

beneficiary is not stated the cheque shall be deemed to be 'to bearer'.

(3) A cheque made payable in Iraq and marked 'not negotiable' shall not be paid except to the bearer who received it marked as such.

Article 144. - (1) A cheque may be drawn to the drawer's or another person's order.

(2) A bank may at the same time be the drawer and drawee.

Article 145. - A stipulation in the cheque for payment of interest is void.

Article 146. - The drawer shall be liable to pay the sum of the cheque and any stipulation by the drawer exonerating himself of such liability shall be null and void.

Article 147. - (1) A cheque made payable to a named person shall, regardless of whether it is made 'to order' or not, be negotiable by indorsement.

(2) A cheque made payable to a named person may not be negotiated, if marked 'not to order' or any other similar term, except in accordance with the provisions relating to the assignment of a right.

(3) Indorsement may be made to the drawer or any other liable party; such person may re-indorse the cheque.

Article 148. - Indorsement to the drawee shall be tantamount to quittance, save when the drawee bank has several branches and the indorsement is made in favour of a branch other than that on which the cheque is drawn.

Article 149. - (1) Save where otherwise stipulated, an indorser is liable for payment of the value of the cheque.

(2) The indorser may ban re-indorsement of a cheque in

which case he shall not be liable on the cheque to holders thereof by subsequent indorsements.

Article 150. - The possessor of a cheque negotiable by indorsement is deemed to be its lawful holder if he proves that he has title thereto by consecutive uninterrupted indorsements, even when the last indorsement was in blank; crossed indorsements shall be deemed to be void in this regard. Where a blank indorsement is followed by another indorsement, he who subscribed his hand to the latter indorsement shall be deemed to be the person to whom the right to the cheque has passed by virtue of the blank indorsement.

Article 151. - Where a person loses possession of an indorsable cheque as a result of an incident, the person to whom this cheque has passed shall not be required to abandon possession thereof if he proves his right thereto in the manner set down in Article 150 hereof, unless he has acquired possession thereof in bad faith or had committed a gross fault in acquiring possession thereof.

Article 152. - An indorsement made on a cheque 'to bearer' renders the indorser liable in accordance with the stipulation for recourse; such indorsement shall not result in making the instrument a cheque 'to order'.

Article 153. - (1) An indorsement made in the wake of a protest after the expiry of the time limit for presentment of the cheque shall produce only the effects of the assignment of a right.

(2) An indorsement which is not dated is deemed to have been made before the protest or before the expiry of the time limit for presentment of the cheque, unless it is established otherwise.

(3) Indorsements may not be pre-dated; pre-dating indorsements shall be deemed to be a forgery.

Article 154. - (1) An accommodation party may guarantee the

payment of the entire or part of the value of the cheque.

(2) The accommodation must be from a third party other than the drawee and may also be by any of the signatories of the cheque.

Article 155. - (1) A cheque is payable on sight and any contrary provision shall be null and void.

(2) A cheque presented for payment before the date stated thereon purporting to be the date of issue shall be payable on the date of presentment.

(3) Where the consideration for payment is less than the amount of the cheque, the holder may require the drawee to pay the consideration available as part payment of the cheque value, make an entry to that effect on the back of the cheque, and issue him with a certificate to that effect; the right of recourse on the sum unpaid is proved by such certificate or by a protest.

Article 156. - (1) A cheque drawn and made payable in Iraq shall be presented for payment within ten days.

(2) Where the cheque is drawn abroad and made payable in Iraq it must be presented within sixty days.

(3) The time limits set down in the preceding two paragraphs begin to run from the date on the cheque purporting to be the date of issue.

(4) Presentment of the cheque to a bank which requires by telephone or telex freezing the value thereof with the drawee bank is tantamount to presentment for payment.

Article 157. - Where a cheque is drawn between two countries using different calendars, the date of its issue shall be adjusted to the corresponding date of the calendar year of the place of payment.

Article 158. - (1) The drawee may pay the value of the cheque after the expiry of the time limit for presentment.

(2) Objection to the payment of the cheque shall not be

allowed except where it is lost or the holder is adjudged insolvent.

(3) In spite of the drawer's objection to payment of the cheque, the bank must pay the value thereof, in other than the two cases provided for in paragraph (2) of this Article; the court may not decree to ban payment even where an action on the main issue has been initiated.

Article 159. - Where the drawer dies, is adjudged insolvent or becomes incapacitated after issuing the cheque, none of its effects shall be altered, with due consideration of the provisions of the tax laws.

Article 160. - (1) Where several cheques are presented simultaneously and the consideration is insufficient to pay their entire value, due regard must be had of the dates of their issue.

(2) When all the cheques presented originate from the same cheque booklet and have the same date of issue the cheque bearing the first serial number shall have preference, unless it is proved otherwise.

Article 161. - (1) Where it is stipulated that a cheque be paid in Iraq in a foreign currency, its value must be paid in the currency of Iraq converted at the rate of exchange prevailing on the date of presentment; where payment is not effected on the date of presentment, the holder may require payment of the value of the cheque converted into the currency of Iraq at the prevailing rate of the Central Bank of Iraq either on the date of presentment or of payment.

(2) In all cases, dealings in cheques may not be contrary to the laws of the Central Bank of Iraq, the Foreign Exchange and the directives issued pursuant thereto.

Article 162. - An accommodation party who has incurred liability in case of the loss of a cheque 'to order' shall be discharged of

said liability after six months if no claim is invoked nor an action is initiated during the said limit.

Article 163. - (1) The owner of a cheque to bearer which is lost or destroyed may lodge an objection to payment of its value with the drawee and must give the number, sum, name of the drawer and such other particulars which may help to identify the cheque, as well as the circumstances of the loss or perishing; when it is impossible to furnish some of the foregoing particulars the reasons therefore must be stated; if the objector has no domicile in Iraq he must elect a domicile therein.

(2) When the drawee receives the objection he must refrain from paying the value of the cheque to whoever has possession thereof and must set aside the consideration for payment thereof until the matter is decided.

(3) The drawee shall at the objector's cost cause an advertisement to be made of the fact in a daily newspaper giving the number, sum of the lost or destroyed cheque and the names and addresses of both the drawer and objector; any disposal in regard to the cheque after the date of the foregoing advertisement shall be null and void.

Article 164. - (1) The person having possession of the cheque mentioned in Article 163 hereof may dispute the objection with the drawee, who must receive the cheque from him against receipt; the name and address of the possessor of the cheque shall then be sent to the objector by registered letter.

(2) He who has possession of the cheque shall send notice by registered mail to the objector requiring him to initiate action claiming title to the cheque within thirty days of the receipt date of such notice; the notice shall state the causes which led to possession of the cheque and the date.

(3) If the objector fails to bring action to support his claim of entitlement to the cheque within the time limit set down in paragraph (2) of this Article the court shall at the request of the person having possession of the cheque dismiss the

objection; in which case the possessor of the cheque shall in regard to the drawee be deemed to be its lawful owner.

(4) If the objector initiates an action claiming title to the cheque, the drawee may not pay its value except to either of the litigating parties who produces to him a final judgement establishing title to the cheque or an amicable settlement approved by both parties acknowledging him to be the title holder; the court shall decide on the entitlement action in accordance with the provisions relating to recovery of movables and the note to bearer provided for in the Civil Law.

Article 165. - (1) Where the possessor of a cheque fails, within six months from the date of filing the objection stipulated in Article 164 hereof, to claim payment of the value of the cheque, the court may, at the request of the objector, decree that he is the rightful owner of the cheque and to receive its value from the drawee.

(2) If the objector fails to present the petition as stated in paragraph (1) of this Article, or if he submitted a petition which was dismissed by the court the drawee must re-credit the consideration for payment to the drawer's account.

Article 166. - (1) The drawer or holder of a cheque may cross it; the crossing shall have the effects mentioned in the following Article.

(2) Crossing shall be by drawing two transverse parallel lines on the face of the cheque.

(3) Crossing may be general or special.

