

LAW OF OBLIGATIONS AND CONTRACTS

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Art. 1. (Repealed, SG No. 12/1993)

GENERAL PART

I. PRINCIPAL RULES

Art. 2. (Repealed, SG No. 27/1973)

Art. 3. (Repealed, SG No. 12/1993)

Art. 4. (Repealed, SG No. 12/1993)

II. SOURCES OF OBLIGATIONS

1. ACTS ON NATIONAL ECONOMY PLANNING AND REGULATION

Art. 5. (Repealed, SG No. 12/1993)

Art. 6. (Repealed, SG No. 12/1993)

Art. 7. (Repealed, SG No. 12/1993)

2. CONTRACTS

A) CONCLUSION OF CONTRACTS

Art. 8. (Amended, SG No. 12/1993) A contract is an agreement between two or more persons for establishing, settling or terminating a legal relationship between them.

Persons shall use their rights to satisfy their interests. They shall not be entitled to exercise these rights if they contravene the interests of society.

Art. 9. (Amended, SG No. 12/1993) The parties are free to determine the content of the contract insofar as it does not contravene the mandatory provisions of both the law and good morals.

(Par. 2 repealed, SG No. 12/1993)

Art. 10. (Par. 1 repealed, SG No. 83/1999, effective date 1 Jan. 2000)

Interest rates agreed shall not exceed the rate set forth by the Council of Ministers. Should the rate agreed be higher, it is reduced ex jure to the one set forth as aforesaid.

Interest charged on overdue interest shall be determined in compliance with Bulgarian National Bank regulations.

Art. 11. (Repealed, SG No. 12/1993)

Art. 12. (Amended, SG No. 12/1993) The parties shall act in good faith in conducting negotiations and concluding contracts. Otherwise they shall be liable for damages.

Art. 13. The offeror shall be bound by the offer until the expiration of the time period either specified therein or usually required under the specific circumstances for the acceptance to reach the offeror.

If an offer is withdrawn, it shall have no effect if the withdrawal reaches the offeree earlier or at the same time as the offer.

In case no time period for acceptance has been specified, an offer made to a person present shall lose its force if it is not accepted immediately, whereas an offer made to a person who is not present shall lose its force after the expiration of a period of time normally needed for the acceptance to reach the offeror under the specific circumstances.

An acceptance shall have no effect in case the withdrawal reaches the offeror earlier or at the same time as the acceptance.

If it is evident that a delayed acceptance has been sent on time, the contract shall be regarded as being concluded unless the offeror immediately notifies the offeree that he considers such an acceptance as being overdue.

Art. 14. The contract shall be deemed concluded at the moment the acceptance reaches the offeror.

Provided that after the acceptance has been sent any of the parties dies or gets into a state which constitutes grounds for placement under interdiction, the contract shall be deemed concluded.

A contract shall be considered concluded at the place where the offer was made.

Art. 15. (Repealed, SG No. 12/1993)

Art. 16. (Par. 1 amended, SG No. 12/1993) Where a proposal includes general terms the acceptance shall be effective provided that it contains a confirmation of the general terms in writing.

In case of inconsistency between registered provisions and provisions contained in the general terms, the former shall prevail even though the latter may not have been obliterated.

As for contracts involving long-term performance any amendment to or replacement of the general terms shall be binding upon the other party under an existing contract only if the other party has been notified of the amendment or replacement and has not rejected it within the reasonable period of time it has been granted in writing.

Art. 17. If the parties conceal an agreement reached between them by way of a fictitious agreement, it is the rules concerning the fictitious agreement that shall apply, provided that the fictitious agreement meets the validity requirements.

Rights acquired in good faith by third parties from the transferee under a fictitious agreement shall be preserved unless those are rights on immovable property acquired after the action for establishing the fictitiousness has been registered.

This provision shall also apply to the transferee's creditors under a fictitious agreement who have levied a distress or an injunction on the object the agreement concerns.

Art. 18. Contracts of ownership transfer and those of establishing other property rights on immovable property must be executed through a notarial deed.

Art. 19. The preliminary contract preceding the conclusion of the final contract that a notarial deed or notarial certification is required for shall be concluded in writing.

The preliminary contract shall contain provisions concerning the material terms of the final contract.

Either party to the preliminary contract is entitled to bring an action for conclusion of the final contract. In this case the contract shall be deemed concluded as of the moment the ruling of the court takes effect.

Art. 20. The actual common will of the parties shall be sought in interpreting contracts. The individual provisions shall be interpreted in their interrelation and each one of them shall be interpreted in the meaning ensuing from the contract as a whole, taking into account the objective of the contract, usage and good faith.

B) EFFECT OF CONTRACTS

Art. 20a. (New, SG No. 12/1993) Contracts shall have the force of a law for the parties that have concluded them.

Contracts may be amended, terminated, cancelled or revoked only by mutual consent of the parties or on the grounds provided for in the law.

Art. 21. Contracts shall be binding on the parties, and with respect to third parties they shall be binding only in the cases provided for in the law.

Third parties impeding the performance of contracts in bad faith shall be liable for compensation.

Art. 22. Arrangements having a third party as a beneficiary may be reached. A third party beneficiary arrangement may not be revoked after the third party has stated to either the promisor or the promisee its desire to make use of the said arrangement. The promisee may reserve the right to revoke such an arrangement or replace the third party.

The promisor is entitled to plead against the third party his defenses which arise from the contract, but not any defenses arising from other relationships with the promisee.

If the contract the third party's right derives from is repealed pursuant to an action of the promisee's creditors, the third party is obliged to give back only what the promisee has given under the contract.

Art. 23. A person who has promised to perform an obligation or an act of a third party is obliged to compensate the other party if the third party either refuses to honour the obligation or fails to perform the promised act.

Art. 24. As for ownership transfer contracts and contracts of establishing or transferring some other property right over a specific chattel, the transfer or the establishment shall occur by virtue of the contract itself and shall not require that the chattel be delivered.

As for contracts of transfer of ownership of fungibles, ownership shall be transferred when the fungibles are specified by agreement of the parties and, should there be no such agreement - on the delivery thereof.

Art. 25. The effect or the termination of a contract may be made dependent on a future uncertain event. In those cases where the party interested in its nonfulfillment has acted in bad faith in order to prevent its occurrence, the condition shall be deemed fulfilled.

The fulfillment of the condition shall have retroactive effect.

C) INVALIDITY OF CONTRACTS

Art. 26. (Par. 1 amended, SG No. 12/1993) Contracts contravening or circumventing the law, as well as contracts infringing good morals, including contracts on inheritance that does not exist as yet, shall be null and void.

Null and void shall also be those contracts that have an impossible subject, as well as the contracts which lack either consent or a form prescribed by law, or grounds. Fictitious contracts are also null and void. The grounds shall be presumed to exist until otherwise proved.

(Par. 3 repealed, SG No. 30/1990)

(Par. 4 amended, SG No. 12/1993) The nullity of separate parts of a contract shall not entail nullity of the whole contract, provided the null provisions are replaced ex jure by mandatory rules of law, or it can be assumed that the transaction would have been concluded even without its null parts.

Art. 27. Contracts concluded by persons of legal incapacity, or by their agents without observing the requirements established for such agents, as well as contracts concluded under mistake, fraud, threat or extreme necessity shall be subject to invalidation.

Art. 28. A mistake as to the subject shall constitute grounds for invalidation of the contract provided the mistake concerns significant properties of the subject. A mistake as to the person shall constitute grounds for invalidation provided the contract has been concluded in view of the person.

A mistake limited only to the calculations shall not constitute grounds for invalidation and shall be subject to correction.

The party claiming invalidation must compensate the other party for the damages sustained in result of the conclusion of the invalidated contract, unless the former party proves that the mistake is through no fault of its own or that the other party has known about the mistake.

Art. 29. Fraud shall constitute grounds for invalidating a contract provided that one of the parties has been misled by the other party into concluding the contract through intentional misrepresentation.

Where the fraud originates from a third party the deceived party is entitled to claim invalidation of the contract only if upon conclusion of the contract the other party knew of it or it is impossible for the other party not to have known of it upon conclusion of the contract.

Art. 30. (Amended, SG No. 12/1993) Threat shall constitute grounds for the contract's invalidation provided one of the parties has been forced either by the other party or by a third party to enter into the contract through provoking reasonable fear.

Art. 31. A contract entered into by a person of legal capacity shall be subject to invalidation provided that upon conclusion of the contract the person was not able to understand it or was not able to guide his acts.

The invalidation of such a contract may not be claimed after the death of the person unless prior to his death it has been requested that the person be placed under interdiction or the legal incapacity ensues from the contract itself.

Art. 32. Invalidation may be claimed only by the party in whose interest the law allows such invalidation.

The right to claim invalidation shall be limited to three years. The limitation period shall commence on the day the person comes of age, or the interdiction is lifted, or the mistake or fraud is discovered or the threat ceased, and in all other cases - on the day of conclusion of the contract.

The defendant to an action for enforcing performance of a contract subject to invalidation is entitled to claim invalidation by means of a defense even after the limitation period has expired.

Art. 33. A contract entered into because of extreme necessity under obviously unfavourable terms shall be subject to invalidation. The court may invalidate such a contract fully or for the future only. The invalidation shall not be admissible if the other party proposes to repair the damage.

The right to claim invalidation shall be limited to one year from the date of conclusion of the contract.

Invalidation on the grounds of extreme necessity shall not affect the rights acquired by third parties prior to the registration of the petition.

Art. 34. (Amended, SG No. 12/1993) Where a contract is recognized as null and void or is invalidated each party must give back to the other party everything it has received therefrom.

(Par. 2, 3, 4, 5 obliterated, SG No. 12/1993)

Art. 35. A contract subject to invalidation may be ratified by the party entitled to demand its invalidation, by way of an instrument in writing which should indicate the grounds for invalidation.

A contract shall also be ratified where the party entitled to demand its invalidation voluntarily performs it, in whole or in part, being aware of the grounds for invalidation.

A contract which is subject to invalidation on grounds of extreme necessity may not be ratified.

D) AGENCY

Art. 36. A person is entitled to represent another one by operation of law or by the will of the principal.

The effects of the legal acts performed by the agent shall arise directly for the principal.

Art. 37. (amend. – SG 59/07, in force from 01.03.2008) Authorization for the conclusion of contracts that the law requires a specific form for shall be made in that particular form; however, if the contract is to be concluded in a notarial form the authorisation shall be made in writing with a certified by a notary signature and content, done at the same time.

Art. 38. The agent is not entitled to negotiate on behalf of the principal either with himself or with another person represented by the same agent, unless the principal has agreed thereto.

The principal may at any time withdraw his authorisation, and the agent may at any time renounce it. Waiver of this right by the principal or the agent shall be null and void.

Art. 39. The scope of the agent's representative authority with respect to third parties shall be determined in accordance with what the principal has stated.

Where several persons have been authorised to perform a certain act each one of them may perform it by himself, unless otherwise ensues from the authorisation.

Art. 40. If the agent and the person he negotiates with reach an agreement to the detriment of the principal, the contract shall not be binding on the latter.

Art. 41. An authorisation shall be terminated when it is withdrawn or renounced, or upon the death of the principal or the agent or upon declaration of their placement under interdiction. Where the principal or the agent are legal entities, the authorisation shall be terminated upon the dissolution thereof.

The termination of the authorisation may not defeat the claims of third parties that have negotiated in good faith with the agent, unless the termination has been subject to registration and such a registration has been made.

Art. 42. The person who has acted as an agent without having authorisation shall be liable for damages to the other party if that party has acted in good faith.

A person on whose behalf a contract has been concluded without authorisation may ratify it. The ratification requires the same form as the one provided for granting the authorisation for conclusion of the contract.

