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Explanatory notes to the Law of commercial contracts of April 2001

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Introduction to the Law of Commercial Contracts of April 2001

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Explanatory notes to the Law of commercial contracts of April 2001

These explanatory notes together with the introduction to the Law relate to the Law of Commercial Contracts. They have been prepared by the Ministry of Commerce in order to assist the reader in understanding the Law. They do not form part of the Law and have not been endorsed by the National Assembly and Senate.

The notes need to be read in conjunction with the Law. Note that where an article or part of an article does not seem to require any explanation or comment, none is given.

Introduction to the Law of Commercial Contracts of April 2001

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the party to the contract. For example see article 30 that deals with the legal obligation of the vendor to warranty the goods sold to farmer and fisherman.

Commercial contract that do not fit the qualification of the Law are said to be “sui generis” (of his own kind or class; the only one of its own kind; peculiar). They are “unnamed contracts” and are regulated the general provisions of this Law (Chapter 1) and by the general rules of the law of obligation and the law of

Law on Commercial Contracts

Chapter 1. Provisions Relating to all Commercial Contracts

Part A. General Provisions

Article 1. Scope of Law

(1) This law applies to contracts made between merchants in the course of their commercial activities.

(2) This law does not apply to contracts made by a merchant for personal, family or household purposes unless the other party neither knew, nor should have known, before or at the conclusion of the contract, that the contract was for such non-commercial purposes.

Explanatory notes: 1. This law is solely applicable to transactions occurring between persons that are both involved in commercial activities. Both parties to the commercial contract must be business persons. If there are more than two parties to the contract the same principle applies: all parties have to be merchants.

2. This Law provides for general provisions applicable to commercial contracts and regulates specifically some

this Law is that: they are carrying on business with a view to profit and that such activity is carried on a recurrent basis. It is not an exceptional activity.

- (c) commercial customs and usages of the type of contract involved in the particular commercial activity in issue;
- (d) commercial customs and usages; and
- (e) the commercial character of the contract and the need to promote the observance of good faith in commercial activities.

Explanatory notes: 1. Rules of construction of contract are, by nature, supplementary. That is to say, when a contract, verbal or written, is clear and not ambiguous, the judge does not have to construct it, he only has to apply it. However, when the contract is ambiguous, it cannot be ascertained which type of contract the parties entered into. In these circumstances, the judge needs to determine what was the common intention of the parties at the time of entering into the contract. To help him in this task, the legislator may provide for rules of construction. This is the sole purpose of this article.

2. The expression “is ambiguous”, expresses a condition precedent to the applicability of this article. Without having found that the common intention of the parties is ambiguous, the judge should not intervene or substitute his decision to the decision of the parties.

3. The expression “common intention of the parties”. Contract law embodies the principle that the conclusion of a contract necessitates a common intention of both parties. If it is not the case there is no contract. Therefore in constructing an ambiguous contract the judge cannot solely look at the intention of the parties in their individuality.

4. “Custom and usage” means “a usage or practice of the people, which, by common adoption [(4..0e-u1(hhues ceces,)]TJET16.02

3. It is generally assumed that business people have a certain degree of sophistication in the field of commerce and they have knowledge of the “business world” in which they are evolving. Considering the above, transactions between business people do not need the same type of safeguards as transactions where non-business people are involved. The intent behind this rule is to facilitate and make less stringent the exchange of goods and services in the country commercial environment.

Cross-references: 1. Articles 11 and 13 of the United Nations Convention on Contracts for the International Sale of Goods 1980) Principles to the same effect are found in the Québec and French law applicable to different type of commercial contracts.

Article 6. Applicable law

(1) The parties to a commercial contract may elect the law applicable to the contract.

(2) In a contract that does not involve any foreign element, and where the parties have not elected the law applicable to the contract, the laws of the Kingdom of Cambodia shall apply.

(3) In a contract that does not involve any foreign element, and where the parties have elected the law of a different country, the rules of law relating to public order of the Kingdom of Cambodia shall apply to that contract.

Explanatory notes: 1. This article permits the parties to a commercial contact to choose the legal system that will be applicable to the contract. That is to say that parties to a commercial contract may agree that the laws of Cambodia will not apply and that the laws of another country will apply instead.

2. In practice, this type of clause is commonly used in Cambodia in the conclusion of significant contract and international ones. This rule solely recognized the actual practice follow in the business community.