(4) When no writing is made between the lines or the word 'bank' or any other word indicating this meaning is inserted therein, the crossing is general; when the name of a specific bank is inserted within the lines, the crossing is special.

(5) A general crossing may be transformed into a special one but a special crossing cannot be changed to a general crossing.

(6) The cancellation of the crossing or of the name of the bank inserted within the lines shall be deemed null and void.

Article 167. - (1) A drawee may not pay a cheque generally crossed except to one of his clients or to a bank.

(2) A drawee may not pay a cheque specially crossed except to the bank whose name is written within the lines or to the customer of such bank; however, the bank whose name is written within the lines may designate another bank to receive the value of the cheque.

(3) A bank may not acquire a crossed cheque except from a client or another bank nor may it receive the value thereof on behalf of other than the foregoing parties.

(4) A drawee who fails to observe the foregoing provisions shall be liable to pay damages up to the value of the cheque.

(5) The word 'client' in this Article means any person who has an account with the drawee and has obtained or has a right to obtain a cheque booklet therefrom.

Article 168. - (1) The drawer or holder of a cheque may stipulate that it be not paid cash by writing on the face thereof 'to be entered into the account' or any other writing indicating the same meaning; in such case, the drawee shall discharge the cheque by entries in his books, i.e. entry in an account, bank transfer or set off; said entries are tantamount to payment.

(2) Cancellation of 'to be entered into the account' shall be disregarded.

(3) Where the drawee fails to observe the foregoing provisions he shall be liable for damages up to the value of the cheque.

Article 169. - (1) The holder of a cheque may have recourse against the drawer, indorsers and other parties liable thereon when it is presented within the prescribed time limit but not honoured and the fact is established by a protest. In lieu of a protest, failure to pay may be established by a statement, dated

and written on a cheque itself, to that effect from the drawee stating the date of presentment of the cheque.

(2) The writing of such statement on the cheque may not be refused when requested by the holder, even when the cheque stipulates 'recourse without costs'; however, the drawee may request a grace period not extending beyond the day following that of the presentment of the cheque, even when the presentment occurs on the last day of the time limit set therefor.

Article 170. - Dishonouring a cheque shall be established in the manner provided for in Article 169 hereof before expiry of the time limit for presentment; but where presentment is made on the last day of such time limit, the dishonouring may be established on the work day which follows.

Article 171. - (1) Where the cheque is not presented, protested or alternative action is not taken in respect thereof within the prescribed time limits, due to a force majeure, the time limits prescribed shall be extended until the force majeure has ceased.

(2) The holder of a cheque shall without delay sent notice to his indorser of the force majeure and enter such notice, dated and signed, on the cheque or the paper attached thereto; the said notice shall be served by one indorser to his predecessor and so on up to the drawer, as stipulated in Article 104 hereof.

(3) On cessation of the force majeure the holder must present the cheque for payment without delay and where relevant protest or take such alternative action as is necessary.

(4) Where the force majeure continues for more than fifteen days calculated from the date on which the holder served notice on his indorser of the force majeure, even when such date happens to be before the expiry of the time limit for presentment of the cheque, recourse may be made against the parties liable thereon without having to present, protest or take alternative action in regard to the cheque, save when a longer time limit is stipulated in another law for the right of recourse.

(5) Matters related to the person of the holder of the cheque or to the person of whom the holder appointed to present or protest the cheque shall not be deemed to be a force majeure.

Article 172. - The holder of a cheque reserves the right of recourse against the drawer even when the holder fails to present it for payment to the drawee, to protest or carry out any alternative action within the legal time limit, unless the drawer had provided the consideration for payment which remained with the drawee until the expiry of the time limit for presentment after which the consideration ceased to exist through an act not attributed to the drawer.

Article 173. - The drawee shall alone be liable for the damages resulting from the payment of the value of a cheque where the drawer's signature was forged or the particulars of its text had been altered, provided the fault is not attributable to the drawer whose name is shown on the cheque; any stipulation otherwise shall be null and void. The drawer shall be particularly deemed to be at fault if he fails to exercise the care to safeguard the cheque booklet delivered to him which an ordinary man would normally exercise.

Article 174. - A cheque, other than 'to bearer', may be drawn in a set, when it is drawn in Iraq and made payable in a foreign country, or vice versa.

Article 175. - (1) Actions of recourse by the holder of a cheque against the drawer, indorsers and other parties liable on the cheque shall be barred after six months from the expiry date of the time limit for presentment.

(2) Actions of recourse by one liable party against another shall be barred after six months from the date of payment by a party liable or from the date of claiming payment through the courts.

(3) Actions of recourse by the holder against the drawee shall be barred after three years from expiry of the time limit for presentment of the cheque.

Article 176. - (1) Where an action has been initiated the time limitation stipulated in Article 175 hereof shall begin to run only from the date of the last action taken thereon.

(2) The foregoing time limitation shall not apply if the debt is established by a judgement or when it is acknowledged by a separate instrument in such manner which results in re-creation of the debt.

Article 177. - The prescription by time limitation of an action claiming the value of a cheque shall not bar the holder to claim from the drawer who had not provided, or had provided and recovered, all or part of a consideration for payment, to return what he had unlawfully taken.

Article 178. - Where a criminal case has been brought against the drawer for any of the cheque offences stipulated in the Penal Law, the holder of the cheque who claimed the civil right may apply to the competent court to enter judgement in his favour for payment of a sum equal to the unpaid part of the value of the cheque, as well as legal interest on such sum which begins to run from the date of presentment of the cheque for payment, in addition to damages, where necessary; the holder, may, if he elects to do so, claim his rights before the civil courts.

Article 179. - In commercial matters, the creditor may oblige the debtor to pay the debt by cheque where the sum of the debt exceeds ten thousand dinars.

CHAPTER 4
COMMON PROVISIONS TO NEGOTIABLE INSTRUMENTS

Article 180. - (1) Service of notice of a protest for non-acceptance or for non-payment must be through a notary public.

(2) Service of the notice of a protest for non-acceptance or for non-payment shall be at the domicile of the person liable on the negotiable instrument.

(3) The protest for non-acceptance or for non-payment must contain a true copy of the negotiable instrument as well as the inscriptions thereon regarding acceptance, indorsement, accommodation, payment of the value thereof, where necessary, and other particulars; the protest shall further contain the notice to pay the value of the instrument and a note whether the person who is to accept or pay the value thereof was present or absent, the grounds of refusal of acceptance or payment of the value thereof, the failure or abstention of signing and the sum paid on account of the instrument, in case of a partial payment.

Article 181. - Save in the cases set down in the law, no instrument shall replace a protest.

Article 182. - (1) Where the date of maturity of a negotiable instrument falls on an official holiday payment of the value thereof may be claimed on the work day which follows.

(2) No action may be taken in regard to a negotiable instrument, such as presentment for acceptance or protest, except on a work day.

(3) Where a time limit has been fixed for taking any action in regard to a negotiable instrument and the last day thereof happens to be on an official bank holiday, it shall be extended to the work day which follows.

(4) The first day of the legal or contractual time limits for negotiable instruments shall not be included for calculation thereof.

Article 183. - The courts may not grant time limits for payment of the value of or take any action in regard to a negotiable instrument other than those provided for in the law.

Article 184. - The acceptance of a creditor to receive a negotiable instrument in settlement of his debt shall not entail the re-creation of such debt unless it is obvious that the intention of the contracting parties was to re-create the debt.

Article 185. - (1) An instrument which is made in connection with a commercial operation stipulating payment of a sum of money or delivery of goods may be negotiated by indorsement, if it is to the order of the creditor or by delivery if it is to the holder.

(2) Indorsement or delivery entails passing of all rights arising from the instrument to the new holder.

(3) In case of indorsement, the indorser shall be liable to pay the right established in the instrument on the date of maturity, unless it is agreed to make the liability dependent on the existence of the right at the time of indorsement.

(4) The debtors may not in all cases adduce against the holder of the instrument defences based on their personal relationships with the maker or the previous holders thereof, save where the holder had at the time of obtaining the instrument acted with intent to harm them.

