goods, but if the sample should be destroyed while in the hands of the buyers, then to the sample.

Article 652: It is permissible for a buyer for examination and experimentation, and approval of the goods.

Article 653: If property is given to the buyer for examination and experimentation, they buyer must, on the basis of the contract, or in the absence of same, during a period specified by custom, express his acceptance or rejection of the property sold. If there is no period specified in the contract or by custom, the seller specifies a reasonable period and invites the buyer to either reject or accept the property sold during that period. If the buyer does not announce his decision during the prescribed period, it is understood that he has accepted the property sold. If the buyer des not state his rights in

the matter explicitly, and if he has paid the price of the goods in full or in part, or if he has received the property sold in a manner different from the receiving necessary for experimentation, the sales is complete.

Article 654: In a sale taking place according to Article 652 , if the buyer has not expressed his decision of acceptance or rejection or during a prescribed period by contract or custom, the sale is not considered to have taken place. If no period is specified in the contract or through custom, the seller specifies a reasonable period and invites the buyer to use this authorized period. If a buyer is silent during this period, the sale is considered not to have taken place.

Article 655: If the sale is in accordance with conditions laid by contract and the law, the buyer must receive the property sold during the period set forth in the contract or by custom. If the buyer does not fulfill this obligation and has paid the price, the seller can, after warning the buyer about the matter, request the Court to appoint a responsible person to guard the property sold. On such request, the Court at once appoints a responsible person without sending for the buyers.

If the appointment of a caretaker or if the delay in receiving goods should cause a loss, it should be compensated by the buyer. If the nature of the property is such that it can not be trusted to other persons, or if in order to guard the property the expense is more than the price of the property , or if it is necessary to rent a storage place , the seller can, after relaying this information to the buyer, on the basis of Court permission , sell the goods openly (Auction). The money received from such sale by the seller, after deduction of the sales expenses, should be put in a bank in the name of the buyer. If there is no bank , he can deposit this money with Court permission in another safe place. After the property or price thereof is deposited in a safe place, the information in at once relayed to the buyer by the seller.

Article 656: In case the buyer does not pay the price during a specified period set forth in the contract or by custom, just as the seller is entitled to claim the price so also he is entitled to inform the buyer through registered letter to fulfill his commitments within the specified period set forth by the seller. If the buyer does not pay the price during this period , the seller can , according to Article 655 , sell the goods, and if the property sold has a current rate in the stock exchange or in the market , the seller can, without having to sell the goods committed for selling, ask the difference between the sales price and the price existing at the end of the period in the stock exchange or the market from the buyer.

Article 657: In case the seller does not give the goods to the buyer during the period set forth in the contract or by custom, the buyer shall invite the seller, through registered letter or otherwise, to have the goods ready for delivery. If at the end of this period the seller does not deliver the goods , the buyer can appeal to the Court and request invalidation of the contract together with the loss suffered and the profit which he has been deprived of. If a buyer wishes, he can buy the necessary goods either directly or through a Court from a third person, and if the price paid by him should exceed that which would have been paid for the goods committed for sale before, this additional

price can be claimed from the first seller. In case the property committed for sale should have a current rate in the market or in the stock exchange, the buyer can, without buying the goods, ask for the difference of the rates between the price of the goods committed for sale and that used currently. In this case, as well as in the case where he buys from a third person, the buyer is entitled to protect his rights concerning the loss he has suffered according to Article 591.

Article 658: If in the sale according to the specifications, or because of the kind and nature of the properties committed for sale and the purpose of the purchase, the buyer and the seller must necessarily execute their commitments during a specified period, and if, at the end of this period, they have not executed their commitments, the other party can, because of the commitment not having been executed without informing, according to Articles 656 and 657, claim the invalidity of the contract and compensation for the property loss, but the party authorized to invalidate the contract, who may want the commitment to be executed exactly, must, before the end of the period, request the execution of the promise.

Article 659: In commercial sales, if there should appear a deficiency or defect in the property sold, or disagreement to the terms of the contract, or the sample or the law, the buyer must, within four days, relay this information to the seller, or else after having received the goods he or his agent must examine the goods during a period of two weeks after receipt. If a deficiency in the goods or a disagreement to the terms of the contract rights, must during the period of two weeks, or immediately if the deficiency is discovered at once, inform the seller of the matter or else it is assumed that he has accepted the goods as is.

Article 660: The buyer has the right to sue the seller because of defects in the goods sold or disagreement with the contents of the contract, or law, or disagreement with the sample. This right holds for six months from the date delivery has been made. To increase or decrease this period in the contract is not permissible.

Article 661: If the non-conformance of the property sold with conditions set forth in the law or the contract or with sample should be understood to be a result of misrepresentation on the part of the seller, the contents of Articles 559 and 560 are not applied to it.

Article 662: In case the buyer according to Article 659 should find defects in the property sold, or if he should not find the property sold to be in accordance with the terms mentioned by the contract or law, or the sample, he can first refer to the seller and invite him for examination. If the seller does not appear during a reasonable period, the buyer can appeal to the Local Commercial Court shall on this basis make the necessary ruling.

Article 663: In case property sold has been sent to the buyer from another place, even if the buyer has referred to the seller according to Article 659, the seller must store the property sold at the expense of the seller or delegate it for safekeeping according to

Article 655 to a trusty person. If property committed for sale is not of the kind to be stored, or if it is easily perishable, or if the fee for safekeeping is higher than the price of the goods, or it is related to the payment of the storage fee, the buyer can sell the goods according to Article 655.

Article 664: In case goods sold are not in accordance with terms mentioned in the contract or the law, the buyer is free to choose between the invalidity of the contract or request from the Court that the difference of price and loss be adjusted.

## **Part II – Certain Special Commercial Sales**

### C.I.F Sales

Article 665: If a sale has taken place on the basis of arrival of a ship on which goods are to be transported, the finality of the sales contract depends on the condition that the above-mentioned ship reaches the prescribed arrival place. If a seller has not specified the period of shipment through the contract or commercial custom, the buyer can request the specification of the shipment period for loss. If no provision or tradition in the contract or in custom exists, the buyer can refer to the Court to request determination of this period, and the Court must act as soon as possible.

If the shipment is not made after the specified period or if the shipment does not reach the arrival point at the specified time, the buyer can claim invalidation of the contract and bring suit. The buyer can prolong the duration of arrival twice or many times more than that specified.

Article 666: If goods while in transit should, due to uncontrollable reasons, be transshipped, the contract is not invalidated, the second ship is accepted for the first one.

Article 667: In case fulfillment of the contract depends on the arrival of the goods, and if the goods while in transit should suffer such damages as to make the anticipated profits impossible, the contract is invalid.

Otherwise, the buyer must accept the property sold at the time of arrival as is. The loss suffered through this, with a certified statement from a qualified person, could be compensated far from the price.

Article 668: Merchandized purchased on the bases of delivery of goods to the ship, in addition to cost, insurance, and freight, is called as CIF purchase. Expenses of transporting the goods until delivered to the harbor cranes included in the cost of merchandized transported.

From the time goods are loaded on the ship, damage to merchandize, based on CIF, on sustained by the purchaser.

Article 669: The article sold as CIF must be transported to the ship by the seller either on the bases of the terms of the contract or, in the absence of same, on the bases of current custom. In case the seller is allowed to fulfill his promises part by part, each part which has been fulfilled is considered to have been sold separately.

Article 670: If seller, during the prescribe period, without unavoidable reason, fails to transport the property he has sold, according to custom, the buyer can invalidate the contract. In such case, the buyer must at once inform the seller of his intentions.

Article 671: The seller may prove through a consignment paper which he prepares for each part of the goods sold, bearing the expression “has been transported,” that each part of the goods has been transported according to the prescribed terms. If the consignment paper contains the expression “has been transported to be received by ship” the buyer can claim that transportation of the property has not taken place on the date mentioned in the consignment paper unless the captain of the ship transporting the goods certified on the consignment paper to the effect that the goods were delivered to his ship on the date specified.

Article 672: If goods sold CIF must be transported from an internal city or from a port with one consignment paper, the date at which the first transportation of goods has taken place is considered as the date of transport.

Article 673: The entry of the usual consignment transportation agreements about whether a ship can stop at certain parts or can change course, or the property aboard can be transshipped, should be recognized by the buyer also. In case above mentioned changes are necessary for the transportation of goods, the loss suffered through such change relates to the buyer, but if the loss should result from the short comings on the part of the seller, the buyer can invalidate the same and claim the loss suffer. If goods are sent by consignment according to Article 672, the consignment must be prepared in such a way as to contain the method of transportation.

Article 674: The seller of CIF merchandize must insure the transported goods, according to ordinary terms whose entry in the contract is usual, against rest that might result from an ocean voyage.

The cost of insurance must be equal to the cost of goods sold at the place where goods are shipped. If goods are sent part by part, each part must be separately insured. The seller can not personally act as insurer against the buyer.

Article 675: If an ordinary insurance certificate does not have special conditions of insurance, and if its conditions do not agree with one of the sample insurance policies, it can not be used as an insurance policy.

Article 676: Unless otherwise stated explicitly in the contract, the risks covered by insurance are ordinary risks. The risks of war are exceptions. Terms concerning dispensation and the procedure to pay for insurance are subject to current local custom, transportation, kind, and the nature of the goods.

If the person who sells the merchandize as CIF as insured goods with a recognized well known company, and this company later should be unable to pay the claims, the seller has no responsibility to the buyer.