3. “Laws relating to public order” include, among other things, laws and regulations that tend to prevent the commission of fraud and crime, and secure generally the comfort, safety, morals, health, and prosperity of the citizens of a state. In some civil law jurisdictions the expression “lois de police” (“laws of police”) is used to refer to these laws and regulations. However, in English, the expression “public order” embodies this principle.

Article 7. Several liability of debtors

Part B – Arbitration Agreements

Cross-references: 1. Articles 2638 to 2643 of the Civil Code of Québec. With respect to the arbitration procedure, see : Law of commercial arbitration.

Article 12. Definition of arbitration agreement

An arbitration agreement is a contract by which the parties undertake to submit a present or future dispute to the decision of one or more arbitrators, to the exclusion of the courts.

Explanatory notes: 1. This article permits the parties to a commercial contract to agree to submit a dispute that may arise between them in the future or

Explanatory notes: 1. This article is to ensure that the rules of public order that are applicable to the contract cannot be counteracted by the parties. In the case where the commercial contract is not an international contract, and that the laws of Cambodia apply in their entirety or partially, the rules of public order of the laws of Cambodia will apply even if the parties to the agreement have provided (expressly or implicitly) for the non applicability of the rules relating to “ status and capacity of persons, family matters or other matters of public order “. Where the contract is an international contract, the determination of the applicable rules relating to status, capacity, etc., will be made by the arbitrator in accordance with the contract or the rules of private international laws (see: articles 18 to 20 and 31 and 32 for the rules of private international law applicable to commercial contracts).

2. This article has to be read in conjunction with article 15 of the Law.

Article 15. Invalid provisions

(1) Any provision in an arbitration agreement that has the purpose of avoiding the applicability of the rules of public order is invalid. The remaining provisions of the arbitration agreement shall be applied.

(2) A provision of the arbitration agreement that places one party in a privileged position with respect to the designation of the arbitrators is null.

Explanatory notes: 1. This article is to ensure that the rules of public order that are applicable to the contract can not be counteracted by the parties. In the case where the commercial contract is not an international contract, and that the laws of Cambodia apply in their entirety or partially, the rules of public order of the laws of Cambodia will apply even if the parties to the agreement have provided (expressly or implicitly) for the non applicability of the rules relating to “ status and capacity of persons, family matters or other matters of public order “. Where the contract is an international contract, the determination of the applicable rules relating to status, capacity, etc., will be made by the arbitrator in accordance with the contract or the rules of private international laws (see: articles 18 to 20 for the rules of private international law applicable to commercial contracts) .

2. The provision found in paragraph (2) is to ensure that at the time of the conclusion of the arbitration agreement, both parties have equivalent powers to designate the arbitrators. The nullity of a provision violating this article doesn't nullify the entire arbitration agreement. It is the specific provision that is null.

3. This article has to be read in conjunction with article 14 of the Law.

Article 16. Arbitration agreement separate from contract

An arbitration agreement contained in a commercial contract is considered to be an agreement separate from the other clauses of the contract. The determination by the arbitrators that the contract is null does not nullify the arbitration agreement.

Explanatory notes: 1. This provision is there to ensure that in the case where the parties have provided for an arbitration agreement in the commercial contract as such, that the nullity of the commercial contract doesn't entail the nullity of the arbitration agreement contained therein.

2. This article is there to ensure that the following situation doesn't occur: the declaration of the nullity of the contract that causes the nullity of the arbitration agreement with the result that the arbitrator did not have jurisdiction to determine the issue between the parties. The arbitrator's jurisdiction to decide the issues being only based on the arbitration agreement.

Article 17. Arbitration procedures

PART C – Conflict of laws

Explanatory notes: 1. The provisions contained in this Part are general conflict of laws rules. Conflict of laws rules are used when there is an international element to the contract and that the parties have not determined which law will be applicable to their contract. Be it that the contract was formed outside of the Cambodian territory, one of the party's establishment or place of business is not on the Cambodian territory, that the property is issue is located outside of Cambodia, etc.

Conflict of laws rules are needed when a dispute between the parties to the contract is brought before the Cambodian court. In this case, the court has to decide and to do so, the court has to look at the rules of law. But what will be the law applicable to the contract if there is an international aspect to it and that the parties have not provided for the applicable law?

In such a case, the first issue for the court to decided will be: what is the law applicable to the contract; is it the laws of Cambodia or the laws of another country. In determining this question the court will apply the rules provided in this Part.