PART IV - COMMERCIAL CONTRACTS & BANKING OPERATIONS

CHAPTER I
COMMERCIAL CONTRACTSSECTION ONE
COMMERCIAL MORTGAGE

Article 186. - The provisions of this section shall apply to every mortgage of a movable property made as security for a debt considered to be commercial in regard to both debtor and creditor or to either one of them.

Article 187. - (1) In order for a mortgage to be contracted and be enforceable against the debtor and third parties, the possession of the mortgaged property must pass to the mortgagee or to a trustee appointed by both contracting parties.

(2) The creditor mortgagee or the trustee shall be deemed to have possession of the mortgaged property:

- (a) if it is placed at his disposal in such manner as will lead third parties to believe that the property has entered his custody;
- (b) if he receives an instrument representing the mortgaged property which vests a right unto the possessor to take delivery thereof.

Article 188. - The right to a mortgage is transferred by delivery of the documents establishing it; where the document has been deposited with a third party, delivery of the receipt of deposit shall be deemed to be a delivery of the document itself, provided the document is identified adequately (negating ignorance) in the receipt and provided the depositary accepts possession of the document on behalf of the mortgagee; in such case, the depositary shall be deemed to have abandoned every

right to withhold the document for his own benefit for a cause preceding the mortgage, unless he had reserved said right on accepting possession of the document on behalf of the mortgagee.

Article 189. - (1) Rights established by nominal instruments shall be mortgaged by an assignment to that effect and shall be entered in the books of the party issuing the instrument.

(2) Rights established by a promissory note to order shall be mortgaged by an endorsement stating that it is for mortgage or any other words purporting the same meaning.

(3) The mortgage referred to in paragraphs (1) and (2) of this Article shall be effective against the debtor without being served on or accepted by him.

Article 190. - The mortgagee shall, if requested to do so, deliver to the debtor a receipt stating the nature, type, quantity, weight and other identifying particulars of the mortgaged item.

Article 191. - The mortgagee shall use for the debtor's account all the rights and proceedings relative to the mortgaged item and shall receive the value, profits, interest and other resultant sums thereof; he shall deduct the sums received from the debt subject matter of the mortgage.

Article 192. - (1) Where the mortgage is for a fungible property, the mortgage remains valid even where another fungible item has been replaced for the mortgaged item.

(2) Where the mortgaged property is not fungible, the debtor may replace it by another item provided an agreement to that effect is contained in the mortgage deed and provided also that the replacement is acceptable to the creditor.

Article 193. - (1) Where the debtor fails to pay the mortgage money (debt) the creditor may, after the lapse of seven days from the date of a notice served on the debtor requiring payment of the debt, apply to the court for leave to sell the mortgaged item

as of urgency, in accordance with the Law of Civil Procedure and in the manner designated by the court.

(2) The mortgagee shall have a priority right over ordinary creditors to collect his debt - principal, interest and expenses - from the resultant price of the sale.

Article 194. - Where the mortgage covers several properties, the mortgagee is entitled to designate the property to be sold, save where otherwise agreed in the mortgage deed with the debtor; the sale shall in all cases cover not more than such property which is adequate to pay the creditor's debt.

Article 195. - Where the mortgaged item is liable to perish or to sustain damage or where its maintenance necessitates exorbitant expenses and the debtor is unwilling to offer a replacement, the creditor may apply to the court for leave to sell it, in which case the mortgage is transferred to the resultant of the sale.

Article 196. - A stipulation in the mortgage deed or an agreement concluded thereafter which vests unto the mortgagee creditor a right if the debt is not paid on the date of maturity to own or sell the mortgaged property without observing the provisions of Article 193 hereof, shall be null and void.

Article 197. - Where the subject matter of the mortgage are securities or other negotiable instruments which came into the mortgagee's possession pursuant to another cause which preceded the mortgage, he shall be deemed to have possession thereof in his capacity as creditor mortgagee when the mortgage was created.

Article 198. - The owner of securities or other negotiable instruments which had been offered by other than the debtor, shall not be liable to pay the debt established by the mortgage except in his capacity as guarantor in rem.

Article 199. - A third party appointed by both parties to have possession of the securities or other negotiable instruments is deemed to have waived all his rights to withhold them on the strength of a cause precedent to the mortgage, unless he had reserved said right when he accepted to take possession of the mortgaged instruments for the account of the creditor mortgagee.

Article 200. - Where the entire value of the security or any other negotiable instrument had not been paid at the time when the instrument was offered as pledge, the debtor shall when called upon (requested to do so) pay the unpaid part thereof at least two days before the date of maturity thereof; if he fails to pay, the mortgagee may apply to the court for leave to sell the instrument; he shall pay the outstanding part of the value of the instrument from the proceeds of the sale and keep the balance as security for his debt.

Article 201. - The order of the mortgagee's right shall remain valid as regards the contracting parties and third parties in terms of the profits of the mortgaged instrument and its interest, as well as the instruments which will replace it and its value where it had been paid prematurely (prior to the date of maturity).

SECTION TWO DEPOSIT IN PUBLIC DEPOTS

Article 202. - (1) The deposit in public depots is a contract by which the depositary - natural or juristic person - undertakes to receive and keep goods for the depositor or the person to whom ownership or possession of such goods passes by virtue of the documents representing them.

(2) Premises where goods are accepted as deposits but which do not issue a certificate of deposit and a mortgage deed shall not be subject to the provisions of public depots.

(3) A public depot vested with power to issued negotiable documents representing the goods deposited may not be established or set up except pursuant to a licence from the competent authority and in conformity with the conditions and terms set forth in a regulation.

Article 203. - (1) The depositor shall submit to the depositary correct particulars regarding the type, nature and the value of the goods deposited.

(2) The depositor may inspect and take samples from the goods delivered to the depositary for his account.

Article 204. - (1) The depositary shall be liable for the goods deposited with him up to such sum which does not exceed that estimated by the depositor.

(2) The depositary shall not be liable for the perishing of or damage suffered by the goods as a result of force majeure or because of the nature of packaging of the same.

Article 205. - A depositary may petition the court to authorise him to sell the goods in case of impending deterioration, if it is impossible to receive instructions from the depositor regarding action in respect thereof; the court shall specify the method of sale.

Article 206. - (1) The depositor shall receive a Certificate of Deposit stating his name, occupation, domicile, as well as the nature, type and quantity of the goods and such other particulars which may be needed to identify and fix the value thereof; as well as the names of the depositary and the company insuring the goods (if any), and a note showing the dues and taxes accruing in respect thereof.

(2) A mortgage deed containing the same particulars as those stated in the Certificate of Deposit shall be attached to the Certificate of Deposit.

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(3) The depositary shall keep certified true copies of both the Certificate of Deposit and the mortgage deed.

Article 207. - (1) A Deposit Certificate and mortgage deed may be issued in the name or to the order of the depositor.

(2) Where the Deposit Certificate and mortgage deed are to the depositor's order, he may assign them together or separately, by indorsement.

(3) The endorsee of a Deposit Certificate or a mortgage deed may apply to have the indorsement and his address entered on the copy kept by the depositary.

Article 208. - (1) The indorsement of the Deposit Certificate and the mortgage deed must be dated.

(2) Where the mortgage deed only is indorsed, the first indorsement shall be coupled with the condition of 'order' and must show the principal sum and interest of the mortgage, the date of maturity, the name, occupation and domicile of the creditor and the indorser's signature.

(3) The first indorser shall apply to have the indorsement of the mortgage deed and the relevant particulars entered in the books of the depositary and a note to be made on the mortgage deed to that effect.

Article 209. - (1) The holder of both the Deposit Certificate and the mortgage deed is entitled to take delivery of the deposited goods; however, he may subdivide the goods into lots and obtain a Deposit Certificate and mortgage deed for each such lot, to replace the Deposit Certificate and the mortgage deed of the whole consignment.

(2) The holder of the mortgage deed only (without the Deposit Certificate) has a mortgage right over the deposited goods.

