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UNIFORM ACT ON GENERAL COMMERCIAL LAW





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

- Having regard to the Treaty on the Harmonization in Africa of Business Law, signed in Port Louis on October 17, 1993, as revised in Quebec on October 17, 2008, particularly in articles 2, 5 and 10 and 12;
- Having regard to the report of the Office of the Permanent Secretary and the comments of States Parties;
- Having regard to Notice No. 001/2010 dated June 30, 2010 of the Common Court of Justice and Arbitration;

After deliberations, States Parties present and voting unanimously adopt the Uniform Act worded as follows:

PRELIMINARY CHAPTER: SCOPE

ARTICLE 1—Any merchant, natural person or legal entity including all commercial companies in which a State or any other entity governed by public law is associated, as well as any economic interest groups, whose establishment or registered office is located on the territory of one of States party to the Treaty on the Harmonization in Africa of Business Law, hereinafter referred to as “States Parties”, shall be governed by the provisions of this Uniform Act.

Individuals who have opted for the status of entrepreneur shall also be governed by this Uniform Act under the conditions defined hereinafter, except where otherwise provided.

Furthermore, any merchant or any entrepreneur shall remain subject to the laws not contrary to this Uniform Act that are applicable in the State party where is located his establishment or registered office.

Natural persons or legal entities and economic interest groups formed or being formed on the date of entry into force of this Uniform Act, shall harmonize the terms of their business operations with the new legislation within a period of two years from the publication of this Uniform Act in the Official Journal.

Passed this deadline, any interested party may file a motion with the competent court so as to order compliance with such legislation, where necessary, under a penalty.

BOOK I STATUS OF MERCHANT AND ENTREPRENEUR



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TITLE I: STATUS OF MERCHANT

CHAPTER I: DEFINITION OF MERCHANT AND COMMERCIAL ACTS

ARTICLE 2—Merchants are individuals who carry out commercial acts and make this their usual profession.

ARTICLE 3- The commercial act by nature is an act by which a person engages in the movement of goods that he produces or purchases or an act by which he provides services with the intent to make a monetary profit. The following represent commercial acts by nature:

- purchase of goods, personal or real property for the purpose of resale;
- banking, stock exchange, insurance and transit operations;
- contracts between merchants for the purposes of their trade;
- industrial mining operations, exploitation of quarries and any deposits of natural resources;
- furniture rental operations;
- manufacture, transport and telecommunications operations;
- the operations of commercial intermediaries, such as commission agents, brokerage, agency, as well as the operations of intermediaries for the purchase, subscription, sale or rental, of real estate, enterprises, or shares or equity interests of commercial or property companies;
- Acts performed by commercial companies.

ARTICLE 4—The following constitute commercial acts by their form: bills of exchange, promissory notes and warrants.

ARTICLE 5—Commercial acts may be proven by any means even electronically as between merchants.

Any commencement of proof in writing shall enable the merchant to prove by any means against a non-merchant.

Accounting books kept in accordance with the provisions of this Uniform Act shall be admitted by the judge as evidence under the conditions set forth above.



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Accounting books and summary financial statements shall constitute evidence.

In the course of a legal dispute, the judge may order, including upon his own motion, that accounting books and summary financial statements be introduced for the purpose of producing evidence contain therein that is related to the dispute.

CHAPTER II: CAPACITY TO ENGAGE IN COMMERCE

ARTICLE 6—No-one shall carry out commercial acts as a profession, if he is not legally able to engage in commerce.

ARTICLE 7—Minors, unless they are declared competent, shall neither have the status of merchant nor engage in commercial acts.

Spouses of merchants shall be deemed to be merchant only if they carry out commercial acts referred to in Articles 3 and 4 above as a profession and separately from their spouses.

ARTICLE 8—No-one shall engage in a commercial activity when subject to a special status of incompatibility.

There's no incompatibility without a specific provision to that effect.

Those who claim incompatibility shall bear the burden of proof thereof.

All acts carried out by an individual in a situation of incompatibility shall nonetheless be valid as to third parties who acted in good faith.

They may, if they see fit, rely on acts performed by an individual in a situation of incompatibility, but the latter shall not rely on them.

ARTICLE 9— Carrying out a commercial activity shall be incompatible with the following duties or professions:

- civil servants, staff of public authorities and State-owned companies;
- ministerial officers and court officers: lawyer, bailiff, auctioneer, stockbroker, notary, clerk, administrator and judicial liquidator;
- certified and chartered accountant, auditor, contributions auditor, legal counsel, shipbroker;
- More generally, any regulated profession that prohibits cumulative holding of office



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with a commercial activity.

ARTICLE 10– Noone shall carry out a commercial activity, directly or through an intermediary, if subject to:

- a general, permanent or temporary ban imposed by a court of one of the States parties, such prohibition having been pronounced as the principal or ancillary judgement;
- a ban pronounced by a professional regulator; in this case, the ban shall only apply to the commercial activity concerned;
- Ban as a consequence of a final judgement with incarceration for a crime governed by common law, or to a sentence with at least three months imprisonment without parole for a misdemeanor against property, or an economic or financial offense.

ARTICLE 11- Temporary ban for a period exceeding five years, as well as the outright ban, may be lifted by the court which pronounced it at the request of the banned party.

Such request shall be admissible only after the expiry of a period of five (5) years from the day on which the decision imposing the ban became final.

Rehabilitation shall end the ban under the conditions and forms prescribed by the Uniform Act on Collective Insolvency Proceedings.

ARTICLE 12- Without prejudice to other sanctions, acts made by a banned party shall not be enforceable against third parties of good faith.

Good faith is always presumed.

However, such acts shall be enforceable against the banned party.

CHAPTER III: ACCOUNTING REQUIREMENTS FOR MERCHANTS

ARTICLE 13- All merchants, natural persons or legal entities, shall keep all accounting books in accordance with the provisions of the Uniform Act with respect to the organization and harmonization of corporate accounting.

They shall also comply, as appropriate, with the provisions of the Uniform Act with respect to the organization and harmonization of corporate accounting and the Uniform Act on commercial companies and the economic interest group.

ARTICLE 14- The accounting books shall indicate the registration number in the Register of Commerce and Securities.



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ARTICLE 15- Any legal entity shall also prepare its annual summary financial statements in accordance with the provisions of the Uniform Act with respect to the organization and harmonization of corporate accounting and the Uniform Act on commercial companies and the economic interest group.

CHAPTER IV: PRESCRIPTIVE PERIOD

ARTICLE 16- Obligations arising from trade between merchants or between merchants and non-merchants shall lapse after five years if they are not subject to shorter prescriptive periods.

Such extinctive prescriptive period shall be subject to the law governing the right that it affects.

ARTICLE 17- Contrary to the statute of limitations period, which commences for the duration set by law, on the day of the event that it determines, this prescriptive period shall run from the day where the holder of the right to act had knowledge or should have known the facts allowing him to carry out his act.

ARTICLE 18- The prescriptive period shall be counted by days, not hours. It shall extinguish when the last day of the term ends.

ARTICLE 19- Prescriptive periods shall not run on account of a claim which depends on a condition until such condition materializes, on account of a future debt until such debt is due, and on account of an action in warranty until the breach takes place.

ARTICLE 20- The suspension of the prescriptive period shall result in a temporary interruption of its course without deletion of the already accrued time.

ARTICLE 21- A prescriptive period shall not run or shall be suspended against the individual who is prevented from acting by law, an agreement or force majeure.

It shall be suspended from the day where, after the occurrence of a dispute, the parties agree to use mediation or conciliation or, in the absence of a written agreement, starting on the day of the first meeting of mediation or conciliation. The prescriptive period shall start to run again for a period which cannot exceed six months, from the date on which either one of the parties or both, or the mediator or conciliator declares that the mediation or conciliation is completed.

It shall also be suspended when the judge agrees to discovery measures submitted before the commencement of suit. The prescriptive period shall start running again for a period which cannot exceed six months from the day the measure was executed.

ARTICLE 22- The interruption of the prescriptive period shall result in the annulment of the prescription period already passed. As a result, a new prescriptive period of the same duration as the initial prescription period shall begin to run.



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ARTICLE 23- Admission by the debtor of the right of those against whom he asserts prescriptions shall interrupt the prescriptive period.

Commencing legal proceedings, even for provisional measures, shall interrupt the prescription period and the statute of limitations. The same shall apply when a petition is brought before an incompetent court or when the referral act of the court is cancelled due to vitiated proceedings. The interruption shall produce its effects until the extinction of the instance. It shall be null and void if the claimant withdraws his petition, lets the instance expire or if the rejection of such petition is final.

ARTICLE 24- Enforcement acts shall interrupt the prescriptive period as well as the statute of limitation.

ARTICLE 25- The filing of a claim against one of the joint debtors through a petition in court or by an act of enforcement or the acknowledgement by the debtor of the right of those against whom he would assert prescription shall interrupt the prescriptive period against all others, even against their heirs.

Claims made against the principal debtor or his admission shall interrupt the prescriptive period with respect to the guarantor.

ARTICLE 26- Judges may raise the claim of prescription on their own motion.

Unless there is a waiver, prescription may always be asserted, even on appeal.

ARTICLE 27- Payment made to settle a debt may not be reclaimed only because the statute of limitations had expired.

ARTICLE 28- Only an acquired prescriptive right can be waived

The waiver of prescription shall be express or tacit. The tacit renunciation shall be the result of situations that unequivocally establish the intent not to assert prescription.

Individuals unable to exercise their rights by themselves may not waive the acquired prescriptive period by themselves.

A creditor or any other person who has an interest in the application of the prescriptive period may assert or invoke it even when the debtor waives it.

ARTICLE 29- The duration of the prescriptive period may be shortened or extended by an agreement of the parties. It may not, however, be reduced to less than one year nor extended to more than ten years.

Parties may also make additions to the causes of suspension and interruption of the prescriptive period by mutual agreement.



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TITLE II: STATUS OF ENTREPRENEUR

CHAPTER I: DEFINITION OF ENTERPRENEUR

ARTICLE 30—The entrepreneur is an individual, a natural person who, upon making a simple declaration as provided for in this uniform Act, engages in a professional, civil, commercial, artisanal or agricultural activity.

An entrepreneur shall retain his status if the annual turnover generated by his activity for two consecutive years does not exceed the thresholds set out by the uniform Act with respect to the organization and harmonization of corporate accounting in terms of minimum cash flow.

With regards to merchants and craftsmen, such annual turnover shall be generated, on the one hand, by their sales of goods, objects, foods and supplies and, on the other hand, by provision of services, and, for farmers, their production activities.

When, for two consecutive years, the turnover of an entrepreneur exceeds limits set for their activities by the State party in the territory in which they carry out their activities, they are required to comply with all charges and obligations applicable to individual enterprises from the first day of the following year and before the end of the first quarter of that year. As from that date, they shall lose their status of entrepreneur, they shall not benefit from the special legislation governing the entrepreneur.

They shall, therefore, comply with the rules applicable to their activities.

Entrepreneurs, who are exempted from registering in the Register of Commerce and Securities, are required to declare their activities as provided for in this uniform Act.

Each State party shall establish incentives for entrepreneurs' activities particularly with regard to taxation and payment of social charges.

CHAPTER II: ACCOUNTING REQUIREMENTS FOR ENTREPRENEURS

ARTICLE 31— Entrepreneurs are required to maintain on a daily basis a journal in which they record in chronological order the source and amount of their income, separating payments in cash and other methods of payment, on the one hand, and the destination and amount of payments on the other hand. Such book shall be kept for not less than five years.

ARTICLE 32— In addition, the entrepreneur who sells goods, objects, supplies and foods or housing furniture must maintain a register, summarized by year, presenting the particulars of purchases and specifying their payment methods and references of supporting documents, which must be kept.



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CHAPTER III: PRESCRIPTIVE PERIOD

ARTICLE 33-Obligations arising with respect to their activities between entrepreneurs, or between entrepreneurs and non-entrepreneurs, shall lapse after five years if they are not subject to shorter prescriptive periods.

Such extinctive prescriptive period shall be subject to the law governing the right that it affects.

The prescription regime provided for in Articles 17 and 29 of this uniform Act shall govern entrepreneurship.

BOOK II REGISTER OF COMMERCE AND SECURITIES

TITLE I: GENERAL PROVISIONS

CHAPTER I: MANDATE OF THE REGISTER OF COMMERCE AND SECURITIES

ARTICLE 34-The Register of Commerce and Securities is created with the intention of:

- enabling persons required to register to comply with the registration formality with the Register of Commerce and Securities so as to request registration, obtain their registration number upon filing their application and complete other formalities set forth by this uniform Act and any other legal provision;
- enabling entrepreneurs to make their declaration of activity, obtain, upon filing thereof, their number of the declaration of activity and complete other formalities set forth by this uniform Act and any other legal provision;
- allowing persons under obligation to register and third parties to access information maintained in the Register of Commerce and Securities;
- satisfying the security, speed, transparency and loyalty requirements necessary for the development of economic activities;
- Receiving entries related to financing leases and to security interests provided for by the Uniform Act on securities interests or by any other legal provision.

ARTICLE 35-The purpose of the Register of Commerce and Securities is:

- 1) to receive applications for registration from, including:



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- natural persons with the status of merchant within the meaning of this uniform Act;
- commercial companies;
- companies, civil by their form, and commercial by their object;
- economic interest groups;
- branches within the meaning of the Uniform Act on commercial companies and the economic interest group;
- all entities with legal personality under obligation by law to register in the said Register;
- any natural person carrying out a professional activity under obligation by law to register in the said Register;
- Public institutions carrying out an economic activity and benefitting from legal and financial autonomy.

Registration entails attribution of a registration number that is personal to each person under obligation to register upon the filing of the application.

- 2) to receive the statement of activity of the entrepreneur, issue his number upon filing of the declaration of activity, to receive his amending statements and accept his declaration of cessation of activity;
- 3) to receive the filing of acts and supporting documents and give the particulars provided for by the provisions of this uniform Act, by those of the Uniform Act on commercial companies and the economic interest group, the Uniform Act with respect to the organization and harmonization of corporate accounting and any other legal provision;
- 4) to receive applications for amendments, additional and secondary statements;
- 5) to receive requests for removal of entries made;
- 6) to receive all applications for registration of security interests provided for by the Uniform Act on Securities and by any other legal provision. It shall also receive registration of financing lease contracts;
- 7) to receive all applications for amendment or renewal of the registration of security interests provided for by the Uniform Act on securities interests and any other legal provision;
- 8) to receive all applications for removal of entries provided for by the Uniform Act on



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securities interests and any other legal provision;

- 9) at any time, issue the necessary documents enabling persons under obligation to register to complete the formalities prescribed by the Uniform Acts and any other legal provision;
- 10) To put at the disposal of the public, information contained in forms provided for in articles 39 and 40 herein pursuant to provisions of article 66 of the Uniform Act on securities interests subject to legal restrictions in effect in the State party.