Art. 43. The agent may authorise another person, if he is authorised to do so or if such authorisation has become necessary for protecting the interests of the principal.

The authorisation given by the agent may be withdrawn by either the principal or the agent.

The agent must immediately notify the principal of the authorisation he has given and provide the necessary information on the other agent authorised by him. If

the agent fails to perform this obligation he shall bear responsibility for the actions of that other agent as if they were his own ones.

3. UNILATERAL EXPRESSION OF WILL

Art. 44. The provisions set forth for contracts shall apply to unilateral expressions of will in those cases where the law permits that they create, alter or terminate rights and obligations.

4. TORT

Art. 45. Every person is obligated to redress the damage he has faultily caused to another person.

In all cases of tort fault is presumed until otherwise proved.

Art. 46. No liability for damages shall be borne in the event of inevitable self-defense.

In cases of extreme necessity there is an obligation to redress the damages caused.

Art. 47. A person lacking the capacity to understand or control his actions shall not be liable for the damage he has caused while in such a state unless he himself has faultily caused his lack of capacity.

Liability for the damage caused by an incapacitated person shall be borne by the person having the obligation to supervise him, unless the latter has not been in a position to prevent the occurrence of the damage.

Art. 48. Natural and adoptive parents who exercise parental rights shall be liable for the damages caused by their children who are not of age and live with them.

The guardian shall be liable for the damages caused by a minor who is under his guardianship and lives with him.

The said persons shall not bear liability if they were not in a position to prevent the occurrence of the damages.

Art. 49. One who has assigned a job to another shall be liable for the damage caused by the latter in, or in connection with, the performance thereof.

Art. 50. The owner of a chattel and the person under whose supervision the said chattel is shall be liable jointly and severally for the damage ensuing from the chattel. If the damage has been caused by an animal, the aforesaid persons shall also be liable when the animal has run away or has got lost.

Art. 51. Compensation shall be due for all damages that are a direct and immediate consequence of the tort. This compensation may be payable as a lump sum or in scheduled payments.

If the person suffering the damage has contributed to its occurrence, the compensation may be reduced.

Where compensation for impaired capacity to work has been awarded, it may be reduced or increased if the injured person's capacity to work changes in connection with the damages caused.

Art. 52. Compensation for a personal tort shall be determined by the court in equity.

Art. 53. Where the damage is caused by several persons, they shall be liable jointly and severally.

Art. 54. The person liable for damages faultily caused by another shall have a claim against the latter for what has been paid.

5. UNJUST ENRICHMENT

Art. 55. Any person who has received something without merits or for non-existing or lapsed merits must return it. A person who has conscientiously fulfilled his moral duty cannot claim restitution.

Art. 56. A person who has fulfilled another person's obligation by mistake is entitled to claim restitution from the creditor unless the latter has given up in good faith the document or the security on the debt. In that case the person who has fulfilled the obligation shall assume the creditor's rights.

Art. 57. If the restitution of a particular chattel is due, the recipient shall owe the yields from the moment he was demanded to make the restitution.

Should the chattel subject to restitution perish after the demand for restitution was made or should the recipient dispose of it or consume it after finding out that he has been keeping it without merits, he shall be liable for either its actual value or the price he has received for it, whichever is higher. However, if the chattel has perished or has been disposed of or consumed by the recipient prior to the said demand, he shall be liable only for what he has used thereof, excluding yields.

Art. 58. Where restitution is owed by a person of legal incapacity only what has been used to his benefit may be claimed from him.

Art. 59. Apart from the above cases, whoever has enriched himself without merits at the expense of another shall be liable for the return of the enrichment, up to the amount of the other person's loss.

This right shall arise whenever there is no other claim by which the person suffering the loss can defend his interests.

6. MANAGING OTHER PERSON'S AFFAIRS WITHOUT AUTHORIZATION

Art. 60. A person who intervenes in the management of affairs that are not his own ones, without having been asked to do so, must take care thereof until the interested person can take them over.

He must take care of the affairs as if he is authorised to do so.

His responsibility may be reduced taking account of the specific circumstances that he has undertaken the other person's affairs under.

Art. 61. If the intervention in the affairs has been appropriate and they have been well managed in the other person's interest, the interested party must fulfill the obligations assumed on his behalf, compensate the person who has managed the affairs for the personal obligations the latter has assumed and must reimburse him for the reasonable and useful expenses plus interest from the date the expense was made.

If the affairs have been managed in the manager's personal interest as well, the interested party shall be liable only up to the amount of enrichment.

If a person has intervened in another person's affairs against the will of the interested party the former shall be liable in accordance with the provisions for unjust enrichment.

Art. 62. The rules for authorisation shall apply if the interested party has approved the management of the affairs.

III. EFFECT OF OBLIGATIONS

1. PERFORMANCE

Art. 63. (Par. 1 amended, SG No. 12/1993) Each of the parties to the contract is obliged to fulfill its obligations thereunder accurately and in good faith, in accordance with the provisions of the law, and shall not prevent the other party from fulfilling its obligations in the same manner.

The obligations must be fulfilled with due diligence, except where the law provides for some other degree of diligence.

Art. 64. Where a fungible is owed the debtor must provide goods of the average quality at least.

Art. 65. The creditor may not be forced into accepting anything different from what is owed.

If the creditor agrees to receive ownership of anything different from what is owed, the rules for sales shall apply in case of hidden defects of the received object.

Where a claim is transferred to the creditor in lieu of an obligation, the obligation shall be extinguished upon collection on the claim, unless otherwise agreed.

Art. 66. The creditor shall not be forced into accepting performance in parts, even though the obligation may be divisible.

Art. 67. (Repealed, SG No. 12/1993)

Art. 68. If the place of performance is not specified by the law, the contract or the nature of the obligation, the performance shall be carried out:

a) for monetary obligations - at the creditor's domicile at the time the obligation is performed;

b) for obligations to give a particular chattel - at the place where that chattel is at the time the obligation arises, and

c) in all other cases - at the debtor's domicile at the time the obligation arises.

Art. 69. If the obligation has no fixed time period the creditor is entitled to demand its immediate performance.

If the performance is left at the debtor's will or capabilities, the creditor may ask the regional court to order the debtor to perform within a sufficient time period.

Art. 70. The time period shall be deemed agreed in favour of the debtor unless otherwise ensues from either the will of the parties or the nature of the obligation.

The debtor may fulfill his obligation before the deadline unless the time period has been agreed in the creditor's favour as well.

In the event of an interest-bearing monetary obligation the debtor may pay before the deadline and deduct the interest for the remainder of the time period.

Art. 71. The creditor may claim performance of an obligation before the deadline if the debtor has become insolvent or if, through his actions, he has reduced the security provided to the creditor, or has failed to provide the promised security.

Art. 72. The time period set in months shall expire on the respective date of the final month; if that month has no respective date, the time period shall expire on its last day. The time period set in weeks shall expire on the respective day of the final

week. Where the time period is set in days, the day of the event or moment that the time period runs from shall not be counted. The time period shall expire at the close of the final day.

If the final day is not a business day, the time period shall expire on the first business day which follows.

If the time period expires a certain number of days prior to a certain day, the latter shall not be counted, neither shall the day on which the term expires.

Written statements and notices of any nature shall be deemed made within the time period if they have been sent by mail, telegraph or radiogram before the expiration of the twenty-fourth hour of the time period's final day.

The beginning of the month shall mean the first day of the month, the middle of the month shall mean the fifteenth day of the month, and the end of the month shall mean the last day of the month.

Art. 73. The obligation may be performed by a third party even against the creditor's will, unless the creditor is interested that it be performed personally by the debtor.

(Paragraph 2 repealed, SG No. 12/1993)

Art. 74. A person who has performed another person's obligation having legal interest to do so shall assume the rights of the creditor.

Art. 75. The performance of the obligation must be made to the creditor or to a person authorised by him, by the court or by law. Otherwise the performance shall be valid only if the creditor has ratified it or has benefited therefrom.

The debtor shall be discharged from obligation if he has performed it in good faith to a person who appears authorised to receive the performance on the basis of unambiguous circumstances. The actual creditor is entitled to a claim against the person who has received the performance. Performance to a creditor who is a person of legal incapacity shall discharge the debtor if the performance has gone in favour of the creditor.

(New, SG No. 83/1996) Where the payment is carried out by debiting and crediting a bank account the obligation shall be deemed extinguished on crediting the creditor's account.

Art. 76. A person who has several obligations of the same type to another one may state which of them he is extinguishing, provided the performance is insufficient to extinguish all of them. If no statement to that effect is made, he shall repay the obligation which is the most onerous one for him. Should there be several equally onerous obligations, the earliest one of them shall be repaid, and if all of them have occurred at the same time, they shall be repaid proportionately.

Where the performance is insufficient for covering the interest, costs and principal, the costs shall be repaid first, then the interest and finally the principal.

Art. 77. The debtor is entitled to ask the creditor for a receipt upon performance.

If a specific document has been issued by the debtor for the debt, he may demand its return.

If the document concerns other rights of the creditor as well, or if the debtor has met his obligation only in part, the creditor shall note on the document the performance he has received and shall issue a receipt to the debtor.

If the document has been lost, the creditor shall be obliged to indicate so in the receipt issued by him.

Art. 78. The performance costs shall be borne by the debtor, and in the event the place of performance is changed, cost increases due to such change shall be borne by the party that has caused them.

2. NON-PERFORMANCE

Art. 79. If a debtor fails to perform his obligation strictly the creditor shall be entitled to seek performance plus damages for the delay or to claim damages for non-performance.

Where damages are sought instead of performance, the debtor may propose to perform the initial obligation plus damages for the delay, provided that the creditor is still interested in the performance.

Art. 80. Where the obligation concerns an act which can be performed by another person, the creditor shall be entitled to request permission for the latter to perform that act at the debtor's expense.

Where the obligation is for non-performance of an act, the creditor may request permission to remove at the debtor's expense what has been done in violation of the obligation.

Art. 81. The debtor shall not be liable if the impossibility to perform an obligation is due to a reason for which no fault can be alleged on him.

The fact that the debtor lacks financial resources for performance of the obligation shall not exempt him from liability.

Art. 82. The damages shall cover the loss suffered and the loss of profit insofar as they constitute a direct consequence of the non-performance and could have been foreseen upon the arising of the obligation. However, if the debtor has acted in bad faith, he shall be liable for all direct damages.

Art. 83. If the non-performance is due to circumstances that the creditor is responsible for, the court may reduce the compensation for damages or discharge the debtor from liability.

The debtor shall not be liable for damages for losses which the creditor could have avoided if acting with due diligence.

Art. 84. Where the date for performance of the obligation is fixed, the debtor shall be in default after its expiration. However, if that date expires after the debtor's death, his heirs shall be in default after the expiration of a seven days' period after being given the invitation to do so.

Where no date for performance is fixed, the debtor shall be in default after being invited by the creditor to perform his obligation.

Where an obligation arises from tort, the debtor shall be deemed in default even without an invitation.

Art. 85. Where a debtor is in default, he shall be liable for damages even though the performance has been rendered impossible by a reason for which he would not have been liable before that, unless he proves that the creditor would have suffered the damages even in case of timely performance.

Art. 86. In case of non-performance of a monetary obligation, the debtor shall be liable for damages to the amount of the interest accrued from the date of default. For greater losses actually incurred a creditor may claim damages in accordance with the general rules.

The rate of interest is set forth by the Council of Ministers.

Art. 87. Where a debtor under a bilateral contract fails to perform his obligation due to a reason that he is liable for, the creditor may cancel the contract by providing the debtor with an appropriate time period for performance with a warning that he shall deem the contract cancelled upon expiration of that time period.