In applying the conflict of laws rule, if the court concludes that the laws of Cambodia apply, then it will apply the laws of Cambodia to determine the issue raised by the parties. Or, if the court concludes that the laws of another country apply, it will have to use these other laws to resolve the dispute between the parties.

Cross-references: 1. Articles 31 and 32 of this Law that provides for a specific conflict of laws rule in the case of a contract of sale.

Article 18. Scope

This Part applies to a commercial contract involving a foreign element and where the parties have not made an election of the law applicable to the contract.

Article 19. Form of the contract

- (1) The form of the contract is governed by the law of the place where it is made.
- (2) A contract is nevertheless valid if it is made in the form prescribed by:
 - (a) the law applicable to the content of the contract;
 - (b) the law of the place where the property which is the object of the contract is situated at the time of the conclusion of the contract: or
 - (c) the law of the domicile of one of the parties when the contract is made.

Article 20. Content of the contract

- (1) The contract is governed by the law designated in the contract.
- (2) If no law is designated by the parties, the court shall apply the law of the country with which the act is most closely connected, in view of its nature and surrounding circumstances.
- (3) A contract is presumed to be mostly connected with the law of the country where the party who has to perform the obligation has his establishment or place of business.

Cross-references: 1. Article 6 permitting the parties to designate the law applicable to the contract

Chapter 2. Contract of sale

Article 21. General rules of the law of contract of sale

The general rules of the law of contract of sale apply to all commercial contracts of sale, except when special rules are found in this Chapter complement or depart from them.

Article 23. Contracts not considered sales contracts

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Chapter does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

Explanatory notes: 1. The purpose of this article is to clarify the nature of the contract of sale. Sale is a well known commercial transaction that is defined in the following manner in article 34 of Decree No.38 referring to contract and other liabilities of October 28, 1988:

A sale is a contract in which one person has the obligation to transfer ownership of a subject matter or right to another person who has the obligation to compensate for the value of that subject matter or right.

As expressed above, the nature of the contract of sale corresponds to the classical conception of civil law jurisdictions. It has to be noted that the United Nations Convention on contracts for the international sale of goods, 1980s based on this very concept. Furthermore, the draft provisions of the Civil code of Cambodia dealing with contract of sale are based on this conception.

In vernacular language, contract of sale may designate a number of transactions that are not in law contract of sale. For example: enterprise contract, the purpose of which is to supply services, is in law, specifically qualified as such, and will be subject to a particular set of rules. Enterprise contract is not subject to the rules applicable to the contract of sale.

Cross references: 1. Article 3 of the United Nations Convention on contracts for the international sale of goods, 1980 Articles 3 reads in the following manner in French:

(1) Sont réputés ventes les contrats de fourniture de marchandises à fabriquer ou à produire, à moins que la partie qui commande celles-ci n'ait à fournir une part essentielle des éléments matériels nécessaires à cette fabrication ou production.

(2) La présente Convention ne s'applique pas aux contrats dans lesquels la part prépondérante de l'obligation de la partie qui fournit les marchandises consiste en une fourniture de main-d'œuvre ou d'autres services.

24. Warranty

The vendor is bound to warrant the purchaser that the property and its accessories are, at the time of the sale, free of latent defects which render it unfit for the use for which it was intended or which so diminish its usefulness that the purchaser would not have bought it or paid so high a price if he had been aware of them.

However, the vendor is not bound to warrant against any latent defect known to the buyer or any apparent defect; an apparent defect is a defect that can be perceived by a prudent and diligent purchaser without any need of expert assistance.

Explanatory notes: 1. This article expresses the general principle establishing the obligation of the vendor to warrant that the property sold is free from latent defects.

Cross reference: 1. Article 1726 of the Civil code of Québec 2. Article 42 of Decree No.38 referring to contract and other liabilities of October 28, 1988.

Article 25. ?????

(1) If the property perishes by reason of a latent defect that existed at the time of the sale, the loss is borne by the vendor, who is bound to restore the price.

(2) However, if the loss results from a force majeure

or is due to the fault of the purchaser, the purchaser shall deduct the value of the property at the time of the loss from the total amount of his claim.

Explanatory notes: 1. Paragraph (1) of this article aims at establishing the liability of the vendor and purchaser when the property that is the subject matter of the contract of sale perishes because of a latent defect.