CHAPTER II: ORGANIZATION OF THE REGISTER OF COMMERCE AND SECURITIES

ARTICLE 36– The Register of Commerce and Securities shall be kept by the clerk of the competent court or the competent body in the State party and overseen by the presiding judge of the court or the judge entrusted by him for this responsibility or the competent authority in the State party.

A National Registry shall centralize information entered in each Register of Commerce and Securities.

A Regional Registry, kept at the Common Court of Justice and Arbitration, shall centralize the information entered in each National Registry.

The information contained in forms submitted to the clerk or to the competent authority in the State party and the registers and directories of the Register of Commerce and Securities are destined for the public.

ARTICLE 37– The Register of Commerce and Securities, in order to perform the tasks defined in article 35, 1 °), 2 °), 3 °), 4 °), 5 °), 9 °) and 10 °) above, shall include:

- 1) a register of incoming correspondence filed chronologically, the date and number of each statement, application, or filing of acts or supporting documents received by the clerk or the competent body in the State party. The directory shall also indicate, and as the case may be, the full names, business name, trade name or name of the declarant or the applicant as well as the object of the declaration or request or filing of acts or supporting documents;
- 2) an alphabetical directory of registered persons and entrepreneurs;
- 3) a directory by number of registered persons and entrepreneurs;
- 4) An individual file for each entrepreneur and each registered person, compiled, as the case may be, by the declaration of activity or the application for registration, supporting documents attached to the declaration or the application in pursuance of articles above.



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Where appropriate, the individual file shall be supplemented by subsequent entries and their supporting documents attached as prescribed by the articles above or special texts.

ARTICLE 38– The Register of Commerce and Securities, in order to perform the tasks set forth in article 35, 6 °), 7 °), 8 °), 9 °) and 10 °) above, shall include:

- 1) A chronological register of filings indicating the filing of the application for registration of security interests, for amendment, renewal or removal of the original entry with the date and number of arrival for each application received.

The chronological register of filings shall also indicate the filing of the application for registration and termination of financing leases.

The chronological register of filings shall, in addition, indicate information contained in the form used for the application for registration provided for in Article 53 (a) and (b) of the Uniform Act on securities interests.

- 2) An alphabetical directory of individuals granting or sustaining security interests and financing lessees with reference to each of them, by security and financing lease, of entries, amendments, renewals and removals, all in chronological order.
- 3) An individual file for each person, natural or legal entity, merchant or non-merchant, registered or not registered in the State party, granting or sustaining security interests subject to registration, or any financing lessee. The personal file shall include the form used to apply for registration as well as the form used for any other application in relation with the security interests.

ARTICLE 39– All declarations of entrepreneurs or registration applications shall be made on a form supplied for this purpose by the clerk or the competent body in the State party, except in case of use of electronic means.

The application shall be signed, as the case may be, by the declarant, the applicant or his agent whom must prove his identity and, unless he is a lawyer, a licensed professional, bailiff, notary or trustee, he shall bring with him a signed power of attorney of the declarant or the applicant.

The duly completed form shall be kept by the clerk or by the person in charge of the competent body in the State party.

The clerk or the person in charge of the competent body in the State party shall immediately issue to the declarant or the applicant a registration receipt stating the date, the nature of the formality completed and, as the case may be, the number of the declaration of activity or the registration number.

A copy of this form with the personal file consisting of supporting documents certified true shall be sent within one month by the clerk or the person in charge at the competent body to the



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National Registry, for transmission within the same time limit, of a copy of that form and extract of the file to the Regional Registry.

ARTICLE 40-Any application for entry, amendment, renewal and removal of a security interest and a financing lease shall be made on the form provided for that purpose by the clerk or the competent body in the State party of the Register of Commerce and Securities, except in case of use of electronic means.

The application shall be signed by individuals referred to in article 51 of the Uniform Act on securities interests. The signer, unless he is lawyer, a licensed professional, bailiff, notary or trustee, must prove his identity and bring a power of attorney signed by the individual who applies for registration.

The duly completed form shall be kept at the Register of Commerce and Securities.

A copy of such form which is attached to the individual file consisting of supporting documents certified true shall immediately be sent to the National Registry.

ARTICLE 41- The application for registration at the Register of Commerce and Securities shall be made for security interests by individuals described in article 51 of the Uniform Act on securities interests.

The application for registration at the Register of Commerce and Securities for financing leases shall be made by the lessor or the lessee.

The Register of Commerce and Securities competent to receive the registration the financing lease shall be in the jurisdiction where is registered the lessee or where he made his declaration, and in other cases, in the jurisdiction of the domicile of the lessee.

ARTICLE 42-The registration date of a security interest or a financing lease shall be the fee indicated in the chronological register of filings provided for in paragraph 1 of article 38 above.

ARTICLE 43- The following shall also be entered automatically at the Register of Commerce and Securities:

- 1) decisions rendered in individual proceedings of bankruptcy or collective insolvency proceedings;
- 2) decisions pronouncing patrimonial sanctions against officers of legal entities;
- 3) Discharge decisions or amnesty measures lifting disqualifications or bans.

The court clerk or the competent body in the State party which has rendered a decision to be entered in the Register of Commerce and Securities shall communicate a signed copy of such



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decision at the earliest convenience to the clerks or competent bodies in the State party within the jurisdiction where formalities have to be completed. Any interested party may also request the entry of the decision in interest from the Registers of Commerce and Securities.

Anyone who intends to rely on decisions bound to be registered automatically is required to establish that such decision has been transcribed, and he shall be responsible for requesting the transcription at the competent Register of Commerce and Securities.

TITLE II: REGISTRATION IN THE REGISTER OF COMMERCE AND SECURITIES

CHAPTER I: TERMS OF REGISTRATION

Section 1 - Registration of Natural Persons

ARTICLE 44-Any natural person whose registration is required by law must, in the first month of the year of his activity, apply for registration in the Register of Commerce and Securities with the clerk of the competent court or the competent body in the State party in the jurisdiction where he carries out his business.

The application form provided for in article 39 above shall state:

- 1) the full names and personal address of the person obliged to register;
- 2) his date and place of birth;
- 3) his nationality;
- 4) where appropriate, the name under which he carries out his activity as well as the brand used;
- 5) the activity/activities;
- 6) where applicable, the date and place of marriage, adopted matrimonial regime, clauses enforceable against third parties restricting free disposal of the assets of the spouses or absent such provisions, applications for separation of property;
- 7) full names, date and place of birth, domicile and nationality of individuals empowered to bind, through their signature, the person under obligation to register;
- 8) the address of the principal place of business and, where appropriate, the address of each branch and all the establishments operating on the territory of the State party;
- 9) where appropriate, the nature and the address of the establishments recently operated with its



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registration number at the Register of Commerce and Securities;

10) the start date, by the person under obligation to register, of his activity, and where appropriate, that of other subsidiaries and establishments;

11) Any other statement provided for by specific texts.

ARTICLE 45—To support his application, the applicant is required to submit the following supporting documents irrespective of their form or support:

- 1) an extract of his birth certificate or any administrative document to prove his identity;
- 2) an extract of his marriage certificate, where necessary;
- 3) a solemn declaration signed by the applicant and asserting that he is not subject to any bans provided for in article 10 above. This solemn declaration shall be made within seventy-five (75) days from the registration by submitting an extract of criminal records or, a document serving in lieu;
- 4) a certificate of residence;
- 5) a copy of property title or lease or a deed of occupancy of the main establishment and, where appropriate, that of other institutions and subsidiaries;
- 6) in case of acquisition or lease of a business a copy of the deed of purchase or management lease;
- 7) where applicable, prior permission to carry out the business;
- 8) Where appropriate, supporting documents required by specific texts.

Section 2 - Registration of Legal Entities

ARTICLE 46—Legal entities required by legal provisions to register must apply for registration within one month of their formation to the clerk of the competent court or of the competent body in the State party in which their registered office or main establishment is located.

Such request with the form provided for in Article 39 above shall state the:

- 1) company name or trade name or brand, as the case may be;
- 2) where appropriate, the logo or brand;



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- 3) the line of business;
- 4) form of the legal entity;
- 5) where applicable, the amount of capital with an indication of the amount of cash contributions and the value of in-kind contributions;
- 6) the address of the registered office, and where applicable, the main establishment and each of the other establishments;
- 7) the duration of the company or the legal entity as defined by its articles of association or the constitutive document;
- 8) the full names and personal residence of shareholders held indefinitely and personally liable for company debts along with their date and place of birth, their nationality, where appropriate, their date and place of marriage, the adopted matrimonial regime and provisions enforceable against third parties restricting free disposal of the assets of the spouses or, the absence of such clauses, as well as applications for separation of property;
- 9) full names, date and place of birth, and domicile of managers, officers, directors or shareholders empowered to bind the legal entity or the group;
- 10) full names, date and place of birth, domicile of statutory auditors, where their appointment is provided for by the Uniform Act on commercial companies and the Economic Interest group;
- 11) Or any other indication set forth by a specific legal provision.

ARTICLE 47—The following supporting documents shall be attached to the application irrespective of their form or support:

- 1) a certified copy of the articles of association or the constitutive document;
- 2) the declaration of regularity and conformity or notarial statement of subscription and payment;
- 3) the list certified true of managers, directors, officers or shareholders held indefinitely and personally liable or having the authority to bind the company or the legal entity;
- 4) a solemn declaration signed by the applicant stating and asserting that he is not subject to any bans provided for in article 10 above. This solemn declaration shall be made within a period of seventy-five (75) days from the registration by submitting an extract of criminal records or, a document serving in lieu;



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- 5) Where appropriate, prior authorization to carry out the activity of the applicant.

ARTICLE 48- Any natural person or legal entity not obliged to register at the Register of Commerce and Securities due to the place of his business or his registered office, shall apply for a branch registration within one month of its creation as prescribed by the Uniform Act on commercial companies and the economic interest group.

Such application is made using the form provided for in article 39 above shall be filed with the court clerk or the competent body of the State party in the jurisdiction where is located that branch or establishment and shall state:

- 1) where appropriate, its trade name, its acronym or brand;
- 2) the business name or the name of the branch or establishment;
- 3) the line of business;
- 4) the name of the foreign company owner of such branch or establishment; its trade name; its acronym or its brand; the line of business; the form of company or the legal entity; his nationality; the address of the registered office; where appropriate, the full names and residence of shareholders indefinitely and personally liable for the company debts;
- 5) Full names, date and place of birth of the natural person resident on the territory of the State party, with the power of representation and management of the branch.

Section 3 – Common Provisions to the Registration of Natural Persons and Legal Entities

ARTICLE 49- Registration of a natural person or legal entity shall be personal.

No-one shall be registered as a principal at multiple registers or at the same register under several numbers.

ARTICLE 50- Upon receipt of the duly completed application form for registration and supporting documents provided for by this Uniform Act, the court clerk or the person in charge of the competent body in the State party shall issue to the applicant a registration receipt stating the date of the registration was completed and the registration number.

The clerk or the person in charge of the competent body in the State party shall have a period of three months to carry out verifications pursuant to article 66 of this uniform Act and, where appropriate, notify the interested party of the withdrawal of his registration and proceed with its removal.

ARTICLE 51- In the event of relocation of the place of business to the territory of another



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jurisdiction, the person under obligation to register shall request:

- its deletion from the Register of Commerce and Securities in the jurisdiction where it was registered;
- A new registration at the Register of Commerce and Securities of the jurisdiction in which the business is relocated; this registration shall be final only after verifications provided for in paragraphs 4 and 5 hereinafter.

For this purpose, the person under obligation to register shall, as the case may be, submit information and supporting documents provided for in articles 44 to 48 hereinafter.

Such formalities must be carried out by the person under obligation to register within one month of the relocation.

The clerk or the competent body in the State party overseeing the Register of Commerce and Securities within the jurisdiction in which the person under obligation to register has relocated his business must, within the month of the new registration, verify the deletion of that person by requiring that he submits a certificate issued by the clerk or the competent body in the State party of the place of the previous registration.

In the event the person under obligation fails to register, the clerk or the competent body in the State party must, *ex officio*, proceed with corrections at the expense of that person.

Section 4 – Amendments, Additional and Secondary Entries

ARTICLE 52– Where the situation of the person under obligation to register undergoes changes that require revisions or amendments of the particulars entered in the Register of Commerce and Securities, he shall introduce a request for an amendment or revision of entry within thirty (30) days.

Any amendment concerning particularly the marital status, matrimonial regime, capacity, and the activity of the registrant, or any changes concerning the status of legal entities required to register should be notified to the Register of Commerce and Securities.

The partial cessation of activity must also be notified to the Register of Commerce and Securities.

Any request for an amendment, or revisions of entries entry shall be signed as provided for in article 39 of this uniform Act.

The court clerk or the person in charge of the competent body in the State party shall issue a registration receipt that states the formality that has been completed.



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ARTICLE 53-Any natural person or legal entity required to register at the Register of Commerce and Securities is required, if his activity is on a secondary basis in the jurisdiction of other courts, to subscribe a declaration of secondary registration within a period of one month from the beginning of the operation.

Such declaration shall state, in addition to the reference to the main registration, the required information:

- for natural persons by article 44 above;
- For legal entities by article 46above.

The court clerk or the person in charge of the competent body in the State party shall issue aregistration receipt stating the formality that has been completed and the date.

ARTICLE 54-A secondary registration application must be registered in the Register of Commerce and Securities of the court in the jurisdiction wherethe the activity will be carried out .

The clerk or the competent authority in the State party concerned shall forward, within one month of the secondary registration, a copy of the declaration of the secondary registration to the clerk or the competent body in the State party in charge of the Register where the main registration was made.

Any registration of a secondary place of businessshallentail the issuance of a registration number.

Section 5 - Removal

ARTICLE 55- Any registered natural person shall, within a period of one month from the cessation of hisactivity, request its removal from the Register of Commerce and Securities. This formality must also be completed for subsidiaries and establishments.

In the event of death of a registered natural person, his successors must, within the period of three months after the death, request the removal of his registration from the Register of Commerce and Securities, or its amendmentwhere they intend to carry on themselves.

Failing to request the removal within the time limit specified in the first two paragraphs of this Article, the clerkor the competent body in the State party shall effect the removalupon the decision of the court or the competent authority in the State party, ruling expeditiously, seized at his request or by any interested party.

The court clerk orthe person in charge of the competent body in the State party overseeing the



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Register of Commerce and Securities shall issue a registration receipt which states the formality completed and the date of completion of the formality.

ARTICLE 56– The clerk or the person in charge of the competent body in the State party shall proceed ex officio to the removal of the natural person or legal entity registered pursuant to article 50 above.

ARTICLE 57– The removal shall entail loss of rights attached to the registration.