Where a contract has been concluded in writing the warning must also be made in writing.

The creditor may inform the debtor that he is cancelling the contract even without providing such a time period if the performance has become impossible in whole or in part, if due to the debtor's default it has been rendered useless, or if the obligation had had to be necessarily fulfilled within the agreed time.

The cancelling of a contract for transfer, creation, recognition or termination of property rights on immovable property shall be done through the court. Should the defendant offer performance in the course of the proceedings, the court may grant a time period for that purpose depending on the circumstances.

No cancellation of a contract shall be admissible if the unperformed part is immaterial with regard to the creditor's interest.

The right of cancelling a contract shall expire by limitation after five years.

Art. 88. The cancellation shall be retroactive except for contracts for continuous or scheduled performance. The creditor shall be entitled to compensation for damages arising from the non-performance.

The cancellation of contracts subject to registration shall not affect the rights acquired by third parties prior to the registration of the claim.

Art. 89. As for bilateral contracts, if the obligation of one of the parties is extinguished due to impossibility of performance, the contract shall be cancelled *ex jure*. Where the said impossibility is only partial, the other party may claim a respective reduction of its obligation or cancellation of the contract through the court, if it does not have sufficient interest in partial performance.

Art. 90. A debtor who has an executable claim against his creditor arising from the same legal relationship as his own obligation, may refuse performance of that obligation until the creditor performs his own obligation. In that case the court shall rule that the defendant perform at the same time as the claimant.

Where the circumstances make it obvious that one of the parties might not perform its obligation, the other party may refuse to perform unless it is given adequate security.

Art. 91. A person who has an executable claim in connection with the preservation, maintenance, repair or improvement of the movable chattel of another person, or for damages caused by such a chattel, shall be entitled to retain the said chattel until satisfied, unless he has acted in bad faith.

Should the subject of retention be goods the creditor is entitled to keep such a quantity of them as is necessary for satisfying his claim.

(Paragraph 3 repealed, SG No. 12/1993)

No retention shall be permitted if due security is provided.

The creditor exercising retention shall be entitled to preferential satisfaction from the value of the retained chattel.

(Paragraph 6 repealed, SG No. 12/1993)

Art. 92. Liquidated damages shall secure the performance of the obligation and shall serve as compensation for damages caused by non-performance that do not have to be proved. The creditor may claim compensation for greater losses as well.

(Par. 2, 3, 4 repealed, SG No. 12/1993)

(2) (New, SG No. 83/1996) Where the liquidated damages are excessive compared to the damage sustained or the obligation has been performed improperly or partially, the court may reduce the amount of damages.

Art. 93. The earnest shall serve as proof that the contract has been concluded and shall secure its performance.

If the party that has given the earnest does not perform its obligation, the other party is entitled to withdraw from the contract and keep the earnest. If the party that has received the earnest fails to perform its obligation, the other party may claim the double amount of the earnest in case of withdrawal from the contract.

If the nondefaulting party prefers to seek performance of the contract the compensation for damages shall be determined in accordance with the general rules.

Art. 94. Arrangements that a priori discharge or limit the debtor's liability for deliberate actions or gross negligence shall be null and void.
(Paragraph 2 repealed, SG No. 12/1993)

3. CREDITOR'S DEFAULT

Art. 95. The creditor shall be in default when, without justification, he refuses to accept the performance offered by the debtor or fails to render the needed assistance without which the debtor would be unable to perform his obligation.

Art. 96. Where a creditor is in default the risk shall be taken by him; if the debtor has also been in default he shall be discharged from the consequences thereof.

The necessary expenses incurred due to the creditor's default shall be borne by the latter.

Art. 97. If the obligation is to deliver something and the creditor is in default, the debtor may get discharged by depositing the due item for safe-keeping at an appropriate place determined by the regional court by place of performance. Money, securities and valuables may be deposited for safe-keeping in a bank at the place of performance even without a court's order.

Where the due item is perishable or its deposition involves significant cost or inconvenience, as well as where its nature prevents it from being deposited, the debtor, after notifying the creditor thereof, may request that the regional court permit him to sell the item and deposit the amount received in a bank to the creditor's name.

The depositing for safe-keeping shall not have effect if the debtor withdraws the item prior to its acceptance by the creditor.

Art. 98. If the subject of the obligation is not the handing over of an item and the creditor refuses either to accept the performance or to render the required assistance, the debtor may withdraw from the contract and seek compensation for the necessary expenses incurred in result of the creditor's default.

IV. TRANSFER OF CLAIMS AND OBLIGATIONS

Art. 99. The creditor may transfer his claim unless the law, contract or nature of the claim does not permit it.

The transferred claim shall pass on to the new creditor with the privileges, securities and other attributes thereof, including interest accrued, unless otherwise agreed.

The former creditor must notify the debtor of the transfer and hand over to the new creditor any documents he may hold which verify the claim. The former creditor must confirm in writing that the transfer has taken place.

The transfer shall be binding upon third parties and the debtor from the day the latter was notified thereof by the former creditor.

Art. 100. If the transfer is for consideration, the creditor shall be liable for the existence of the claim at the time of the transfer.

He shall not be liable for the debtor's solvency, unless he has assumed such an obligation and only up to the amount received for the claim transferred.

Art. 101. A third party may step in as a co-debtor in a certain obligation by way of an agreement with either the creditor or the debtor. If the creditor has approved the agreement for the stepping in of the co-debtor, this agreement shall not be cancelled or amended without his consent.

The initial debtor and the co-debtor shall be jointly and severally liable to the creditor.

Art. 102. A third party may substitute for the debtor only with the creditor's explicit consent. The substituted debtor shall be discharged from liability to the creditor.

Security provided by third parties shall be cancelled provided the third parties do not consent that such security be provided to the new debtor. Pledges and mortgages provided by the initial debtor shall remain in force.

The new debtor may plead against the creditor any of the former debtor's defenses arising from the transferred legal relationship.

V. EXTINGUISHMENT OF OBLIGATIONS

1. SET-OFF, RENEWAL AND REMISSION

Art. 103. Where two persons owe to each other either money or fungibles, each one of them may set off his claim against his obligation, provided that the claim is executable and liquid.

A set-off is admissible even if the claim has been extinguished by limitation, provided it could have been performed prior to the expiration of the limitation period.

If the debtor has agreed with the transfer of the claim, he is not entitled to set off his obligation against his claim towards the former creditor.

Art. 104. The set-off shall be effected through a statement made by either party to the other one. It may not be done subject to a time period or condition other than the one that the court action for the claim shall be upheld.

The two counter claims shall be deemed extinguished up to the amount of the smaller one as of the day a set-off could have been performed on.

Art. 105. Claims that are not subject to forcible execution and claims ensuing from wilful wrongful acts and claims for taxes cannot be set-off without the creditor's consent.

Art. 106. (Repealed, SG No. 12/1993)

Art. 107. An obligation shall be renewed when it is substituted for by another one by agreement with the creditor. In this case the security for the previous obligation shall remain for the new one, if the persons who have provided it agree thereto.

(Paragraph 2 repealed, SG No. 12/1993)

Art. 108. The obligation shall be remitted if the creditor renounces the claim through a contract with the debtor.

Art. 109. An obligation shall be deemed extinguished if the private document for it is in the possession of the debtor, unless it is proved that the said document has not been returned voluntarily.

2. LIMITATION

Art. 110. All claims shall be extinguished upon the expiration of a five-year limitation period unless otherwise provided in the law.

Art. 111. The following obligations shall be extinguished upon the expiration of a three-year limitation period:

- a) labour remuneration claims that no other limitation period is provided for;
- b) (Amended, SG No. 12/1993) claims for damages and liquidated damages resulting from non-performance of contracts;
- c) claims for rent, interest and other scheduled payments;
- d) (Obliterated, SG No. 12/1993)

Art. 112. (Amended, SG No. 16/1977, repealed, SG No. 12/1993)

Art. 113. An agreement for shortening or extending the established limitation periods, as well as an agreement for renunciation of limitation before it expires shall be invalid.

Art. 114. The limitation shall run from the day the claim becomes executable on.

Should it is agreed that the claim becomes executable following an invitation, the limitation shall begin to run from the day the obligation arises on.

As for claims arising from tort, the limitation shall begin to run upon discovering the offender.

(New paragraph 4, SG No. 12/1993) As for claims for liquidated damages for default, the limitation period shall begin to run from the last day for which the liquidated damages are assessed.

Art. 115. A limitation period shall not run:

a) between children and parents as long as the latter exercise parental rights;
b) between persons under guardianship or custody and their guardians or custodians as long as the guardianship or custody lasts;

c) between spouses;

d) for claims of persons whose property is placed under trusteeship by law or by order of court, against the trustee as long as the trusteeship lasts;

e) for claims for damages to legal entities against their managers as long as the latter are in office;

f) for claims of minors and persons under interdiction for the period of time when they have no legitimate representative or custodian appointed, and six months after such a person is appointed or after the legal incapacity is terminated;

g) for the duration of the judicial proceedings on the claim.

If the limitation period expires while the creditor or the debtor are mobilised in the military forces, the action may be brought within six months after their demobilisation.

Art. 116. The limitation period shall be interrupted:

a) upon admission of the claim by the debtor;

b) upon bringing an action or defense, or an application for a conciliation procedure to commence; if the action or defense or application for a conciliation procedure is not upheld, the limitation shall not be deemed interrupted;

c) upon undertaking acts for forcible execution.

Art. 117. A new limitation period shall start to run when the limitation period is interrupted.

(Par. 2 amended, SG No. 12/1993) If the claim has been established by a court decision, the new limitation period shall be five years.

Art. 118. Should a debtor perform his obligation after the expiration of the limitation, he shall not be entitled to claim back what he has paid, even though at the time of payment he might not have known that the limitation had expired.

Art. 119. The extinguishment of the principal claim shall entail the extinguishment of additional claims arising therefrom, even though their limitation periods have not expired.

Art. 120. (Amended, SG Nos. 16/1977 and 30/1990) Limitation shall not be applied on the court's own motion.

(Paragraph 2 repealed, SG No. 30/1990)

(Paragraph 3 repealed, SG No. 30/1990)

(Paragraph 4 repealed, SG No. 30/1990)

VI. SPECIFIC TYPES OF OBLIGATIONS

1. JOINT AND SEVERAL OBLIGATIONS

Art. 121. Except for cases specified by law, joint and several liability between two or more debtors shall arise only where agreed upon.

(Paragraph 2 repealed, SG No. 12/1993)

Art. 122. The creditor may claim performance of the obligation in whole by any one of the debtors.

The bringing of the action against one joint and several debtor shall not affect the creditor's rights with respect to the other co-debtors.

A joint and several debtor may not plead against the creditor the personal defenses of his co-debtors.

Art. 123. Performance by one joint and several debtor shall discharge all the co-debtors. The receipt of something from a joint and several debtor in lieu of performance, the set-off with such a debtor, as well as the default of the creditor with regard to one joint and several debtor shall also have effect with respect to all joint and several debtors.

A joint and several debtor is not entitled to set off his obligation with claims of his co-debtors towards the creditor.

Art. 124. The renewal of an obligation of a joint and several debtor shall discharge the other co-debtors unless the creditor has preserved his rights against them.

The remission in favour of one joint and several debtor shall discharge the other co-debtors as well unless the creditor has preserved his rights against them. In the latter case the obligation shall be reduced by the share of the remitted co-debtor.

Should the creditor and the joint and several debtor be the same person, the obligation of the other joint and several debtors for the share of that co-debtor shall be extinguished.