Article 677: If in a CIF sale both parties examine the quality and weight of the goods transported to the ship, and a defect is discovered, the buyer may appeal to the court and request appointment and certification of qualified persons to appraise the defect.

Article 678: After goods are transported, the seller must endorse the consignment and sell it to the buyer together with the insurance policy and sales bill and, if necessary, the certification concerning the quality and weight, and the check.

If a ship transporting goods reaches port and related papers have not yet arrived or are incomplete, and if the buyer informs the seller of this, the seller must prepare and send reliable documents for the purpose of receiving the goods. Expenses resulting from the delay of papers relate to the seller.

Article 679: The seller must relay immediately the confirmation concerning date of shipment of goods, marks, and name of ship transporting the goods to the buyer.

Article 680: Documents sent to the buyer should be complete and in order. In case the contents of documents should not be in agreement with the conditions of the contract, the buyer can invalidate the contract and claim the loss.

Article 681: The buyer must, within four working days after the date he receives the papers according to Article 618, either accept or reject them.

In case of rejection, if it is proved that rejection is unreasonable, the buyer must compensate the seller for loss and, vice versa, the buyer has the right to invalidate the contract and claim loss. The buyer who has accepted the papers can not invalidate the contract until such time as the misrepresentation of the seller has been proved, or the disagreement of contents of the documents with the goods sold has been established. If the buyer for some reason has rejected or conditionally accepted the papers, he can not have other objection excepting the reasons specified.

Article 682: The person who buys of a CIF basis must, after receipt and acceptance of papers as mentioned in Article 672, at once return the papers sent to him about the price of goods sold, unless otherwise stated in the contract.

Article 683: When a ship arrives it should be unloaded according to the terms consignment and contract, and if there is nothing explicit in the contract, according to local custom. The buyer must examine the agreement of the goods with that of the number and counter marks and conditions of packing as mentioned in the papers. If because of a mistake on the part of the seller it should not be possible to determine and specify the goods, the buyer can invalidate the contract.

Article 684: If there is more than the usual amount of this difference between goods sent and those specified in the contract, the buyer must accept the goods but he can ask for the reduction of an amount from the price, on the basis of the opinion of a qualified person. The amount that has to be reduced, unless otherwise stated by custom, is to be determined at the unloading port.

Article 685: To set conditions to the effect that the price of goods should be paid according to weight at the time of debarkation is permissible. In such cases according to the contents of the contract, a temporary bill is also prepared which is sent to the buyer after the transportation of the goods. The price of the goods shown on the papers sent to the buyer is anticipated from 75 to 90 percent of the real price of the goods. After goods have been weighed in the presence of both parties or their representatives, a second final bill is prepared. The difference between these two bills should be paid within 8 days of the acceptance of goods by the buyer, or it should be returned by the seller (in case of over payment).

Article 686: If the term “approximate” is in the contract, when all goods are consigned to the ship ten percent is payable, and when partially consigned, 5 percent more or less is payable. In case of specification of definite quantity, the buyer has the right to request all of the amount mentioned in the contract, but the seller is not responsible for natural or ocean losses that might result to goods while in transit. The price of the lesser or greater quantity custom at point of debarkation. In case it is not possible to determine the real weight of goods due to the sinking of a part of the goods in the ocean or due to goods having become wet, a temporary bill is given consideration.

Article 687: If conditions are anticipated in the contract relating to losses suffered by the seller after transportation, or ( if conditions specified) delay in completion of the contract until goods have reached their destination in perfect condition, or if ( conditions of contract) free the buyer to reject or accept a sample at the time of contract, in such cases the nature of the contract of CIF has changed and the matter takes the form of a sale subject to delivery of the goods at place of debarkation.

#### **Subchapter D – Commercial Loans**

Article 688: In order for a loan to be considered commercial, it must be made for the purpose of being spent in commercial matters.

Article 689: To borrow “in kind” is as acceptable as borrowing cash as far as commercial loans are concerned.

Article 690: The borrower must return the thing he borrows at the specified time with the same kind and quality.

Article 691: In case a person must make payment to another person for other than a loan, he can settle this debt with a creditor in the form a commercial loan.

Article 692: A commercial loan is always subject to interest unless otherwise decided by both parties.

Article 693: If the amount of interest has not been determined in the contract, it is understood that both parties have agreed to payment of the legal rate of interest.

Article 694: If the duration of the loan is less than one year, the interest is paid on the date the loan is returned but if the duration is more than one year, the interest should be paid at the end of the year, unless otherwise decided by both parties.

Article 695: If the date of return has been determined, the creditor can not force the debtor to pay before the due date.

Article 696: The quantity and price an item borrowed for commercial purposes are determined by the provision of Article 609 of this law.

### **Subchapter E – Commercial Mortgage**

Article 697: In order for a mortgage to be considered commercial it must be made for commercial purposes.

Article 698: Contracting parties can unanimously decide the mortgaged property be deposited with the third person.

Article 699: A commercial mortgage is carried out according to Article 624 of this law. If the mortgage loan exceeds Afs.500, it should be registered and certified by the commercial Registration Office.

Article 700: To mortgage negotiable notes, promissory notes, and other commercial documents is permissible. The mortgaging of documents bearing names should be registered and kept in the books of the related company.

Article 701: The creditor has priority in receiving his rights from the mortgaged property over other creditors. The priority right of the creditor is the mortgage property is only recognized when the mortgaged property is in the hands of the creditor or, with unanimous agreement of both parties, in the hands of a third person.

In case the mortgaged property is in the place of business of the creditor or in the place of business of a commission's agent, or in the storage rooms of the customhouse, it is understood that it is under control of the creditor. Also, if before arrival of the mortgage property it should be mentioned on a consignment paper which is given to the creditor or in a contract of the transportation, that it has been given against a guaranty, the mortgaged property is considered to be under the control of the creditor.

Article 702: The creditor must make preparation for the safe keeping of the mortgaged property. The creditor must, when due date approaches, take legal steps towards settling his rights. The debtor must pay, in addition to his debt, all expense incurred by the creditor for safe keeping of the mortgaged property, and also the creditor must give to the debtor statement of all expenses he has incurred.

Article 703: Unless otherwise specified, the creditor must protect all rights that the debtor has, or the mortgaged property, bonds, and loan documents.

Article 704: If the price of the mortgaged property, bonds, and loan document is reduced more than 10% , the creditor can request the remainder from the debtor, unless otherwise agreed upon by both parties. In case the debtor doesn't accept this request, if he delays its acceptance, the creditor can sell the mortgaged property according to Article 655.

Article 705: When mortgaging and presenting such items as stocks or documents or the like, the regulation of mortgages are applicable to these items.

Article 706: The debtor fails to pay all these indebtedness received through mortgage, the creditor can take steps towards selling the mortgaged property.

For this purpose the creditor shall refer to the related commercial port and request permission to sell the mortgaged property. On receipt of such request the Court at once notify the debtor or , if the mortgage has taken place in the name of the debtor by a third person, to the third person as well as that if they have any objection they should report in three days.

After three days, if there is not objection from the debtor or third person, the Commercial Court makes a decision concerning the sale of the mortgaged property. If contract includes provision for such sale, it is also sold to these terms, or is the steps Article 655 are taking. The decision of the Court is not executed until such time as it has been delayed to the debtor or to the third person who in the name of debtor has mortgaged the property.

In the announcement of the decision, the hour date of sale should be mentioned and also the fact that, if there is no protest on the Court decision from the creditor in three days, it will be final. In case of receipt of approaches the Court has within 8 days of the date of arrival of protest to hear the problems make its ruling.

Article 707: In case the debtor or the person who in the name of the debtor has executed the mortgage doesn't live in the vicinity or has no address, the announcement will be made through the local paper in the Court area. If there is no such paper, the announcement is posted in a suitable place designated by the Court. The duration specified in Article 706 relative to protest can not be prolonged because of distance.

Article 708: The rights delegated to the creditor according to the above articles neither do nor cease to exist due to the death or bankruptcy of the debtor or the person who has made the mortgaged property in the absence of payment of the debt by the debtor is rejected.

Article 709: Establishing any condition that might deprive a creditor according to the above articles do not cease to exist due to the death or bankruptcy of the debtor or the person who has made the mortgage in the name of the distance.

Article 710: Matters relating to the mortgage of properties to be deposited at public storehouse are subjected to the special Articles of this law dealing with public storehouse.

## Part 6

### Howalla Talabat (Demand Drafts)

Article 711: A creditor can, without approval of his debtor, assign his [right to collect a] debt to another person unless prohibited by the nature of the transaction or the conditions of the contract. A person assigned the debt holds, from the date he has been delegated, shall legally be [the same] as the original Claimant .If there is no provision in the text of the document concerning non-delegation of the demand draft, and a third person should accept the order, then a debtor cannot take the attitude that he need not pay the third party on presentation of the demand draft.

Article 712: Assignment of a demand draft which presently exists but which will be realized in the future is permissible .

Article 713: A demand draft is not honored until it has been put in writing.

Article 714: Before information is given by a creditor to a debtor of the claim right, if the debtor should pay his debt to the creditor he has no responsibility to the person authorized to collect the claim.

Article 715: If there is a dispute as to whom is entitled to the claim, the debtor can pay the debt to the real creditor, which will be proved, or to another reliable person, through the court.

If the debtor, although aware of the dispute, should pay his debt to a person other than the real owner, he may not deny payment to the person authorized for collection. If there is a suit concerning to whom the debt relates and the due date has passed, each of the contending parties may have the debtor deposit formally the amount of the debt.