2. Paragraph (2) provides for the rule applicable when

Article 28. Extension of warranty obligation to manufacturers and distributors

The manufacturer, any person who distributes the property under his name or as his own, and any supplier of the property, in particular the wholesaler and the importer, are also bound to warrant the purchaser in the same manner as the vendor.

Explanatory notes: 1. This article extends the legal obligation of the vendor to warranty against latent defect to the manufacturers and other persons described in the article. This article is there to provide a rule regarding the respective liability of the different actors where there is a series of contracts dealing with the same goods. For example: The manufacturer is selling computers to a distributor, who in turn is selling the computers to an independent vendor.

Cross-reference: 1. Article 1730 of the Civil code of Québec

Article 29. Exclusion of warranty

Where the contract of sale is concluded between two or more merchants, the parties to the contract may diminish or entirely exclude the application of the warranty as expressed in articles 24 to 28 of this Law.

However, such a diminish warranty or exclusion of the warranty only takes effect between the parties to the contract.

Such provisions (diminishing or excluding the warranty) is of no force and effect against, farmers, fisherman and non – merchants. **IT IS PUBLIC ORDER RULE AND NOT SUPPLETIVE**

Explanatory notes: 1. This article aims at providing flexibility in contracts concluded between merchants. It is assumed that merchants are able to negotiate the content of their contract and that they do not necessarily need the protection of the State. Therefore, the Law permits them to waive between themselves the legal obligation to warranty the sale of good against latent defects.

Such a waiver of the warranty will however will be of no force of effect against non-party to the contract, nor against non-merchants. In other words, even it the manufacturer, the distributor and the vendor of the good agreed that there would not be any warranty clause between themselves, they will not be able to rely on the waiver of the warranty clause vis-à-vis of the ultimate purchaser, for example, the consumer of the good.

2. The rule to the effect that a waiver of a warranty has not effect against farmers and fisherman is actually necessary in Cambodia. Considering the level of education of the vast majority of the farmers and fisherman, it was felt that these individuals needed the protection of the State and therefore, the sale of goods warranty may not be waived in contracts concluded with them.

Article 30. Farmers and fisherman

(1) Where one of the party to a commercial contract of sale is a farmer or a fisherman and that the subject matter of the contract is the sale of agricultural products in bulk, **AGRICULTURAL PRODUCT THAT ARE NOT YET CULTIVATE – I AM TAKING ABOUT WHEN THEY SELL THE RICE FOR EXAMPLE AND THE PURCHASER WILL BE THE ONE WHO IS GONNA CUT THE RICE AND PROCESS IT.** , seeds, fertilizers and **FISH IN BULK**, the fisherman and farmer ma[(a)o bhe flity fo the

that these individuals needed the protection of the State and therefore, they may be entitled to claim nullity of the contract on the basis of lesion.

Cross-references: On lesion, see articles 11 and 12 of Decree No.38 referring to contract and other liabilities of October 28, 1988 (that will be replaced by the Civil code once adopted)

Article 31. Conflict of law in the case of sale of a movable property

If no law is designated by the parties, the sale of a tangible movable property is governed by the law of the country where the vendor had his establishment at the time of formation of the contract.

However, the sale is governed by the law of the country in which the purchaser has his establishment at the time of formation of the contract in any of the following cases:

- (1) negotiations have taken place and the contract has been formed in that country;
- (2) the contract provides expressly that delivery shall be made in that country;
- (3) the contract is formed on terms determined mainly by the purchaser, in response to a call for tenders.

Explanatory notes: 1. See explanatory notes under Part C of Chapter 1 – Conflict of laws

Article 32. Conflict of law in the case of sale of immovable property

If no law is designated by the parties, the sale of immovable property is governed by the law of the country where it is situated.

Explanatory notes: 1. See explanatory notes under Part C of Chapter 1 – Conflict of laws

Chapter 3. Transportation contract

Part A. General provisions

Article 33. Definition

A contract of carriage is a contract by which one merchant, the carrier, undertakes principally to carry persons or property from one place to another, in return for a price which another merchant, the travel organizer or intermediary thereof, or the shipper or receiver of the property, undertakes to pay at the agreed time.

Explanatory notes: 1. This article defines the contract of carriage between merchants. The content of the definition is reiterating the principles of carriage contract found in civil law jurisdiction and that has been used in international conventions.