Art. 125. The termination or interruption of the limitation period against a joint and several debtor shall not be enforced against the other co-debtors. However, if the debtor with regard to whom the limitation period has not expired has performed the obligation, that debtor may bring an action against the others who have been discharged in result of the limitation.

Renunciation of the limitation by one joint and several debtor shall not be enforced against the other co-debtors; the one who has renounced the limitation shall not be entitled to an action against those who have been discharged in result of the limitation.

Art. 126. Should performance become impossible and only one of the debtors is responsible for that, the creditor is entitled to claim full damages from him. The other debtors shall be liable jointly and severally only for the value of the initial debt.

Default by one joint and several debtor shall not be enforceable against the other co-debtors.

Art. 127. Payments to the creditor shall be borne equally by all joint and several debtors, unless otherwise ensuing from their relationship.

Each joint and several debtor who has performed more than his own share may bring an action against the other co-debtors for the balance. Should any of the latter be insolvent, the loss shall be distributed pro rata among the other co-debtors, including the one who has performed.

If a joint and several debtor who has performed has not raised a general defense against the creditor or has not informed his co-debtors of the performance, he shall be liable to them for the damages caused.

2. INDIVISIBLE OBLIGATIONS

Art. 128. An obligation shall be indivisible when what is owed is indivisible either by its nature or by the intention of the parties.

In both cases the obligation shall remain indivisible with regard to the debtor's heirs as well.

Art. 129. The subject of an indivisible obligation has to be transferred to all creditors as a whole. However, each creditor may demand that the subject owed be deposited for safe-keeping pursuant to [Art. 97](#).

As for everything else concerning indivisible obligations it is the rules for joint and several obligations that shall apply.

3. OBLIGATIONS WITH A RIGHT OF CHOICE

Art. 130. If it is not specified whose the right of choice is concerning an obligation with a right of choice, this right shall belong to the debtor.

The choice shall become irrevocable when it is communicated to the other party, and if it is granted to a third party - when communicated to both parties. In case the party the choice has to be communicated to consists of several persons, the choice shall become irrevocable when it is communicated to one of them.

Art. 131. If the right of choice belongs to the debtor and he fails to exercise it within the specified time period, or should there be no such time period - by the date when the obligation has to be performed, the right of choice shall pass to the creditor.

If the right of choice belongs to the creditor and he fails to exercise it within the specified time period, or should there be no such time period - prior to the deadline set by the debtor, the right of choice shall pass to the debtor.

If the choice is granted to a third party and it fails to make it within the specified time period, the choice shall be made by the court.

Art. 132. If performance concerning one of the subjects of the obligation is rendered impossible for any reason which is not the fault of the party that has no right of choice, the obligation shall remain in force only with respect to the other subjects.

If the party that has no right of choice is responsible for the aforesaid impossibility, the other party may choose: the creditor may choose either settlement through one of the possible subjects of the obligation or compensation in lieu of the impossible subject, whereas the debtor may either choose one of the possible subjects of the obligation and claim damages for the impossible one or be discharged of the obligation by forfeiting the damages.

VII. SECURITY ON CLAIMS

1. GENERAL PROVISIONS

Art. 133. The entire property of the debtor shall serve as general security to his creditors who shall have equal right to be satisfied by it provided there are no legal grounds for preferences.

Art. 134. The creditor is entitled to exercise the debtor's property rights when the latter's omission threatens the satisfaction of the creditor, except for rights the exercise thereof depending on the debtor's personal discretion only.

Where a creditor brings an action pursuant to the preceding paragraph, the debtor shall be summoned as a party to the proceedings as well.

If the exercise of the right does not consist in bringing an action, in order for the creditor to carry out the act, he must be authorised by the court under the procedure for securing claims.

Art. 135. The creditor may ask that, with respect to himself, certain acts of the debtor which harm the creditor be declared invalid, if the debtor was aware of the harm at the time of performance of those acts. Where an act is for consideration the person with whom the debtor has negotiated should also have been aware of the harm. Invalidity shall not affect the rights acquired in good faith by third parties for consideration prior to the registration of the petition for invalidation.

Awareness shall be presumed until otherwise proved in those cases where the third party is a spouse, a descendant or ascendant, or a sibling of the debtor.

Where the act had been performed before the claim arose, it shall be invalid only if the debtor and the person with whom he has negotiated have meant to harm the creditor.

Creditors in whose favour the invalidity is declared shall be satisfied out of the amount received from the public sale before the third party, when the latter participates in the distribution with a claim arising from the declaration of invalidity.

2. PRIVILEGE

Art. 136. The following claims shall be satisfied preferentially in the order they are listed in:

1. claims on costs for securing and forcible execution, as well as actions pursuant to Articles 134 and 135 - out of the value of the property for which they were made, with respect to creditors in whose favour these costs have been made;

2. (Amended, SG No. 103/1999, effective date 1 Jan. 2000; suppl. - SG 36/06, in force from 01.07.2006) state claims for property taxes or motor vehicle taxes - out of the value of the property or the vehicle, as well as claims for concession payments, interests and contractual penalties from concession agreements;

3. claims secured by a pledge or mortgage - out of the value of the pledged or mortgaged property;

4. claims that the right of retention is exercised for - out of the value of the retained property; should this claim arise from costs for maintenance or improvement of the retained property, it shall be satisfied prior to the claims under item 3;

5. employees' claims arising from employment relationships and maintenance claims;

6. claims of the state other than fines;

7. (Obliterated, SG No. 12/1993)

8. (Obliterated, SG No. 12/1993)

(Par. 2 amended, SG No. 12/1993) Claims under items 5 and 6 shall be satisfied preferentially from the entire property of the debtor.

Claims of the same rank shall be satisfied proportionately.

In addition to accrued interest the right to preferential satisfaction shall also apply to the outstanding interest from the moment the forcible execution commenced, and also to the interest for the year preceding it.

Art. 137. (Amended, SG No. 12/1993) Where the law does not specify the order of satisfying a claim, preferential satisfaction being provided for it, that claim shall be paid after the claims under item 6 of the preceding Art..

Where particular laws provide for some claims to be paid prior to all others they shall be paid after the claim under item 1 of Art. 136, and in the event they compete with each other they shall be paid proportionately.

3. GUARANTEE

Art. 138. Under a guarantee contract the guarantor undertakes an obligation before another person's creditor to be liable for the performance of the other person's obligation. This contract must be in writing.

The guarantee may exist only for an actual obligation. It may be undertaken for future or conditional obligation as well.

Art. 139. The guarantee may also be undertaken for a part of the debtor's obligations or under alleviated terms. If the guarantor has undertaken an obligation exceeding what the debtor owes or under more aggravated terms, his obligation shall be reduced to the amount of the principal obligation.

Art. 140. The guarantee shall cover all consequences of the non-performance of the principal obligation, including costs on collection of the claim.

Art. 141. The guarantor shall be liable jointly and severally with the principal debtor.

If a debtor has several guarantors for one and the same obligation, each one of them shall be liable for the whole obligation unless there is an arrangement for the division thereof.

Art. 142. The guarantor is entitled to plead against the creditor all defenses of the debtor, and he may also set off a claim of the debtor against the creditor. The guarantor shall not lose these rights even if the debtor has renounced them or has admitted his obligation.

Art. 143. A guarantor who has performed the obligation is entitled to claim from the debtor the principal, the interest, and the expenses he has made after notifying the debtor of the action he has brought against him. He shall also be entitled to the interest on the amounts paid from the date of payment.

The debtor shall not be liable to the guarantor if he has performed the obligation prior to being notified of the guarantor's payment. If the guarantor has performed the obligation without notifying the debtor thereof, the latter may plead against the guarantor the same defenses he could have raised against the creditor upon

performance. In both cases the guarantor is entitled to claim back what the creditor has unduly received.

Art. 144. The debtor who has performed his obligation shall be obliged to immediately notify the guarantor thereof.

Art. 145. Where a debtor has several guarantors for one and the same obligation, a guarantor who has performed the obligation may claim from the other guarantors their due parts.

Art. 146. The guarantor who has performed the obligation shall assume the rights the creditor has against the debtor, even though the debtor might have been unaware of the guarantee provided.

The guarantor shall also assume the rights of the creditor against third parties that have provided a pledge or mortgage for the obligation, but only up to the amount to which he would have had an action against them if they had been guarantors.

The guarantee shall expire where the guarantor is not able to assume the creditor's rights, this being due to the creditor's acts.

Art. 147. The guarantor shall remain under obligation even after the maturity of the principal obligation if the creditor has brought an action against the debtor within six months. This provision shall also apply in those cases where the guarantor has explicitly limited his guarantee to the time period of the principal obligation.

An extension of the time period granted by the creditor to the debtor shall have no effect with regard to the guarantor if the latter has not agreed thereto.

Art. 148. The interruption of the limitation with respect to the debtor or his renunciation of the expired limitation shall have no effect with regard to the guarantor; the interruption of the limitation with respect to the guarantor or his renunciation of the expired limitation shall have no effect with regard to the debtor.

4. PLEDGE AND MORTGAGE

A) GENERAL PROVISIONS

Art. 149. A claim may be secured by way of a pledge on either movable property or a claim and also by way of a mortgage on immovable property.

The pledge and mortgage may be established both for one's own obligation or for another person's obligation.

Art. 150. The pledge and mortgage shall follow the secured claim when it is transferred and shall be extinguished if the claim is extinguished.

Should the obligation be divided among the debtor's heirs, the pledge and mortgage shall continue to be valid for the whole obligation on the entire chattel or on all chattels even though they might be divided among the heirs.

Art. 151. Should the pledge or mortgage secure someone else's obligation, the owner of the pledged chattel or the mortgaged property may plead against the creditor all defenses at the debtor's disposal, as well as claim set-offs with the debtor's claims against the creditor.

Art. 152. An agreement which stipulates in advance that if the obligation is not performed the creditor shall become the owner of the property, as well as any other agreement which stipulates in advance the way of satisfying the creditor other than the one provided for by the law shall be invalid.

Art. 153. In the event there are several pledges or mortgages on one property the creditors shall be satisfied preferentially in the order the pledges and mortgages were created in, even though the secured claim might not have existed at the time of the creation thereof.

Art. 154. (Amended, SG No. 12/1993) If the pledged or mortgaged property perishes or gets damaged, or is expropriated for state or municipal needs, the pledgee and mortgagee shall be entitled to preferential satisfaction from either the insurance amount or the compensation due in accordance with the order of privileges of their initial claims. However, a payment made to the owner shall be valid if the pledgee or mortgagee has been notified of it by the insurer or the person liable for the compensation and did not object within a three-month period.

Art. 155. If the debtor has transferred the pledged or mortgaged property to a third party and the transferee pays or is subjected to forcible execution, the latter shall assume the rights of the satisfied creditor against the debtor, guarantors and the persons who have acquired from the debtor the ownership of other pledged or mortgaged properties for the same obligation later than him.

The same rights shall be enjoyed by an owner who has pledged or mortgaged his property for another person's obligation. However, in this case he shall assume the creditor's rights against the guarantors up to the amount which he could claim against them if he were a guarantor.

B) PLEDGE ON CHATTELS

Art. 156. The contract for pledge shall be valid only if the pledged chattel is handed over to either the creditor or another person designated by him and the pledgor.

(Par. 2 amended, SG No. 12/1993) Where the secured claim exceeds 5 levs, the pledge shall not be enforced against third parties if there is no document in writing showing the respective date, indicating the chattels and the claim.

Art. 157. The creditor shall be entitled to retain the pledged chattel until the secured claim is fully extinguished.

He shall not have the right to use it unless otherwise agreed.

Should the creditor be deprived of possession of the chattel, on grounds of his pledge he may claim it back from the person holding it.