(3) The holder of the Deposit Certificate only (without the mortgage deed) is entitled to recover the deposited goods provided he pays the debt secured by the mortgage deed, if matured;

where the debt has not matured, he may recover the goods before the maturity date of the debt if he deposits with the depositary an adequate sum to pay off the debt and interest up to the date of maturity; this provision shall apply where the debt matures and the holder of the mortgage deed fails to present himself to receive the debt; however, a part of the goods may be recovered against payment of a sum commensurate with such part.

Article 210. - Where the secured debt is not paid on the date of maturity, the holder of the mortgage deed only, without the Deposit Certificate, may after five days from notice to pay served on the debtor apply of the court for leave to sell as of urgency the secured goods in accordance with the provisions of the Civil Procedure Law; the court shall determine the method of sale.

Article 211. - (1) The mortgagee shall collect his debt from the price of the goods, after deduction of the following sums;

- (a) the expenses of sale, storage and upkeep of the goods;
- (b) the taxes and dues accruing on the goods.

(2) Where the holder of the Deposit Certificate is not present at the time of sale of the goods, the sum in excess of the sum due to the holder of the mortgage deed shall be deposited with the court.

Article 212. - (1) The holder of a mortgage deed may not have recourse against the debtor or indorsers unless the mortgaged goods have been sold and until it is established that the resultant is not adequate to pay the debt.

(2) Recourse against the indorsers shall be made within fifteen days of the date of sale of the goods, and failing which the holder forfeits his right of recourse.

(3) In all cases, the holder of the mortgage deed forfeits his right of recourse against the indorsers if he fails to commence the sale proceedings of the mortgaged goods within thirty days of the maturity date of the debt.

Article 213. - Where the goods suffer an accident, the holder of the Deposit Certificate or the mortgage deed shall have the same rights on the insurance sum which becomes due on the occurrence of the accident as those to which he is entitled on the goods.

Article 214. - (1) Any person who loses the Deposit Certificate may apply to the court of first instance within the jurisdiction of which lies the public depot to issue an order for delivery to him of a copy of the lost Certificate, provided he proves his title thereto and produces a guarantor.

(2) A person who loses the mortgage deed may apply to the court to issue an order for payment of the secured debt on maturity, provided he produces a guarantor; where the debtor fails to comply with such order, the person in whose favour the order was made may apply for the sale of the mortgaged goods by applying the provisions laid down in Article 210 hereof, provided that the indorsement in his favour has been entered on the copy kept by the depository and also provided the notice requiring payment contains the particulars of said indorsement.

Article 215. - (1) Where the depositor fails to recover the goods on the expiry of the deposit contract, the depository may apply for the sale thereof by following the proceeding laid down in Article 210 hereof; the depository shall collect, from the resultant of the sale, the amounts due to him and hand over the remainder to the depositor or have it deposited in the Treasury of the Court.

(2) The provision of paragraph (1) of this Article shall apply if the contract of deposit is for an unlimited term and the depositor fails after one year of the date of deposit to recover the goods or to express his wish to propagate the contract of deposit.

Article 216. - Any person who establishes or sets up a public depot without obtaining the licence stipulated in Article 202(3) hereof shall be punished with a fine of not less than five

hundred nor more than five thousand dinars and the depot shall be closed.

SECTION THREE CURRENT ACCOUNT

Article 217. - A current account is a contract by which two persons agree to have entered in an account by way of reciprocal and overlapping payments the debts which arise from operations effected between them, such as the delivery of monies, property, commercial papers (negotiable instruments) capable of ownership and others, and to replace the settlement of each payment of such debts separately by a final settlement resulting in the balance of the account on closing it.

Article 218. - The ownership of monies and property delivered and credited to the owner in a current account shall pass to the party who received the same.

Article 219. - A debt existing prior to the contract of a current account shall be deemed to have been renewed where it has been entered in the current account by agreement of both parties; the rules of time limitations and interest which would have run prior to entering the debt in the current account shall not run on said debt.

Article 220. - The entry of an instrument in the current account is valid provided its consideration is not taken into account where it is not paid on the date of maturity, in which case it may be returned to its owner and the entry reversed as stated in Article 237 hereof.

Article 221. - Individual entries in the current account, in their total, shall not be divisible before closure of the account and extraction of the balance.

Article 222. - No set-off may be made between one item in the current account and another in the same account.

Article 223. - Individual entries in the current account shall not cause the forfeiture of the rights of both parties relative to contracts and transactions from which such individual entries have arisen save where otherwise agreed.

Article 224. - Each party to a current account may at any time dispose of his credit account except where otherwise agreed.

Article 225. - (1) Payments into a current account do not produce interest unless it is agreed otherwise; interest shall be calculated according to the rate agreed provided it does not exceed the limit set down in the Law.

(2) No interest on the balance may be calculated save where the current account is between a bank and another person; when computing the interest in this case consideration shall be had of the time limits fixed by the bank for entering interest in the account so long as the account remains open.

Article 226. - (1) All debts arising from business relations effected by both parties to the account shall be entered by the operation of law in the current account save when such debts have been secured by legal or contractual securities; or where it has been agreed to exclude the debts from the account.

(2) Debts accompanied by contractual securities established by the debtor or a third party may be entered in the current account where all the interested parties have agreed expressly to do so.

Article 227. - Where it is agreed to enter a debt accompanied by a contractual security in the current account, said security is transferred to guarantee the balance of the account on closure in the sum of the debt without regard to such changes to the account which may occur during its operation save where otherwise agreed.

Article 228. - Where the law provides that certain measures must be taken to give effect to or adduce the security against a third party neither the transfer to the balance nor the adducing against a third party may be exercised except from the date of completion of such measures.

Article 229. - (1) Where the individual entries of the current account contain cash debts valued in various currencies or non-fungible articles, both parties may agree to have them entered in the account provided they are entered in separate columns where consideration shall be had of the similarity of payments contained therein and provided both parties declare that the account remains united in spite of the plurality of its entries.

(2) The balance of the foregoing columns must be transferrable so that at the time fixed by both parties or at the latest on closure of the account a set-off may be made in regard thereof in order to extract one single balance.

Article 230. - (1) Where a term has been fixed for a current account it must be closed on the expiry of said period; it may, however, be closed prematurely by agreement of both parties.

(2) Where a term has not been fixed for the current account it may be closed at any time at the discretion of either party with due consideration of the notice time limits agreed.

(3) The account shall be closed where either party has died, became incapacitated, of diminished capacity or adjudged insolvent.

Article 231. - Where an account has been opened between a bank and another person it shall be deemed to be closed at the end of the financial year of the bank; such closure shall not be deemed to be a final shut-down of the account, and the balance will be carried forward to the same account and its movement is resumed on the following day.

Article 232. - Where an account is finally shut the debt of the balance shall be considered as maturing unless the parties have agreed otherwise and where certain operations which must be entered into the account and which are still being transacted shall when entered tend to amend the sum of the balance, in which case the debt of the balance is deemed as maturing from the day following the last entry resulting from said operations.

Article 233. - The rules of the Civil Law shall apply to the prescription of the debt of the balance and interest; legal interest shall run on the debt of the balance from the date of closure of the account save where otherwise agreed.

Article 234. - Where a debt entered in the account is eliminated or its sum reduced due to a cause subsequent to its inclusion in the account the entry must be cancelled or reduced (as the case may be) and the account adjusted accordingly.

Article 235. - The creditor of either party to a current account may effect an attachment on such sum of the credit balance of the debtor which is owing to him from a third party at the time of effecting the attachment.

Article 236. - (1) Where either party to the account is adjudged insolvent, a mortgage established on the bankrupt's property after the date set by the court for suspension of payments to guarantee the probable debit of the balance may not be adduced against the Creditors' Assembly in the sum of the debit balance on the date of establishing the mortgage.