Cross-references: 1. Articles 2030 2084 of the Civil code of Québec 2. United Nations Convention on the Carriage of Goods by Sea Hamburg, signed March 31, 1978, entry into force on November 1, 1992 – ratified mostly by developing countries – Cambodia has not ratified it) 3. Convention on the Contract for the International Carriage of Goods by Road Geneva, signed May 19, 1956, entry into force on July 2, 1961 – has been modified subsequently by Geneva Protocol of July 5, 1978 – Cambodia has not ratified it)

Article 34. Travel organizer or intermediary defined

“Travel organizer” or “intermediary” means any merchant who undertakes to perform the contract defined in article 33 in his own name to provide for another, for an inclusive price, a combination of services comprising transportation, accommodation separate from the transportation or any other service relating thereto.

Article 35. Successive and combined carriage

Successive carriage is effected by several carriers in succession, using the same means of transportation; combined carriage is effected by several carriers in succession, using different means of transportation.

Article 36. Gratuitous carriage

Where a merchant provides for gratuitous carriage of persons or property, the rules contained in this Chapter apply.

Article 37. Carrier's obligation and

A carrier who provides services to the general public shall carry any person requesting it and any property he is requested to carry, unless he has serious cause for refusal.

The passengers, shipper or receiver is bound to follow the instructions given by the carrier in accordance with the law.

Article 38. Carrier's liability

A carrier may not exclude or limit his liability except to the extent and subject to the conditions established by law.

The carrier is liable for any damages resulting from delay, unless he proves

Article 39. ????

Where the carrier entrusts another carrier with the performance of all or part of his obligation, the substitute carrier is deemed to be a party to the contract.

The shipper is discharged by payment to one of the carriers.

Part B. Carriage of persons

Article 40. Definition

Carriage of persons includes, in addition to carriage itself, embarking and disembarking operation.

Article 41. Carrier's liability

- (1) The carrier is bound to take his passengers safe and sound to their destination.
- (2) The carrier is liable for injury suffered by a passenger unless he proves it was caused by
OR BY THE STATE OF HEALTH OR FAULT OF THE
PASSENGER.
- (3) The carrier is liable for any loss of the luggage or other effects placed in his care by a passenger, unless he proves an inherent defect in the property or the fault of the passenger.

However,

- (a) the carrier is not liable for any loss of documents, money or other property of great value, unless he agreed to carry the property after its nature or value was declared to him.

(b) the carrier is not liable for any loss of hand luggage or other effects which remain in the care of the passenger, unless the passenger proves the fault of the carrier.

Article 42. Liability of successive or combined carriers

In the case of successive or combined carriage of persons, the carrier who effects the carriage during which the injury or loss occur is liable thereof, unless one of the carriers has expressly assumed liability of entire journey.

Part C. Carriage of property

Article 43. Definition

Carriage of property extends from the time the carrier receives the property into his charge

for carriage until its
delivery.

Article 44. Bill of lading

Parties to a contract for the carriage of property shall evidence such a contract in writing.

A bill of lading is a writing that evidences a contract for the carriage of property.

A bill of lading states the names of the shipper, receiver and carrier and, where applicable, of the person who is to pay the freight and carriage charges.

A bill of lading also states the place and date of receipt of the property by the carrier, the points of origin and destination, the freight as well as the nature, quantity, volume or weight, and apparent condition of the property and any dangerous properties it may have.

Article 45. ???

The bill of lading is issued in several copies; the issuing carrier keeps a copy and gives one to

3. A bearer is a person in possession of a bill of lading that is payable to bearer or endorsed in blank.

Article 47. Delivery of the property

The carrier is bound to deliver the property to the receiver or to the holder of the bill of lading.

The holder of a bill of lading shall hand it over to the carrier when he demands delivery of the property.

Article 48. Receiver's rights and obligations

Subject to the rights of the shipper, the receiver upon accepting the property or the contract, acquires the rights and assumes the obligations arising out of the contract.

Article 49. Carrier's obligation to notify

The carrier is bound to notify the receiver of the arrival of the property and of the time allowed to remove it, unless it is delivered to the receiver's residence or premises.

Article 50. Receiver not found or refusing to act

Where the receiver cannot be found or refuses or neglects to take delivery of the property or where, for any other reason, the carrier cannot deliver the property through no fault of his own, the carrier shall notify the shipper without delay and request instructions as to disposal of the property. However, in case of emergency, the carrier may dispose of perishable property without notice.

If the carrier receives no instructions within fifteen days of notification, he may return the property to the shipper.