Art. 158. If the pledged chattel is in danger of being spoilt, both the creditor and the pledgor may request permission from the regional court to sell it and to deposit the amount received in a bank as security to the creditor.

Art. 159. A creditor shall be entitled to preferential satisfaction from the pledged chattel's price through forcible execution only if he has not returned it to the debtor. The chattel shall be deemed returned if it is in the debtor's possession.

Art. 160. (amend. – SG 12.93; amend. - SG 59/07, in force from 01.03.2008) Where a secured claim is monetary or liquidated damages in cash have been agreed for it, provided that the pledge is created by a contract in writing or is provided ex jure for securing claims which arise from a contract in writing, the creditor may on the grounds of the contract require issuing of an order for immediate execution pursuant to the provisions of Art. 418 of the Civil Procedure Code.

Art. 161. The rules contained in this chapter shall not repeal the special provisions of other laws on creation and effect of pledges.

C) PLEDGE ON CLAIMS

Art. 162. (Amended, SG No. 12/1993) Only transferable claims shall be pledged. A contract for pledging a claim may not be pleaded against third parties if the pledge was not made known to the debtor; where a secured claim exceeds 5 levs the provision of Art. 152, paragraph 2 shall also apply.

Art. 163. A pledgor must hand over to the pledgee the documents proving the pledged claim, if there are such.

Art. 164. The creditor who has a pledge on a claim is obliged to carry out all acts required for maintaining it.

He shall be obliged to collect the interest on the pledged claim, as well as the principal should it become due.

All that the creditor has collected pursuant to the preceding paragraph shall be kept by him as a pledge. If it is in cash, the amount shall be deposited in a bank as security for the creditor.

Art. 165. (amend. – SG 59/07, in force from 01.03.2008) A creditor who has a pledge on a claim may require issuing of an order for immediate execution pursuant to the provisions of Art. 418 of the Civil Procedure Code under the terms and procedures set forth in Art. 160 and he shall be satisfied preferentially in accordance with the procedure for reversal of execution on a claim.

D) MORTGAGE

Art. 166. The mortgage shall be created through registration in the Property Register on the grounds of a contract or by operation of law.

(Par. 2 amended, SG No. 12/1993) It may be established only on separately specified properties and for a specific sum of money.

Art. 167. The mortgage contract shall be concluded by way of a title deed.

It shall indicate: the full name, domicile and occupation of the creditor and the debtor, as well as of the owner of the property if the mortgage is created for another person's obligation, and if any of the above parties is a legal entity - its trade name; the property on which the mortgage is created; the secured claim, its maturity and the interest rate if interest is agreed, as well as the amount of the sum the mortgage is created for if the claim is a non-monetary one.

A mortgage may be created only on property that belongs to the mortgagor at the time of concluding the contract.

Art. 168. A mortgage by operation of law shall be created:

1.in favour of the alienator of immovable property - on the alienated property as security for his claims under the contract, and

2.in favour of the co-partitioners to whom a supplementing of the share is due - on immovable property left in the share of a co-partitioner who is liable for the supplementing of the share.

The mortgage by operation of law shall be registered upon the creditor's application, which should have the deed of alienation or partition attached thereto. The application shall contain all the data set forth in Art. 167, paragraph 2.

Art. 169. (Par. 1 repealed, SG No. 34/2000, effective date 1 Jan. 2001)

A mortgage shall receive its rank upon its registration.

Art. 170. The creation of a mortgage shall be invalid if either the mortgage contract or the application for creation of a mortgage by operation of law or the deed pursuant to which it is filed does not specify the identity of the creditor or the owner or

the debtor, or does not specify the identity of the property or the secured claim or the amount of the sum the mortgage is created for.

Art. 171. The transfer and pledging of a claim secured by mortgage, the assumption of such a claim and levying a distraint on it, as well as its renewal and substitution in obligation secured by mortgage, must be made in writing with notarised signatures and entered in the Property Register in order for them to have effect with respect to the mortgage.

Art. 172. The registration shall be valid for 10 years from the date it was made on. It may be extended if the registration is renewed prior to the expiration of the above period.

Should the time period expire without a renewal being made the mortgage may be registered anew. In that case it shall be ranked as from the new registration.

The registration shall be renewed upon an application with a copy of the contract or a copy of the application for creating the mortgage attached thereto.

Art. 173. A creditor whose claim is secured by a mortgage shall be entitled to be satisfied preferentially from the mortgaged property's price, whoever its owner might be.

The right to a preferential satisfaction shall also apply to the income from the property from the date on which the owner must give account of such income under forcible execution pursuant to the [Code of Civil Procedure](#).

(amend. – SG 59/07, in force from 01.03.2008) If the claim is for a specified amount of money, or if liquidated damages in cash have been agreed for it, the creditor may on the basis of the deed of registration of the mortgage require issuing of an order for immediate execution pursuant to the provisions of Art. 418 of the Civil Procedure Code.

Art. 174. The mortgage shall secure the claim irrespective of any changes that might occur in the latter, but only to the amount shown in the registration. However, if it is registered that the claim is interest-bearing, the mortgage shall also secure the interest for the two years preceding the year of serving a writ of summons for voluntary performance on the owner, for the current year and all the following years until the date the property is sold. Besides, the mortgage shall secure the creditor's claims for expenses incurred for its creation and renewal, and court and execution expenses.

Art. 175. Upon public sale of the property all mortgages on it, as well as all property rights created after the first mortgage, shall be extinguished. Mortgagees shall be entitled to a preferential satisfaction from the price in accordance with the ranks of their mortgages.

(Amend. SG 43/05, in Force from 1st of September 2005) The mortgage may be preserved upon the public sale of a property if, with the mortgagee's consent,

the buyer assumes the secured obligation. In that case, the registration in the Property Register shall note the protocol with which the state or private bailiff certifies this consent.

Art. 176. Should a third party bearing no personal obligation on the secured claim acquire the mortgaged property and afterwards that property is sold at a public sale, the property rights he had over the said property before acquiring its ownership shall be restored ex jure except for the mortgages. As for the mortgages, he shall participate in the price distribution according to the rank thereof.

Art. 177. If the owner of a sold mortgaged property bears no personal obligation, he shall be entitled to receive from the property's price, before the mortgagees compensation, any necessary expenses he has incurred for the said property, as well as any increase in its value due to his useful expenses.

He shall be liable to the mortgagees for any damages caused to the property due to his gross negligence.

Art. 178. A person who purchases a mortgaged property from the debtor under the secured claim without assuming the obligation may pay the mortgagee up to the amount of the price he owes. In this case he shall be deemed to have assumed the rights of the satisfied creditor with respect to the creditors whose mortgages had been created before he purchased the property.

Art. 179. The registration of a mortgage shall be deleted on the basis of the creditor's consent that must be notarised or on the basis of an effective court ruling.

The deletion shall be made upon an application with the deed of consent or a copy of the effective court ruling attached thereto. It shall be made through entering a note in the lot of the mortgaged property.

The deletion shall extinguish the mortgage. However, if the deed the deletion was based on is declared null and void, the mortgage may be registered anew. In that case, it shall be ranked from the date of the new registration.

5. SECURITY BEFORE A COURT

Art. 180. Where the law provides for providing security before a court, the said security may be a deposit in cash or government securities, or a mortgage.

The value of the securities and immovable property shall be calculated at 20 per cent below their market price.

Art. 181. The pledge shall be created by depositing cash or securities in a bank.

A mortgage shall be created by registering the notarised consent of the owner of the immovable property.

The pledged cash and securities shall be returned to the pledgor and the mortgage shall be extinguished by order of the court that the security was provided before.

Art. 182. The rules set out in Articles 180 and 181 shall also apply where the law stipulates that security be provided before another state institution; in this case the court's acts shall be performed by the state institution that the security was provided before.

SPECIAL PART

I. SALE

1. GENERAL RULES

Art. 183. Under the contract of sale the seller assumes the obligation to transfer to the buyer the ownership of a chattel or any other right for a price which the buyer assumes the obligation to pay to the seller.

(Paragraph 2, repealed, SG No. 12/1993)

Art. 184. If upon conclusion of the contract the chattel has already perished, the contract shall be null and void.

If only a part of the chattel has perished, the buyer is entitled either to renounce the contract or to claim the surviving part at a respectively reduced price.

Art. 185. The following persons are not entitled to be buyers, even at a public sale, either directly or through a figure-head:

a) persons who manage or guard the property of another person *ex jure* or *ex officio* - with regard to this property, as well as officials to whom the sale of property is assigned in their official capacity - with regard to this property; and

b) (Amended, SG 104/1996, Amend. SG 43/05, in Force from 1st of September 2005) judges, prosecutors, state and bailiffs, entry judges, and lawyers - with regard to the rights which are disputed before the court to which they belong or in whose jurisdiction they act, except if the buyer is a co-owner of the disputed right.

Art. 186. The costs for the contract and other expenses related to the transfer of ownership shall be borne by the buyer, except for the sale of immovable property where the costs shall be shared equally by the parties.

The costs of delivery, including the measuring and weighing, shall be borne by the seller and the costs of accepting delivery shall be borne by the buyer.

Art. 186a (New, SG No. 12/1993) The risk of accidental loss or damage of fungibles shall pass on to the buyer from the moment the goods are specified by

agreement of the parties or are delivered to the buyer, and in case of delivery to a buyer in some other place - from the moment the goods are handed over to the shipping agent or carrier, except if otherwise agreed between the parties. In case of transit deliveries the risk shall pass on to the final consignee.

2. OBLIGATIONS OF THE SELLER

Art. 187. The seller is obliged to deliver the sold chattel to the buyer. The chattel shall be delivered in the same state as the one it was in at the time of the sale, together with all yields since that time.

Art. 188. The seller shall be liable if third parties possess the right of ownership or any other rights over the chattel which may defeat the buyer's claim, except if the latter was aware thereof.

Art. 189. If the sold chattel belongs entirely to a third party, the buyer is entitled to cancel the sale pursuant to [Art. 87](#). In such a case the seller must repay to the buyer the price paid and cover the buyer's costs incurred by him for the contract, as well as his necessary and useful expenses on the chattel. The seller shall be liable for other damages in accordance with [the general rules for non-performance of an obligation](#).

The seller shall owe the repayment of the whole price even though the chattel has been depreciated or damaged. However, if the buyer has benefited from the damage caused by him the amount of such benefit shall be deducted from the sum owed by the seller.

Art. 190. Should only a part of the sold chattel belong to a third party or should the chattel be encumbered with rights of a third party, the buyer may bring an action for cancelling the sale and ask for damages pursuant to the preceding Art. in those cases where, under the circumstances, it must be presumed that he would not have concluded the contract had he known thereof.

Otherwise the buyer may ask for a reduction of the price and damages.

Art. 191. If an injunction is issued against the buyer, he may also claim from the seller the value of the yields which the court has ordered him to give back to the third party, as well as the court expenses.

The seller shall not be liable for the injunction if he was not made a party to the proceedings and if he proves that he has sufficient grounds for defeating the claim.

Where the buyer has defeated the injunction or has cleared the chattel from the rights third parties had over it by paying a sum of money, the seller may get discharged from liability by paying the buyer this sum, the accrued interest from the date of payment and the costs.

Art. 192. If the buyer knew of the rights of the third parties at the time of the sale, in case of an injunction he may claim only the price. This shall also apply where the seller has reached an agreement that he will not be liable for the injunction.

The agreement for discharging the seller shall not be valid if he has not disclosed the third party's rights that he was aware of.

Art. 193. The seller shall be liable if the sold chattel has defects that significantly reduce its price or its aptitude for such use as is usual or is prescribed in the contract.

The seller is not liable for defects which were known to the buyer at the time of sale.