(2) The mortgage may be adduced against the Creditors' Assembly in regard to the difference, if any, between the sum of the debit balance on the date of establishing the mortgage and the sum of the balance on closure of the account, unless it is proved that the contracting party was, on the date of establishing the debt, aware that the debtor had suspended payments.

Article 237. - (1) Where the resultant discount of a negotiable instrument is entered in the current account the person who discounted the instrument may where the value thereof has not been paid on the date of maturity cancel the entry by a counter entry, even where the person who presented it for discount has been adjudged insolvent.

(2) A counter entry means entering a sum equal to the value of the negotiable instrument plus the amounts stipulated in Article 107 hereof on the debit side of the current account.

(3) A counter entry may not be made except in regard to such negotiable instruments the value of which had not been paid on the date of maturity; any agreement otherwise shall be null and void.

Article 238. - A case to rectify the current account is inadmissible even where the application is based on the commission of an error, inadvertence or repetition of the entry, in regard to entries made more than five years previously unless during said time a notice had been sent by either party to the other party requesting rectification of the account or where, in the case of an account opened with a bank, the customer proves that he has not received during said time limit any statement of account. No case related to a current account shall be heard after five years from the date of closure of the account.

CHAPTER 2 BANK OPERATIONS

SECTION ONE MONEY DEPOSITS

Article 239. - Money deposit is a contract authorising the bank to own the monies deposited therein and to dispose of them as is consistent with its professional activities; it must return fungible articles to the depositor.

Article 240. - (1) The bank shall open an account for the depositor wherein shall be entered the operations effected between both parties or such operations which are effected between the bank and a third party for the account of the depositor.

(2) Where both parties agree that an operation should not be entered in the account, then no entry shall be made in the account.

Article 241. - (1) A money deposit contract does not create a right for the depositor to draw from the bank sums in excess of the sums he has deposited therein.

(2) Where the bank carries out operations which render the depositor's balance in debit, the bank shall inform him immediately of the fact in order for him to adjust his situation.

Article 242. - The bank shall send a statement of account to the depositor at least once each year save where the agreement provides otherwise; the statement shall contain a copy of the account and the balance after the last transaction.

Article 243. - A money deposit is refunded on demand, save where otherwise agreed; a depositor may at any time dispose of all or part of his credit balance; the exercise of the foregoing right may be made conditional on giving notice or until the expiry of a certain specified term and the running of contractual interest ceases on the date of maturity unless another term is agreed.

Article 244. - The deposit and withdrawal shall be effected in the branch of the bank wherein the account was opened, unless otherwise agreed.

Article 245. - Where a depositor holds several accounts in the same bank or in branches of the same bank, each such account shall be considered to be independent of the other unless otherwise agreed.

Article 246. - A bank may open a joint account for two or more persons putting them on the same footing (equalising them) unless there is an agreement to the contrary, with due observation of the following terms:

- (1) A joint account is opened by all co-owners or by a person holding authority from the owners of the joint account which must be duly certified by a competent authority or by the bank; the agreement of the account holders shall be observed in regard to withdrawals;
- (2) Where a seizure is made on the balance of a co-owner of a joint account, it shall be valid in regard to the distrainee's share of the balance of the account on the date of notification of the bank; the bank shall stop withdrawal of the equivalent of the confiscated share of a joint account and shall notify the co-owners or their representatives of the seizure within not more than five days; the bank may after said time limit close the account if the co-owners failed to liquidate their relations which resulted from the seizure, when all of them shall be jointly liable to the bank on the debit balance;
- (3) The bank may not when effecting a set-off between the various accounts of one of the co-owners of a joint account include said account in the set-off except with the written approval of the co-owners;
- (4) Where a co-owner of a joint account dies or becomes legally incompetent the other co-owners must inform the bank accordingly and of their wish to continue the account within not more than ten days from the date of the death or becoming incompetent (as the case may be); the bank shall stop withdrawal from the joint account until a successor is appointed.

Article 247. - Cases related to money deposits shall prescribe after fifteen years to run from the date of the last entry in the deposit account.

SECTION TWO
LEASE OF SAFE DEPOSIT BOXES

Article 248. - Lease of safe deposit boxes is a contract by which a bank undertakes to place against remuneration a certain specified safe deposit box at the disposal of a lessee to take advantage thereof.

Article 249. - (1) One key to the safe deposit shall be delivered to the lessee and a duplicate key shall be kept by the bank; the bank may not deliver the duplicate key to any other person than the lessee.

(2) The key handed over to the lessee shall remain the property of the bank and must be returned to it on expiry of the term of the lease.

Article 250. - The bank may not permit any person other than the lessee or any person acting for him to use the safe deposit box.

Article 251. - The bank shall take all precautions to secure the safety of the safe deposit box and safeguard the contents thereof.

Article 252. - The lessee may not place in the safe deposit box such articles which may endanger its safety or that of the place where it is located.

Article 253. - Where the safe deposit box becomes threatened by a danger or it is revealed that it contains dangerous articles the bank must send immediate notice to the lessee requiring him to report to the bank to empty it or to remove the dangerous articles therefrom; where the lessee fails to report at the appointed time the bank may apply to the court for permission to open and empty the safe deposit box or to withdraw the dangerous articles therefrom in the presence of a person appointed by the court for the purpose; a report of the event shall be made out

stating the contents of the safe deposit box; where the danger is imminent the bank may on its own responsibility open and empty the safe deposit box or remove the dangerous articles therefrom without sending the aforementioned notice or seeking the permission of the court.

Article 254. - (1) Where the lessee fails to pay the rent of the safe deposit box on the dates of maturity the bank may, after the lapse of thirty days from the date of a notice sent to him requiring payment, consider the contract to be cancelled automatically; the bank shall recover the safe deposit box after sending notice to the lessee requiring him to report to open it and remove its contents.

(2) Where the lessee fails to report on the date fixed the bank may petition the court requesting permission to open and remove the contents of the safe deposit box in the presence of a person appointed by the court for this purpose; a report of the event shall be made out stating the contents of the safe deposit box.

The court may decree that the contents be deposited with the bank or a depository until an execution has been effected thereon.

Article 255. - A notice and caution sent to the lessee of the safe deposit box at the last domicile given to the bank shall be valid.

Article 256. - (1) A provisional or executory attachment may be effected on the safe deposit box.

(2) The attachment is effected by serving on the bank the contents of the document pursuant to which the attachment is being made; immediately upon receipt of the service the bank shall bar the lessee from using the safe deposit box and forthwith inform the lessee that an attachment has been effected on the safe deposit box.

(3) Where the attachment is provisional the lessee may

apply to the court for permission to withdraw some of the contents of the safe deposit box, to such extent as will not violate the creditor's rights.

(4) Where the attachment is executory the bank must open the safe deposit box and empty it in the presence of the distrainer and the execution officer; the lessee shall be informed of the date which was fixed for opening the safe deposit box; an inventory of the contents of the safe deposit box shall be made and delivered to the bank or the depositary appointed by the Execution Officer or any one acting for him until the sale is effected.

(5) Where the safe deposit box contains papers or documents not covered by the forcible sale they must be delivered to the lessee and if he is not present at the time of opening the safe deposit box they must be handed over to the bank for safe-keeping until they are claimed by the lessee or his heirs.

Article 257. - The bank may not in other than the cases provided for in the law open or empty the contents of the safe deposit box except with the permission and the presence of the lessee or alternatively by enforcing a court order.

SECTION THREE BANKING TRANSFERS (ACCOUNTING TRANSFERS)

Article 258. - (1) A banking transfer is an operation whereby a bank enters a certain specified sum in the debit side of the account of such person who orders in writing the transfer of such sum which is entered in the credit side of another account.

(2) The following may be effected by the foregoing operation:

- (a) transfer of a certain specified sum from one person to another each of whom has an account with the same bank or with two different banks;

(b) transfer of a certain specified sum from one account to another account both of which are opened in the name of the person who orders the transfer in the same bank or in two different banks.

(3) The agreement between the bank and the person ordering the transfer lays down the conditions for the issue of the order; however, the transfer order may not be to bearer.