Article 51. Carrier entitlement to remuneration for preservation and storage

From the expiration of the time allowed for removal or from notification of the shipper, the obligations of the carrier are those of a gratuitous depositary.

However, the carrier is entitled to reasonable remuneration for the preservation and storage of the property, payable by the receiver or, in the case where the receiver fails to pay, by the shipper.

Explanatory notes: 1. The concept of gratuitous depositary will be regulated in the Civil code. At this time, parties will have to refer to commercial customs and usages to determine the obligation of the carrier during this period. Generally the depositary has the obligation of preserving and maintaining the property as a reasonable person would in similar circumstances.

Article 52. Carrier's obligations

The carrier is bound to carry the property to its destination.

The action is not admissible unless a prior notice of the claim is given to the carrier in writing within sixty days after the delivery of the property, whether or not the loss is apparent, or if the property is not delivered, within nine months after the date of which it was sent. No notice is required if the action is brought within that time.

Article 54. Right of action against successive or combined carriers

In the case of successive or combined carriage of property, an action in liability may be brought against the carrier with whom the contract was made or the last carrier.

Article 55. Liability of the carrier

The liability of the carrier, in the case of loss, may not exceed the value of the property declared by the shipper.

If no value has been declared, it is established on the basis of the value of the property at the place and time of shipment.

Article 56. ???

No carrier is bound to carry documents, money or property of great value.

Article 61. Carrier's right of retention of the property

The carrier may retain the property carried until the freight, the carriage charges and any reasonable storage charges are paid.

If, according to the shipper's instructions, those amounts are payable by the receiver and the carrier does not demand payment according to instructions, he loses his right to claim payment from the shipper.

Chapter 4. Transition Provisions

Article XX. Scope

This chapter shall apply to commercial contracts concluded after the promulgation of this law and prior to the promulgation of the Civil Code.

Explanatory Notes. Commercial Contracts – or contracts between merchants in the course of their business – comprise one type of many different types of contracts. All of these contracts, regardless of their type, share common characteristics that will be governed by the Civil Code. Thus, while commercial contracts will be separate from the Civil Code, they will be governed to a large extent by provisions in the Civil Code. In order to avoid undue burdens on contracting parties, as well as the judicial system, it is essential that these two laws are compatible.

At the time this draft Law was prepared, a substantial part of the Civil Code had been drafted; however, it is difficult to predict how long it will be before the Code is enacted. In order to move ahead with enactment of modern contract principles suited to Cambodia's rapidly developing economic sector, the draft Law on Commercial Contracts includes transition provisions. In this way, these important reforms can proceed through the enactment process prior to enactment of the Civil Code.

In preparing the transition provisions, consideration was also given to existing contract law, Decree 38. Decree 38, which applies to all obligations, including commercial contracts, will be repealed by the Civil Code. In the interim, it will apply to commercial contracts to the extent that it does not conflict with provisions of the Law on Commercial Contracts.

The transition provisions are based on the following factors.

1. Continued applicability of general contract provisions of Decree 38.

Part A. Computation of Time

Article XX. Designation of period

A time period may be designated in terms of hours, minutes or seconds, or in terms of days, weeks, months or years.

Article XX. Expression of intention

Unless the parties have expressed a contrary intention, time periods shall be computed in accordance with this section.

Article XX. Calculation of period expressed as days, weeks, months or years

(1) If a period has been expressed as days, weeks, months or years, the first day of the period shall not be included in the computation, unless the period begins at 00:00 of the day. The period shall terminate at midnight on the last day of the period.

(2) If the last day of a period falls on an official holiday or other non-business day, the period shall terminate at the end of the immediately following business day.

Article XX. Calculation of period by calendar

(1) If a period has been established in terms of weeks, months or years, it shall be computed in accordance with the calendar.

(2) If a period does not commence at the beginning of a week, month or year, such period shall terminate on the day in the last week, month or year preceding the day corresponding to that on which it commenced. However, if the period has been fixed in terms of months or years and there is no corresponding day in the last month or year, the last day of the month shall be the day of termination.

Part B. Formation of Contract (Offer and Acceptance)

Article XX. Contract by offer and acceptance

A contract is formed when an offer and an acceptance thereof conform to each other.

Article XX. Definition of offer

(1) An offer is an invitation to enter into a contract based on the offeror's intention to be legally bound by the other party's acceptance thereof.