The seller shall also be liable when he was unaware of the defect. An agreement discharging him from liability shall be invalid.

Art. 194. Having accepted the chattel, the buyer has to examine it within the period usually required for such purposes and to immediately notify the seller of any defects he has noticed. Failure to do so shall mean that the chattel is approved, unless other defects, which cannot be seen under ordinary examination, are discovered later. In this latter case the buyer's rights shall be preserved provided that he immediately notifies the seller of the defect discovered.

No notification of the seller is necessary if he has known of the defect.

Art. 195. Where the seller is liable pursuant to Art. 193 the buyer may give back the chattel and claim the price paid and the expenses on the sale or keep the chattel and claim a reduction of the price or have the defects repaired at the seller's expense.

He may also claim damages in accordance with the general rules concerning non-performance of obligations.

In the sale of fungibles the buyer may either exercise the rights under the first paragraph or claim delivery of a fungible without defects, or claim damages in both cases.

Art. 196. The seller shall have the rights set forth in the previous Art. even though the chattel has perished or has been damaged, if this has occurred because of its defects or by chance.

If the damage or perishing have occurred through a fault of either the buyer or the parties to whom the chattel has been transferred by him, he is entitled to claim only a reduction of the price and damages pursuant to the provisions of the preceding Art.. The rights of the buyer shall be limited in the same way where the chattel has been reprocessed.

Art. 197. The buyer's actions pursuant to Art. 195 shall expire by limitation after one year in the case of a sale of immovable property, and after six months in the case of a sale of movable property. If the seller knowingly did not disclose the defect,

the limitation period shall be three years. The limitation period may be extended or shortened by agreement of the parties.

The limitation period starts to run from the moment of delivery.

Art. 198. Where the buyer raises an objection for defects in the sold chattel which was delivered from another place he must keep it at the disposal of the seller and take care of its preservation in the meantime.

If the chattel is exposed to deterioration and any delay entails a danger, or the preservation involves considerable cost or inconvenience, the buyer, having notified the seller, may ask the regional court for permission to sell the chattel.

Art. 199. The rules concerning liability for defects do not apply to [public sales](#).

3. OBLIGATIONS OF THE BUYER

Art. 200. The buyer is obliged to pay the price and take delivery of the chattel.

The payment shall be made simultaneously with the delivery of the chattel and at the place where it is done.

If the sold chattel gives yields or other income, the buyer shall owe interest on the price from the date of delivery of the chattel even though the price might not be executable yet.

4. SPECIAL RULES FOR SOME SALES

Art. 201. Where a movable chattel is sold the seller is liable to cancel the contract without observing the provisions of [Art. 87](#):

a) if the buyer fails to pay the price upon expiration of the time period, where the contract provides for delivery of the chattel simultaneously with the payment or after the payment;

b) if the buyer with respect to whom the time period for payment of the price has not yet expired does not appear to take delivery, or does not take delivery upon expiration of the time period of the chattel offered him in accordance with the contract.

In both cases he must notify the buyer within 7 days of expiration of the time period that he has cancelled the contract.

Art. 202. Where no time period for the payment of the price is specified and the buyer takes delivery of the chattel without payment, the seller may ask for a return of the chattel within 15 days after delivery if the chattel is still in the possession of the buyer and is in the same state as the one upon delivery.

This right shall not be exercised to the detriment of the buyer's creditors who have levied a distraint on the chattel or have received it as a pledge without knowing that the price has not been paid.

Art. 203. If the sales contract was concluded on the basis of a sample and the buyer does not provide it, the chattel shall be deemed to possess the qualities of the sample.

Art. 204. The sale with a test or examination provision shall be deemed concluded under the deferment clause that the buyer shall approve the chattel.

The seller shall cease to be bound by the contract if the chattel is in his possession and the buyer does not approve it prior to the expiration of the time period agreed upon or, if there is no such a period, immediately after being invited by the seller to do so.

The chattel shall be deemed approved if it is delivered to the buyer and the buyer makes no statement prior to the expiration of the time period agreed upon or, if there is no such a period, immediately after being invited by the seller to do so.

Art. 205. In the sale of chattels under an installment contract the seller may retain the ownership of the sold chattel until he receives the last installment, but in this case the risk passes on to the buyer from the moment of delivery.

This term may be pleaded as a defense against the buyer's creditors if it is agreed upon in writing and the document bears a verifiable date.

Art. 206. Regardless of any agreement to the contrary, failure to pay installments not exceeding 1/5 of the chattel's price does not provide grounds for cancelling the contract.

If the contract is cancelled on grounds of the buyer's non-performance, the seller is entitled to claim compensation for the use of the chattel regardless of any rights to damages.

An agreement providing that the installments already paid shall be kept by the seller as compensation shall be invalid.

Art. 207. (Repealed, SG No. 83/1996)

Art. 208. Under the contracts for scheduled delivery the price shall be paid proportionately upon each separate delivery.

The time period specified for the individual deliveries shall be deemed agreed upon in the interest of both parties.

Art. 209. A sale with a repurchase clause shall be invalid.

Art. 210. In selling an immovable property where the total area and the price per unit area is specified, if the real area turns out to be larger or smaller than the one specified in the contract, the price of the property shall be increased or decreased respectively. However, the buyer may withdraw from the contract if the area is larger or smaller by 1/10 or more from the one specified in the contract.

Where the price is defined as a total price for the whole property, if the area of the property is specified in the contract and it turns out to be smaller by over 1/10 of the real area, the buyer has the right to cancel the contract or claim a reduction of the price; but if it turns to be larger by over 1/10 the seller has the right to claim an increase of the price and in this latter case the buyer may withdraw from the contract.

These rules do not apply to public sales.

Art. 211. Actions for exercising the rights stipulated in the preceding Art. must be brought within one year of the delivery of property.

The cancellation of the contract shall not affect the rights third parties have acquired prior to the registration of the petition.

Art. 212. A person who is selling a decedent's estate as a whole without specifying the individual items thereof must secure only his capacity of an heir.

The sale of a decedent's estate shall be executed in writing with notarised signatures of the parties.

A contract for the sale of a decedent's estate which contains immovable property may defeat the claim of a third party only if it is registered.

Art. 213. If prior to the sale of an estate the seller has collected some payments or has alienated some objects, he must return to the buyer what he has received.

The buyer must restore to the seller what the latter has paid for the debts and burdens on the estate.

Art. 214-221. (Repealed, SG No. 85/1963)

II. EXCHANGE

Art. 222. Under the contract of exchange the parties undertake to transfer reciprocally the ownership of chattels or other rights.

Art. 223. The rules of sale shall apply to exchange as well, and each of the parties to the exchange shall be deemed a seller of what he is giving and a buyer of what he is receiving.

Art. 224. (Repealed, SG No. 12/1993)

III. DONATION

Art. 225. Under the contract of donation the donor undertakes to transfer immediately and gratuitously something to the donee who shall accept it.

The donation of movable property shall be effected either in writing with notarised signatures or by handing over, and of securities - as prescribed by the due procedure for their transfer.

Art. 226. A promise to make a donation shall have no effect.

Insofar as the donation concerns future property, it is null and void.

(Par. 3 amended, SG No. 12/1993) A donation is also null and void where either it, or the single motive for which it was made, contravene the law or good morals, and also where the conditions or burdens are impossible ones.

Art. 227. The donation may be repealed when the donee:

a) has intentionally murdered or attempted to murder the donor, his wife or his child, or is an accomplice in such a crime, except if the act has been committed under circumstances that exclude culpability;

b) has slanderously accused the donor of committing a criminal act punishable by at least three years' imprisonment, except if the slanderous accusation has to be prosecuted upon a complaint of the victim and no such complaint has been lodged, and

c) has refused to provide the donor with the support he needs.

These provisions shall not apply to customary or rewarding donations.

The action may be brought within one year from the moment the donor has obtained knowledge of the grounds for repealing the donation. Prior to the expiration of the above period the donor's heirs may bring the same action if the donor has died before that.

A renunciation of the right to such action shall be null and void.

The repeal of the donation shall not affect the rights that third parties have acquired over the donated properties prior to the registration of the petition, but the donee shall be liable to the donor for compensation for all yields he has gained.

IV. LEASE OF PROPERTY

Art. 228. Under the contract of lease the lessor is bound to provide a property to the lessee for temporary use, and the lessee undertakes to pay him a certain price.

Art. 229. (suppl. – SG 92/07) The contract of lease may not be signed for a period longer than 10 years, unless it is a commercial transaction.

Persons who are capable only of activities of simple management shall not conclude contracts of lease for a period longer than three years.

If the contract is made for a longer period it has validity for only ten years, or three years, respectively.

Art. 230. Unless otherwise agreed, the lessor is bound to hand over the property in a state which is appropriate to the use it has been leased for.

If the property is not in the proper state, the lessee may claim its repair or a proportionate reduction in lease price, or may cancel the contract of lease. In all cases he is entitled to claim damages.

The lessor shall not be liable for the defects of the leased property which the lessee either knew of or could easily detect if he had paid normal attention upon conclusion of the contract, except if the defects are dangerous to either his health or the health of the members of his household.

Art. 231. Small repairs related to damages which are due to conventional use, such as dirty walls in the rooms, corrosion of faucets and door locks, clogging of chimneys, etc., shall be at the expense of the lessee.

The repair of all other damages, if they are not faultily caused by the lessee, shall be at the expense of the lessor. If the lessor fails to make those repairs, the lessee shall have the rights set forth in paragraph 2 of the preceding Art., however, he may claim damages only if the repair is due to reasons the lessor is liable for. If the lessee makes the repair himself with due diligence he is entitled to deduct the cost of the repair from the rent.

When the property perishes completely or partially [Art. 89](#) shall apply.

Art. 232. The lessee must use the property as specified in the contract, and where the use is not specified, in accordance with its purpose.

He shall pay the lease and the expenses related to the use of the property.

Art. 233. The lessee shall owe the return of the property. He shall be liable for compensation for the damage caused during the use of the property, unless he proves that they are due to reasons he is not liable for. He shall also be liable for compensation for damages caused by members of his household or by his sub-lessees. It shall be presumed that the property has been accepted in a good state unless otherwise proved.

The lessee must notify the lessor without delay of the damages and infringements committed against the leased property.

Art. 234. Unless otherwise agreed, the lessee may sublease parts of the leased property without the lessor's consent. But even in this case he is not discharged from his obligations under the contract of lease.

The sublessee's rights shall not exceed the lessee's rights as to the use of the property.

The sublessee shall be liable to the lessor only for payment of the lease he himself owes upon bringing of the action, without being entitled to plead the payments he has made in advance.

Art. 235. The lessee of premises in a condominium must observe the internal rules of the condominium. Otherwise he may be evicted from the leased premises upon the motion of the Board of the condominium.

Art. 236. If after the expiration of the term of the lease the use of the property continues with the knowledge of and without objection on the part of the lessor, the contract shall be deemed extended for an indefinite term.

If the lessee continues to use the property despite the objection of the lessor, the former shall be liable for compensation and must fulfill all obligations arising from the terminated contract of lease.

Art. 237. In case of a transfer of immovable property the contract of lease shall remain valid with respect to the transferee if it has been registered in the Property Register.

A contract of lease concluded before the transfer of the property which has a verifiable date shall be binding upon the transferee for the term stated therein, but not for longer than one year from the date of transfer. If it does not contain a verifiable date and the lessee is in possession of the property, the contract shall be binding upon the transferee as a contract of lease for an indefinite term.

The lessor shall be liable for compensation to the lessee if the latter is deprived of the use of the leased property prior to the expiration of the term of the lease, this deprivation being due to the transfer of the property.