Article 716: If the person who is indebted knows of the Assignment of a claim right, he may use his protest right that he had against the original creditor against the delegated person. If the debtor has a claim against a creditor which is not yet payable, he can use this claim against the person to whom the claim authority has been delegated.

Article 717: The demand draft and the right thereof, and all other legal priority rights which come with the demand draft, are included on the demand draft. However, if this right belongs personally to the creditor, the demand draft can't circumvent this right .A creditor is authorized to ask for receipt of the demand drafts and documents. The one who issues a demand draft should provide creditors with information and make delivery to them. The person holding a demand draft should be able to receive payment of the debt form the debtor.

Article 718: If a demand draft is exchanged for something, the person authorizing the demand draft must guarantee the existence of the demand. However, if the one who orders the demand as not explicitly promised the demand, he is not responsible for the financial difficulties of the debtor. If a person should transfer a demand draft to another person, he is not responsible for the payment.

Article 719: If a person refers (*hawalla*) the debt owed to him by another person to his creditor for the payment of his debt [to the creditor], and has not specified the amount that should be deducted from [that] debt, the person to whom the debt has been referred [the creditor] must count the amount he actually received from the debtor against [the person's] debt.

Article 720: A person who orders a claim, provided he guarantees the one to whom the demand draft is issued, must pay for the interest which he has received in exchange for the order plus the expenses of the draft.

#### Current Account

Article 721: Current account is a contract on the basis of which both parties agree to make their claims from each other in person regardless of whether resulting from cash or from properties whose ownership is transferable. The account is item by item treated as debit and credit and the balance from each of the parties.

Article 722: The following are the regulations concerning the contract of a current account:

1. The ownership of the properties registered in the debit account is transferred to the receive.
2. In case, before the contraction of the current account, a transaction has taken place between the parties as the current account, unless otherwise specified the transaction is considered to have been renewed.
3. A commercial document can only be treated in a current account when its payment is positive.
4. The balance of the debit and credit account is payable.
5. The amount recorded in the credit columns of a person from that date when in his favor is credited to his account, and when in his disfavor is debited to his account.

Article 723: If the return from the commercial document mentioned in item 3 of Article 722 should not be collected, it should be returned to the owner and erased from the account.

Article 724: The extension of a current account between two parties does not prevent the request for commission and other minor expenses.

Article 725: A current account is closed on the date specified in the contract or by custom and the difference between debit and credit is contract or by custom, and the difference between debit and credit is established. If there is no such date in the contract or by custom, each year the end of Hoot is considered as the date for the closing of current accounts.

Article 726: the balance established from debit and credit is subject to interest from the same date.

Article 727: Both parties can arrange to add the interest to the capital and specify the time of balancing the amount in interest and specify the commission amount.

Article 728: Cash and goods given solely to be spent for a specific or a separate purpose do not enter into the current account.

Article 729: The items of debit and credit in the current account are not analyzable. Before the close of the current account, neither of the parties is considered as creditor or debtor,. The status of the claims of both parties is only decided upon termination of the contact.

Article 730: Cash repayments and merchandise will be reliable in current accounts only if the remainder of the accounts at the time of settlement are recorded in favor of the interested party.

Article 731: Current account contacts are legally invalidated due to the following reasons:

1. Termination of the specified period of the contract.
2. With consent of both parties.
3. Invalidation of the contact by one of the parties provided it is not prohibited in the contact.
4. Bankruptcy of one of the parties.

Article 732: In case of the death or incompetence of one of the parties, the other party is entitled to apply to the Court to ask for the invalidation of the contact for current account.

Article 733: The contact of the current account ca be proved only through commercial documents.

Article 734: Registration of debit and credit in the current account does not invalidate the right of contract which results in debit and credit, or the right which both parties have related to the case in defending this matter. If a contact or transaction is discarded , the item relating to it from the current account is eliminated . If there is a different condition in the contract, that condition is followed:

Article 735: Cases concerning liquidation of the current account or the remaining interest determined by the consent of both parties or the law or the repetition, mistake, or the entry of an incorrect item, are invalidated after five years.

### **chapter 8 – Deposit to Public Warehouses**

Article 736: Places which accept goods of persons as deposit for mortgages and issue legal receipts for them to the persons concerned are called public warehouses.

Article 737: Regulations concerning public warehouses do not apply to places where goods are deposited without a receipt being issued for them.

Article 738: The receipt document given for properties and surpluses deposited in public warehouses must have the following detail:

1. Name, business, and address of the depositor
2. Name of the warehouse where properties are deposited
3. Necessary details for identifying the kind, quantity, and value of the items deposited.
4. Evidence of payment or default of the tax and tariff charges of deposited items and a statement indicating whether or not property has been insured. If insured, details of insurance are to be shown.

Article 739: The mortgage document (warrant) is also subject to details of Article 738, and is to be accomplished by the receipt document.

Article 749: Copies of the documents relating to transactions should be made according to regulations and should be kept regularly in files of public warehouses.

Article 741: The receipt document and warrant are prepared in the name of the depositor or a in the name of the third appointed by the depositor.

Article 742: The bearer of the receipt document and warrant may claim the deposited properties by producing the receipt or designating each of the items of merchandise by means of the general receipt. In such case, the expense of preparation of the documents is invalidated.

Article 743: The receipt document and warrant separately or jointly are transferable by endorsement. The endorsement should bear the date of the day on which it was made.

Article 744: On the endorsement the following regulations govern:

1. The joint endorsement of the receipt document and warrant transfers ownership of the property.
2. Only the endorsement of the warrant assigns the mortgage or the property to the person to whom the warrant is transferred.
3. Only endorsement of the receipt document ( provided the right of the bearer is valid) transfers ownership of the stored property.

Article 745: The endorsement of a warrant should contain the amount of the debt, its interest, and time of payment.

Article 746: The endorsement of a receipt document should be like that for warrants and the endorser should sign it.

Article 747: The warrant and receipt document can be endorsed jointly as a blank endorsement. This kind of endorsement transfers the rights of the endorser to the bearer.

Article 748: It is not permitted to assume control, seize, or mortgage properties and surpluses in public warehouses unless in cases of the destruction of warrant and receipt document, or dispute because of inheritance and bankruptcy, in which cases the order and ruling of the Court prevail.

Article 749: The bearer of a receipt document separated from the warrant can, before due date, pay the debt and its interest resulting from warrant to the public warehouse, and take out the properties stored therein before the date due. The amount deposited is returned for the warrant to the bearer.

Article 750: If a receipt document is separated from the warrant, if its bearer should wish he may take back part of the properties stored in public warehouses by depositing, under the responsibility of the store, a sum of money in proportion to the sum of the debt resulting from the properties, which resulted in the first place.

Article 751: The bearer of a warrant, in case a claim is not settled at the end of the period, can, like a bearer of a negotiable note, sell the mortgage according to regulations governing commercial mortgage, ten days after protest.

Article 752: Situation of Article 748 may not prevent the sale, but the price is deposited in the warehouse until a final ruling is made.

Article 753: Warehouse fees and other expenses for the tariff and other charges relating to properties and surpluses which are paid by the warehouses have priority for settlement from the mortgaged property.

Article 754: The money received from the mortgaged property after the deduction of the expense and fees as mentioned in Article 753 is kept in the warehouse for settlement of the matter with the bearer of the document.

Article 755: The bearer of the warrant may apply to the debtor or the endorser only when the sale of the mortgaged property does not satisfy this claim.

Article 756: The receipt document and warrant are subject to a period of time as specified by the negotiable note. In applying to the endorser, the period of time from the day the merchandise is sold and deposited is counted.

Article 757: If the bearer of a warrant does not protest or does not take action during the legal period for the sale of mortgaged property, he loses all his rights against the endorsers, but his right to bring suit against the debtor is secure.

Article 758: A bearer who loses the receipt documents or the warrant can claim a duplicate after receiving permission of the authorized commercial Court, provided he proves his ownership and presents a guarantee, and after it has been advertised in the local papers and the time specified for protest has passed. If the due date of the last warrant has been reached, the Court may order settlement of the debt on the request of the bearer. If the matter relates to warehousing and the warrant, the matter is relayed to the warehouse as well as to the first debtor. The owner of the warehouse and the debtor can protest against the permission of the Court. In such case, the Court may at once rule on the protest. If the ruling is in favor of the creditor, it is temporarily executed, but until such time as the ruling is final the money received from the sale of the mortgage property is deposited in a safe place by order of the Court.

Article 759: Regulations and conditions for establishing public warehouses for deposit of properties are set forth in special directives.

### **Subchapter 9 – Commercial Agencies**

Article 760: The function of commercial agencies is the execution of commercial transaction in the name and account of the person for whom the agent works. Commercial agencies may not work without compensation.

Article 761: Even if a commercial agency should include general terms and interpretations, it can not perform non-commercial activities unless there exist special stipulations.

If an agent has requested direction concerning certain matters from the person for whom he works, the agent also has authorization as far as other aspects of the same business are concerned.

The agency is authorized for a specific business. Other matters necessary for the execution of this business are included without being separately mentioned.

Article 762: A merchant who is given authority to act as an agent is free either to accept or reject it, but in the case of rejection he must:

1. First, report the matter without loss of time.
2. Until such time as news of the rejection reaches the person who has asked him to act as agent, he should take proper steps to safeguard that person's property. Otherwise he will be required to compensate for any resulting loss.