Article 259. - Where a banking transfer is effected between two branches of a bank or between two different banks any objection by a third party regarding the transfer must be notified to the branch or the bank having the beneficiary's account.

Article 260. - The transfer order may be in regard to a sum actually entered in the account of the person making the order or amounts agreed with the bank to be entered in his account within a certain specified period.

Article 261. - It may be agreed that the beneficiary of a transfer order may present it in person to the bank instead of it being served on the bank by the person making the order.

Article 262. - (1) The beneficiary becomes the owner of the value of a banking transfer from the time it is entered in the debit account of the person making the order; a transfer order may be revoked until the foregoing entry is made.

(2) However, where it is agreed that the beneficiary shall himself present the order of transfer to the bank the person making the order may not revoke it with due consideration of the provisions of Articles 267 and 268 hereof.

Article 263. - The debt for the settlement of which the transfer order is made shall remain standing together with its securities and annexes until the value has been actually entered in the credit account of the beneficiary.

Article 264. - It may be agreed to postpone the execution of certain specified transfer orders - whether they are sent directly by the person making the order or are presented by the beneficiary - to the end of the day to be executed with other orders of the same kind which are presented to the bank on the same day.

Article 265. - Where the consideration for payment is less than the value stated in the transfer order and if the order has been made directly by the maker the bank may refuse to execute the order provided it notifies the person making the order accordingly without delay.

(2) Where the transfer order is presented by the beneficiary the bank shall enter into his account the partial consideration unless the beneficiary refuses; the bank must make a note on the transfer order purporting to the entry of the partial consideration or to the rejection made by the beneficiary.

(3) Where the bank refuses to comply with the order or the beneficiary refuses to accept the partial consideration as mentioned in the preceding two paragraphs, the maker of the order remains entitled to dispose of the partial consideration.

Article 266. - Where the bank fails to execute the transfer order on the first working day which followed the day of presentment the order shall be deemed to be null and void up to the amount which was not executed and hence it must be returned to the presenter against receipt; where a longer period than the foregoing has been agreed the unexecuted transfer order shall be added to such orders which are presented in the following days.

Article 267. - Where the beneficiary is adjudged bankrupt the maker of the order may object to the execution of the transfer order even though the beneficiary had received it himself.

Article 268. - The adjudication of bankruptcy of the maker of the order shall not bar the execution of the transfer orders

issued by him where they have been presented to the bank prior to the adjudication of bankruptcy save where the court decrees otherwise.

SECTION FOUR NON-DOCUMENTARY CREDITS

Article 269. - (1) A non-documentary credit is a contract by which a bank places at the disposal of the beneficiary a sum of money for a specified or unspecified period of time.

(2) Besides the contractual interest a lump sum annual commission accrues to the bank in consideration of a non-documentary credit.

Article 270. - (1) The bank may require the applicant for credit to supply a guarantee in personam or in rem before granting him the credit.

(2) The bank may reduce the sum of the credit if it becomes aware that the guarantee in rem or the guarantor's credibility has fallen below the sum of the credit, save where the beneficiary has increased the security.

Article 271. - The bank may cancel the credit, if the beneficiary has violated the duty of trust with it or has committed a gross fault in his relationships with the bank.

Article 272. - The credit shall terminate (lapse) by the death, loss of legal capacity, adjudication of bankruptcy or cessation of the juristic personality (if any) of the beneficiary.

**SECTION FIVE
DOCUMENTARY CREDITS**

Article 273. - A documentary credit is a contract by which a bank undertakes to open a credit at the request of the maker of the order for opening the credit in favour of the beneficiary against documents representing goods transported or ready for transport.

(2) A documentary credit contract is independent of the contract which occasioned the opening of the credit and the bank remains a stranger to the latter contract.

Article 274. - The bank which opened a credit must perform the conditions of payment, acceptance and discount which have been agreed in the credit contract if the documents conform to the particulars and conditions contained in the contract.

Article 275. - (1) A documentary credit may be revocable or irrevocable.

(2) A documentary credit is revocable unless it is expressly agreed otherwise.

Article 276. - A revocable documentary credit does not create any obligation on the bank towards the beneficiary; the bank may at any time amend or cancel it of its own accord or at the request of the maker of the order.

(2) Where the documents for which the credit is opened are presented during the validity of the contract prior to the cancellation of the credit and are in conformity with the particulars and conditions of the credit contract, the bank as well as the maker of the order shall be liable to the beneficiary.

Article 277. - (1) The bank's obligation in regard to an irrevocable documentary credit shall be absolute and direct towards the beneficiary and any bona fide holder of the commercial document drawn for performance of the contract which

caused the opening of the credit.

(2) An irrevocable documentary credit may neither be cancelled nor amended except by the agreement of all the parties concerned.

Article 278. - (1) An irrevocable credit may be confirmed by another bank which in turn shall be obligated absolutely and directly towards the beneficiary.

(2) A mere notification of the opening of an irrevocable credit sent to the beneficiary via another bank shall not be considered to be a confirmation by such other bank of the credit.

Article 279. - The bank shall verify that the documents are in conformity with the instructions of the person who ordered the opening of the credit.

(2) Where the bank rejects the documents it shall forthwith send notice of the rejection to the maker of the order, giving reasons.

Article 280. - (1) The bank shall not be liable where the documents appear to conform to the instructions received from the person making the order.

(2) The bank shall not bear any obligation relating to the goods in respect of which the credit was opened.

Article 281. - A documentary credit is neither assignable nor divisible unless the bank which opened it is authorised to pay all or part thereof to a person or a number of persons other than the first beneficiary pursuant to instructions issued by said beneficiary; an assignment is not effected unless it is approved by the bank; unless otherwise agreed one assignment only is permissible.

Article 282. - (1) Where the person who ordered the opening of the documentary credit fails to pay the value of the shipping documents which conform to the conditions of opening of the

credit within six months of the date of being informed of the arrival of said documents, the bank may sell the goods by public auction after notifying the date and place of the sale to the person ordering the opening; no award of the sale shall be made if the consideration does not amount to four-fifths of the documentary value of the goods and the costs; where said amount is not reached a second auction shall be held and the goods shall be sold for the consideration at which the auction is concluded.

(2) The provisions of paragraph (1) of this Article shall not apply to credits opened by Departments of the State and the Socialist Sector; in such case the stipulations of the mortgage shall apply to the goods.

SECTION SIX DISCOUNTS

Article 283. - (1) Discount is an agreement by which a bank undertakes to pay in advance the value of a negotiable instrument or any other negotiable document to the beneficiary of the document in consideration for conveyance of its ownership to the bank but the beneficiary remains bound to refund the value to the bank if the original debtor fails to pay.

(2) The bank shall deduct from the amount paid to the beneficiary of the discount interest on the sum of the instrument/document and commission where stipulated.

Article 284. - (1) The interest shall be calculated on the basis of the time which elapses up to the date of maturity of the document on the basis of a shorter period in regard to mortgage and other operations which provide for an undertaking by the beneficiary of the discount to refund whatever sum he had cashed before the maturity date of the document.

(2) Commission shall be estimated on the basis of the value of the document.

(3) A minimum rate may be fixed for the interest and the commission.

Article 285. - The beneficiary of a discount shall refund to the bank the face value of the document which was not paid.

Article 286. - (1) The bank shall have all the rights which are created by the document discounted vis-a-vis the principal debtor of the document, the beneficiary of the discount and the other obligees.

(2) The bank is vested, vis-a-vis the beneficiary of the discount, with a right of recovery of the amounts placed at his disposal without deduction of such interest and commission which was received by the bank; the bank is vested with said right in regard to the unpaid documents regardless of the cause of refusal to pay.

SECTION SEVEN LETTER OF GUARANTEE

Article 287. - A letter of guarantee is an undertaking issued by a bank upon the request of a customer (the maker of the order) to pay a certain specified or specificable sum to another person (the beneficiary) unconditionally and without any restrictions where this is required of it within the time limit stated in the letter; the letter of guarantee shall state the purpose for which it is issued.