ARTICLE 58– The dissolution of a legal entity, for any reason whatsoever, must be declared so as to enter it in the Register of Commerce and Securities within one month at the register of the competent court or the competent body in the State party in which the entity is registered.

The same shall apply to the nullity of the company as soon as the decision thereon is taken.

The removal shall be requested by the liquidator within a one month period from the close of the liquidation proceedings.

Where appropriate, the removal shall be requested for additional particulars and secondary registrations as well as for subsidiaries and establishments.

Failing to apply for removal within the prescribed period, the clerk of the competent court or the competent body in the State party shall enter the removal upon the rendering of the decision of the competent court or competent authority in the State party, ruling expeditiously, seized on its own motion or by any interested party.

The court clerk or the person in charge of the competent body in the State party shall issue a registration receipt which states the formality completed and the date of completion.

CHAPTER II: EFFECTS OF REGISTRATION

ARTICLE 59– Any individual registered in the Register of Commerce and Securities is presumed, unless evidence is provided to the contrary, to have the status of merchant within the meaning of this uniform Act.

However, such presumption shall not apply to individuals non-merchants whose registration in the Register of Commerce and Securities is the result of a statutory provision and legal entities who are not deemed merchants by virtue of this uniform Act, the Uniform Act on commercial companies and the economic interest group or a special legal provision.

Any natural person or legal entity registered in the Register of Commerce and Securities is required to enter on their invoices, purchase orders, tariffs and commercial documents as well as all correspondence, number and place of registration in the Register of Commerce and Securities.



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ARTICLE 60- Any natural person under the obligation to register in the Register of Commerce and Securities who did not apply within the prescribed deadline shall not assume the status of merchant until he registers, when such status is required.

Any legal entity under the obligation to register in the Register of Commerce and Securities which did not apply within the prescribed deadline shall not assume the legal personality until its registration.

However, both shall not raise their registration failure in the Register of Commerce and Securities to avoid responsibilities and obligations inherent in this capacity.

ARTICLE 61- In carrying out his activities, any natural person under the obligation to register in the Register of Commerce and Securities shall not assert acts and instruments subject to registration against third parties and public administrations unless they have been published at the Register of Commerce and Securities. However, third parties and public administrations may rely on such acts and instruments.

This provision shall not be applicable if the individual required to register establishes that at the time they were processed, the third parties or administrations had knowledge of the instruments and acts in question.

TITLE III: DECLARATION OF ACTIVITY OF ENTREPRENEURS IN THE REGISTER OF COMMERCE AND SECURITIES

ARTICLE 62- Entrepreneurs shall declare their activity using the form provided for in article 39 above, free of charge, at the clerk of the competent court or the competent body in the State party, in the jurisdiction where they conduct their activities. They shall provide the following particulars:

- 1) full names;
- 2) address of the business;
- 3) description of the activity;
- 4) proof of identity;
- 5) If necessary, proof of matrimonial regime.

Upon receipt of the duly completed declaration of activity form and supporting documents provided for by this Uniform Act, the court clerk or the person in charge of the competent body in the State party shall issue to the declarant a registration receipt that states the date of completion of the registration and the number of the declaration of activity.



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Entrepreneurs may only begin their activity after receipt of the number of the declaration of activity that must appear on their invoices, purchase orders, price lists and documents or professional correspondence, followed by the Register of Commerce and Securities which registered their declaration and the words “entrepreneur exempted from registration”.

The statements of change in activity or place of business as well as the declaration of removal shall be addressed in the same manner and, free of charge, to the clerk of the competent court or to the competent body in the State party.

ARTICLE 63-In support of his declaration, the applicant is required to provide the following supporting documents regardless of their form and support:

- 1) an extract of his birth certificate or any administrative document to prove his identity;
- 2) an extract of his marriage certificate, where necessary;
- 3) a solemn declaration signed by the applicant stating and attesting that:
 - if he is a merchant, he is not subject to any of the bans provided for in article 10 above.
 - If he is not a merchant, he has not been banned from carrying out any activity relating to his profession and he is not subject to any conviction for offenses provided for in article 10 above.

Such solemn declaration shall be made within a period of seventy-five (75) days from the date of the registration, by submitting an extract of criminal records or, a document serving in lieu.

- 4) a certificate of residence;
- 5) Where applicable, prior authorization to carry on the activity of the declarant.

ARTICLE 64-Declaration of a natural person or legal entity shall be personal.

No-one shall be declared as a principal at multiple registers or at the same register under several numbers.

Entrepreneurs shall not be registered at the same time in the Register of Commerce and Securities. They shall not have the same status as natural persons registered at the Register of Commerce and Securities.

ARTICLE 65-The natural person who meets the declarative obligations set forth in articles 62 to 64 above shall be presumed to have the status of entrepreneur. As such, he shall benefit from the provisions of:



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- article 5 of this uniform Act related to evidence;
- articles 17 to 29 and 33 of this uniform Act related to prescriptive period;
- articles 101 to 134 of this uniform Act related to lease for professional use.

In the event of a change of activity, the entrepreneur must make a statement to the competent court registry or the competent authority in the State party.

Similarly, in the case of change of the place of activity, he must make an amending declaration to the court clerk or the competent body of the State party of the Register of Commerce and Securities.

In case of cessation of activity, the entrepreneur must make a statement for that purpose to the competent court clerk or the competent body in the State party.

All entrepreneurs' declarations shall be made free of charge.

TITLE IV: DISPUTE RELATING TO THE REGISTER OF COMMERCE AND SECURITIES

ARTICLE 66-The clerk or the person in charge of the competent body in the State party overseeing the Register of Commerce and Securities shall ensure that, under his responsibility, the application and the declaration are complete and shall verify the veracity of their particulars against the supporting documents submitted as stipulated in articles 50 and 58 above.

The clerk or the person in charge of the competent body in the State party shall make all verifications on the formal regularity of the application and the declaration that are submitted.

If there are inaccuracies or there are problems in the performance of his duties, the clerk may summon the applicant or the declarant so as to get explanations and additional documents.

The decision of the clerk or the person in charge of the body competent in the State party rendered pursuant to article 50 above must be motivated and notified to the interested party. This decision is subject to appeal within fifteen (15) days from the date of notification. The clerk or the person in charge of the competent body in the State party, who has rejected an application or declaration, or has refused to grant a request for supporting documents or information of a person under the obligation to register a third party must motivate his decision and notify the interested party. This decision may be appealed within a period of fifteen (15) days of the date of the notification.

The appeal against the decision of the clerk or the person in charge of the competent body in the



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State party shall be made before the competent court or competent authority in the State party ruling expeditiously. The decision of the competent court or the competent body in the State party shall be subject to appeal, within a period of fifteen (15) days from the date of the decision, to the competent court of appeal acting in the same manner.

The procedure described above shall apply to disputes between persons under obligation to register or declarants and the court clerk or the person in charge of the competent body in the State party, and between the third party and the clerk or the person in charge of the competent body in the State party.

ARTICLE 67-Disputes relating to security interests and liens shall be governed by the provisions of the Uniform Act on securities interests.

The provisions of articles 66, 68 and 69 hereinafter shall govern disputes relating to contracts for the leasing of an on-going enterprise.

ARTICLE 68- Failure by a person under the obligation to complete a formality prescribed in this Uniform Act to request it within the prescribed deadline, the competent court or authority in the State party, ruling expeditiously, may, either ex officio, or at the request of the clerk or the competent body in the State party overseeing the Register of Commerce and Securities, or of any other applicant, take a decision enjoining the person concerned to carry out the formality in question.

Under the same conditions, the competent court or competent body in the State party may enjoin any natural person or legal entity registered in the Register of Commerce and Securities to have them proceed with:

- either the completion of omitted supplementary or corrective entries;
- or the completion of necessary entries or corrections in case of inaccurate or incomplete declaration;
- Or to proceed with removal.

ARTICLE 69- Any person who is required to complete the formalities prescribed in this uniform Act, but who has failed to do so, or even completed a fraudulent formality, shall incur sanctions pursuant to national criminal law, or where necessary, shall be punished under the special criminal law applicable in the State party pursuant to this uniform Act.

If possible, the court that pronounces the sentence shall order the correction of the inaccurate entries.

TITLE V: SPECIAL PROVISIONS

ARTICLE 70-Each State party may designate a Register of Commerce and Securities as the



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sole entity empowered to complete formalities relating to security interests and leasing agreements provided for by this uniform Act, the Uniform Act on securities interests and any other legislation.

ARTICLE 71-The clerk or the person in charge of the competent body in the State party overseeing the Register of Commerce and Securities designated at this effect shall be the only entity competent to perform the tasks set forth in article 35 of this uniform Act.

The clerk or the person in charge of the competent body in the State party overseeing the designated Register of Commerce and Securities shall use existing registries and directories and provided for in article 38 above of this uniform Act for formalities referred to in article 70 above.

ARTICLE 72-In order to enable the designated Register of Commerce and Securities to implement the provisions of article 70 above, each Register of Commerce and Securities shall have a period of one year to transfer all files related to security interests and leasing agreements entered in its registries including registration, amendment, renewal and removal dates to the designated Register of Commerce and Securities.

Notwithstanding the foregoing, in the event of amendment, renewal and removal of an entry, upon receipt of the related application, the clerk or the competent body in the State party overseeing the designated Register of Commerce and Securities shall request immediate transmission of the file in question to the registry or the competent body in the State party overseeing the Register of Commerce and Securities who received the initial entry. It should be an urgent transmission, to be completed in any event within one month from the receipt of the application.

Individuals referred to in article 51 of the Uniform Act on securities interests may seize the competent court or body in the State party which shall rule expeditiously to have the concerned clerk or person overseeing the Register of Commerce and Securities transfer the file in case the file is not transferred within the prescribed deadlines above.

The clerk or the person in charge of the competent body in the State party overseeing the designated Register of Commerce and Securities shall, upon receipt of the application concerned, register in the chronological register of filings and in the alphabetical directory of data.

Registration, renewal, amendment, or removal dates shall, inter alia, be entered in the chronological register of filings and in the alphabetical directory while specifying that it is a deferred registration, renewal, modification or removal from a file transferred with entries from the original Register of Commerce and Securities.

The creditor holder of a security interest, the securities agent or the lessor may seize the competent court or body in the State party, which shall rule expeditiously, to have the concerned clerk or



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person in charge of the competent body make the necessary entry if there is failure to register in the chronological registry of filings and the alphabetical directory data included in the file transferred to the Register of Commerce and Securities within 48 hours from the receipt of the file at issue.

BOOK III NATIONAL REGISTRY

CHAPTER I: GENERAL PROVISIONS

ARTICLE 73-Each State party shall establish a National Registry for the purpose of:

- centralizing information and particulars recorded in each Register of Commerce and Securities;
- giving persons under obligation to register and third parties access to information kept in the National Registry;
- making it possible to meet the security, speed, transparency and loyalty requirements needed for the development of economic activities;
- Receiving declarations relating to mortgages made at the behest of the authority in charge of publicity of mortgage or one of the individuals referred to in article 51 of the Uniform Act on securities interests.

The National Registry shall receive, from each Register of Commerce and Securities, copies of forms, in hard copy or electronic and electronic individual files or consisting of supporting documents certified true by the clerk or the person in charge of the competent body in the State party overseeing the Register of Commerce and Securities.

CHAPTER II: NATIONAL REGISTRY ORGANIZATION

ARTICLE 74 – Each State party shall appoint the body responsible for keeping the National Registry.

The National Registry shall be overseen by the ministry in charge of justice. Information contained in the forms forwarded to the National Registry shall be destined to the public.

Upon receipt of any request for information addressed to the National Registry, the clerk or the person in charge of the competent body in State party must reply immediately or at the latest within forty-eight (48) hours from the receipt of the request. The request and the response may be sent electronically.



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ARTICLE 75-The National Registry shall include:

- 1) a register for incoming correspondence stating, in chronological order, the receipt of the transmission, the nature of the form and file received. The Registry shall also state declarations relating to mortgages. An order number of arrival shall be assigned to each transmission and each mortgage declaration;
- 2) an alphabetical directory of individuals concerned by the forms and filings relating to registration and declaration of activity received from each Register of Commerce and Securities stating:
 - a) for natural persons, their full names, date and place of birth, the registration number in the Register of Commerce and Securities or the number of the declaration of activity in the Register of Commerce and Securities, the nature of the activity, address of principal place of business or place of activity, subsidiaries and establishments located within the jurisdiction of the Register of Commerce and Securities or outside;
 - b) for legal entities, as the case may be, their trade or corporate name, their legal form, their registration number, the nature of activity, the address of the principal place of business, the address of the registered office, subsidiaries and establishments located within the jurisdiction of the Register of Commerce and Securities or outside.
- 3) an alphabetical directory of individuals concerned by the forms and files relating to the registration of security interests and financing leases as well as the declarations of mortgages. The directory shall refer to entries supported by these people, containing, for each one, relating data, and all in chronological order;
- 4) An individual file for each person concerned by the form, declaration of mortgage and file received by the National Registry.

BOOK IV REGIONAL REGISTRY

CHAPTER I: GENERAL PROVISIONS

ARTICLE 76-A Regional Registry kept at the Common Court of Justice and Arbitration shall be established for the purpose of:

- centralizing information and particulars recorded in each National Registry;
- giving persons under obligation to register and third parties access to information kept



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in the Regional Registry;

- making it possible to meet the security, speed, transparency and loyalty requirements necessary for the development of economic activities;

It shall receive, from each National Registry of each State party, copies of forms, in hard copy or electronic, and where necessary, an extract of individual files in electronic form or consisting of documents certified true by the clerk or the person in charge of the competent body in the State party overseeing the National Registry of each State party.

It shall perform the same duties of informing the public as the National Registry.

CHAPTER II: REGIONAL REGISTRY ORGANIZATION

ARTICLE 77-The Regional Registry shall include:

- 1) a register for incoming correspondence stating, in chronological order, the receipt of the transmission, the nature of the form and file received. An order number shall be assigned to each transmission;
- 2) an alphabetical directory of individuals concerned by the forms and files received from each National Registry with regards to the registration and declaration of activity stating:
 - a) for natural persons, their full names, date and place of birth, the registration number in the Register of Commerce and Securities or the number of the declaration of activity in the Register of Commerce and Securities, the nature of the activity, address of principal place of business or place of activity, subsidiaries and establishments located within the jurisdiction of the Register of Commerce and Securities or outside;
 - b) for legal entities, as the case may be, their trade or corporate name, their legal form, their registration number, the nature of activity, the address of the principal place of business, the address of the registered office, branches and establishments located within the jurisdiction of the Register of Commerce and Securities or outside.
- 3) an alphabetical directory of individuals concerned by the forms and the declarations of mortgages received from each National Registry indicating entries supported by them;
- 4) An extract of the individual file for each person concerned by the forms and declarations of mortgage.

ARTICLE 78-The information contained in the forms and declaration of mortgage transferred to



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the Regional Registry shall be destined to the public.