Article 763: After receiving news of the rejection, if the person does not during a period proportional to the distance involved appoint another person as his agent, the agent can refer to the Court, according to Article 655, and request the appointment of a reasonable person to safeguard the property. Moreover, he may request permission to sell as much of the property as necessary to compensate for the expense which he has incurred.

Article 764: If the agent has definite evidence concerning property loss incurred during transportation , he should , for the purpose of making possible suit by the owner of the goods against the transporter of the goods, reveal the losses and take necessary feasible steps to safeguard the property. In case there exists a risk of destruction of all property, the agent should sell the goods with permission of the Court, according to Article 655, and he should at once report the matter to the person for whom he is working. Otherwise the agent will be held responsible for loss suffered through his negligence.

Article 765: In case properties sent to the agent for sale are easily perishable or subject to changes which might result in reduction of the price, and if there is not enough time to get the owner's permission, or if the owner himself should delay in giving an answer, the agent can sell the property according to Article 655, with permission of the authorized Court.

Article 766: The agent must relay all circumstances causing modification or elimination of properties to the person for whom he works.

Article 767: The agent is responsible for losses suffered to articles with him belonging in the account of the person for whom he works only if the loss is for reasons other than extraordinary circumstances or uncontrollable reasons or because of defects existing in the properties themselves.

Article 768: The agent must, during a reasonable and logical period, send the money to the owner. Otherwise he must pay interest from the same date or , if necessary, pay the losses suffered separately.

Article 769: The agent must deviate from the explicit and final direction of the person for whom he works. Otherwise, he will be held responsible to compensate for loss suffered through the deviation, but if the execution of a transaction by order of the owner should result in a total loss for the owner, the agent can, with permission of the owner, delay the execution of the transaction.

Article 770: Transactions not accompanied by explicit directions of the person for whom the agent works may be delayed until arrival of directions from the person for whom the agent works, but if haste is indicated for the transaction and sufficient time is not available to receive the permission of the owner, or if the agent has permission to take action under prescribed terms, in such case he may act with initiative in the execution of the transaction.

Article 771: The agent must at once inform the person from whom he works of the execution of transaction. If an agent has deviated from his agency instructions , it is understood that the person for whom an agent works has agreed to the deviations in cases where the person for whom he works has not delayed answers during the necessary time.

Article 772: If an agent should receive an amount of money in the name of the person for whom he works, and does not use this money for the specified purpose, he is required to compensate for the loss incurred through not fulfilling his obligation, just as he is responsible to pay interest on that money from that date. If misrepresentation and fraud have been used, he is also subject to punitive actions.

Article 773: If a third person making a contract with an agent should ask for credentials of his agency, the agent must present him with such credentials. Otherwise third persons do not have to execute the contract. However, if the agent should prove that during establishment of the contract the third persons knew of the directions to the agent from the person for whom he works, they can not withdraw from the contract.

Article 774: If the agency of a person who acts or represents another person should not be positively established, or the transaction he has made is not approved by the person for whom he works, he is personally responsible for that transaction.

Article 775: The person for whom an agent works must provide the necessary agency authorization to the agent unless otherwise expected in the contract.

Article 776: The agency fee, in case it is not mentioned in the contract, is determined by the Court according to custom, circumstances, and the condition of the agency.

Article 777: Demand of agreement from a principal in regard to the work of his agency are applicable in cases where demands for advance sums, debts, and drafts have been issued, guaranteed goods via the agent. Or the payment and fees for agency for other sums in respect to guarantees of agency have been loaned; and services have come into existence. If the goods of his client are sold by an agent, incurred expenses can be collected from the price of the goods.

Article 778: In order for reimbursement mentioned in Article 777 to be made, the agent must inform the person for whom he works, through the Court, of his claim, and include in this notification that if the debt is not settled during a period of five days he will take action to sell the properties having priority. The person for whom the agent works has the right to protest this notification and invite the agent to Court. The person for whom the agent works must, during a period of three days from the date he has been notified, inform the agent of the protest to the court.

If the person for whom the agent works does not have an address in the locality of the agent, the duration of the protest is extended as follows:

If the residence of the person for whom the agent works is located in the region of the Court, the protest period is 20 days, but if he lives in one of the provinces the protest period is 40 days.

If the person for whom the agent works lives in a foreign country, the protest period is that used in legal trials.

Article 779: In the case of expiration of the period or rejection of the protest, the agent can, according to Article 655, sell the properties under discussion. In case of appointment of many agents for the execution of the same business, if their joint action is not explicitly stated, each of them, in the absence of others, is authorized to execute the transaction. If their joint action should be stated and some of them should not have accepted the agency, those having majority can accept the agency and execute the transaction.

Article 780: if an agent is dismissed without logical reason by the person for whom he works, or if the transaction that was undertaken by the agent should not be completed because of his registration, the party causing this situation is responsible to compensate for loss suffered by the other party.

Article 781: If the agency should cease to exist due to bankruptcy, death, or the fault of the agent or the person for whom he works, the agent or person replacing him is entitled to any fee in proportion to the completion of the unfinished transaction.

### **Subchapter 10 – Commission Agents**

Article 782: A person who executes commercial transactions in his own name and in the account of the owner of the business for a fee, as his adopted profession, is called a commission agent, and the contract to this effect is called a commission transaction.

Article 783: if the owner of a business has provided for the execution of a matter explicitly in his own name, the resulting contract is subject to the regulations for commercial agencies.

Article 784: In case there is no special regulation in this chapter concerning the rights and obligations of the employer and the commission agent, the regulations relating to commercial agencies apply.

Article 785: The rights and obligations resulting from the commission business relate solely to the commission agent and not to the employer and the third person.

Article 786: The commission agent should execute the business he has definitely or inferentially accepted. The commission agent who does not fulfill his delegated duties without legal reason, as mentioned in Articles 789 and 790, must compensate for any resulting losses to his employee.

Article 787: the death of the employer does not invalidate the commission contract. His rights and obligations are transferred to his heirs.

Article 788: An employer may not withdraw from such contracts as have been accepted by the commission agent.

Article 789: If it should be proved that the execution of the business of commission is not possible through someone else, or if it will create difficulties resulting in losses for the employer, the commission agent can not withdraw from the contract.

Article 790: In case the execution of the regulations of the commission contract should depend on money, and if the employer does not send sufficient money, or if the contract says that the required money should be paid by the commission agent but its manner of repayment by the employer has not been explicitly stated, the commission agent can always withhold the necessary amounts from the commission contract, or he can delay execution of the contract.

Article 791: If the approximate price of properties involved in the business of the commission contract is insufficient to cover the transportation expense, the commission agent must delay this information at once to the employer. Moreover, for receiving the mentioned property he may request the appointment of a reasonable person from the Court according to Article 655.

Article 792: The commission agent should use such initiative and attention in the execution of the transaction he has undertaken as is used by a good merchant in his own private affairs. To safeguard the interest of the person for whom he works, the duties of the commission agent are to execute orders, inform the person for whom he works of the necessary aspects of the transaction at the proper time for making decision, and especially to report about the commission and to render the accounts based on documents, and to send without delay the profits received.

Article 793: If the commission agent deviates from his authority or misuses his authority in the execution of the transaction, and thus causes a loss to the person for whom he works, this transaction is recognized in the case of the commission agent, but the employer, based on terms of Articles 796 and 795, can not be made to accept the transaction in his account.

Article 794: To claim the invalidity of a contract because of deviations of the commission agent from the orders and directives of the person for whom he works is the sole right of the employer, and does not depend on the commission agent or third persons.

Article 795: until such time as the employer orders otherwise, the commission agent need not insure the properties subject to the commission contact.

Article 796: If the commission agent deviates from the directions of his employer concerning the kind and specific quality of merchandise which is to be bought, the employer does not have to accept it. If the deviation consists of buying more merchandise by the commission agent than was specified by the person for whom he works, the employer may accept the specified amount and leave the rest for the commission agent.

797: If a commission agent sells properties subject to the contract at a price lower than specified, or if he buys them at a price higher than specified, and if the employer, upon receipt of the news, does not want to accept this transaction in his own account, he must at once inform the commission agent of his acceptance or rejection. If he does not so: act, he is considered to have accepted the transaction. In spite of this, if the commission agent of , during execution of the transaction, states that he is paying the price difference separately, the employer must accept the executed transaction. If the commission agent has deviated from the specified price set forth by his employer, and if from this the employer incurs loss, the employer may claim compensation for the loss.

Article 798: If the commission agent, according to specified conditions of the employer, executes a transaction resulting in an increased profit, the excessive profit relates to the employer.

Article 799: The account submitted by the commission agent must agree with all pertinent records.

The commission agent who submits incorrect account statements to this employer, or who changes the cost of the goods and the condition of the contracts wrongly , or who enters fictitious expenses, or who shows expenses larger than the real amount, loses his right to receive a fee, and is personally responsible for the consequences of the transactions executed.

Article 800: The commission agent who, without the permission of the employer, makes a down-payment to third persons, or who gives credit to third person, is considered to have accepted the loss and profit resulting from the transaction as relating to himself.

If, at a place where the transaction takes place, it should be the commercial custom for a deferment in payment to be given to a customer, should the employer not be opposed to this action, the commission agent can make this deferment in person.

Article 801: If a commission agent has permission to sell on extended terms, he may not sell the property of the employer to persons financially unable to pay or who have bad business repudiations.

Articles 802: The commission agent who, with the permission of the employer, sells his properties on time must report after the execution of the transaction the names of the customers to his employer, Otherwise the sale is considered to have been by cash.