(2) An offer becomes effective when it reaches the offeree.

Article XX. Offer with acceptance period

(1) An offer may be made subject to an accep

(2) If the offeror does not receive notice of acceptance within the specified acceptance period, the offer shall automatically lapse upon the expiration of the acceptance period.

(3) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Article XX. Offer with no acceptance period

(1) An oral offer that states no acceptance period shall lapse unless it is accepted forthwith by the offeree.

(2) A non-oral offer that states no acceptance period cannot be revoked by the offeror until after a reasonable period of time.

Article XX. Revocation of offer

A revocation of an offer shall be valid if it reaches the offeree before notice of acceptance is dispatched by the offeror.

Article XX. Formation of contract on receipt of acceptance

(1) A contract shall be formed when the notice of acceptance is received by the offeror.

(2) An acceptance is a statement made by or other conduct of the offeree indicating assent to an offer. Silence or inactivity does not in itself amount to acceptance.

(3) An acceptance of an offer becomes effective when it reaches the offeror.

(4) An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

Part C. Performance of Contract

Article xx. Obligee's duty to perform

(1) An obligee shall perform its contractual obligations in accordance with the purpose of the contract and the principle of good faith.

(2) The obligation of a party is extinguished by a performance that complies with the standard established in the preceding paragraph.

Article xx. Right to demand performance

(1) An obligee is entitled to file a suit demanding that the obligor perform the obligation.

(2) However, an obligee may not file a suit demanding performance in the following cases:

- (a) where the parties to the contract have agreed not to seek judicial enforcement of performance;
- (b) where performance is physically impossible; or

(c) where the cost of performance is prohibitive, and demanding performance of the obligor would violate the principle of good faith.

(3) Even where a suit seeking judicial enforcement of performance is barred, if the obligor carries out such performance voluntarily, the obligee may receive and retain the benefits thereof.

Article xx. Defense of simultaneous performance

Each party to a bilateral contract may refuse to perform its own obligation until the other party tenders the performance of its obligation. However, this shall not apply where the time for performance of the other party's obligation has not arrived.

Article xx. Defense of insecurity

A party to a bilateral contract who is required to perform an obligation in advance of the other party may refuse to perform the obligation if there is a significant risk that the other party will not substantially perform its obligation in accordance with its intended purpose. However, this shall not apply where the other party offers a guarantee or security for its performance.

Part D. Remedies for Breach of Contract

Section 1. Non-Performance - General Rules

Article xx. Definition of non-performance

Where an obligor fails to perform a contractual obligation, the obligee may demand as a remedy for such non-performance specific performance, damages, or termination of the contract, in accordance with the provisions set forth in this part.

Article xx. Types of non-performance

Non-performance of an obligation includes cases in which performance cannot be carried out by the established time for performance due to a delay in performance ('delayed performance'), cases in which performance at such time is impossible ('impossibility of performance'), and other cases in which full and complete performance in accordance with the intended purpose of the obligation is not carried out ('incomplete performance').

Article xx. Delayed performance

Delayed performance occurs in the following situations:

- (a) where performance is to occur at a time certain, delay beyond such time;
- (b) where performance is to occur at a time that is uncertain, delay beyond the time when the obligor knows that such time has arrived; or
- (c) where no time for performance is specified, delay beyond the time that the obligor receives a demand for performance.

Article xx. Impossibility of performance

Where an obligor is physically incapable of performing the obligation at the time for performance, the performance is deemed impossible. Performance shall also be deemed impossible where performance is determined to be impossible from a social or economic standpoint.

Article xx. Incomplete performance

An obligation shall be deemed non-performed where it has been performed but the act of performance was not complete, where only partial performance was carried out, or where for any other reason complete performance in accordance with the intended purpose of the obligation was not carried out.

Article xx. Multiple remedies

Where multiple remedies are available to the obligee, the obligee may select any or all of such remedies so long as they are not in mutual conflict.

Section 2. Specific performance

Article xx. Court order for specific performance

(1) Where an obligor does not voluntarily perform an obligation, the obligee may seek an order of specific performance from the court. However, this shall not apply where the nature of the obligation is not suitable for specific performance.

(2) Where the nature of the obligation is suitable for specific performance, the court may, after consideration of the nature of the obligation, the need for the obligee's protection and other circumstances, order direct enforcement, substitute execution, or indirect enforcement.