Upon receipt of any request for information addressed to the Regional Registry, the person in charge shall reply immediately or at the latest within forty-eight (48) hours from the receipt of the request.

BOOK V COMPUTERIZATION OF THE REGISTER OF COMMERCE AND SECURITIES, THE NATIONAL AND REGIONAL REGISTRIES

CHAPTER I: GENERAL PRINCIPLES FOR USE OF ELECTRONIC PROCEDURES

ARTICLE 79- The provisions of this Book shall apply to formalities or applications provided for in this uniform Act, by any other uniform Act or by any other regulations. Such applications or formalities may be made electronically provided that they can be sent and received in the same way by their recipients.

However, the provisions of this Book shall not apply to electronic exchanges or transmissions that are subject to special legislation.

ARTICLE 80- In each State party, the Register of Commerce and Securities and the National Registry may keep records and use both hard copies and electronic means.

The Regional Registry may keep records and use both hard copies and electronic means.

ARTICLE 81- A Technical Committee for the Standardization of Electronic Procedures established within OHADA shall be responsible for the standardization of procedures performed through documents and electronic transmissions.

CHAPTER II: VALIDITY OF ELECTRONIC DOCUMENTS AND ELECTRONIC SIGNATURES

ARTICLE 82- Formalities completed by sending documents electronically to the Registers of Commerce and Securities shall have the same legal effects, meaning legal validity and evidential force as those sent in hard copy.

Electronic documents may replace hard copy documents and shall be acknowledged as equivalent when they are established and kept in a reliable technique, which guarantees, at any time, the origin of the electronic document and its integrity during electronic processing and transmissions.

The reliable processing techniques that guarantee, at all times, the origin of electronic documents as



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well as their integrity during electronic processing and transmissions shall be acknowledged as valid by this Uniform Act by the Technical Committee for the Standardization of Electronic Procedures provided for in article 81 of this uniform Act.

The use of a qualified electronic signature shall be a reliable technical process that guarantees, at any time, the origin of electronic documents, their integrity during electronic processing and transmissions.

ARTICLE 83- The qualified electronic signature shall be applied to a document and shall allow identification of the signer and the manifestation of his consent to obligations arising from the act.

It shall have the following characteristics:

- it is linked only to the signer;
- it allows proper identification of the signer;
- it is created in a way that the signer may be the sole person to have its exclusive control;
- It is linked to the document to which it relates so that any subsequent amendment to the document is noticeable.

The qualified electronic signature consists of the following technical components:

- a software for signature creation and a software for signature verification;
- An electronic certificate, authenticating the signer, produced by a provider of electronic certification services.

The Technical Committee for the Standardization of Electronic Procedures provided for in article 81 of this uniform Act shall determine the criteria for a provider of electronic certification services.

ARTICLE 84- The electronic certificate used in support of the qualified electronic signature shall be an electronic certificate which links signature-verification data to a person and confirms the identity of such person.

It shall have at least the following particulars:

- the name of the certificate's holder;
- the public cryptographic key of the holder;
- the period of validity of the certificate;



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- a unique serial number;
- The electronic signature of the provider of the electronic certification service.

ARTICLE 85-The regulation of the Organization for the Harmonization in Africa of Business Law, and otherwise, the national legislation of States parties shall develop the technical constraints applied to the components of the electronic signature so that it is deemed qualified.

CHAPTER III: USE AND CONSERVATION OF ELECTRONIC DOCUMENTS

ARTICLE 86- The application or the declaration as well as the supporting documents may come, totally or partially, electronically subject to compliance with the provisions of article 79 of this uniform Act with regards to the recipient and compliance with the provisions of articles 82 to 85 of this uniform Act concerning the conformity of some documents.

ARTICLE 87– In case individuals choose the electronic form, individuals overseeing the Register of Commerce and Securities shall issue the same deeds as those issued in case of formalities completed with documents presented in hard copy pursuant to the provisions of this uniform Act.

Documents delivered by the authorities overseeing the Register of Commerce and Securities shall be in the form of reliable processing techniques that guarantee, at all times, the origin of electronic documents as well as their integrity during electronic processing and transmissions, acknowledged as valid by this uniform Act or the Technical Committee for the Standardization of Electronic Procedures provided for in article 81 of this uniform Act.

They shall take the following names:

- for registration formalities: registration receipt stating the registration date and the number;
- for declaration formalities: registration receipt of the declaration bearing the date and number of the declaration of activity;
- for other formalities at the Register of Commerce and Securities: registration receipt stating the date and the nature of the formality;
- for formalities relating to registration of security interests: registration receipt or certificate of deposit bearing the date, the name of the formality carried out and the order number;
- registration renewal procedures: registration receipt or renewal certificate bearing the



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date, the name of the formality carried out and the order number;

- For formalities for amendment and removal from the directory: registration receipt or renewal or removal certificate bearing the date, the name and the order number.

Other documents provided for by the provisions of this uniform Act and issued electronically shall bear the same names as those provided in the procedure using hard copies subject to the provisions of articles 82 to 85 above. The registration receipt bearing the particulars set forth by this uniform Act, or by any other uniform Act or any other legal provision, shall state that the forms, documents, acts or required information were well received by the recipient and is useable, notably in electronic processing.

The registration receipt shall be issued by the clerk or the person in charge of the competent body in the State party overseeing the Register of Commerce and Securities upon receipt of the electronic application or declaration in accordance with the provisions of this uniform Act.

ARTICLE 88- The clerk or the person in charge of the competent body in the State party responsible for the Register of Commerce and Securities shall be entitled to extract court or administrative decisions which are communicated on paper or in electronic form, regarding the particulars to be entered in individual files or in the margins of the registry and directory.

Marginal annotations in the individual file or in the margins of the register and directory, entered electronically shall be in a computer file connected to the original individual file signed by the clerk or the person in charge of the competent body overseeing the Register of Commerce and Securities in the State party through his qualified electronic signature.

Full copies of individual files supplemented by marginal annotations shall be transmitted within twenty-four (24) hours to the National Registry, which shall forward electronically within twenty-four (24) hours to the Regional Registry, copies of forms in digital form and, where appropriate, an extract of individual files in digital form or consisting of supporting documents certified true by the clerk or the person in charge of the competent body in the State party overseeing the National Registry of the State party.

ARTICLE 89- When an application or declaration is made electronically and absent the electronic signature of the applicant, the declarant or his representative, the clerk or the person in charge of the competent body in the State party overseeing the Register of Commerce and Securities shall validate the request or the declaration by affixing his own qualified electronic signature, after reviewing the document and its supporting attachments.

In this case, the registration receipt shall not state the number of the declaration of activity, registration or order.

The number of the declaration of activity or the registration or order number, as the case may be, shall be issued within a period of forty-eight (48) hours after the clerk or the person in charge



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of the competent body in the State party has validated the declaration or the application as well as the supporting documents.

ARTICLE 90—An administrative authority may communicate to the Register of Commerce and Securities, directly in paper or electronically, information subject to publicity under the provisions of this uniform Act or any another uniform Act or under any other available legal provision notwithstanding the presence of personal information.

ARTICLE 91—Keeping the declaration or the application established electronically shall be done under conditions that preserve sustainability, integrity and legibility.

All information on the declaration or application, once established, such as data for identifying it, determining its particulars, inter alia, qualified electronic signatures, and ensure traceability, shall also be retained.

Successive steps justified by the act of saving information, among other things, migrations of an electronic storage medium to another whose information may be subject, shall not remove the original value of the electronic records of the statements or applications.

The saving process must allow annotations by the clerk or the competent body in the State party in charge of inputting subsequent particulars to the registration without altering previous data.

CHAPTER IV: USE OF ELECTRONIC MEANS FOR THE TRANSMISSION OF DOCUMENTS

ARTICLE 92— The Registers of Commerce and Securities, the National and Regional Registries shall provide a secured internet service allowing the applicant or the declarant, as they see fit to:

- make any request or declaration;
- send, including by email, a single application or declaration file consisting of electronic documents and scanned attachments;
- Prepare an application interactively online, including on the web site of the Register of Commerce and Securities, and send it the same way.

ARTICLE 93— The clerk or the competent body in the State party overseeing the Register of Commerce and Securities may respond electronically to any request for information which is addressed that way. No confirmation on paper is required for both the request and the answer.

ARTICLE 94—Exchanges between the Registers of Commerce and Securities, the National and Regional Registries shall bear the qualified electronic signature of the issuer in order to guarantee the source and integrity thereof.



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ARTICLE 95-For all direct electronic transmission including by email, the applicant or the declarant shall use his qualified electronic signature.

ARTICLE 96-Individual files, copies or extracts provided for by the Uniform Acts may be sent electronically, including by prior scanning under conditions ensuring their reproduction in the same manner pursuant to recommendations issued by the Technical Committee for the Standardization of Electronic Procedures provided for in article 81 of this uniform Act.

Information is deemed to have been sent electronically when they are issued and received at the other end through processing electronic devices, including digital compression, and data storage, and deemed entirely transmitted, directed and received by wire, radio, optical or other electromagnetic means pursuant to mechanisms set out by the States parties, but enabling interoperability between the information system of transmitters and receivers. Acknowledgment receipts shall be sent by recipient bodies to the issuing agencies. They bear the qualified electronic signature of the clerk or the person in charge of the competent body in the State party of the recipient agency.

CHAPTER V: PUBLICITY AND ELECTRONIC DISSEMINATION OF REGISTERS INFORMATION

ARTICLE 97-Anyone may obtain information contained on the forms filed with the Register of Commerce and Securities electronically in accordance with conditions set forth by this uniform Act or the Uniform Act on securities interests.

Anyone may also receive information on extracts or copies of all or part of the documents published in the Register of Commerce and Securities pursuant to this Uniform Act, the Uniform Act on commercial companies and the economic interest group and the Uniform Act with respect to the organization and harmonization of corporate accounting.

ARTICLE 98-The clerk or the competent body in the State party overseeing the Register of Commerce and Securities, after using the scan system under conditions ensuring verbatim reproduction, may proceed with the electronic copy of all or part of an individual file on paper.

The information provided electronically shall not be certified true unless specifically requested by the applicant. In the absence of certification, the information provided shall be considered for information purposes only.

The certification of electronic copies must both authenticate their source and the integrity of their content through, at least, a qualified electronic signature of the authority overseeing the Register of Commerce and Securities. The authentic copy shall also include the date and the image of its seal. This shall be indicated in the copy issued certifying its conformity to the original.

Information, extracts and full copies of a document may be sent to the electronic address



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provided by the applicant under conditions guaranteeing the integrity of the instrument, confidentiality of the transmission, the sender's identity and that of the recipient.

ARTICLE 99-The cost of obtaining information, extract or full copy in hard copy or electronically shall not be greater than the administrative cost of the operation.

ARTICLE 100—The Register of Commerce and Securities may send information and supporting documents electronically to recipient administrative agencies of the State party, notwithstanding the presence of personal data.

BOOK VI LEASE FOR PROFESSIONAL USE AND ENTERPRISES

TITLE I: LEASE FOR PROFESSIONAL USE

PRELIMINARY CHAPTER: SCOPE

ARTICLE 101-The provisions of this Title shall be applicable to all leases on buildings falling within the following categories:

- 1) premises or buildings for commercial, industrial, artisanal or any other professional use;
- 2) accessory premises depending on a premise or building for commercial, industrial, artisanal or any other professional use, provided that if these accessory premises belong to different owners, this location has been devoted to common use intended by the lessee, and such use has been known to the lessor at the time of the conclusion of the lease;
- 3) Raw land on which were built, before or after the conclusion of the lease, properties for industrial, commercial, artisanal or any other professional use, if such buildings have been elevated or operated with the express consent of the owner or brought to his attention specifically and he approved.

ARTICLE 102-The provisions of this Title shall also apply to industrial or commercial legal entities and public corporations governed by public law whether they act as lessor or lessee.

CHAPTER I: CONCLUSION AND DURATION OF A LEASE

ARTICLE 103— Any agreement, written or not, between a person accredited by law or a legal agreement to rent all or part of a building within the scope of this Title, and another person or entity, allowing the latter, the lessee, to carry out a commercial, industrial, artisanal or any other professional activity in the premises with his consent, is deemed for professional use.



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ARTICLE 104-The parties shall freely set the term of the lease.

Lease for professional use may be entered into for a fixed or indeterminate period.

Failing written agreement or fixed term, the lease is deemed concluded for an indeterminate period. The lease shall take effect from the signing of the contract, unless otherwise agreed by the parties.

CHAPTER II: OBLIGATIONS OF THE LESSOR

ARTICLE 105- The lessor is required to rent premises in good condition.

He is presumed to have met this obligation:

- when the lease is verbal;
- Or when the lessee has assigned the lease without formulating reserves as to the condition of the premises.

ARTICLE 106- The lessor shall pay for necessary and urgent major repairs.

In this case, the lessee shall bear the negative consequences.

Major repairs include repairs to big walls, vaults, beams, roofs, retaining walls, fence walls, septic systems and sump pits.

The amount of rent shall then be decreased in proportion to the time and use during which the lessee was deprived of the enjoyment of the premises.

Where urgent repairs are of such nature that they prevent the enjoyment of the property, the lessee may request suspension during the duration of the works to the competent court ruling expeditiously.

He may also request the judicial termination of the agreement before the competent court.

ARTICLE 107- When the lessor refuses to pay for major repairs for which he is liable, the lessee may obtain authorization from the competent court, ruling expeditiously, to execute them according to proper rules, on behalf of the lessor. In this case, the competent court, ruling expeditiously, shall set the amount of such repairs and modalities for refund.

ARTICLE 108- The lessor may, on his own will, neither make change to the state of the premises leased, nor restrict use.



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ARTICLE 109- The lessor shall be liable to the lessee for disturbances occurred due to his actions, or due to his successors or attendants.

ARTICLE 110- The lease shall not be terminated by the cessation of the lessor's rights to the leased premises.

In this case, the new lessor shall automatically assume the obligations of the former lessor and continue with the lease.

ARTICLE 111- The lease shall not be terminated by the death of one or the other of parties.

In case of death of the lessee, a natural person, the lease shall continue with spouses, immediate ascendants or descendants, who have made the request to the lessor served by a bailiff or any means establishing actual receipt by the addressee, within a period of three months after the death.

In case of plurality of requests, the lessor may seize the competent court, ruling expeditiously, to appoint a successor in the lease.

In the absence of any claim within this period of three months, the lease shall be terminated ipso jure.

The dissolution of the legal entity lessee shall not entail automatic termination of the lease of buildings devoted to the activity of lessee. The liquidator is required to execute the obligations of the lessee, under conditions set by the parties. The lease shall be terminated ipso jure after a formal notice sent to the liquidator remains without effect for more than sixty (60) days.