Article 803: A commission agent who undertakes the buying of a negotiable note must, after endorsement of the note, send it without any conditions to his employer.

Article 804: A commission agent is not responsible to his employer for the debt of third persons with whom he does business. If there exists a contract or a commercial custom contrary to this, the commission agent bears as much responsibility as the third person. In this case, the commission agent is entitled to receive a separate fee for this responsibility.

Article 805: A commission agent is entitled, after execution of a promised transaction, to request his fee. In a transaction administered by a commission agent but not executed for reasons attributed to the employer, the agent is also entitled to claim his fee. In transactions not executed for other reasons. The commission agent can also ask for his fee in proportion to the effort he has expended according to local custom.

Article 806: A commission agent may, before completion of the responsibilities of his commission agency, claim down-payment money and expenses with interest therein. In such case he must present the employer with a statement of account supported by documents. Expenses of transportation and warehousing are reportable expenses of the commission agent, but the salaries of his employees may not be included.

Article 807: The commission agent who undertakes to buy and sell valuable papers or properties having specified rates in the stock exchange, or the market, unless ordered otherwise by the employer, can purchase or sell from his merchandise as a buyer or seller. In such case, the commission agent, on the basis of the specified rates of the stock exchange or market must submit to the employer a statement of account. The date of the notification to the employer of the execution of the commission agent is thus considered to be the date of execution of the transaction.

The regulation of commercial sales apply to other details. The regulations of this Article cannot be modified through contract against the employer.

Article 808: In case the commission agency business is executed according to Article 807, the commission agent is entitled to receive a commission and ordinary expenses.

Article 808: In case the commission agency business is executed according to Article 807, the commission agent is entitled to receive a commission and ordinary expenses.

Article 809: The commission agent can, according to Article 777, settle his claim against the employer and his creditors preferably from the amount he receive as the result of having executed transaction fro the account of the employer.

Article 810: If the commission agent executes the commission transaction according to Article 807, and if he reports without specifying the other person to his employer, the employer can consider this transaction of buying and selling to have taken place in the account of the commission agent.

Article 811: Unless explicitly permitted, a commission agent can not change the markings on the properties of his employer.

Article 812: If a transaction takes place involving the properties of many employers, the commission agent should in his books, explicitly and correctly register the owners of the property.

## **Subchapter 11- Transportation Commission Agency**

Article 813: A person who , as his vocation, chooses the transportation of commercial goods in his own name and in the account of his employer , is called a transportation commission agent. In cases concerning transportation commission agencies not covered in this chapter, regulations relating to commission contracts and especially those regulations relating to the receipt, safeguarding, and insurance of properties apply.

Article 814: A transportation commission agent can not record in the account of his employer more than the amount he has contracted for with the transport.

Article 815: The transportation commission agent is entitled to claim remuneration only when he has delivered properties to the transporter.

Article 816: The presentation of the transportation document or the waybill substituting for the transportation document, and also the receipt for the deposit of the properties in warehouses, is proof of the goods in the hands of the commission agent. As far as transportation expenses, commission fees, and down-payment money are concerned , these properties are considered, these properties are considered to be mortgaged with the commission agent.

Article 817: In case many commission agents should have consecutively participated in the transportation of property , those agents having participated later must fulfill the rights of the commission agents ahead of them, especially their mortgage rights on the properties that have been transported.

Article 818: If a claim by a commission agent is realized by a subsequent agent, the mortgage right of the first commission agent is transferred to the subsequent commission agent. In case a commission agent pays the transportation of the transporter, his rights transfer to himself.

Article 819: Unless a contract exists otherwise, a transportation commission agent can transport goods in his own means.

In case a transportation commission agent prepares a waybill on this basis of the request of the employer, in the employer's name and has issued it, or he has decided upon the amount and expense of transportation with the specified final amount, in such case as far as his employer is concerned he has the legal status of transporter.

Article 820: The responsibility of the transportation commission agent is invalidated one year after the date the addressee has received the goods.

If the properties whose transportation has been promised have all been destroyed , the passage of time starts from the date the properties were received.

In case the property through misrepresentation of the commission agent is short of the quantity or has been damaged in transit, or if it is received late, the responsibility of the commission agent is not invalidated during the above-mentioned periods.

## **Subchapter 12 – Transportation**

### **Part I – General Regulations**

Article 821: The agreement to transport goods and persons on land, on water, and in the air, for a fee, by the transporter, is called a transportation contract.

Article 822: The regulations of this chapter also apply to persons who are not professionally engaged in transportation business and who, as temporary measure, promise transportation of goods and persons,.

Article 823: All legal cases resulting from transportation contracts including those for the return of unearned transportation fees are invalidated after one year.

This period is calculated from the date of receipt of goods and from the date of arrival of passengers. If all the goods have been destroyed, or the persons should not reach their destination, the period is calculated from the date goods would have been received and the date the passengers would have arrived.

### **Part II – Transportation of Goods**

Article 824: In case the transporter so request, the sender must issue the transportation document in two copies. The transportation contract, without transportation documents, and with the consent of both parties, may be executed with the delivery of goods to the transporter.

Article 825. The transportation document must have the following points:

1. Identity and address of consignee, place where goods are sent, and statement regarding the receipt of goods as to order or request of bearer.
2. Weight and size of items, number of items, and, if goods are packaged, the number and kind of packaging.
3. Identity and address of sender.
4. Identity and address of transporter.
5. Amount of transportation fee and indication if paid.
6. The time during which the transportation will take place.
7. Other details agreed upon by both parties

The loss and responsibility for not entering one of the above items intentionally or unintentionally or the false entry of items falls upon the sender.

If the goods transported should be dangerous, such as explosives, the sender who does not give this information is responsible for compensation for loss caused through this undisclosed information.

Article 826. The sender must deposit all customhouse and other documents that are necessary for the transportation of goods by the transporter. If these papers are not properly and correctly prepared, the sender is responsible.

Article 827. If the transportation documents have not been prepared, the transporter, on request of the sender, should prepare a waybill containing the informational items of the transportation document, sign it, and give it to the sender.

Article 828. One copy of the transportation document, after it has been signed by the sender, is deposited with the transporter to be sent along with the goods. The other copy, after it has been signed by the transporter, should be returned to the sender,

if the transportation document is marked "to the order" or "to the bearer," its endorsement or receipt implies the transfer of ownership of the goods. The form and consequences of the endorsement are subject to the same regulations as mentioned for commercial documents.

Article 829. If a transporter has not recorded a statement concerning the conditions and receipt of the goods in the transportation document or any other paper by which he has accepted the goods, it is understood that he has certified the absence of apparent defects in the properties.

In spite of this, if the transporter has accepted the goods without protest, he may claim and prove that the goods have unapparent and undetectable defects.

Article 830. The ( )

to him concerning the transportation of goods, except in uncontrollable cases where he shall act accordingly.

Article 831. If the transportation of goods does not take place due to uncontrollable situations unrelated to any of the parties, or if transportation should be delayed, the transporter must inform the sender at once. In such cases, the sender may return the copy of the transportation document which had been signed by the transporter, and the settlement anticipated in Article 834 should follow and the contract be invalidated.

Article 832. Just as the sender has the right, with payment of the damage, to delay the transportation and withhold the goods, according to Article 834 and 835, he is also authorized to consign the goods to another person or otherwise control the goods. The transporter is not subject to the orders of the sender from the date the goods have reached their destination or the addressee has received the transportation documents or from the date the sender has informed the addressee.

If transportation or documents are in the name of the bearer or marked "to the order," the transporter is responsible only to present and deliver the good.

Article 833. If, on new directions of the sender or the addressee, the distance that has to be traversed or the period of transportation is extended, the transporter may ask for compensation in proportion to prolongation.

Article 834. If transportation arrangements are changed due to uncontrollable situations not related to any of the parties, the transporter is entitled to claim his fee in proportion to the distance traversed, and compensation for the extra expenses he has incurred. If,

because of uncontrollable circumstances, transportation of goods should not start, the transporter is not entitled to a fee but he is entitled to claim compensation for other expenses and services performed .

Article 835: If the transportation should be cancelled on order of the addressee, the following provisions apply:

1. If transportation activity should not start, the sender should pay half of the specified fees and expenses for transportation and removal of goods, together with other expenses paid by the transporter.
2. If transportation activity should be stopped after starting, the sender must pay all the transportation fee and the evacuation expenses of the goods together with all the expenses made for returning the goods to him.

Article 836: The transporter must transport goods in the period specified by the contract or by commercial custom , and if there is no such specification the goods should be transported during a reasonable period.

Article 837: If goods should arrive after the specified period, the other party can ask for a reduction of the transportation fee in proportion to the delayed period.

If transportation should be delayed more than twice the period specified , the transporter's right to claim his fee is completely invalidated, and the transporter must compensate for losses proved to have resulted from this delay. Any terms in the contract concerning the irresponsibility of the transporter are not valid . If the transporter should prove that the delay was caused by the sender or the addressee, or through uncontrollable reasons , he is not responsible for the late arrival of the goods. Explanation concerning the absence or insufficiency of the necessary means of transportation are not acceptable .

Article 838 : The transporter is responsible for any loss or damage suffered by the property between the date he has received it and the date it is received by the addressee. The transporter is absolved from responsibility if he can prove that the loss or damage has been caused by any of the following reasons:

1. Conditions beyond the control of the transporter
2. Proof that there existed defects in the goods and in their packaging
3. Proof that the loss and damages have been caused by the actions and instructions of the sender or the addressee

Only in case of complete loss and damage of goods as mentioned in and Item 3 is the transporter entitled to full fee. If , in cases of Items 1 and 2 , part of the goods has been destroyed , the transporter is entitled to receive the fee for the remaining part.