Article 288. - (1) The bank may require the presentment of a guarantee in personam or in rem against the issue of a letter of guarantee.

(2) The security may be an assignment of the right of the maker of the order from the beneficiary.

Article 289. - A beneficiary may not assign to a third party his right which arises from the letter of guarantee save with the bank's approval.

Article 290. - The bank may not refuse payment to the beneficiary by reason of the bank's relation with the maker of the order or with the beneficiary or the maker's relation with the beneficiary.

Article 291. - (1) The bank shall be discharged of liability towards the beneficiary where it does not receive a request from the beneficiary to pay during the validity of the letter of guarantee unless it has been agreed to extend said validity prior to expiry.

(2) Where the bank has more than one branch claim for payment must be made to the issuing branch.

Article 292. - Where the bank pays off the sum agreed in the letter of guarantee to the beneficiary it shall subrogate him in having recourse against the maker of the order for the sum so paid.

Article 293. - The beneficiary may not claim payment of the value of the letter of guarantee for other than the purpose for which it is designed.

PART V - INTERNATIONAL SALES

CHAPTER 1 GENERAL PROVISIONS

Article 294. - An international sale is that which relates to goods transported or are ready for transport between two or more states.

Article 295. - The general provisions of this Chapter shall apply to the international sales provided for in this Part; the parties may however stipulate other conditions if their specific circumstances or requirements of international dealings so require.

Article 296. - A contract of sale concluded pursuant to the provisions of this Part shall be separate and will not affect the relationships which are created between the purchaser/vendor and the carrier by the contract of carriage, or between the purchaser and the bank pursuant to the documentary credit contract.

Article 297. - The contracting parties may make reference in regard to the detailed conditions of the sale to a model contract of sale.

CHAPTER 2 F.O.B. SALES

Article 298. - FOB sales are such sales where the goods must be delivered at the shipping port on board a ship designated by the purchaser to carry them.

Article 299. - In FOB sales the vendor has the following obligations;

- (1) to supply the goods in conformity with the conditions of the contract of sale;
- (2) to deliver the goods on board the ship designated by the purchaser in the designated port of shipping in accordance with customary dealing in said port and on the date or within the time limit agreed and must without delay notify the purchaser that the goods have been delivered on board of the ship;

- (3) when the goods are sold for export the vendor shall at his own responsibility and cost obtain an export licence or such other licences requisite for exporting the goods;
- (4) at his own expense effect the customary wrapping of the goods, save where it is customary to ship the goods without wrapping or where the nature of the goods does not necessitate the wrapping;
- (5) to pay the expenses for checking or scrutinising the goods, such as checking the type, measurement, weight or count of the goods as needed for shipping them;
- (6) at his own expense to provide the purchaser with the usual clean Bill of Lading which confirms delivery of the goods on board of the ship;
- (7) at the request, responsibility and expense of the purchaser render assistance as needed for obtaining documents issued in the country of shipping or of origin, other than those mentioned in paragraphs (3) and (6) of this Article which the purchaser needs for importing the goods to the country of arrival or for passing in transit through another country, where necessary;
- (8) at the purchaser's request and cost, to provide him with the Certificate of Origin;
- (9) to bear all costs payable in regard to the goods and be liable to all risks which may be suffered by the goods until the time when they pass actually the barrier of the ship in the designated port of shipping, inclusive of any dues, wages or costs collected on account of the export, as well as the costs of measures for placing the goods on board of the ship.

Article 300. - In FOB sales, the purchaser has the following obligations:

- (1) at his expense to charter or reserve the spaces needed on board of a vessel and notify the vendor in due time

- of the name of the vessel the loading quay and the dates of delivery aboard thereof;
- (2) to bear all expenses payable in respect of and be liable for all risks which may be suffered by the goods from the time when they pass actually the barrier of the ship in the designated port of shipping and to pay the price of the goods as stated in the contract;
 - (3) to bear such additional expenses resulting from delay in arrival of the ship until after the expiry of the time limit set for the shipping of the goods or from the ship's premature departure from the port, where it is impossible to ship the goods thereon; he shall also be liable for any damages suffered by the goods from the date of expiry of the time limit agreed, provided that the goods had been designated (identified) on said date;
 - (4) to bear the additional expenses which are incurred due to his failure to communicate to the vendor the name of the ship in due course; he shall be liable for the damages suffered by the goods from the date of expiration of the time limit for the notice or the period agreed for fixing the date of delivery, provided that the goods had at that time been designated (identified);
 - (5) to pay the expenses of obtention of the Certificate of Origin or such documents issued in the country of shipping or of origin, which are needed by the purchaser for importing the goods into the country of arrival (destination) or for passage thereof in transit via another country, when such obligations are not the responsibility of the vendor.

CHAPTER 3
C.I.F. SALES

Article 301. - CIF sales are such sales where the vendor undertakes to execute a contract for the carriage of the goods sold from the port of shipping to the port of unshipping, duly insured against the risks of carriage and shipping on the vessel, and payment of the relevant expenses and costs, which will be added to the price (undertaken to be paid by the purchaser).

Article 302. - In CIF sales the vendor has the following obligations:

- (1) to supply the goods in accordance with the conditions of the contract of sale, during the period fixed for the shipping or which is customary in international dealings;
- (2) to execute the contract of carriage according to the conditions prevailing in the port of shipping in regard to similar goods, and to choose a vessel which is suitable to carry commodities of the same kind as that of the goods sold;
- (3) to obtain at his responsibility and cost an export licence or such other licences which are needed for exporting the goods;
- (4) to bear the cost of loading the goods aboard the ship in the port of shipping and on the date or during the time limit fixed; where no date or time limit has been fixed, the loading must be effected within such period which is customary in dealings in the port of shipping; he must notify the purchaser without delay that the goods have been loaded on board of the vessel;
- (5) to carry insurance for the goods issued by a reputable insurer against the risks of ordinary carriage and pay the relevant costs and expenses; where the goods are shipped in lots, each such lot must be insured;

- (6) to prepare at his own expense a negotiable insurance policy in accordance with the conditions of current usage, provided the sum of the insurance is not less than the price stated in the contract of sale, plus ten per cent;
- (7) a certificate in lieu of the original insurance policy must be issued by the insurer and shall comprise the basic conditions stipulated in the original policy vesting upon the holder the rights stipulated in the policy;
- (8) to bear the costs of the customary wrapping of the goods, save where it is customary to ship such goods without wrapping;
- (9) to bear the expenses of inspection or scrutiny requisite for the shipping of the goods, such as inspection of the type, weight, measurement or count;
- (10) to pay any taxes or fees payable in respect of the goods up to the time when the loading is completed, inclusive of the export fees;
- (11) at the request and cost of the purchaser, to provide him with the Certificate of Origin;
- (12) at the request, cost and responsibility of the purchaser, to render every assistance to enable him to obtain any documents that may be needed by the purchaser for importation of the goods into the country of arrival (destination) or, where necessary, for the passage thereof in transit via another state;
- (13) to send without delay to the purchaser a clean negotiable Bill of Lading addressed to the port designated for unloading; an invoice for the goods sold and their prices, the insurance policy or a Certificate in lieu thereof and any other documents required by the purchaser shall be attached to the Bill of Lading; where in certain cases the Bill of Lading refers to the charter-party of the vessel, a copy thereof must be attached to the Bill of Lading.

Article 303. - The vendor shall not be bound to buy insurance against the risks of extraordinary carriage, unless it is agreed otherwise; the vendor must not insure the goods against the risks of war unless the purchaser so requires, in which case he shall bear the costs.

Article 304. - A Bill of Lading is clean if it does not contain express supplementary conditions confirming the existence of defects in the goods or in the packing method; reference in the Bill of Lading to prior use of the containers or wrappings or to non-liability for such damages as are attributable to the nature of the goods sold or to the carrier's ignorance of the contents or the weight of the package, shall not be deemed to be supplementary conditions.