Art. 238. If the contract of lease has an indefinite term, each of the parties may withdraw from it by means of a one month's notice to the other party. However, if the lease is a daily one, a one day's notice shall be sufficient.

Art. 239. Where the lease is created by an act of an authorised state body the relationships between the parties shall be governed by the rules set above unless a special law provides otherwise.

V. LOAN

Art. 240. Under a contract of loan the lender transfers into the ownership of the borrower money or other fungibles and the borrower assumes the obligation to return the loaned sum or fungibles of the same type, quantity and quality.

The borrower shall owe interest only if so agreed in writing. This provision shall not apply to banks.

Art. 247 shall apply to loans.

Unless otherwise agreed, the borrower shall return the loaned money or chattels within one month from the invitation to do so.

Art. 241. The person who has undertaken to provide a loan is entitled to refuse to perform this obligation if the other contracting party has become insolvent.

Art. 242. (Repealed, SG No. 12/1993)

VI. LOAN FOR USE

Art. 243. Under the contract of loan for use the lender shall provide gratuitously to the borrower one chattel for temporary use and the borrower assumes the obligation to return it.

Art. 244. The borrower must take due care of the chattel, giving higher priority to its preservation than to the preservation of his own belongings.

He may use the loaned chattel only in accordance with the contract, and where the use has not been negotiated, in accordance with its purpose; he may not cede the use of the chattel to another person.

In case of non-performance of these obligations the borrower shall be liable for damages caused by reasons beyond his control, except where he may prove that they would have affected the chattel even if he had performed accurately.

If the chattel has been loaned to several persons, they shall be liable jointly and severally.

Art. 245. The borrower shall bear the usual costs for maintenance, preservation and use of the chattel. He shall be entitled to claim from the lender the extraordinary expenses if they have been necessary and urgent.

Art. 246. Where the loaned chattel gives yields the borrower must return them, unless otherwise agreed.

Art. 247. The lender shall be liable for compensation for the damages caused to the borrower in result of the hidden defects of the loaned chattel if he deliberately or because of negligence has failed to report them to the borrower.

Art. 248. Art. 233 shall apply to the loan for use.

Art. 249. Upon the expiration of the term agreed or after the termination of the use the borrower is obliged to return the chattel. However, the lender may claim the return of the chattel even before that if he himself urgently needs it because of

unforeseen circumstances or if the borrower either dies or does not perform his obligations under [Art. 244](#).

If the time or the purpose of the use are not specified in the contract, the lender may claim the return of the chattel at any time.

VII. DEPOSIT

Art. 250. Under the contract of deposit the depositor delivers a chattel to the depositary, who receives it with the obligation to keep it and return it.

The depositary shall not be entitled to compensation unless otherwise agreed.

Art. 251. [The restrictions on proof by witness testimony](#) shall not apply where the deposit is forced by some calamity such as fire, flood or another extraordinary event, as well as in cases where the chattel is delivered to an employee at a theatre, club, restaurant or other similar places.

Art. 252. The depositor may at any time claim the return of both the deposited chattel and the yields received therefrom, even if it has been agreed that the deposit will last for a certain time period. In this case the depositor shall owe compensation only for the period within which the chattel has been kept, but he must pay the depositary the expenses he has made on the basis of the term of the deposit agreed upon.

The deposited chattel shall be returned to the depositor at the depositor's expense at the place it had to be kept.

Art. 253. The depositary may not use the chattel without the consent of the depositor. Otherwise he shall be liable for compensation for the use and shall also be liable pursuant to [Art. 244](#), paragraph 3.

The depositary shall keep the chattels entrusted to him with due diligence.

Art. 254. The depositor shall cover the extra expenses for the preservation of the chattel if they have been necessary and urgent, and where the deposit was gratuitous he shall also cover the usual expenses.

He shall be liable for the damages and special expenses caused by the hidden defects of the deposited chattel if the depositary has been unaware of them.

Art. 255. If no term has been agreed for keeping the chattel, the depositary may discharge himself from the deposit obligations by notifying the depositor thereof and providing him with a sufficient time period to receive the chattel.

If upon the expiration of the term specified in the contract or in the notice the depositor has not taken the chattel, after the expiration of the said term the depositary shall be liable only in case of deliberate action or gross negligence, and

may petition the regional court to be permitted to sell the deposited chattel at a public sale. The claims of the depositary shall be paid out of the price obtained, and the balance shall be deposited in a bank in the name of the depositor.

Art. 256. (Repealed, SG No. 12/1993)

Art. 257. Even if the deposited chattels are fungibles the depositary has no right to dispose of them, except where so permitted by the depositor.

In the latter case the rules for loans shall apply.

The provision of paragraph 1 shall not apply to banks or to the Savings Bank.

VIII. A CONTRACT OF MANUFACTURE

Art. 258. Under the contract of manufacture the contractor shall be liable, at his own risk, to manufacture something in accordance with the other party's order, and the latter undertakes to pay remuneration.

Art. 259. Unless otherwise agreed, the contractor shall manufacture what has been ordered with means of his own.

Art. 260. The contractor must immediately notify the other party if the design provided or materials supplied are unfit for the correct performance of the job, and he has to ask for the necessary changes in the design or for supply of appropriate materials. If the other party fails to do so the contractor may renounce the contract.

If the contractor fails to make the above warning, he shall be liable to the other party for the damages caused.

Art. 261. The contractor must perform the work in such a way that it fits the usual purpose or the one stipulated in the contract.

The contractor who performs the work with his own materials is responsible for their good quality.

Where several persons have assumed the obligation to perform certain work together, they shall be liable jointly and severally, unless otherwise agreed.

Art. 262. The person ordering the work is entitled to check the performance of the contract at any time, provided he does not disturb the contractor.

(Par. 2 amended, SG No. 12/1993) If it becomes evident that the contractor will not be able to perform the work on time or that he will not perform it in the way agreed or as due, the person ordering the work may cancel the contract and claim damages under the general rules.

Art. 263. The risk of accidental loss or damage of the materials shall be borne by the party that has provided them, if the other party is not in default.

Art. 264. The person ordering the work must accept delivery of the work done in accordance with the contract.

Upon accepting delivery he shall examine the work and shall state all the objections concerning improper performance, except for defects that cannot be revealed in the usual manner of acceptance of delivery or are revealed only later. The person who has ordered the work shall notify the contractor of any such defects immediately after they are discovered. This shall not be necessary where the contractor has been aware of them.

If no such objections are raised, the work shall be deemed accepted.

Art. 265. If, in the course of performing the work, the contractor has departed from the order or if the work done has deficiencies, the person ordering the work may claim:

repair of the work within a period stipulated by him without payment;
covering the expenses needed for the repair or a respective reduction of the remuneration.

If the departure from the order or the deficiencies are considerable and the work is deemed unfit for its contractual or usual purpose the person ordering the work may cancel the contract.

These rights shall be extinguished by limitation within six months, and in case of construction work - within five years.

Art. 266. The person ordering the work shall pay remuneration for the work accepted. If the remuneration is agreed on a unit price basis, its amount shall be determined upon acceptance of the work.

If in the course of the performance of the contract the duly determined prices of materials or labour change, the remuneration shall be adjusted accordingly, even where it has been agreed upon as a total sum.

(Par. 3 repealed, SG No. 12/1993)

Art. 267. If the performance of the work becomes impossible due to a reason that neither party is liable for, the contractor has no right to remuneration. If one part of the work has been done and may be of use to the person ordering the work, the contractor is entitled to the respective part of the agreed remuneration.

The contractor shall be entitled to remuneration if the performance of the work has become entirely or partially impossible due to the unfitness of the materials or design provided by the person ordering the work, and the contractor has duly notified him thereof.

Art. 268. If there are reasonable grounds thereof, the person ordering the work may renounce the contract, regardless of the fact that the performance has begun,

by paying the contractor for the costs incurred, the work done and the profit he would have obtained from the performance of the work.

(Paragraph 2, repealed, SG No. 12/1993)

Art. 269. If the contractor dies or becomes unable to proceed with the work the contract shall be terminated, unless it has been concluded with regard to the contractor and his heirs agree to proceed with the work.

Upon termination of the contract the person ordering the work shall pay both for the work done and for the usefully invested materials in accordance with the contracted remuneration.

IX. PUBLISHING CONTRACT, CONTRACT OF PUBLIC PERFORMANCE AND SCENARIO CONTRACT

Art. 270.-278. (Repealed, SG No 56/1993)

Art. 279. (Repealed, SG No 12/1993)

X. MANDATE CONTRACT

Art. 280. Under the mandate contract the mandatary assumes the obligation to perform on behalf of the mandator the acts for which he is commissioned by the mandator.

Art. 281. The mandatary shall perform the mandate with due diligence and shall protect the property received in connection therewith.

Art. 282. The mandatary may depart from the mandate, if this has become necessary for the protection of the mandator's interests and it has been impossible to obtain the mandator's consent.

Art. 283. The mandatary must perform the mandate personally.

He may assign it to another person if he is authorised to do so by the mandator or this has become necessary for the protection of the mandator's interests provided that failure to do so would have resulted in damage to the mandator.

The mandatary must immediately notify the mandator of this substitution.

A mandatary who is not entitled to authorise another person to substitute for him shall be liable for the acts of his substitute as if they were his own, and a mandatary who is entitled to authorise another person shall be liable for any damage caused by his poor choice of a substitute.

Art. 284. The mandatary shall notify the mandator of the performance of the mandate.

The mandatary must provide an account to the mandator and deliver to him everything he has received in the performance of the mandate.

Art. 285. Upon request, the mandator must deliver to the mandatary the means necessary for performance of the mandate and recover the expenses made by the latter, plus interests and damages suffered in connection with the performance of the mandate.

Art. 286. (Amended, SG No 12/1993) The mandator shall pay remuneration to the mandatary only if so agreed.

Art. 287. Apart from the other reasons set forth in the law, the contract of mandate shall be terminated upon the withdrawal of the mandate by the mandator, upon the mandatary's renunciation thereof or upon the death or placing under interdiction of the mandatary or mandator, as well as with the dissolution of the legal entity if either the mandator or mandatary were a legal entity.

Art. 288. The withdrawal of the mandate shall not deprive the mandatary of the right to demand payment of expenses or the remuneration agreed.

If the performance of the mandate becomes impossible, the mandator must reimburse the mandatary for his expenses and pay him remuneration for the work performed.

Art. 289. A mandatary who renounces the mandate without good grounds and fails to promptly notify the mandator thereof shall be liable for compensation for the damages caused by his renunciation.

Art. 290. The acts undertaken by the mandatary in performance of the mandate without being aware of and not being able to learn of its termination shall obligate the mandator.

Art. 291. Upon termination of the mandate due to death, placing under interdiction or dissolution of the legal entity, the heirs, guardian, trustee or the liquidator shall immediately notify the other party thereof and shall undertake the due measures for protecting the interest thereof.

Art. 292. If the mandatary acts on behalf of the mandator as a direct agent, the rights and obligations from transactions effected with third parties shall arise directly for the mandator.

If the mandatary acts on his own behalf, the rights and obligations from transactions effected with third parties shall arise directly for him. However, in the

internal relationship between the mandatary and mandator, as well as with respect to third mala fide parties, these rights shall be deemed rights of the mandator. These rights shall also be deemed rights of the mandator with respect to the bona fide creditors of the mandatary provided that the contract of mandate has a verifiable date preceding the distraint. This rule shall apply to the mala fide creditors of the mandatary even without a verifiable date on the contract.

Where the mandate is for acquiring property rights on immovable property in the name of the mandator, the contract shall be made in writing with notarised signatures.