Article 839 : The responsibility of the transporter begins from the date he receives the goods for the purpose of transportation.

Article 840 : Concerning the transportation of goods which are reduced in weight and volume during transportation , the transporter may determine the percentage

of reduction before the transportation and receive the written approval of the sender.

In case the goods should be in packages, responsibility may be limited to each package separately.

If the sender or the addressee should prove that the reduction in weight or value has not resulted from the nature of the goods but has resulted from other reasons, or if the reduction is less than the amount specified, in such case the matter of limitation of responsibility is without effect.

Article 841 : The transporter is responsible for the acts and errors of all other transporters working for him or helping him , or other persons delegated by him to transport the goods until such time as the goods have been received by the addressee.

Article 842 : The value of the loss of the goods is determined on the basis of the price mentioned in the transportation document , and in the absence of which the value is determined on the basis of the current price of the goods at the place of receipt. Damage to goods before the goods are delivered is based first on cost differential of the delivered place; and , after goods are delivered, the damage is based on the popular method of the locality.

Article 843: In case of loss and damage suffered by goods , the transporter guarantees the prices of the goods he has accepted .The loss suffered by passengers of property which without the declaration of the nature and price thereof has been deposited with the transporter , is determined on the basis of the special circumstances of each person and accident . A transporter is not responsible for loss of and damage to valued items such as cash . promissory notes, bonds, loan documents, and other documents and papers which have not been declared while being deposited with the transporter . In spite of this , if the loss should be proved to have happened because of the apparent misrepresentation and shortcomings of the transporter, the transporter must make full compensation .

Article 844 : Transporters who provide transportation for goods subsequent to the first transporter are his substitute as far as debts arising after the receipt of movable goods and transportation documents are concerned . They may enter the condition of the goods having been received in the transportation document or other accompanying papers . Otherwise, the contents of Article 819 apply.

Article 845 : The transporter must inform the sender of the arrival of goods that have been transported.

Article 846 : The transporter must act according to directions given to him by the addressee before the arrival of the goods, especially in reference to the upkeep of merchandise. The addressee can claim loss from the transporter or third party

before receiving goods or when he receives the transportation documents, or the bill of lading , or such documents which represent the original documents . The transporter presents to addressee a transportation document marked " to the bearer" or marked "to the order "

Article 847 : Unless otherwise specified , the transportation fees together with other expenses are paid by the addressee at the place of destination on the basis of the terms of the transportation document.

Article 848 . If a person who receives transported goods should be unable to make the payment involved, the transporter need not turn the goods over to him. If there should be a dispute concerning differences in payment , the addressee can pay the amount that he has agreed upon and deposit the amount in question with a recognized bank or with a responsible person . In such case the transporter must turn the goods over to him. The transporter does not have to deliver the goods prior to the surrender of the transportation documents , whether these documents are in the name of the bearer or to the order of .

Article 849 . The transporter may keep the goods until claims resulting from the transportation contracture paid, if there should be many transporters, the last one protects the rights of the previous ones . the amount deposited by the addressee according to Article 848 is considered payment for the goods as far as keeping the goods by the transporter is concerned .

Article 850 . If the last transporter should turn over goods without requesting the deposited claim and without settling his claim and those of his preceding transporters, or the sender, he is responsible for the sum spent or the expenses of the sender, or those of previous transporters, but his own right to refer to the addressee is protected .

Article 851 . If , during the transfer of goods to the addressee, there should exist no evidence of loss suffered by the goods, the addressee, has the right to examine the condition and quality of the goods in the presence of the transporter, or have the goods examined through the local Commercial Court. This right is also available to the transporter. The expenses of such an examination are payable by the person requesting the examination , but if the expenses paid by the addressee should be paid top the transporter and loss and damage are suffered through transportation, these expenses are reimbursable by the transporter.

Article 852 . In cases brought against a transporter for compensation due to damage, it is possible to bring suit against either initial or final transporters, but if it should be proved that the damage and loss were caused while the goods were in the hands of another transporter, the charge is directed towards him. If a transporter is made to compensate for loss and damages for which he is not responsible , or if he should be brought to Court for this purpose, his right to

protest against his predecessors or other transporters who might have responsibility in this matter is protected .

If the responsible transporter should not be determined , the loss and damages suffered must be assumed by all the transporters in proportion to the fee they have received . In spite of this , if a transporter should prove that the losses suffered have not taken place while the transported goods were his responsibility , he need not be compensated for the loss.

Article 853 . In case in the transporter should not find the addressee or the addressee should refuse to accept the goods , or if there should be a delay in receipt of the goods because of circumstances , the transporter must at once inform the sender and await his answer . If sending an answer is not possible , or if the sender should delay in answering, or if he should give directions impossible to execute, the sender can refer to the Court and ask the appointment of a responsible person, to whom the goods should be turned over. The loss and damages suffered by such goods are incurred by the sender. In case the goods are perishable , and loss pending receipt of an answer is inevitable , the transporter shall act according to Article 655 , and deduct transportation charges and actual expenses from the return realized from the sale of the goods.

The transporter must then as quickly as possible inform the sender and the addressee of the situation or else be responsible for the loss and the addressee of the situation or else be responsible for the loss and damage suffered.

Article 854 . In the circumstances mentioned in Article 853, the transporter must act wisely and quickly as far as the transportation of goods and the protection of the rights of the owner thereof are concerned .

Article 855 . The payment of transportation charges and the unconditional acceptance of goods invalidate the case against the transporter.

In spite of this , if the loss should have been established before the acceptance by qualified persons appointed by the Court, the right of the addressee to use the transporter is secure.

If it should be impossible to detect losses and defects in goods during acceptance ,the right to bring claim against the transporter is preserved even after payment of the transportation fee and the acceptance, on the basis of the following circumstances:

1. If it should be proven that losses and damages were caused between the period of the receipt of goods by the transporter and the date of turning over of goods to addressee.
2. If by examination and investigation , damages are revealed eight (8) days after acceptance , no claims may be made against the transporter unless such a fault had been caused due to the carelessness of the transporter.

### **Part 3 – Transport of persons**

Article 856 .Passengers must honor regulations otherwise set forth by the transporter concerning transportation services.

Article 857 . If their travel arrangements should be cancelled after the contract and before travel starts, the following applies :

1. If the passenger should not be able to be present on time at the starting place, he is entitled to travel by means of subsequent transporters.
2. If the passenger should change has mind about traveling , he is not entitled to refund.
3. If the travel should be cancelled because of death , sickness, or uncontrollable reasons, the fare paid is refunded.
4. If the travel should be cancelled due to uncontrollable reasons related to the means of transportation, without the fault of either party, the contract (without being penalized ) is invalidated, but if the transporter should have received the fare he must return it .
5. If travel arrangements should be cancelled due to the acts and the fault of the transporter , the traveler is entitled to receive refund and claim compensation for his loss.

Article 858 . If travel arrangements should be interrupted after the contract and the start of travel , unless otherwise specified in the contract , the following applies:

1. If traveler enroute should change his mind about continuing the trip , he is liable for payment of all fees.
2. If a transporter should change his mind about continuing the journey or if a traveler should have to stop on the way because of the shortcomings and fault of a transporter, the traveler is not liable for payment of the fare. If a traveler has paid his fare, he is entitled to a refund and claim for the loss incurred.
3. If travel should be cancelled for personal reasons of the passenger, or by uncontrollable reasons concerning the means of transportation , the fare is paid in proportion to the distance traversed . In such case , neither of the parties is liable for compensation for loss suffered by the other .

Article 859 . If a transporter during the journey should stop at a place not in his scheduled course and follow another course, or by any other means should delay the arrival at destination, the traveler is entitled to invalidate the contract and claim the loss . If a transporter should be carrying goods in addition to passengers , he is entitled to a delay period required for unloading of the goods. This Article applies in case there should exist no contract to the contrary.

Article 860 . If a trip should be cancelled on order of the Government , or if it should be delayed by necessary repairs to the transporting means, or hazards prevent continuation of the journey ( provided there should not exist any special arrangement between the parties) the following will apply:

1. If a traveler should not want to wait for the elimination of the reason for delay or the completion of repairs , he can , after paying the fare proportional to the distance traveled , invalidate the contract.

2. If a passenger should desire to wait , he is to pay the specified fare , but if the fare includes food as will , the traveler , during the period of delay , must personally bear the expense for his food.

Article 861 . A traveler must pay transportation charges for his personal luggage separately unless there exist provision to the contrary . A transporter is responsible for loss of and damages suffered by a traveler's property according to Articles 838-843 . A transporter is not responsible for the loss of goods personally carried by a traveler.

Article 862 . A transporter is entitled to withhold the luggage of a traveler pending payment for fare and food.

Article 863 . A transporter is not responsible for accidents involving a traveler while in transit unless it is proved that the accident was caused by the neglect of the transporter or his personnel.

Article 864 . If a traveler should die while in transit , a transporter , for the protection of the traveler's heirs, must safeguard the traveler's luggage and other related properties until such time that they may be turned over to authorized persons.

If one of the relative of the deceased should be present , he is entitled to intercede in the supervision of this affair , and he can request a statement from the transporter concerning the properties left by the deceased .