CHAPTER III: OBLIGATIONS OF THE LESSEE

ARTICLE 112- In return for occupying the leased premises, the lessee must pay rent pursuant to terms agreed with the lessor or his duly mandated representative.

Payment of rent may be made by correspondence or electronically.

ARTICLE 113- The lessee is required to treat the leased premises in good faith in accordance with the use provided for in the lease or, absent a written agreement, following the presumed use according to circumstances.

However it is possible that the lessee has to add related or complementary activities to the one stipulated in the lease at the time of signature. The lessee shall expressly advise the lessor who may oppose such move for good reason.

In the event of change of activity stipulated in the lease, the lessee must obtain the express prior



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consent of the lessor who may oppose such move for solid grounds.

If there is a conflict between the lessor and the lessee, the earliest party shall seize the competent court.

ARTICLE 114—The lessee shall be responsible for making repairs for maintenance.

He shall be liable for damage or losses due to a lack of maintenance during the lease.

ARTICLE 115—At the time lease ends, the lessee who, for a reason other than the one stipulated in article 126 hereinafter, fails to vacate the premises against the will of the lessor shall pay an occupancy fee equal to the rent amount for the duration of the lease, without prejudice to any damages.

CHAPTER IV: RENT

ARTICLE 116—The parties shall freely determine the rent subject to applicable legislative or regulatory provisions.

The rent shall be revisable under the conditions set by the parties or, otherwise, upon each renewal pursuant to article 123 hereinafter.

ARTICLE 117— Absent a written agreement between the parties on the new rent, the competent court, ruling expeditiously, shall be seized by the most diligent party. To set the new rent, the competent court weighs the following:

- the state of the premises;
- their surface area;
- the state of dilapidation;
- The rent for commercial premises commonly charged in the vicinity for similar premises.

CHAPTER V: ASSIGNMENT AND SUBLETTING

ARTICLE 118— If the lessee assigns the lease together with the tangible and intangible fixed assets related to the enterprise conducted in the leased premises, the lessor shall proceed with the assignment.

If the lessee assigns only the leasehold, alone or with only part of the tangible and intangible fixed assets related to the enterprise conducted in the leased premises the assignment shall be subject to the agreement of the lessor.



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Any assignment of the lease should be communicated to the lessor by a bailiff's writ or a notification sent by any means ensuring actual receipt by addressee, stating:

- the full identity of the assignee;
- his address;
- And, as the case may be, his registration number in the Register of Commerce and Securities.

ARTICLE 119—Absent the writ or notification pursuant to article 118 above, the assignment shall be unenforceable against the lessor.

ARTICLE 120- When an assignment is notified to the lessor, he shall have a period of one month from the notification to oppose it, where necessary, and seize the competent court, ruling expeditiously, by giving reasonable and legitimate reasons to raise an opposition.

Breach of the obligations of the lease by the lessee, and in particular, non-payment of rent, constitutes a reasonable and legitimate reason to oppose the assignment.

Throughout the procedure, the assignor shall remain in the premises and remain liable for the obligations under the lease.

When the assignment requires the agreement of the lessor, the latter shall have a period of one month from the notification to communicate to the lessee his acceptance or refusal. Passed this deadline, the silence of the lessor shall entail acceptance of the assignment of lease.

ARTICLE 121-Unless otherwise provided in the lease, any total or partial sub-letting is prohibited.

In case of an authorized sublet, the lessor shall be informed by any written means.

Otherwise, the subletting shall be unenforceable.

ARTICLE 122-When the total or partial rent of the sublet is higher than that of the main lease, the lessor shall have the option to require a corresponding increase in the rent under the main lease, increase which, failing agreement between the parties, shall be set by a competent court, ruling expeditiously, taking account of particulars referred to in article 117 above.

CHAPTER VI: CONDITIONS AND FORMS OF RENEWAL

ARTICLE 123—A lessee who establishes having occupied the premises in accordance with the terms of the lease and having conducted in the premises the enterprise provided for in the lease for a minimum period of two years is entitled to renew either a fixed term or indefinite term



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lease.

No stipulation to the contract may override the right to renew.

In the event of express or tacit renewal, the lease is concluded for a minimum period of three years.

If renewed for an unspecified period, the parties shall provide for a notice period of vacancy which cannot be less than six months.

ARTICLE 124- In case of a lease with a fixed term, the lessee, entitled to renew the lease under Article 123 above, may request the renewal through a notice served by a bailiff or by any means showing actual receipt by the addressee, no later than three months before the expiration date of the lease.

A lessee that fails to give the renewal notice within the prescribed period, shall forfeit the right to renew the lease.

When the lessor fails to respond to the renewal request within one month before the end of the lease, he shall be deemed to have accepted the principle of renewal of such lease.

ARTICLE 125- In case of an lease for an indefinite term, any party who intends to terminate the agreement must give notice served by a bailiff or by any means showing actual receipt by the addressee at least six months in advance.

The lessee, entitled to renew the lease pursuant to article 123 above, may object to the termination, no later than the effective date thereof, by sending notice of objection served by a bailiff or by any means showing actual receipt by the addressee.

Absent an objection served within this time limit, the unspecified lease shall terminate on the date set in the notice of surrender.

ARTICLE 126- The lessor may object to the right to renew a fixed term or indefinite term lease by paying an eviction allowance.

In the absence of agreement on the amount of such allowance, it shall be set by the competent court taking into account the lessee's turnover, investments made by the lessee, the geographical location of the premise and moving expenses due to the denial to renew.

ARTICLE 127- The lessor may object to the right to renew the term or unspecified lease without paying the eviction allowance in the following cases:

- 1) If he can establish serious and legitimate grounds for the terminating the outgoing lessee



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Such motive shall consist of either the non-observance by the lessee of a substantial obligation under the lease, or the termination of the exploitation of the enterprise;

Such motive shall only be invoked if the facts at issue continued or were repeated more than two months after a formal notice to cease given by the lessor served by a bailiff or by any means showing actual receipt by the addressee.

- 2) If he is planning to demolish the building comprising the leased premises for reconstruction purposes. The lessor must show probative facts of the nature and description of the works planned.

The lessee is entitled to remain in the premises until the beginning of the demolition works, and he shall enjoy the right of priority to obtain a new lease in the rebuilt building.

If the newly rebuilt premises are devoted to something other than the activity in the lease at issue, or if a lease is not offered to the lessee in the new premises, the lessor shall pay the lessee the eviction allowance as provided in article 126 above.

ARTICLE 128-The lessor may, without paying the eviction allowance, deny the renewal of the lease on residential premises accessory to the main premises because he intends to use them himself or to accommodate his spouse or ascendants, descendants or those of his spouse.

This right cannot be exercised if the lessee establishes that deprivation of enjoyment of the accessory residential premises seriously disrupts the enjoyment of the lease on the main premises, or when the main premises and residential premises form an indivisible whole.

ARTICLE 129-The new lease shall take effect from the expiration of the previous lease where it is a term lease, or from the date on which the notice of vacancy was given where the previous lease was for an indefinite term.

ARTICLE 130- The sub-lessee may request the principal lessee to renew his lease to the extent of the rights granted by the person legally or contractually entitled to lease the premises. Such right shall be subject to the provisions of articles 118 to 122 of this uniform Act.

Renewal of the sublet must be communicated to the lessor under the same conditions as the initial authorization request for the sublet.

ARTICLE 131-The lessee, deprived of the right to renew, irrespective of the reason, may be recover the value of works and improvements he made on the premises with the lessor's permission.

Absent an agreement between the parties, the lessee may seize the competent court upon the expiry of the fixed term of the non-renewed lease, or upon receipt of the notice of vacancy of the indefinite term lease.



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ARTICLE 132-Unless otherwise agreed by the parties, disputes arising from the application of the provisions of Title I of this Book shall be brought, at the request of the most diligent party, before the competent court, ruling expeditiously, in the jurisdiction where are located the leased premises, unless otherwise stipulated in this Book.

CHAPTER VII: TERMINATION OF A LEASE

ARTICLE 133-Lessees and lessors are respectively required to comply with each of the clauses and conditions of the lease under penalty of termination.

Any writ for the purposes of terminating a lease must be preceded by a formal notice requiring compliance with clauses or conditions that were breached. Formal notice shall be served by bailiff or notified by any means showing actual receipt by the addressee.

Under penalty of nullity, the formal notice must indicate the clause(s) and conditions of the lease that were not observed and inform the recipient that in the event of non-compliance within a period of one month from the receipt of the notice, a competent court, ruling expeditiously, shall be seized for the purposes of terminating the lease and eviction, where appropriate, of the lessee and anybody occupying the premises under agreement with such lessee.

The lease agreement may provide for an automatic termination clause. The competent court ruling expeditiously shall record the lease termination and pronounce, where appropriate, the eviction of the lessee and anybody occupying the premises under agreement with the lessee, in case of breach of a clause or condition of the lease following the formal notice referred to in the foregoing.

The party intending to pursue termination of the lease must forward the copy of the writ instituting the proceedings to any registered creditors. The decision pronouncing or recognizing the termination of the lease may only intervene after the expiry of a period of one month following the notification of the request to registered creditors.

CHAPTER VIII: PUBLIC POLICY PROVISIONS

ARTICLE 134-The following articles are public policy provisions: 101, 102, 103, 107, 110, 111, 117, 123, 124, 125, 126, 127, 130 and 133 of this uniform Act.

Unless otherwise agreed between the lessor and the entrepreneur, the lessee shall not be entitled to either the right to renew the lease, or the right to judicial setting of rent of the renewed lease.

TITLE II: THE ENTERPRISE

CHAPTER I: DEFINITION OF ENTERPRISE



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ARTICLE 135– The enterprise shall consist of a set of resources that allow the merchant to attract and retain customers.

ARTICLE 136– The enterprise shall comprise the customers and the brand or the customers and the trade name, without prejudice to cumulating customers with the brand and trade name.

ARTICLE 137– The enterprise can consist of different movable, tangible and intangible elements, including the following:

- facilities;
- facilities and fixtures;
- equipment;
- furniture;
- goods in stock;
- right to lease;
- operating licenses;
- Patents, brand names and trademarks, drawings and models, and any other intellectual property right necessary to the operation.

CHAPTER II: ENTERPRISE MODUS OPERANDI

ARTICLE 138– The enterprise may be exploited directly or under a lease management agreement.

Direct exploitation may be the act of a merchant, even if he is entrepreneur, or a commercial company.

The lease management is an agreement whereby the owner of the enterprise, natural person or legal entity, concedes the lease, in his capacity as a lessor to a natural person or legal entity, a lessee-manager, who operates for his own account. The entrepreneur shall not be party to a lease management agreement.

The lessee-manager shall pay the lessor rent corresponding to the fee payable for occupancy of the premises, and rent for the enjoyment of tangible and intangible assets of the enterprise as described in the lease management agreement. These two rent components shall be necessarily determined separately in the lease management agreement, even if they are on the same dates. In agreement with the lessor of the premises, the lessee-manager may be exempted from paying



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rent directly at each due date or the enjoyment of the premises.

ARTICLE 139– The lessee-manager shall be a merchant, and shall be subject to all obligations arising therefrom.

He must comply with the provisions regulating registration in the Register of Commerce and Securities.

Every lease management agreement shall be registered, in addition to being published by the more diligent party and at the expense of the lessee-manager within fifteen days of its date, in the form of an extract in a newspaper empowered to publish legal notices and circulating where the enterprise is registered in the Register of Commerce and Securities.

The owner of the enterprise, if he is a merchant, is required to pay for the change to his registration in the Register of Commerce and Securities by stating the lease management of his enterprise.

The expiry of the expected or anticipated term of the lease management agreement shall entail the same measures of publicity at the expense of the lessee-manager.

ARTICLE 140-The lessee-manager is required to indicate at the top of his purchase orders, invoices and other financial and commercial documents his registration number in the Register of Commerce and Securities and his status of lessee-manager of the enterprise.

Any breach to this provision shall be punishable under the national criminal law.

ARTICLE 141- The natural person or legal entity, who leases an enterprise, must have operated the enterprise devoted to lease management for two years at least as a merchant.

However, he shall not lease an enterprise to individuals banned or denied the right to exercise a commercial profession.

ARTICLE 142- The time limit prescribed in the foregoing may be reduced, without being less than a year, by the competent court, especially when the natural person or the legal entity established that he and his workers were unable to personally operate the enterprise.

ARTICLE 143- Conditions set in Article 141 above shall not apply to:

- the State;
- local communities;
- public institutions;



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- legally incapacitated individuals, with regard to the enterprise which they owned before they become legally incapacitated;
- to heirs or legatees of a deceased merchant, with regard to the enterprise operated by the latter;
- Court officers overseeing, in some capacity, the administration of an enterprise, provided that they have been authorized by the competent court and that they have satisfied all publicity requirements.

ARTICLE 144-The debts of the lessor arising from the enterprise operation may be declared immediately payable by the competent court if it holds that the lease management is jeopardizing their collection.

The action shall be brought by any interested party, under penalty of foreclosure, within a period of three months from the date of the publication of the lease management agreement pursuant to Article 139 of this Uniform Act.

ARTICLE 145-Until the publication of the lease management agreement, the owner of the enterprise shall be jointly and severally liable for the debts of the lessee-manager arising from the enterprise operation in lease management.

ARTICLE 146- The regular or anticipated expiry of the lease management agreement shall make the debts contracted immediately payable by the lessee-manager of the enterprise during his management.

CHAPTER III: ASSIGNMENT OF THE ENTERPRISE

ARTICLE 147-Assignment of the enterprise shall comply with the general rules of sale subject to the following provisions and those specific to some enterprise activities.

ARTICLE 148-The assignment of the enterprise shall necessarily relate to items listed in article 136 of this uniform Act.

Absent a simultaneous assignment of the above mentioned items, the assignment of other items, such as those listed in article 137 above, shall remain possible, but does not entail assignment of the enterprise, irrespective of the provisions agreed upon in the assignment deed.

ARTICLE 149- The sale of an enterprise may be realized either by private deed or notarial deed.

The provisions of this Chapter shall govern any deed recording an assignment of enterprise, even conditionally consented, including in the case of contribution of an enterprise to a company.



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ARTICLE 150– Any deed recording the assignment of an enterprise must state:

- 1) for natural persons, the full civil status of the seller and buyer, and for legal entities, their name, their enterprise, their legal form and address of their registered office;
- 2) the activities of the seller and the buyer;
- 3) their registration numbers in the Register of Commerce and Securities;
- 4) where applicable, the source of the enterprise with respect to the previous owner;
- 5) the state of liens, pledges and entries encumbering the enterprise;
- 6) turnover for each of three last financial years of exploitation, or since its acquisition if the enterprise has not been operated for more than three years;
- 7) profits and losses during the same period;
- 8) the lease annexed to the deed stating its date, term, name and address of the lessor and the assignor, where applicable;
- 9) the price agreed;
- 10) the location and list of assets sold with the enterprise;
- 11) The name and address of the notary or banking institution designated as escrow agent if the sale takes place by private deed.