Article 305. - The purchaser has the following obligations:

- (1) to accept the documents on being presented by the vendor if they conform to the contract of sale; but if they do not conform thereto, he may refuse them; the purchaser is deemed to have accepted said documents if he does not object to them within four (4) days from the date of receipt; the objection shall be by notice served on the vendor requiring him to send documents conforming to the conditions of the agreement, within a reasonable period, on the expiration of which the purchaser may apply for cancellation of the sale and claim damages, if any;
- (2) to pay the price of the goods in accordance with the stipulations of the contract;
- (3) to receive the goods at the port of arrival agreed;
- (4) to be liable for all risks which the goods may sustain after being placed at his disposal, as well as for all costs and expenses which are payable in respect thereof from said moment.

Article 306. - Where the purchaser reserves a right to fix the date of shipping or the unloading port within a certain specified time limit, but fails within the said time limit to issue instructions in that regard, he shall bear such additional expenses which may result and be liable for damages suffered by the goods up to the date of expiration of the shipping time limit, provided the goods would on that date have been designated (identified).

CHAPTER 4 C & F SALES

Article 307. - A C & F Sale is that pursuant to which the vendor undertakes to execute the contract of carriage of the goods from the port of shipping to the port of arrival (destination) without being under an obligation to execute an insurance policy therefor against the risks of carriage.

Article 308. - The provisions relating to CIF sales - other than those relating to vendor's obligations to execute the insurance policy - shall apply to C & F Sales.

CHAPTER 5 F.A.S. SALES

Article 309. - A FAS Sale is a contract pursuant to which the vendor undertakes to deliver the goods alongside the vessel designated by the purchaser at the port of shipping.

Article 310. - The vendor in FAS Sales shall have the following obligations:

- (1) to pack the goods as stated in the contract of sale and

- present the documents purporting to conformity of the goods as stated in the contract of sale;
- (2) to deliver the goods alongside the ship on the shipping quay designated by the purchaser in the port of shipping agreed in accordance with usage of the port and on the date or within the time limit agreed; he must notify the purchaser without delay that the goods have been delivered alongside the ship;
 - (3) at the request and cost of the purchaser, to render every assistance for obtention of any export or other licence which may be needed for exportation of the goods;
 - (4) to bear all expenses which are payable in respect and the risks which may be suffered by the goods up to the time of their actual delivery alongside the ship in the designated port of shipping, inclusive of costs of any measures which are incumbent on him for delivery of the goods alongside the ship;
 - (5) at his cost, to effect the customary wrapping of the goods, save where it is customary to ship the goods without wrappings;
 - (6) to pay expenses of checking or scrutiny as needed for delivery of the goods alongside ship, such as expenses of testing the type, weight, measurement or count;
 - (7) furnish the purchaser with a customary clean Bill of Lading confirming delivery of the goods alongside ship;
 - (8) at the request and cost of the purchaser, to deliver to him a Certificate of Origin of the goods;
 - (10) at the request, responsibility and cost of the purchaser, to render to him every assistance for obtention of such documents which are granted in the country of shipping or of origin, in order to enable the purchaser to import the goods into the country of arrival (destination) or the passage thereof in transit via another state, where necessary.

Article 311. - The purchaser's obligations are:

- (1) to communicate to the vendor in due course the name of the vessel, the quay of loading and the date of delivery on the vessel;
- (2) to pay the price agreed and to be liable for all expenses payable in respect of the goods, as well as for all risks which the goods may suffer from the time of their actual delivery alongside ship on the quay of loading designated and on the date or within the time limit agreed;
- (3) to be liable for such additional costs which may result due to failure of the ship designated by him to arrive on the date specified or where it was impossible for said ship to take the goods or complete the loading before the date agreed;
- (4) to be liable for all risks which may be suffered by the goods as of the date when the vendor places them at the purchaser's disposal, provided the goods have been identified in accordance with the contract or in any other way as being the goods stipulated in the contract;
- (5) to pay all expenses and costs needed for obtention of the documents provided for in Article 310(3), (8) and (9) hereof.

Article 312. - If the purchaser fails to designate the ship within the time limit set or where he had reserved for himself a time limit to receive the goods or to choose the port of shipping or if he has failed to give detailed instructions within the specified time limit, he shall be liable for the additional expenses resulting from such failure, as well as for all risks which the goods may suffer with effect from the date of expiry of the time limit agreed for delivery, provided the goods had been identified (designated clearly).

CHAPTER 6
SALES EX WORKS

Article 313. - An Ex Works sale is one which provides for delivery at the place of work, such as factory, depot, enterprise, farm or industrial facility, as the case may be.

Article 314. - The vendor has the following obligations:

- (1) to supply the goods in accordance with the stipulations of the contract of sale;
- (2) to place the goods at the purchaser's disposal at the time stipulated in the contract and at the place of delivery agreed and to load them on the means of transport provided by the purchaser;
- (3) to undertake, at his cost, the necessary wrapping (if necessary) to enable the purchaser to take delivery of the goods;
- (4) send notice to the purchaser within a reasonable time limit notifying him of the time when the goods will be at his disposal;
- (5) to be liable for all risks which may be suffered by and the expenses payable in respect of the goods up to the time when the goods are placed at purchaser's disposal within the time limit stated in the contract, provided that the goods have been identified (designated per se);
- (6) to be liable for the costs of testing operations, such as testing the type, weight, measurement or count which may be needed to place the goods at purchaser's disposal;
- (7) at purchaser's request and cost, to render every assistance for obtention of any document, needed for the export, import or for passage of the goods in transit via another state.

Article 315. - The purchaser shall have the following obligations:

- (1) to receive the goods as soon as they are placed at his disposal in the place and at the time stipulated in the contract;
- (2) to pay the price of the goods in accordance with the stipulations of the contract;
- (3) to be liable for all expenses payable in respect of, and the risks which may be suffered by, the goods from the time placing them at his disposal, provided the goods have been identified (designated);
- (4) to bear customs duty and such other duties which are levied as a result of the export;
- (5) to be liable for additional expenses resulting from his failure to receive and the risks which may be suffered by, the goods, with effect from the date of expiry of the time limit fixed for delivery, provided the goods have been identified (designated).

CHAPTER 7 F.O.B. AIRPORT OF DEPARTURE SALES

Article 316. - A FOB Airport of Departure Sale is that where the goods are delivered at the airport designated for departure on the date set or within the time limit agreed, in accordance with usage in the airport.

Article 317. - The vendor shall have the following obligations:

- (1) to pack the goods in accordance with the conditions of the contract and to present the documents supporting such conformity as stipulated in the contract;
- (2) at his cost, to wrap the goods in a manner which is secure and suitable for despatch via air, save where it

- is customary to send such goods without wrapping;
- (3) to conclude at purchaser's cost a contract for the carriage of the goods, save where he or the purchaser has assigned a third party to do so;
 - (4) to deliver the goods to the air carrier, his agent or such other person designated by the purchaser; where the purchaser has not designated an air carrier, an agent for him or a third party, the vendor shall appoint an air carrier or an agent for him;
 - (5) to comply with the purchaser's instructions in conformity with the customary conditions for moving the goods to the airport of arrival designated by the purchaser or to the nearest airport available for carrying the goods to purchaser's place of business within the normal route of navigation, if the purchaser has failed to designate the airport of arrival (destination);
 - (6) to provide at his responsibility and cost an export licence or other official instruments needed for export of the goods;
 - (7) to pay such dues, taxes, wages (fees) or expenses resulting from or by reason of export of the goods;
 - (8) to pay additional expenses which are payable by reason of the goods up to the time when they are delivered;
 - (9) to be liable for all risks suffered by the goods up to the time when they are delivered;
 - (10) to pay all expenses payable in regard to testing operations needed for delivery of the goods;
 - (11) at his expense, to notify the purchaser without delay of the delivery date of the goods, through telecommunications;
 - (12) to keep the purchaser posted without delay of the risks which the goods have sustained during the trip;
 - (13) to provide the purchaser with the correct commercial invoice and also with the Certificate of Origin, at the latter's request;