Article 865 . Regulation of the interior of the conveyance is the duty of the transporter . It is the duty of the transporter to see that passengers do not carry with them items which might cause trouble and damage to themselves and other travelers . Losses suffered by such means by the travelers are payable by the transporter.

#### Subchapter 13 Insurance

##### Part 1 – General Insurance Laws

Article 866 . Insurance is a contract by which an insurance company promises to compensate for loss and damage suffered by persons from certain specified accidents and uncontrollable circumstances for a specific amount of money .

Article 867 . In case of insurance disputes , regulations of this law are applied unless otherwise explicitly covered in the insurance contract.

#### **Part II- Property Insurance**

Article 868 . Properties may be insured by owners, creditors, mortgagors, tenants, and all persons benefiting from property. The insurance may be provided by their executors and agents unless otherwise specified.

Article 869. A person may make an insurance contract in the name and account of another person, but if the person who makes the contract should not be authorized by the one in whose name and count the insurance contract is made

should have accepted it before the grounds for a claim arise, he can take advantage of the insurance.

Article 970. If insurance made through an agent who has executed the contract is accepted by a person it is understood that the agent has acted in accordance with the terms of the business of his agency. If a person for whom an insurance contract is made should not have given directions concerning the terms of the insurance, the agent must execute the contract of the insurance in accordance with local costume. If it should not be understood from the contract that the insurance has been made in the name and account of another person, it is understood that the contract has been executed in the name and account of the executor.

Article 971. A creditor can insure his debt against the inability of a debtor to pay. In such case (unless otherwise stated in the contract), the insurance company can claim that the creditor should in the first instance refer to the properties of the debtor to settle his debt.

Article 872. A creditor who has in his control or in mortgage the real and personal property of a debtor, or who has a prior claim on these properties, is considered compensated by the insurance on the insured property for the destroyed property under control of the creditors.

Article 873. If the priority of a creditor in an insured property is inadequate to pay the claims of a creditor having later priority, he can not again insure the property.

Article 874. Losses suffered through illegal activities or activities not in accordance with general morality and good conduct can not be insured.

Article 875. An insurance agreement is not considered applicable if those who are insured or persons who conditionally receives benefit from insurance are aware of the occurrence of a previous accident. In such event, the insurance company may return the premium.

Article 876. The insurance company must compensate exactly for the damages actually suffered by the insured persons. Therefore, if compensation for an insured property should exceed the real price of the property, the person who has insured the property can not take advantage of the excessive price. If the insurance payment should be less than the price of the property, the insurance premium is also reduced and that part of the premium which has been collected in excess should be returned. If the insurance price is established by the report of experts selected by the consent of the parties and accepted, the insurance company can not object to the ruling.

Article 877. The insurance company can, at any time, examine the insured property to establish its price.

Article 878. If a property has been insured for its total price by its owner, this same owner can not reinsure this property against the same risks. If it should not be established in the contract that the property has been insured for its total price, than the property could be insured once or many times for its remaining price. In such case, the insurance companies who have subsequently insured the property are responsible for the remaining price from the date the contract has been made.....contracts are considered to be effective on the date executed.

Article 879 . If a property is insured by many companies at the same ..... for the same risks, the contracts made are recognized for the amount equal to the price of the property. In such case ,each of the insurance companies is responsible in proportion to the total amount insured .

Article 880 . If a property is insured for only a part of its price, in case the rest should be insured, unless otherwise stated , the insurance company is required to compensate the later part at the same rate as the part which previously has been insured .

Article 881 . Property insured for its total price could, in the following circumstances , be insured against the same risk :

1. In case the insurance companies should approve, in which case all the contracts are taken to have been executed at the same time . and in case of loss the compensation for the loss is made by the companies according to Article 879.
2. If the policy holder transfers all rights of the first insurance company to that of a second , the method of transferring must be indicated explicitly to the second company. Contrary to this , the contract is null and void .
3. If it should be a condition that the latter insurance company is responsible for the compensation that was not made by the previous company . In such case the matter should be entered in the contract of the latter in accordance with the contract of the former.

Article 882 . The insured person must. At the time of the contract , inform the insurance company of all details which might cause a greater award and in case of fraud the insurance contract is invalidated . If in three months' time from the date the insurance company has received the correct information it does not use its right to invalidate the contract, this right is without effect. If it is proven that the insuring person has unlawful intentions, the insurance company is entitled to return the premium. No responsibility is directed to the insuring party except for those promises and answer he has made on the insurance application filled in by him.

Article 883 .If the possibility of accident is removed prior to actual responsibility of the insurance company , without the interference of the policy holder or his beneficiaries, the insurance company cannot claim the premium.

Article 884 . The insurer can , before an accident , invalidate the insurance contract partly or wholly , in such case , the insurance company is entitled to half the fee.

Article 885 . Unless otherwise stipulated , the insurance company is responsible for compensating for losses suffered through unintentional acts of the insured to himself or his beneficiaries, or the person for whose acts the insurance company is legally responsible , but in no case is the company responsible to compensate for losses suffered through fraud on the part of the insurer or the beneficiaries . Also , unless otherwise specified, the insurance company is not responsible for compensating for defects occurring in the property.

Article 886 . The insurer has five days from the day of the occurrence of the risk against which the insurance has been made to inform the insurance company , In addition to this , the insurer must take proper steps to prevent loss or reduce damage therefrom. Conditions otherwise stated in the contract in favor of the insurer concerning this situation are not valid . If the expense for the proper steps proves ineffective, the insurance company pays it, but if the insurance should not be related to the total price of the goods , the expense should be paid in proportion to the part insured.

Article 887 . If through fraud or shortcoming the insurer should not fulfill his obligations as mentioned in Article 886 , he loses his rights resulting from the insurance .

Article 888 . If a property should be insured in different insurance companies according to Article 879, in case of occurrence of the risk the insurer must , within the specified period of Article886, inform each of the companies of the loss as well as the agreements made concerning this .

Article 889 . Unless otherwise stated each insurance company is responsible to compensate for loss suffered by the insured properties, except in case of war and transgression .

Article 890 . In case risks for which , according to Article 889, the insurance company is responsible should be an exception in the contract, and if there is loss through this type of risk , the proof of the fact that the suffered loss has been caused by the excepted risk rests with the insurance company.

Article 891 . Unless otherwise stated , the insurance company is responsible for risks which occur after the date the insurance contract has been made . If the

duration for which this responsibility is in effect is not explicit in the contract , it is determined by the Court on the basis of local custom.

Article 892 .The insurance company is entitled to premium from the date its responsibility begins.

Article 893 . Payment to the insurance company may be made in either cash or instruments that are to be paid in cash , and in monthly or yearly installments. However , if contrary to this is not agreed , payment will be made in cash when the insurance responsibility starts.

Article 894 . If the insurance premium and the process for its payment should not be decided , it is determined by the Court on the basis of local custom and circumstances .

Article 895 . The insured value is determined on the basis of the price of the insured property . If the insured value of property should exceed its real value, the real value only is paid when the insured property has all been destroyed . In case of partial loss of property unless otherwise provided, insurance for the loss is paid in proportion to the total value .

Article 896 . If the value of the insured property is not mentioned in the contract , the insuring party must prove its value in event of loss . If the Court should so wish , for its own satisfaction , it can request a sworn statements of the value form the insuring party. If the insuring party claims that the price of the property has been declared less then its actual price, he must prove his claim, but if the price of the insured property has been determined by qualified persons appointed by both parties before the loss, and fraud by the insuring party has not been proved, the insurance company can not protest this value.

Article 897: After the insurance company makes payment to policy holder, the insurance company becomes the representative of the policy holder. Therefore, if the insuring party should have claims against third person for the loss, this right in proportion to the money the company has paid is transferred to the insuring company. If the policy holder is indemnified as stated in the above -mentioned Article, he is responsible to the insurance company.

Article 898: The insurance contract is established on the bases of insurance policy or another substitute contract. The contract should be prepared in two copies. It should, in addition to the date and signature of both parties, content the following items:

1. The name and the address of the insurance company.
2. The object insure
3. The compensation of the loss promised by the company with the dates of effect and determination
4. Insurance value

5. The amount, time and place for the payment of insurance fees

6. All circumstances and factors determining the nature of the insure risks

Remark : The insurance policy is made in the name or order of the insured party or in the name of the bearer.

Article 899: Unless otherwise stated, the insurance company must present the executed contract, made directly between the insuring party or his executor and the insurance company, to the insuring party within 24 hours of the date it is made; or if the contract should have been made of ten days after the date it was made, or else the insuring party can claim the suffer loss from the insurance company and the broker through whose mediation the contract has taken place.

Article 900: The insurance premium is payable at the address of the insuring party, but a condition in the contract as to the payment of the premium at the office of the company or at its agency is valid. However, contrary to the above condition, if the insurance premium is paid at the place of policy holder, the requirement for payment at the place of insurance company is not applicable.

Article 902: If the insurance premium has not been paid at the time of the contract, or it has been agreed it will be paid on the installment, the insurance company may send the insuring party a formal warning through registered letter if it is not at the end of the installment period. In case of non payment of the premium, the contract is invalidated after a period of one month. Any condition otherwise established in the contract against the insurer is not recognized.

Article 903: If, in an insurance agreement made for a number of years, the amount of insurance payment is augmented because of especial hazard, and the hazard later disappears, the policy holder may apply for a reduction for the related years.

Article 904 : If an insurance company goes bankrupt before the expiration of an insurance policy , or if the insured goes bankrupt or otherwise is unable to pay the insurance premium , the injured party may establish a claim against the total assets of the other party in order to settle the claims resulting from the contract . If settlement has been made during a period of three days from the date of the demand , the person who has made a claim against the assets of the other party may invalidate the contract.