ARTICLE 151- Omission or inaccuracy of the above required particulars may result in the cancellation of the sale if the purchaser so requests, and if he proves that such omission or inaccuracy has substantially affected the integrity of the transferred enterprise and that he is prejudiced therefrom.

Such request must be filed within the period of one year from the date of the establishment of the deed.

ARTICLE 152- Any deed recording an enterprise assignment must be filed in a copy certified true by the seller or the buyer at the Register of Commerce and Securities.

It will be up to the seller and buyer to cause the entries which concern them to be amended.

ARTICLE 153– Within exactly fifteen days from its date, the deed recording the assignment of the enterprise must be published at the behest of the buyer, in the form of notice in a newspaper empowered to publish legal notices and circulating where the seller is registered at the Register



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of Commerce and Securities.

ARTICLE 154-The seller of the enterprise is required to make the assigned enterprise available to the buyer on the date provided for in the assignment deed.

However, if the price is paid in cash, the seller shall release the enterprise to the buyer only on the date he receives full payment, unless otherwise agreed between the parties.

ARTICLE 155-The seller of the enterprise must abstain from any behavior which would interfere with the buyer's operation of the sold enterprise.

Non-competition clauses shall be valid only if they are limited either in time or in space; one of these limitations is enough to render the clause valid.

The seller must deliver the object of the sale to the buyer peacefully, and in particular, guarantee him against the rights that other people would pretend to have on the enterprise.

ARTICLE 156- If the buyer was partially evicted, or if he discovers charges which were not declared in the bill of sale, or if the enterprise is encumbered with hidden defects or lack of conformity, he may request the cancellation of the sale, but only if the materiality of the decrease of enjoyment he suffers as a consequence is such that he would have never bought the enterprise had he known.

ARTICLE 157-The buyer must pay the sale price, on the day and place fixed in the bill of sale, to the notary or at any banking institution mutually agreed in the deed.

The notary or the banking institution so designated shall keep the funds in escrow for a period of thirty days, starting on the day of the publication in a newspaper empowered to publish the sale in the legal notices section.

If at the end of such time limit, no objection was notified to the escrow agent, he must surrender the payment to the seller.

Where one or multiple objections have been lodged during the time limit, the sale price shall be available only when proved that all objections have been removed.

ARTICLE 158- Shall be null and void any counter-letter or agreement whose object or effect is to conceal all or part of the sale price of the enterprise.

ARTICLE 159- The objection lodged by any creditor of the seller must be served by the bailiff or by any means showing actual receipt to:

- 1) the notary or the designated banking institution as escrow;
- 2) the buyer at his address as indicated in the deed;



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- 3) At the court clerk or the competent body in the State party overseeing the Register of Commerce and Securities where the seller is registered; the court clerk or the competent body in the State party shall proceed with the inclusion of this objection in the Register of Commerce and Securities.

The objection act shall state, in addition to the identification of the objecting creditor, the amount and causes of the claim, and the elected domicile in the jurisdiction where is kept the Register of Commerce and Securities.

Formalities so chargeable to the objecting creditor by this Article shall be satisfied under penalty of nullity of his objection.

ARTICLE 160- The objection shall produce conservatory effect.

It is the responsibility of the objecting creditor to seize the competent court on his claim and receive payment therefor.

ARTICLE 161- The seller may obtain from the competent court ruling expeditiously the removal of the objection and the payment of the enterprise only in exchange of a suretyship, or guarantee equivalent to the amount of the claim being objected.

The seller may also obtain amicably from the objecting creditor the removal of his objection; in this case, the removal must be notified by the objecting creditor within the guidelines of article 159 above.

ARTICLE 162- The objection which, within the month of its notification, is not removed amicably or is not brought before the judge pursuant to article 160 above shall be automatically null and void. At the request of any interested party, the competent court ruling expeditiously shall record such nullity and order the removal of the objection without prejudice to any claim for damages for an unreasonable objection.

ARTICLE 163- Any creditor who registered a lien or pledge, or having regularly lodged objections may, within one month of the publication of the sale in a newspaper empowered to publish legal notices, launch a bid equal to 1/6 over the price of the enterprise set out in the bill of sale.

When the enterprise has been subjected to a forced sale, secured and objecting creditors shall benefit from the same bidding right that must be exercised within the same time limit starting from the award.

The bidder shall report the amount of the price increased by 1/6, within the same period, at the clerk of the competent court or the competent body in the State party.

ARTICLE 164- The terms of reference, established in court prior to the sale at the behest of



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the earliest bidder, shall reproduce in full the sale agreement that gave rise to the bid and security interests previously recorded as well as objections regularly notified following publication of the voluntary sale of the enterprise, or during the forced sales.

Within exactly fifteen (15) days from the bidding, the bidder shall publish, at his expense, in a newspaper empowered to publish legal notices and circulating where the seller is registered in the Register of Commerce and Securities, a notice stating the place and date of the judicial sale as well as modalities for consulting the terms of reference. Passed this deadline, the bid shall automatically be void and null and the sole bidder shall pay for all related costs without prejudice to the suit for damages possibly for an unreasonable bidding.

No new objection may be filed during the bidding process.

ARTICLE 165- The sale shall be carried out as an auction at the helm of the competent court.

ARTICLE 166- When the price is not paid in cash, the seller shall have a lien on the sold enterprise.

For this purpose, he shall proceed with the registration of his seller's lien within the guidelines of this uniform Act.

ARTICLE 167- When the seller is not paid by the agreed deadlines, he can request the cancellation of the sale, in accordance with common law.

ARTICLE 168- The seller who exerts the resolutive action shall make the notification by an extrajudicial deed or by any means proving in writing notification to creditors listed on the enterprise and to their elected residence as per their indication.

He shall also proceed with the provisional entries of his resolutive action in accordance with the provisions afforded to this effect by the Uniform Act on securities interests.

The cancellation may only be pronounced by the competent court of the place of registration of the seller of the enterprise.

Any amicable cancellation agreement of a sale of the enterprise shall be unenforceable against the buyer's creditors who have filed a lien on the enterprise.

BOOK VII

COMMERCIAL INTERMEDIARIES

TITLE I: COMMON PROVISIONS

CHAPTER I: DEFINITION AND SCOPE

ARTICLE 169- The commercial intermediary is a natural person or legal entity empowered to



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act, or meansto act, usuallyandprofessionally on behalf of another person,merchantor not, in order to conclude a legal act of commercial nature with a third party.

ARTICLE 170-The commercial intermediary is amerchant; he is subject to conditions set forthin articles 6 to 12 of this uniform Act.

Conditions for access to the professions of commercial intermediaries may also be supplemented by conditions specific to each of the categories of intermediaries referred to in this Book.

ARTICLE 171-The provisions of this Book shall govern not only the conclusion of contracts by the commercial intermediary, but also any act he realizes for the conclusion or execution of such contracts.

Theyshall also govern relationsbetweenallthepeopleforwhom the intermediaryacts, and relations between these people and the intermediaryhimself.

They shall apply whether the intermediary acts in his own name, as an agent or broker, or on behalf of the principal he represents, as a commercial agent.

ARTICLE172-Theprovisionsof this Bookshall applyevenifthe principal,or the third party referred to in article 169 above, have their establishments in States other than those signatories of this uniform Act, insofar as either:

- a) the intermediary is registered at the Registerof Commerce and Securities of one of the States Parties;
- b) or the intermediary acts on the territory of one of the States Parties;
- c) Or the rules of private international law lead to the application of this uniform Act.

ARTICLE 173-The provisions of this Book shall not apply to:

- a) therepresentation resulting from a legal or judicialauthorization to act on behalf of individuals who do not have the legal capacity to act;
- b) the representation by anyone conducting auctions, or by an administration or court official;
- c) Thelegal representationinfamily law,ofmatrimonialandsuccession regimes.

ARTICLE 174-The provisions of this Book shall not apply to officers of corporations, associations or other groups with legal personality, which are legal representatives.



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CHAPTER II: ESTABLISHMENT AND SCOPE OF THE POWER OF INTERMEDIARIES

ARTICLE 175- The rules of the mandate shall apply to relations between the intermediary and the person for whom he acts, even if such agency is not revealed. Relations between the intermediary, the principal and the third party referred to in article 169 above shall be governed by articles 180, 181, 183, 184 and 185 of this uniform Act.

ARTICLE 176- The mandate of the intermediary may be written or verbal.

It is not subjected to any requirement of form.

Absent a written mandate, it may be proved by any means, including by a witness.

ARTICLE 177- The principal and the intermediary on one hand, the intermediary and the third party referred to article 169 above on the other hand, shall be bound by practices which they knew or should have known, and which, in trade, are widely known and regularly observed by the parties in the same relation in the line of enterprise in question.

They shall also be bound by practices established between them.

ARTICLE 178- Unless expressly stipulated in the contract, the scope of the intermediary's power is determined by the nature of the matter to which he relates.

The mandate shall include the power to perform legal acts necessary for its implementation.

However, the intermediary may not initiate legal proceedings, settle disputes, agree to arbitration, assume obligations of change, alienate or encumber property, or make gifts, without a special power.

ARTICLE 179- The intermediary who has received specific instructions may not deviate from them, absent proof that circumstances did not allow him to get permission from the principal, where it is established that, should the principal be informed of the situation, he would have granted the power.

CHAPTER III: LEGAL EFFECTS OF ACTS PERFORMED BY THE INTERMEDIARIES

ARTICLE 180- When the intermediary is acting on behalf of the principal within the limits of his power, and the third party knew or had to know him as an intermediary, his acts shall bind the principal directly to the third party referred to in article 169 above, unless it is clear from the circumstances, notably by reference to a commission or brokerage contract, that the intermediary meant to act only for himself.

ARTICLE 181- When the intermediary acts on behalf of the principal within the limits of his power, he is not bound personally to the third party referred to in article 169 above unless:



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- The third party did not know or was not supposed to know his status of intermediary;
- Or if the circumstances, including in terms of a commission contract, demonstrate that the intermediary meant to act for his own account.

ARTICLE 182-The responsibility of the intermediary is generally subject to the mandate rules.

The intermediary shall then be liable to the principal for good and faithful performance of duties.

He is required to perform personally, unless he is authorized to transfer his duties to a third party, or forced by circumstances, or the practice allows for a substitution of powers.

ARTICLE 183-When the intermediary acts without a mandate, or beyond his mandate, his acts are not binding either to the principal or the third party referred to in article 169 above.

However, when the behavior of the principal leads the third party to believe, reasonably and in good faith, that the intermediary has the power to act on behalf of the principal, the latter shall not rely on the lack of the intermediate power with respect of the third party.

ARTICLE 184- An act realized by an intermediary who acts, without or beyond his power, may be ratified by the principal.

Such act, if confirmed, shall have the same effects as if it was realized under specific mandate.

ARTICLE 185- Absent a confirmation, an intermediary who acts, without or beyond his power, is required to indemnify the third party referred to in article 169 above in order to restore his original condition which should have been such, should the intermediary have acted by virtue of a mandate and within its limits.

The intermediary shall not be liable if the third party referred to in article 169 above knew or ought to have known that the intermediary had no power or acted beyond his power.

ARTICLE- The principal must reimburse to the intermediary any advances and costs incurred by the intermediary, in principal and interest, in the course of the proper performance of the mandate, and release him from any contracted obligations.

ARTICLE 187-The intermediary is required to report on the execution of his mandate to the principal at all times at the request of the principal.

He shall be liable for interests accrued by delayed payments caused by him and shall be liable for the compensation for damages caused by failure of execution or bad performance of his duties unless he can prove that he is not responsible for such damage.



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CHAPTER IV: TERMINATION OF THE MANDATE OF THE INTERMEDIARY

ARTICLE 188-The mandate of the intermediary shall be terminated:

- by an agreement between the principal and the intermediary;
- at the completion of the transaction or transactions for which he was mandated;
- by revocation on the initiative of the principal;
- By the intermediary's renunciation.

The principal who abusively terminates the mandate entrusted to the intermediary shall be liable for compensation for damages.

The intermediary who abusively declines to execute his mandate must compensate the principal for the damage caused.

ARTICLE 189-The mandate of the intermediary shall cease also in case of death, incapacity, or in cases provided for by the Uniform Act on Collective Insolvency Proceedings, whether these events relate to the principal or the intermediary.

ARTICLE 190-The termination of the intermediary's mandate ordered by the principal shall have no effect on the third party referred to in article 169 above, unless he knew or had to know about the termination.

ARTICLE 191-Notwithstanding the termination of the mandate, the intermediary shall still be able to perform necessary and urgent acts on behalf of the principal or his rightful beneficiaries to prevent any damage.

TITLE II: COMMISSION AGENTS

ARTICLE 192- An commission agent is a professional who, in exchange for payment of a commission, shall conclude any legal act in his own name but on behalf of the principal who gives him mandate.

ARTICLE 193-The commission agents shall perform the operations stipulated in the commission contract within the guidelines of the principal.

If the commission contract contains instructions, the agent must comply with them unless he decides to terminate the contract if the nature of the mandate or practices is contradictory to the instructions.

If there suggestions, the commission agent must act as if his own interests were at stake, and



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following closely the advice received.

The agent must act in the way that best serves the interests of the principal and observance of trade practices.

ARTICLE 194– The commission agent must act fairly on behalf of the principal. He shall not purchase, for his own account, goods that he is supposed to sell or sell his own goods to the principal.

ARTICLE 195– The commission agent must give the principal all useful information on the operation, object of the commission, and give an account of his actions until the completion of the operation.

ARTICLE 196– The principal must pay the agent remuneration or commission that is due as soon as the mandate is executed, and, irrespective of the outcome of the operation, subject to the rules of contractual responsibility.

ARTICLE 197– The principal must reimburse the commission agent for costs and normal expenses incurred by the latter, provided that they have been useful to the operation, and that they are accompanied by supporting documents.

ARTICLE 198– All agents shall have a lien on all goods that he holds with respect to all his claims against the principal.

ARTICLE 199– When the goods shipped on commission to be sold are in a clearly defective condition, the agent must safeguard the rights of appeal against the carrier, have the damage recorded, do his best to preserve the goods and notify the principal, without delay.

Failing that, he shall be liable for the damage caused by his own negligence.

When there is reason to fear that goods shipped on commission for sale will deteriorate quickly, and if the interest of principal so requires, the agent has an obligation to sell them.

ARTICLE 200– The commission agent who made the sale hereinafter the minimum price set by the principal shall be liable for the difference, unless he proves that by selling that way, he has saved the principal from damage, and that the circumstances prevented him from respecting his orders.

If he is at fault, he must repair the damage caused by breaching the contract.

The commission agent who buys at a low price or overprices while selling contrary to the orders of the principal, shall not benefit from the difference.