(3) Direct enforcement is a method by which an obligation is compulsorily enforced regardless of the desires of the obligor, and is permitted where the nature of the obligation involves the payment of money or the delivery of property (including eviction from land or buildings).

(4) Substitute execution is a method of specific performance in which, where the nature of the obligation is not suitable for direct enforcement, if the obligation involves the performance of a specific action, a third party is charged with the performance of such action and the obligor is assessed the cost of such action. Where the obligation involves the obligor's manifestation of a specific intent, the court may manifest such intent on behalf of the obligor by means of a [decision]. Where the obligation involves the non-performance of an action, the court may negate the results of the obligor's action at the obligor's expense, or where it is anticipated that the obligor may attempt to perform an action in violation of such duty, the court may adopt appropriate prospective measures.

(5) Indirect enforcement is a court order that, where an obligor fails to voluntarily perform an obligation, orders that the obligor pay a fixed sum of money until the obligation is performed. The obligee may seek a court order of indirect enforcement even in cases in which direct enforcement or substitute execution are available.

(c) Where the non-performance is the result of bad faith, the judge may, based on the obligee's demand for damages, regardless of subparagraphs (a) and (b), order that the obligor pay to the obligee as damages either all of the damages suffered by the obligee or the profit or benefit obtained by the obligor from the conduct comprising the non-performance.

Article xx. Grounds for reduction of damages

(1) Where the obligee's negligence or fault contributed to the occurrence of non-performance or damages, the court may reduce the amount of damages to be paid by the obligor to the extent that the obligee's conduct contributed thereto.

(2) Where the obligee neglects to mitigate damages, the court may reduce the amount of damages to the extent such damages could have been mitigated by the obligee.

Article xx. Liquidated damages

(1) The obligor and obligee may separately establish conditions for the payment of damages and an amount to be paid.

(2) The obligor may not be exempted [by an agreement described in the preceding paragraph] from liability for non-performance that is intentional or the result of gross negligence.

(3) Where the parties agree on the amount of damages, the court may not increase or reduce the agreed-upon amount. However, where the amount fixed by the parties as liquidated damages is either grossly higher or grossly lower than actual damages, and giving effect to such amount would violate public order and good morals, the court may increase or decrease the liquidated damages amount fixed by the parties.

(4) The liquidation of damages does not obstruct a claim for performance or for termination of the contract. An amount fixed and agreed to by the parties as damages for delay shall not be binding on the parties where the obligee seeks termination of the contract and compensation for damages as a substitute for performance.

(5) A penalty for breach of contract shall be presumed to constitute liquidated damages.

Article xx. Compensation in money

Compensation for damages for non-performance

Article xx. Extinctive prescription

The right to demand compensation for damages based on non-performance shall be subject to extinctive prescription of a five-year period from the time when the damages occurred.

Section 4. Termination of Contract

Article xx. Termination for non-performance

Where one of the parties to a bilateral contract commits a material breach of the contract, the other party may terminate the contract immediately.

Article xx. Material breach of contract

(1) A material breach of contract occurs where the purpose of the contract cannot be achieved as a result of the other party's breach, and shall be deemed to occur in any of the following situations:

- (a) where after a failure to perform at the specified time, the [obligor] fails to perform within a reasonable warning period established by the obligee;
- (b) where the obligor fails to perform at the specified time, and the purpose of the contract cannot be fulfilled if performance is not made by the specified time;
- (c) where it is impossible to carry out the essential act of performance; and
- (d) where the magnitude of the breach is so substantial that trust between the parties is destroyed and further performance cannot be expected.

(2) The obligor may not prevent termination of the contract based on the reasons set forth in the preceding paragraph on the ground that the non-performance occurred without the fault of the obligor.

Article xx. Method of exercise of right of termination

(1) A party having the right to terminate a contract may terminate the contract by expressing an intention to terminate to the other party. Such an intention may be expressed by means other than a lawsuit.

(2) An expression of an intention to terminate may not be revoked or withdrawn.

(3) An expression of an intention to terminate may be subject to a condition precedent.

Article xx. Termination in cases of multiple parties

(1) Where one of the parties comprises multiple persons, termination of the contract must be effected by all of such persons to the other party or by the other party to all of such persons.

(2) In the case described in the preceding paragraph, where the right of termination is extinguished as to one person, it is extinguished as to all persons.

Article xx. Effect of termination

(1) Termination of a contract relieves both parties of their duties under the contract except for the duty to pay damages.