Article 905 : If, during the period of contract , a person whose property has been insured for some reason transfers the property , all rights of the insurance are transferred to the new owner if not contrary to the conditions of the agreement .

Article 906 : If the insuring party, without the approval of the insurance company , should change the risk location or the condition of the property from that of the time of contract, the insurance company may invalidate the contract if these changes are of a nature that would cause invalidity of the contract, or would

require heavy commitment on the part of the insurance company . If the insured person making these changes should within eight inform the company of the matter , the insurance exists if the company has not used its invalidation right during the same eight days.

Article 907 : If the insurance premium is not paid for two years , it may be settled from the insured property. This claim has priority over other debts.

### **Part III-Fire Insurance**

Article 908 : A fire insurance company is responsible for compensating for losses suffered by fire to insured personal and real properties . An insurance company is not responsible for compensating for losses caused from intentional fires in which the insuring party is primarily or secondarily involved.

Article 909 : The following expenses , unless otherwise stated, are considered to have been caused by the fire loss :

1. The expense of an means required for the purpose of putting out the fire, such as prevention of smoke damage or other steps taken to secure the insured property or such as moving the property from one place to another , or the partial or complete destruction of the insured building which may be necessary of the purpose of preventing the extension of the fire.
2. The losses resulting from fire, lightning , explosion , and the like, even if these should not have been the cause of the fire.

Article 910 . The contract which is made for the insurance of real and personal property against fire should , in addition to the specifications of Article 899, contain the following information :

1. Location and type of building and the purpose for which insured building is used .
2. If the subject of insurance is goods are located , its construction and use .

Article 911 . Partial damage suffered by an insured building through fire is established on the basis of comparison of the value of the building before and after the fire . Damage caused by fire in and insured building is paid so that the necessary repair or replacement can be made, and if rebuilding or repairing of a building destroyed partially or completely by fire has been provided for in the contract. It is executed during a period agreed upon by both parties . In case of disagreement between the parties , this period may be determined by the Court . If the expenses should be paid by the insurance company , the insuring person must build and repair , and the insurance company has the right to control and supervise the expenses for which payment it is responsible .

Article 912 : A person who , in the account of another person, is authorized to have control over a property . can insure this property partially or completely

against fire . Also a person who by whatever means controls a property for which he is legally responsible , can insure it against fire for his personal protection.

Article 913 : In analyzing Article 912 concerning the authority to obtain insurance compensation , the insurance company will compensation only those individuals and insurer to whom they are responsible. Creditors of the policyholder cannot take advantage of insurance compensation.

Article 914 : Unless otherwise stated , the insuring party has the right to leave the property having suffered damages to the insurance company and claim its replacement .

#### **Party IV – Transportation Insurance**

Article 915 . Unless otherwise stated , in the matter of transportation insurance the insurance company is responsible for any loss or damage suffered to properties being transported on land or on the water other than the ocean ,from the date it has been given to the transporter to the date it has been received by the addressee.

Article 916 . The cost of insurance in addition to the local of merchandise insured includes freight charges and other expenses until the goods are delivered to the final destination .When goods are delivered to the final destination just profit based on common custom is applicable provided it has been entered separately in the insurance contract .

Article 917 . The contract concerning insurance transportation must have the following items in addition to the specifications of Article 898 :

1. The transportation means and route followed
2. The name and commercial title of the transporter
3. The period of transportation , if determined by the transporter and the addressee
4. The place of receipt of goods by the addressee and the place of receipt of goods by the transporter

Article 918 . The insurance company is responsible for damages caused by fraud and irregularities by the transporter's employees.

Article 919 : If transportation company should be postponed or if the route and method of transportation should be changed, the insurance contract is not invalidated.

#### **Part V – Life Insurance**

Article 920 . The life of a person may be insured either by himself or by a third person , but in order for the contract to be valid the third person should have an interest in the life of the person he has insured . A contract concerning the health

insurance of a mentally incompetent or insane person is allowed but a contract conditioned to their death is not allowed .In either case, if death should occur , half of the fees collected until the date of death is returned to the insuring party.

Article 921 . An insurance company may insure a person for a definite period of time by indicating the probability and condition of life expectancy in the insurance policy .

Article 922 . In the life insurance contract , in addition to the specifications of Article 898 , the name , age business ,and health condition of the person whose life is insured is entered . This agreement can be made either to the "named " or "the order of " but it cannot be made to the bearer .

Article 923 . If the person whose life is insured should die while the contract is in process , the insurance is not recognized .

Article 924 . In case of default of the insurance premium , the provisions of Article 902 are recognized and the insurance and the insurance company does not have to bring a case concerning this matter .

If the policy holder refuses to pay what he has promised , he cannot ask for refund of the payment which he has paid to the company .

However , if the policy holder has paid the amount for more than three years he can, after deducting one per cent from the total , apply for two thirds of the remainder .

Article 925 . The suicide of a person who has insured his life against the risk of death invalidates payment for death by the insurance company , but if the suicide should occur under circumstances beyond the control and determination of the insured , it does not invalidate the insurance .

If a beneficiary of an insurance policy should be convicted to take advantage of the insurance , and the insurance benefits go to the heirs of the person murdered.

Article 926 . A person can insure his life for whatever sum he wishes , and can insure with more than one company .

Article 927 . The authority to claim and settle rights resulting from a life insurance contract between a company and a third person belongs directly to the third person . If in the contract there should be a stipulation concerning the inheritance of a third person, according to Paragraph 1 this person has direct rights against the insurance company . A husband and wife can , on the basis of this agreement , execute two policies on the life of each other.

Article 928 . Just as the insuring party can determine the benefactor at the time of the agreement , so he can determine him after the agreement . The insurer may change the beneficiary , but if he has stated in the contract that he does not have

the right to change the beneficiary and gives the contract to the beneficiary , then he cannot change the beneficiary .

Article 929 . In case of bankruptcy or liquidation of the insurance company , claims of those who are benefiting on the basis of recognized contracts are restricted to the return of the premiums without interest that have been paid for each contract until the date of the ruling of bankruptcy or liquidation .

Article 930 . The insured may , without previous notice , travel in Afghanistan or abroad on land , sea or in the air.

A life insurance contract in time of peace and in time of armed mobilization or during internal strife and civil wars is valid unless otherwise stated . The contract is cancelled only at the start of war with a foreign country . In such case , the premium received for anticipation of death is returnable without interest.

Article 931 . The insurance payments , based on the Tontines system , are payable on a fixed date to the beneficiaries as , for example , a life annuity which has fixed installments.

#### **Part VI - Accident Insurance**

Article 932 . Accident insurance is a contract on the basis of which the insurance company promises to pay , in return for a fee , a certain lump sum and / or income in case of sickness or injury which affects the normal income of the insured , or in case of the death of the insured person because of an accident the nature of which has been defined ,or because of temporary or permanent disability of the insured . This payment is made to the insured or to his heirs or other specified person or persons who legally replace him as far as his rights are concerned . The insurance contract can be made directly by the insuring party , or a person can the contract in favor of one or many persons. Accident insurance by a group or a society is also possible . In such case it is not necessary that the names of the insured parties be mentioned . The profession or occupation is sufficient.

Article 933 . The insurance contract may be made to protect the insured from damages cased to him because of an accident . These contracts may also be made to settle damages resulting from an accident that the insured party might have to settle.

Article 934 . In respect to accident insurance , the company is required to include the following provisions in the agreement:

1. In case the accident should result in death , whether at once or in the period of one year from the date of the accident .
2. In case the accident should cause permanent disability .
3. In case the accident should cause temporary disability to work , the insured party is compensated on a day –by – day basis as long as the disability lasts.

Article 935 . Unless otherwise stated , the insurance company must pay the medical expenses actually paid by the insured party in addition to compensations mentioned in the contract .

Article 936 . The receipt of an insurance award from the insurance company does not invalidate the right of the insurance receiver to make claim against a third person whose mistake and fault is involved. The third person must , regardless of the insurance , compensate the person who has lost . In other cases relating to accident insurance , the regulations of life insurance apply.

## **Part VII Agricultural Insurance**

Article 937 . Any kind of crop , cut or uncut , can be insured at any time of the year.

Article 938 . Agricultural insurance is valid for the period it has been contracted . The insurance period may cover a second damage after compensation has been paid for a previous damage . The extent of damage is determined by a mediator appointed by both parties .

Article 939 . Continuation of the insurance period in agricultural insurance companies which are based on the confidence of both parties is as long as the company continues . However, both the company and the stockholders at the end of each year may cancel the agreement . Condition which are contrary to this are valid.

Article 940: It is permissible to insure agricultural and domestic animals against any kind of communicable disease.

## **Part VIII - Theft Insurance**

Article 941 . In order to protect a person against theft or persons who suffer from the loss caused by theft , it is possible to make an insurance contract against theft.

## **Part IX - Passage of Time**

Article 942 . Any case resulting from the contract of insurance loses its effect two years from the date of the dispute.

Article 943 . After the issuance of this law , the following laws are discarded and replaced by this law: (1) commercial books law: (2) brokerage law : (3) commercial law : and (4) commercial registration law

Article 944 This law is applicable 2 months after the date it is issued

Article 945 . The authority to execute and apply this law rests with the Ministry of commerce.

We order and ordain the enactment and execution of this law among other laws of the country. Dated 21 Qaus 1334