ARTICLE 201– The commission agent shall act at his own peril if, without the consent of the



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principal, he extends a credit or an advance to a third party.

However, the principal is required to indemnify the agent of his losses if the latter demonstrates that he has acted in the interest of the principal.

ARTICLE 202- The commission agent shall only be liable for payment or execution of other obligations resulting from those he executed if he is answerable thereof or if it is common practice in trade where he operates.

The commission agent who guarantees the obligations of the third party with whom he deals shall be entitled to an additional commission called *del credere* commission.

ARTICLE 203- The commission agent shall lose all rights to commission if he has been guilty of acts of bad faith towards the principal, especially if he gave the principal a higher price than the purchase price or a lower price than sale price.

In such cases, the principal has the right to oblige the agent as buyer or seller.

ARTICLE 204- The shipping agent or carrier on commission, who, in exchange for compensation and in his own name, takes charge to ship or re-ship goods on behalf of his principal, shall be likened to the commission agent. He shall be subjected to provisions governing the contract of transportation with regard to the transport of goods.

ARTICLE 205- The shipping agent or carrier on commission shall be responsible for, *inter alia*, the timely arrival of goods, damage and losses, unless caused by a third party or cases of *force majeure*.

ARTICLE 206- The authorized customs commission agent is required to pay the amount of duties, taxes or fines of the Customs authority on behalf of his client.

The authorized customs commission agent who has paid for others rights, taxes or fines collected by Customs, shall be subrogated to the rights of Customs.

ARTICLE 207- The authorized customs commission agent shall be liable to his principal for any error in the declaration or application of customs tariffs, as well as any prejudice that may arise from delays in payment of duties, taxes or fines.

He shall be liable to Customs authorities and the Treasury for customs operations entrusted to him.

TITLE III: BROKERS

ARTICLE 208- Brokers are professionals who connect people to facilitate or bring about the conclusion of agreements between them.



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ARTICLE 209-The broker must remain independent of the parties. He shall limit his activities to matching individuals wishing to enter into agreements, and to making arrangements for facilitating the agreement between them.

He shall not get involved personally in an agreement without the consent of the parties.

ARTICLE 210-The broker shall:

- Provide the parties with all useful information for their free and informed consent;
- Make all necessary arrangements to facilitate the conclusion of a contract.

The brokers shall be liable for prejudice resulting from false statements if, in order to bring a party to enter into a contract, he knowingly presents capabilities and qualities that he does not have.

ARTICLE 211- The broker shall not perform commercial transactions either on his own account, or directly or indirectly, or under somebody's name or through a middleman.

ARTICLE 212- The broker shall be paid a percentage of the amount of the transaction.

In case of a sale brokerage, if the seller is the only one engaging the broker, the commission cannot be paid, even partially, by the buyer and it shall be, if necessary, deducted from the amount of the price agreed between the parties and paid for by the seller.

Where the buyer is the only party engaging the broker, he shall pay the commission, in addition to the amount paid to the seller.

Where both parties engage the broker, the percentage corresponding to the commission due to the broker shall be set and divided among themselves by mutual agreement with the broker.

ARTICLE 213-Brokers shall be entitled to compensation as soon as the indication they gave or negotiations they led results in the conclusion of the contract.

When the contract was concluded under a condition precedent, the broker's compensation shall be due only after that condition is met.

Where it was agreed that the broker's expenses would be reimbursed, they shall be due even when the contract has not been concluded.

ARTICLE 214- Compensation not agreed by the parties shall be set based on the usual rate, if one exists; absent such rate, the remuneration shall be fixed according to standard practice.

Absent such practice, the brokers shall be entitled to a compensation that takes into



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accountallelements that relate tothe transaction.

ARTICLE 215– The broker shall lose his right to remuneration and reimbursement of expenses if he acted in the interest of the contracting third party in disregard of his obligations towards his principal,orhereivescompensation from the third contracting party, unknownto the principal.

TITLE IV: COMMERCIAL AGENTS

ARTICLE 216- Commercial agents are professionals who, permanently, are entrusted with negotiatingandpossibly concluding contractsofsale,purchase, rentalorprovision ofservices on behalf of and forproducers,manufacturers,merchants, or other agents, without being bound to them by a contract of employment.

ARTICLE 217-The contract between commercial agents and their principals shall be entered in the common interest of the parties.

Commercial agents and their principal are bound, one to the other, by a duty of loyalty and information.

Commercial agents shall perform their duties in a professional manner; the principal has an obligation to enable their agents to execute their mandate.

ARTICLE 218- Commercial agents may accept, without needing authorization, and unless otherwise agreed, to represent other principal parties.

They shall notaccepttherepresentation of a businesscompeting with thatofoneoftheir principals without the latter's written agreement.

ARTICLE 219-Commercial agents shall not, even after the end of the contract, use or revealinformation that the principal communicated to them in confidence or that they learned because of their contract.

When a non-competition undertaking has been agreed between commercial agents and their principal, the agent shall be entitled to a special allowance at the expiry of the contract.

ARTICLE220-Allforms of remuneration which vary depending onthenumberorthethevalue of transactions shall constitute acommission.

Where the contract is silent, commercial agents shall be entitled to a commission that is customary in the sector covered by their mandate.

Absent anycustom,a commercial agent shall be entitledtoaremunerationthattakes into accountall elements that relate to the transaction.



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ARTICLE 221-Agents assigned exclusively to a geographical area or a group of specific clients shall be entitled to a commission for any transaction performed during the duration of the agency contract.

ARTICLE 222-For any commercial transaction concluded after the termination of the agency contract, commercial agents shall be entitled to a commission when the operation is mainly due to their activity in the course of the agency contract, and was concluded within a reasonable time period from the termination of the contract.

ARTICLE 223-Unless circumstances make equitable the sharing of the commission between two or more commercial agents, they shall not be entitled to a commission if it is already payable to:

- the agent who preceded him for a commercial transaction concluded before the beginning of his agency contract;
- The agent who succeeded him for a commercial transaction concluded after the termination of his agency contract.

ARTICLE 224-The commission shall be paid as soon as the principal performs the transaction, or should have executed it by virtue of the agreement with the third party referred to in article 169, or even as soon as the said third party has performed the transaction.

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

ARTICLE 225- The right to a commission may only expire if it is established that the contract between the third party referred to in article 169 above and the principal is not executed according to circumstances attributable to the commercial agent or due to circumstances beyond the control of the principal.

ARTICLE 226-Unless otherwise agreed or otherwise customary, the commercial agent is not entitled to reimbursement of costs and expenses resulting from the normal exercise of his activity, but only from those incurred under special instructions of the principal.

Reimbursement of costs and expenses is due, in this case, even if the transaction was not performed.

ARTICLE 227- The agency contract for a fixed term shall end upon expiry of the term provided, without any need to complete any formality.

The agency contract entered into for a fixed term, which continues to be executed by the two parties after its term, shall be deemed transformed into an indefinite term contract.



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ARTICLE 228-When the contract is for an indefinite term, each party may terminate it upon giving a notice.

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

In the absence of an agreement to the contrary, the end of the notice period shall coincide with the end of a calendar month.

In case of a term contract transformed into an unspecified contract, the notice period shall be calculated from the commencement of the contractual relations between the parties.

The parties may not agree on shorter notice periods.

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

These provisions do not apply when the contract is terminated due to a serious misconduct of one of the parties, or the occurrence of an event of force major.

ARTICLE 229- In case of severance of relations with the principal, the commercial agent shall be entitled to a compensatory allowance without prejudice to any damages.

The commercial agent shall lose the right to compensation where he failed to notify the principal that he intends to enforce his right through a notice served by the bailiff or by any means showing actual receipt by the principal, within a period of one year after termination of the contract.

The successors of the commercial agent shall also benefit from the right to compensatory allowance when the contract is terminated due to the agent's death.

ARTICLE 230-The compensatory allowance provided for in the foregoing shall not be due:

- 1) in case of termination of the contract for serious misconduct of the commercial agent;
- 2) in case of termination of the contract at the agent's initiative, unless such termination is justified by circumstances attributable to the principal or not caused by age, infirmity or illness of the commercial agent, and more generally, by circumstances independent of the will of the agent as a result of which the continuation of his activity cannot be reasonably required;
- 3) Where, in agreement with the principal, the commercial agent assigns rights and obligations attached to this contract that he holds to a third party.



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ARTICLE 231-The compensatory allowance shall be equal to a minimum of:

- one month of commission as from the first fully executed contract year;
- two months of commission as from the second fully executed contract year;
- Three months of commission as from the third fully executed contract year.

The compensatory allowance shall be fixed freely between the commercial agent and his principal beyond the third completely fully executed contract year.

Failing agreement, it may not be less than three months of commission.

The monthly payment to take into account for the calculation of the compensation is that of the average of the last twelve months of the execution of the mandate.

These provisions shall not apply when the contract is terminated due to misconduct by an agent or the occurrence of an event of force majeure.

ARTICLE 232-Any clause or agreement derogating from the provisions of articles 186 to 189 above shall be deemed unenforceable against the commercial agent.

ARTICLE 233-Each party is required to return, at the end of the contract, everything which was given to him for the duration of this contract, either by the other party, or by third parties on behalf of the other party, without prejudice to the right of retention for either one of the parties.

BOOK VIII COMMERCIAL SALE

TITLE I: SCOPE AND GENERAL PROVISIONS

CHAPTER I: SCOPE

ARTICLE 234-The provisions of this Book shall govern contracts of sale of goods between merchants, natural persons or legal entities, including contracts for supply of goods intended for manufacturing activities or production.

Unless otherwise stipulated, the commercial sale contracts shall be subject to the provisions of this Book insofar as the contractors have their registered office in one of the States parties or when the rules of private international law lead to the application of the law of a State party.

ARTICLE 235-The provisions of this Book shall not govern:



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- a. sales of goods bought for personal, family or household use unless the seller, at any time before the conclusion of the contract or at the conclusion of the contract, did not know and should not have known that the goods were bought for any such use;
- b. Contracts of supply of goods in which the main part of the obligation of the party supplying the goods consists of a provision of labor or other services.

ARTICLE 236-The provisions of this Book shall not govern sales subject to a special regime, including:

- a) auctions;
- b) foreclosure sales or by any other means by court officials;
- c) sales of securities, negotiable instruments or currencies;
- d) endorsing and other operations concerning financial instruments or receivables;
- e) sales of ships, vessels, hovercraft and aircraft;
- f) Sales of electricity.

CHAPTER II: GENERAL PROVISIONS

ARTICLE 237—A commercial sale shall be subject to the rules of common law with respect to contracts and sale which are not contrary to the provisions of this Book.

Parties are required to comply with the requirements of good faith. They shall not exclude this obligation, nor limit its scope.

ARTICLE 238-When a clause is ambiguous, the will of one party must be construed according to the meaning that a reasonable individual, of the same status as the other party, placed in the same situation, would have deduced from his behavior.

To determine the will of one party, factual circumstances shall be taken into account, in particular, the negotiations that took place between the parties, practices established between them, customary practices in the concerned profession.

ARTICLE 239-Parties are bound by customs they have agreed upon and the course of dealing established in their commercial relationship.

Unless otherwise agreed by the parties, they are deemed to have agreed to professional practices of which they had knowledge or ought to have known and which, in trade, are widely



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known and regularly observed by parties to contracts of the same nature in the line of businessconcerned.

ARTICLE 240- The commercial sales contract may be in written or verbal form; it shall not be subject to any condition of form. It shall be proven by allmeans.

TITLE II: FORMATION OF THE CONTRACT

ARTICLE 241- A contract is entered into either by the acceptance of an offer, or by behavior of the parties which adequately indicates consent.

An offer shall be specific enough when it refers to goods and, expressly or implicitly, fixes the amount and the price or provides information which permits them to be determined.

A proposal to enter into a contract addressed to one or more specific individualsshall constitute an offer if it is sufficiently specific and it indicates its author's will to be bound in case of acceptance.

A proposal addressed to unspecific individuals is considered only asaninvitationto make an offer,unless thepersonthatmade the proposaldid not clearly indicate thecontrary.

ARTICLE 242- The offer shall take effect when it reaches the addressee.

The offercanberevokediftherevocationreaches theaddressee before the latter has expressed hisacceptance.

However, the offer may not be revoked if it states that,before a deadline for acceptance, it is irrevocable or if the addressee hasreasonable grounds to believe that the offer is irrevocable and acted accordingly.

The offer shall end when its rejection reached the offeror.

ARTICLE 243- The offer must be accepted within the time limit stipulated by its author or, failing suchstipulation,within reasonable deadline, inlightofcircumstances, including the rapidity of the means of communication used by the offeror. A verbal offermustbeacceptedimmediately unlesshecircumstances indicate otherwise.

Anydeclarationorotherbehavior of therecipientindicating that he accepts the offer shall be deemed to be an acceptance.Silenceorinactioncannot alone establishacceptance.

ARTICLE 244- The acceptance of an offer shall take effect when the expression of acceptance reaches the offeror.



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However, if by virtue of the provisions of the offer, practices or customs established between the parties, the addressee may, without notice to the offeror, indicate that he accepts by commencing performance of and act, the acceptance shall then take effect at the time where that act is performed.

ARTICLE 245-The reply to an offer meant to be an acceptance thereof, but containing additions, limitations or other amendments shall mean rejection of the offer and constitute a counter-offer.

However, the response which is meant to be an acceptance but contains additional or different elements, which do not substantially alter the terms of the offer, shall constitute an acceptance, unless the offeror, without undue delay, disagrees with such elements. If he fails to do so, the terms of the contract shall be those of the offer with amendments contained in the acceptance.

ARTICLE 246- The acceptance time limit fixed by the offeror shall take effect at the time the offer is expressed. The date indicated in the offer shall be presumed to be the date of its transmission, unless circumstances indicate otherwise.

ARTICLE 247- Acceptance may be revoked unless the revocation reaches the offeror at the latest at the time when the acceptance would have taken effect.

ARTICLE 248- The contract may be validly concluded even if the parties defer determination of a condition to subsequent agreement or to a third party.

The existence of the contract shall not be compromised due to failure of agreement by the parties or the absence of a decision of third parties if, under the circumstances and the intention of the parties, such clause is determinable.

ARTICLE 249- The parties shall negotiate freely and shall not be held liable if they do not reach an agreement.

However, the party that conducts or terminates negotiations in bad faith shall be liable for the prejudices suffered by the other party.

The party that starts or continues negotiations without any intention of reaching an agreement is in bad faith.

TITLE III: OBLIGATIONS OF THE PARTIES

CHAPTER I: OBLIGATIONS OF THE SELLER

ARTICLE 250- The seller undertakes to deliver goods and remit, if possible, documents and accessories necessary to their use, upon proof of purchase and acceptance of delivery, under the conditions set forth in the contract and this Book,.



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Furthermore, he is required to ensure and guarantee that the goods are conforming to the order.