XI. COMMISSION CONTRACT

Art. 293 - 303. (Repealed, SG No. 83/1996)

XII. SHIPMENT CONTRACT

Art. 304 - 308. (Repealed, SG No. 83/1996)

XIII. CONTRACT OF CARRIAGE

Art. 309 - 322. (Repealed, SG No. 83/1996)

XIV. INSURANCE CONTRACT

Art. 323 - 356. (Repealed, SG No. 83/1996)

XV. PARTNERSHIP

Art. 357. Under the contract of partnership two or more persons agree to unite their activities for achieving a common business objective.
(Paragraph 2 repealed, SG No 12/1993)

Art. 358. For achieving the common objective the partners may also agree to contributions in cash or other property.

The contributed cash, fungibles and perishable goods shall be owned jointly by the partners. All other goods shall be deemed contributed for joint use, unless otherwise agreed.

As for the liability of the partner for deficiencies in the contributed goods and for an injunction, the provisions of the contract of lease shall apply where the contributed goods are for use, and the provisions of the contract of sale shall apply where the goods are contributed into ownership.

Art. 359. Everything that has been acquired by the partnership shall be common property of the partners.

Unless otherwise agreed the shares of the partners shall be equal.

A partner is entitled to claim his share of the common property only on withdrawing from the partnership or its dissolution.

Art. 360. The decisions concerning the partnership's affairs shall be made with the consent of all partners, except for cases where the memorandum of association provides for a majority vote. Each partner shall be entitled to one vote.

Unless otherwise agreed, each partner shall have the right to management. However, in this case each of the other partners may object to an act of the partner prior to its being performed. Disagreements shall be settled by a majority vote of the partners.

Art. 361. Unless otherwise agreed the profits and losses shall be distributed among the partners proportionately to their shares.

Agreements for excluding some partners from participation in the losses or profits shall be invalid.

Art. 362. The partner is not entitled to assign his right of participation in the partnership without the consent of the other partners.

Art. 363. The partnership shall be dissolved:

a) on achieving the partnership's objective or if achieving this objective has become impossible;

b) on the expiration of the time period the partnership was established for;

c) upon the death or placing under interdiction of one of the partners, unless otherwise agreed;

d) by notice from one of the partners made in good faith and in due time if the partnership has been established for an unspecified term, unless it has been agreed that the partnership shall continue its activities with the remaining partners, and

e) upon a court ruling if there exist grounds thereof, where the partnership has been established for a specified term.

Art. 364. The partner shall be entitled to claim reimbursement for the expenses incurred by him, plus the interest and damages suffered by him in connection with the partnership's affairs.

XVI. SETTLEMENT

Art. 365. Under a settlement contract the contracting parties shall either terminate an existing dispute or avoid a potential dispute by way of mutual concessions.

Legal relationships that have not been a subject of the dispute may also be created, modified or extinguished by way of mutual concessions. In this case the transfer of these rights shall be executed in the form specified thereof.

Art. 366. A settlement on an illegal contract shall be null and void even though the parties have agreed on its nullity.

Art. 367. A settlement reached on the basis of documents subsequently recognized as forged shall be subject to invalidation.

XVII. PUBLIC PLEDGE OF AWARD

Art. 368. A public pledge of award for the performance of specified work, the pledge being made in writing or announced in the press or otherwise, obligates the pledgor to pay the award.

Where the work is performed by two or more persons, the award shall be divided between them in accordance with their participation in the work performed. However, if it is impossible to determine their personal participation the award shall be divided equally between them.

Where no consent can be reached between the persons on this issue, the award shall be given after the settlement of the dispute in court.

Where the work is done by two or more persons independently of each other, the award shall be given to the person who presents the work first, and where they present the work simultaneously, the award shall be divided equally.

Art. 369. (Par. 1 amended, SG No 12/1993) The public pledge of award for work done the best (contest) obligates the pledgor to pay the promised award to the person whose work wins the contest.

The decision as to whether the presented work meets the terms of the contest and the comparative evaluation of the work shall be made in the way specified in the announcement.

Where it is recognized that the persons participating in the work equally merit the award, it shall be divided equally between them.

XVIII. PROMISSORY NOTE,

BILL OF EXCHANGE AND CHEQUE

Art. 370 - 435. (Repealed, SG No. 83/1996)

Art. 436. (Obliterated, SG No. 28/1982)

PART THREE (new – SG 19/03)

APPLICABLE LAW TO CONTRACTS WITH INTERNATIONAL ELEMENT

1. Choice of applicable law

Art. 437. (new – SG 19/03, repealed – SG 42/05)

2. Applicable law at lack of choice

Art. 438. (new – SG 19/03, repealed – SG 42/05)

3. Special mandatory norms

Art. 439. (new – SG 19/03, repealed – SG 42/05)

4. Validity of the contracts

Art. 440. (new – SG 19/03, repealed – SG 42/05)

Art. 441. (new – SG 19/03, repealed – SG 42/05)

5. Form of the contracts

Art. 442. (new – SG 19/03, repealed – SG 42/05)

6. Subrogation, transfer of receivables

Art. 443. (new – SG 19/03, repealed – SG 42/05)

Art. 444. (new – SG 19/03, repealed – SG 42/05)

7. Proofs

Art. 445. (new – SG 19/03, repealed – SG 42/05)

8. Scope of the applicable law

Art. 446. (new – SG 19/03, repealed – SG 42/05)

Art. 447. (new – SG 19/03, repealed – SG 42/05)

9. Excluding of the

Art. 448. (new – SG 19/03, repealed – SG 42/05)

10. Public order

Art. 449. (new – SG 19/03, repealed – SG 42/05)

Concluding provisions

Sole paragraph. (new - SG 50/08, in force from 30.05.2008) The authorisations for institution, change or termination of rights in property made before 1 March 2008 shall preserve their effect.

AMENDMENTS TO OTHER LAWS

I. TO THE LAW ON CIVIL LEGAL PROCEEDINGS

§ 1. Following Art. 638 a new Art. 638a shall be created:

Where an action pursuant to Art. 19, paragraph 3, of the Law on Obligation and Contracts is brought and according to the preliminary contract the plaintiff must fulfill a counter obligation upon conclusion of the final contract, the court ruling shall replace this contract by performance of the plaintiff's obligation. In such a case the plaintiff must perform his obligation within two weeks of the ruling's entering into force.

If the plaintiff fails to perform his obligation within the time period, the court of first instance shall invalidate the ruling upon a petition of the defendant.

The court shall rule that the plaintiff pay to the State the expenses due on the transfer of the property and shall order that an attachment be created on the property for these expenses.

§ 2. Following Art. 1001 the following Chapter X-a shall be added:

Chapter ten.

"a" Invalidation of Securities Payable to Order

Art. 1001a. A person who has been deprived, against his will, of possession of a security payable to order, may apply to the court of first instance by the place of payment to invalidate it.

The content of the security must be described precisely and the applicant must indicate how he has been deprived of the security. The latter must confirm the truthfulness of his statement by an explicit declaration in the application.

Art. 1001b. After receiving the application, the court shall order the person that must pay the security on its maturity not to pay the amount and shall give the bearer 45 days to claim his rights on it. The payer shall be notified of the order and it shall be promulgated in the State Gazette.

This time period shall run from the date of the promulgation of the order, and if that occurs before maturity - from the maturity date.

Art. 1001c. If within the said time period no one claims rights on the security in court, the court shall decree its invalidation. If such rights are claimed and the security is presented, the court shall terminate the proceedings and shall invalidate the order. The interested parties may seek their rights through the general procedure.

Art. 1001d. After the invalidation of a security the applicant shall exercise the rights on it on the basis of the invalidation order, but he shall be liable to its owner for damages and losses.

II. To the Law on Privileges and Mortgages

§ 3. Following Art. 5 a new Art. 5a shall be created:

There shall be registered petitions for rulings for concluding final contracts (Art. 19, paragraph 3 of the Law on Obligations and Contracts) that a property right on immovable is created by.

The property rights and attachments acquired after the registration shall not be set up against the petitioner. However, the State, for its claims against the transferor which have become executable prior to the date of transfer or creation of the property right, may direct its claims to the property, regardless of in whose hands the property is.

The ruling which has entered into force and the action is upheld under it shall be registered on the grounds of a copy issued by the court, after the petitioner proves that he has performed the obligations that the transfer of the property ensues from.

TRANSITIONAL RULES

§ 4. This Law shall enter into force on January 1, 1951 and shall repeal:

1. The Law on Obligation and Contracts.
2. The Commercial Law, with the exception of Articles 14-26, 68-238, 277 and 278 which remain in force.
3. Articles 5 through 7 of the Law on Interest Taking.
4. The Law on Privileges and Mortgages with the exception of: Articles 1-5 (including the new Art. 5a), 118 and 119, as well as the Notary Tariff Schedule, and 17 of the Law on Amendments to the same Law dated 15 December 1948.
5. The Law on Protective Concordat.
6. Articles 10, 17, 24-28, 36-38 and 40-50 of the Law on Limitation; the other Articles of this Law shall remain valid only with respect to prescription.
7. Articles 81-88 of the Law on Inheritance.

§ 5. The court pending proceedings on declared insolvency and preventive concordat shall be finished under the existing procedure.

§ 6. The references to the texts of the Laws repealed under 4, shall be valid as references to the corresponding texts of this Law.

§ 7. The provisions on the duration of the limitation and prescription and the other time periods provided by this Law shall not be applied to the limitations and prescriptions whose terms have started running under the previous Law, unless the previous Law provides for a longer term for their termination compared to the term under this Law.

INTERIM AND CONCLUDING PROVISIONS

to the Law on Amendments to the Commercial Law (SG, No 83/1996)

§ 11. The amendments to the Law on Obligations and Contracts under this Law shall not apply to transactions that have been concluded but have not been performed up to the moment it took effect.

Transitional and concluding provisions TO THE LAW FOR THE CONCESSIONS

(PROM. – SG 36/06, in force from 01.07.2006)

§ 23. The law shall enter into force from 1 July 2006 except Art. 42, para 3 and Art. 58, para 4 which shall enter into force from the date of accession of the Republic of Bulgaria to the European Union.

Transitional and concluding provisions TO THE CIVIL PROCEDURE CODE

(PROM. – SG 59/07, IN FORCE FROM 01.03.2008)

§ 61. This code shall enter into force from 1 March 2008, except for:

1. Part Seven "Special rules related to proceedings on civil cases subject to application of European Union legislation";

2. paragraph 2, par. 4;

3. paragraph 3 related to revoking of Chapter Thirty Two "a" "Special rules for recognition and admission of fulfillment of decisions of foreign courts and of other foreign bodies" with Art. 307a – 307e and Part Seven "Proceedings for returning a child or exercising the right of personal relations" with Art. 502 – 507;

4. paragraph 4, par. 2;

5. paragraph 24;

6. paragraph 60,

which shall enter into force three days after the promulgation of the Code in the State Gazette.

Transitional and concluding provisions
TO THE LAW ON AMENDMENT AND SUPPLEMENTATION OF THE
CODE OF CIVIL PROCEDURE

(PROM. - SG 50/08, IN FORCE FROM 01.03.2008)

§ 45. In the Law of Obligations and Contracts (prom. - SG 275/50; corr. - Izv. 02/50; amend. - SG 69/51, SG 92/52; SG 85/63, SG 27/73, SG 16/77, SG 28/82, SG 30/90, SG 12 and 56/93, SG 83 and 104/96, SG 83 and 103/99, SG 34/00, SG 19/03, SG 42 and 43/05, SG 36/06, SG 59 and 92/07) a concluding provisions shall be created with a single paragraph:

§ 48. The Law shall enter into force from 1 March 2008 except § 23, 25, 45, 46 and 47, which shall enter into force from the day of its promulgation in the State Gazette.