Section 1 - Obligation to Deliver

ARTICLE 251- When the seller is not required to deliver the goods at a particular place, he must keep them at the disposal of the buyer, either at the place where they were manufactured or stored at the headquarters of his sales activities.

ARTICLE 252- Where the sales contract provides for delivery of goods to a carrier, the seller shall meet his obligation to the buyer by delivering them as requested.

However, the seller is required to conclude the necessary contracts so the transportation is effected by appropriate means and according to customary conditions up to the location agreed with the buyer.

The seller is not required to subscribe to a shipping insurance, but he shall, at the request of the buyer, provide him with all information necessary to contract such insurance.

ARTICLE 253- The seller must deliver the goods on the date set in the contract or determined according to its provisions.

If delivery is scheduled for a specific period, he may deliver any time during that timeframe.

Absent such stipulation, the seller shall deliver within a reasonable time after the conclusion of the contract.

ARTICLE 254- Where the seller is to hand over documents and accessories of the goods, he shall meet this obligation at the time, place, and in the form provided for in the contract or by customary practices in the concerned sector.

Section 2 - Mandatory Compliance

ARTICLE 255- The seller shall deliver the goods in quantity, quality, specifications and packaging in accordance with the terms of the contract.

Where the contract is silent, the seller shall deliver the goods according to customary practice or in the same way as he presented samples or models. He must also deliver them in packages or conditions usually applied for this type of goods or, failing that, in conditions enabling their conservation and protection.

ARTICLE 256- Compliance of the goods sold shall be determined as of the day of delivery, even if defects appear only later.



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ARTICLE 257-Where delivery is anticipated, the seller may, until the date scheduled for delivery, either impose delivery of new compliant goods, or repair the non-conformity or defect of delivered goods insofar as the exercise of this right does not cause any damage or costs to the buyer.

ARTICLE 258-Under penalty of forfeiture for the buyer of the right thereof, the apparent defect of conformity on the day of delivery must be disclosed by the buyer to the seller in the month following the delivery.

ARTICLE 259-The action of the buyer, based on a defect of conformity concealed on the day of delivery, shall lapse after a period of one year commencing on the day where such defect was found or ought to have been found.

This latter time limit cannot have the effect of reducing the duration of the contractual warranty eventually consented.

Section 3 –Obligation to Guarantee

ARTICLE 260-The seller must deliver goods free of any right or claim of a third party, unless the buyer agrees to take them “as is”.

The seller shall guarantee the buyer against any eviction of his own doing.

ARTICLE 261-Any clause restricting the warranty due by the seller shall be construed accordingly.

The seller who invokes such clause shall demonstrate that the buyer has known thereof and accepted it at the conclusion of the sale.

CHAPTER II: OBLIGATIONS OF THE BUYER

ARTICLE 262 - The buyer undertakes to pay the price and accept the delivery of goods.

Section 1 – Payment of the Price

ARTICLE 263- The buyer is required to pay the agreed price. The price stipulated in the contract is presumed to be agreed exclusive of VAT.

Where it is necessary to set the price, the parties may refer to the value habitually assigned to goods sold under comparable circumstances in the same sector at the conclusion of the contract.

ARTICLE 264-The buyer shall take all necessary measures to complete formalities prior to the actual payment of the price.



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ARTICLE 265-When the price is fixed according to the weight of goods, the price shall be set based on their net weight in case of doubt.

ARTICLE 266-The payment of price to the seller shall be made either at the place of his place of business or at the delivery location if payment is made on delivery or if delivery is made against submission of documents.

ARTICLE 267-Where the sales contract provides for delivery of the goods to a carrier, the seller may subordinate their shipping or handing over to the buyer of documents representing them to prior payment of the price.

Parties may also provide that the buyer is obligated to pay the price only after checking the goods.

ARTICLE 268-The buyer shall pay the price on the agreed date and may not condition his payment to a demand by the seller.

Section 2 –Acceptance of Delivery

ARTICLE 269-The buyer must accept delivery by performing acts that will allow the seller to make delivery, and then he must remove the goods.

ARTICLE 270- The buyer must examine the goods or cause them to be examined within a very short period. Where the sales contract provides for delivery of goods to a carrier, the examination may be delayed until the arrival of these goods at their destination.

Where the goods are diverted or forwarded by the buyer without a reasonable opportunity to examine them, and if at the time of the conclusion of the contract, the seller knew or should have known of the possibility of diversion or forwarding, examination may be deferred until the arrival of the goods at their new destination.

ARTICLE 271-Where payment shall be made on the day of delivery, and the buyer delays taking delivery of the goods or does not pay the price, the seller, if the goods are in his possession or under his control, shall be bound to keep them until he receives full payment.

However, the seller must take reasonable steps, under these circumstances, to ensure the conservation of the goods and the buyer must reimburse expenses incurred consequently.

ARTICLE 272- If the buyer received the goods and intends to refuse them, he shall take reasonable steps, under these circumstances, to ensure their conservation. He shall be entitled to keep them until he receives from the seller reimbursement of storage costs incurred.

ARTICLE 273– The party required to take measures to ensure the conservation of the



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goods may stock them in the stores of a third party at the expense of the other party but is required to bear excessive costs that could result from such storage.

ARTICLE 274- The party who must ensure the conservation of the goods may sell them by all means appropriate if the other party delays to take possession, to pay the price, or to refund costs incurred for their conservation. He must first notify the other party of his intention to sell these goods.

The party selling the goods may deduct from the product for sale an amount equal to his costs for conservation, and shall owe the surplus to the other party.

TITLE IV: EFFECTS OF THE CONTRACT

CHAPTER I: TRANSFER OF OWNERSHIP

ARTICLE 275- The acceptance of delivery shall entail transfer of title to the buyer of the goods sold.

ARTICLE 276- The parties may, however, agree to defer the transfer of title pursuant to an title retention clause governed by articles 72 to 78 of the Uniform Act on securities interests.

CHAPTER II: TRANSFER OF RISKS

ARTICLE 277- Transfer of ownership shall entail the transfer of risk to the buyer.

Loss or damage on goods occurred after the transfer of risk shall release the buyer from his obligation to pay the price only if these events are caused by the seller.

ARTICLE 278- Where the sales contract provides for delivery of the goods to a carrier, the risks are transferred to the buyer by handing the goods to the first carrier.

The authorization given to the seller to retain documents on the goods shall not affect the transfer of risk.

ARTICLE 279- Risk to goods sold while being transported shall be transferred to the buyer upon conclusion of the sales contract.

However if the seller had knowledge or ought to know of the loss or deterioration of the goods, he shall bear the cost of such risk if he failed to inform the buyer.

ARTICLE 280- Where goods sold are not itemized, the transfer of risk shall be done at the time of their identification which requires that they become available to the buyer.



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TITLE V: NON-EXECUTION AND RESPONSABILITY

CHAPTER I: GENERAL PROVISIONS

ARTICLE 281-Any party to a contract of commercial sale is entitled to petition for its termination before the competent judge for total or partial non-execution of the obligations of the other party.

However, the seriousness of the conduct of one party to the contract of commercial sale may justify that the other party unilaterally terminate it at his own risk. The severity of the motive of termination shall be weighed by the competent court at the request of the most diligent party.

Irrespective of the seriousness of the conduct, the party who invokes it may be required to comply with a notice period before notifying its unilateral decision to the other party. Absent adequate notice, the author of the termination shall be liable even if the court admits the merits of the termination.

The party that imposes or obtains the termination of the contract may seek further damages in compensation of the loss suffered and the loss of profit stemming immediately and directly from the non-execution.

CHAPTER II: NON-EXECUTION OF THE OBLIGATIONS OF THE SELLER

ARTICLE 282—Where the seller does not seem to execute his obligations to deliver the goods within the prescribed time limit due to inadequate capability of manufacturing or a maladjustment of his production resources, the buyer may obtain from the competent court ruling expeditiously the authorization to differ execution of his obligation of payment. Such authorization may include the obligation to escrow part or the entire price.

ARTICLE 283—Where the buyer invokes, within the time limits set in article 258 and 259 of this uniform Act, a lack of conformity of the goods delivered, the seller has the option to impose, at his sole expense and without delay, to the buyer the replacement of the defective goods by goods that are fit for the purpose.

Furthermore, the buyer may agree with the seller on an additional time limit for the replacement, at the sole expense of the seller, of defective goods with goods that are fit for the purpose.

Before the end of this new time limit, the buyer may not invoke the non-execution of the obligations of the seller and, if the seller performs his obligations within that period, the buyer cannot claim damages.



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ARTICLE 284– Passed that deadline provided for in paragraphs 2 and 3 of article 283 above, the seller may still remediate, at his expense, to any non-performance of his obligations but the buyer, who is entitled to claim damages, may object.

CHAPTER III: NON-EXECUTION OF THE OBLIGATIONS OF THE BUYER

ARTICLE 285- If the buyer does not seem able to pay the full price due to insolvency or cessation of payments or even his delays in the agreed deadlines, the seller may obtain from the competent court ruling expeditiously to defer the execution of his delivery obligations. Such authorization may include the obligation to deposit the goods at his advanced costs.

ARTICLE 286–Where the seller grants an additional extension for the payment of the price, he may not invoke the non-execution of the buyer’s obligations before the end of this new time limit. Where the buyer performs his obligations within that time limit, the seller may not attempt to ask for damages.

ARTICLE 287–Passed the time limit prescribed in article 289 above, the buyer may still perform his obligations but the seller, who still holds the right to ask for damages, may object.

ARTICLE 288- In case the goods are not fit for the purpose, whether or not the price was already paid, the buyer may reduce the price of the amount of the difference between the value that compliant goods could have had at the time of delivery and the value that goods actually delivered had at that moment.

ARTICLE 289– Where the seller delivers only part of the goods or if only one part of the goods delivered is fit for the purpose, the buyer who agreed to accept the delivery may not invoke non-execution of the contract and shall not claim damages relating to the part missing or non-compliant.

ARTICLE 290– Where the seller delivers the goods before the set date, the buyer has the option to accept or refuse to accept the delivery.

Where the seller delivers a greater quantity of goods than the one provided for in the contract, the buyer has the right to accept or refuse to take up the delivery of the excess quantity.

Where the buyer accepts all or part of the surplus, he must pay for it at the rate stipulated in the contract.

CHAPTER IV: DAMAGES

ARTICLE 291–Any delay in payment of the price entails compulsory



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payment of interest calculated at the legal interest rate, without prejudice to possible damages due to other causes.

Interest shall accrue from the mailing of the formal notice sent by the seller to the buyer by registered letter with acknowledgement of receipt or by any other equivalent means.

ARTICLE 292-When the contract is breached and that the buyer went ahead and bought substitutes, he may obtain compensation corresponding to the difference between the purchase price of substitutes and the price agreed in the contract, as well as all other damages due to another cause.

When the contract is breached and the seller proceeded with the resale of the goods, he may receive damages corresponding to the difference between the agreed contract price and the resale price, as well as all other damages due to another cause.

ARTICLE 293-The party which invokes a non-execution of the obligations of the contract shall take all reasonable measures in light of the circumstances to limit losses, or keep his gains.

Failing to do so, the defaulting party may request a reduction of damages equal to the amount of losses that could have been avoided and the gain that could have been achieved.

CHAPTER V: EXEMPTION FROM LIABILITY

ARTICLE 294- A party may not be liable for non-execution of one of any of his obligations where he proves that his non-performance was due to an impediment beyond his control, such as an act of a third party or a case of force majeure. A case of force majeure shall be any impediment that is beyond a party's control and the occurrence or consequences of which no-one could have reasonably foreseen.

ARTICLE 295- When a non-execution of one of the parties is due to an act of a third party which has been put in charge of executing part or the entire contract by such party, he shall not be exempted from liability.

CHAPTER VI: TERMINATION OF THE CONTRACT

ARTICLE 296- The termination of the contract shall release the parties from their obligations but shall not exempt them from potential damages.

It shall have no effect on the terms of the contract relating to the settlement of disputes or to rights and obligations of the parties in case of termination.

ARTICLE 297-The party who executed part or all his obligations may be refunded by the



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other party that which he has supplied or paid under the contract.

ARTICLE 298-The buyer may not obtain the termination of the contract or require delivery of substitute goods if it is impossible to return the goods in the state where they were received, and if such impossibility is due to an act or omission from his part

ARTICLE 299– The buyer who has lost the right to declare that the contract is terminated or to require from the seller the delivery of substitute goods under the preceding article, shall retain the right to avail himself of all the other rights stipulated in the contract.

ARTICLE 300-If the seller is bound to return the payment of the price, he must pay interest on the amount from the day he received the payment.

If the buyer must return all or part of the goods, he must pay the seller all or part of the amount of the profit that he has made.

CHAPTER VII: PRESCRIPTIVE PERIOD

ARTICLE 301- The prescriptive period of actions for commercial sale are subject to the provisions stipulated in Chapter IV, Book I of this Uniform Act, subject to the following provisions.

The prescriptive period for commercial sale is two years except where otherwise provided in this Book.

ARTICLE 302–Where the seller has given a contractual warranty, the prescriptive period of actions referred to in article 259 shall begin to run from the date of the expiry of the contractual warranty.

BOOK IX TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 303– Setting up resources for electronic processing and transmission of the Regional Registry shall be effective within two years from the date of entry into force of this uniform Act.

Setting up resources for electronic processing and transmission of the National Registry in each State party shall be effective within two years from the date of entry into force of this uniform Act.

Setting up resources for electronic processing and transmission of the Register (s) of Commerce and Securities in each State party shall be effective within two years from the date of entry into



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force of this uniform Act.

ARTICLE 304- States parties shall ensure that, within a period of two years from the date of entry into force of this Uniform Act, companies and other individuals and organizations required to register or participate in the registration may file electronically all their acts and information subject to publicity. Furthermore, the States parties may compel all companies, or certain categories of them, to file everything or part of their acts and information in question electronically.

ARTICLE 305- Within a period of two years from the date of entry into force of this uniform Act, all documents and information provided for by this uniform Act and any other legal provision, filed in hard copy or electronically, shall be delivered accordingly to the Register of Commerce and Securities, then re-entered electronically in the National and Regional Registries. To this end, States Parties shall ensure that all acts and information that are filed in hard copy to this date be converted to an electronic format by the Register of Commerce and Securities.

ARTICLE 306- This uniform Act repeals the Uniform Act of 17 April 1997 on general commercial law.

ARTICLE 307- This uniform Act shall be published in the Official Journal of OHADA within a period of sixty days from the date of its adoption. It shall also be published in the Official Journal of the States Parties, or by any appropriate means. It shall enter into force ninety days from the date of its publication in the Official Journal of OHADA in accordance with article 9 of the Treaty on the Harmonization in Africa of Business Law signed in Port Louis on 17 October 1993, as revised in Quebec City on 17 October 2008.



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Done in Lomé, 15 December 2010

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